

Rescinded By  
Res 35-06

# City of Stuart

*Sailfish Capital of the World*



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**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 18-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A GROUND LEASE BETWEEN THE CITY OF STUART AND N.O.I. ENTERPRISES CORPORATION (BOB DeSANTIS) FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\*\*\*\*\*

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The Mayor and City Clerk are hereby authorized and directed to execute a ground lease between the City and N.O.I. Enterprises Corporation (Bob DeSantis) for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel. A copy of ground lease is on file in the office of the City Clerk.**

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 23<sup>RD</sup> day of January, 2006.

Commissioner Mortell offered the foregoing resolution and moved its adoption.

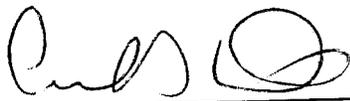
The motion was seconded by Commissioner Krauskopf and upon being put to a roll call vote, the vote was as follows:

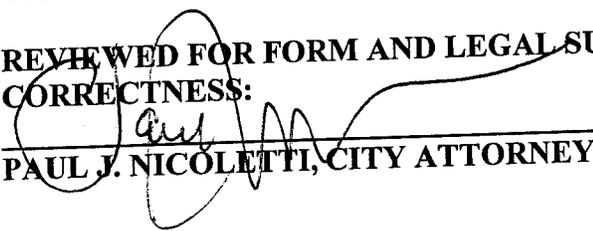
CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		

ATTEST:

\_\_\_\_\_  
CHERYL WHITE  
CITY CLERK

  
\_\_\_\_\_  
Carol Waxler  
MAYOR

REVIEWED FOR FORM AND LEGAL SUFFICIENCY  
CORRECTNESS:  
  
\_\_\_\_\_  
PAUL J. NICOLETTI, CITY ATTORNEY

CITY OF STUART, FLORIDA

AGENDA ITEM REQUEST

Meeting Date: January 23, 2006

Prepared by: Paul J. Nicoletti

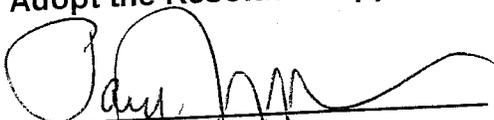
Title of Item: RESOLUTION 18-06 AUTHORIZING THE EXECUTION OF A GROUND LEASE WITH N.O.I. ENTERPRISES CORPORATION (BOB DeSANTIS) FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL.

Summary Explanation/Background Information on Agenda Request:

Bob DeSantis was the successful bidder on the lease of the 2+ acre parcel at the old landfill on Monterey Road. We have been negotiating with him since early October. The terms set forth in the attached Lease Agreement comport with the bid specs as additionally negotiated. Mr. DeSantis plans on building an office, storage unit facility that will be a Commercial PUD. We had worked this issue with Terry O'Neill and Monica Graziani, who had agreed it would be permitted by the Land Development Code. This item is being brought to you with several items remaining to be obtained, including an appraisal and a survey. At this point we don't even have a good Legal Description of the property. The reason for the timing is to accommodate Mr. DeSantis, who wants to use the property as part of a "like kind exchange" under Sec. 1031, Internal Revenue Code, and must do so by February, 2006. It has no bearing on the City, but could provide a tax saving to Mr. DeSantis. So, in the lease at paragraph 32.D. are several ways that we can cancel the lease, if we later desire to do so.

Recommended Action:

Adopt the Resolution approving the Lease.

  
PAUL J. NICOLETTI  
City Attorney

1-19-06  
Date

  
DAVID COLLIER,  
City Manager

1/19/06  
Date

NOT  
Executed

## GROUND LEASE

**THIS GROUND LEASE** is made and executed as of the **23rd day of February, 2006**, between the **CITY OF STUART**, Florida, hereinafter "CITY," as Lessor, 121 S.W. Flagler Avenue, Stuart, FL 34994, and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, hereinafter "LESSEE", 719 Colorado Avenue, Stuart, Florida 34994.

### **Section 1. Demise, Description and Use of Premises.**

In consideration of the sum of Ten and No/100 Dollars (\$10.00) to it in hand paid this day, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY leases to Lessee and Lessee hires from CITY upon the terms and conditions contained herein, for the purpose of conducting thereon any lawful business and for no other purpose, the following described real property located in Martin County, Florida, to wit:

**See Exhibit "A" attached hereto and made a part hereof.**

As used herein, the term "Premises" refers to the real property above described and to any improvements located thereon from time to time during the term hereof.

### **Section 2. Commencement and Term.**

The term of this Lease shall commence on the date of full execution of this Lease (the "Commencement Date"). Rent payments due hereunder shall commence on **January 1, 2007** (the "Rent Commencement Date").

The term of this Lease shall continue for an initial period of **THIRTY (30) YEARS** from the commencement date subject to extension or prior termination as set forth herein.

### **Section 3. Right to Extend and Rent Adjustment.**

Provided the Lessee is not in default under any of the terms and conditions of this Lease, and provided the Tenant has faithfully performed all of its covenants and undertakings contained in this Lease, Lessee shall have the right and option to extend the term of this Lease for **two (2) consecutive additional terms of TEN (10) YEARS, each** upon the same terms and conditions except that CITY shall have the right to adjust the Rent for the Premises, prior to each additional term, based upon and conforming to current economic rent values as determined by an appraisal of same as prepared herein. The appraisal shall be prepared prior to the time required for notice of term extension by the Lessee, below. For purposes of this section, the appraisal shall be made by a board of three (3) MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Premises. One of the appraisers shall be

## Ground Lease – City of Stuart and N.O.I. Enterprises Corporation

appointed and paid for by the Lessee, a second appraiser shall be appointed and paid by the CITY, and the third appraiser shall be selected by the first two appraisers so appointed and the third appraiser's fee shall be born one-half (1/2) by the Lessee and one-half (1/2) by the CITY. If the first two appraisers are unable to agree on a third appraiser within fifteen (15) days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the then President of the Florida Society of MAI's, or such successor to the Society exercising similar functions.

The term of the Lease shall be extended from one term to the next by Lessee giving written notice to the CITY not less than one hundred twenty (120) days prior to the end of the current term, or extended term. Such notice shall be sent to the CITY by hand delivery or by certified mail, return receipt requested, at the address of CITY set forth above or such other address as CITY may direct in writing. Optional terms may only be exercised one at a time, and only consecutively.

### Section 4. Basic Rent.

It is the purpose and intent of the CITY and the Lessee that the rent shall be absolute net to the CITY. Lessee hereby agrees to pay to CITY rent for the leased Premises land, the initial annual sum of **\$52,500.00**, together with the upward adjustments provided herein, payable solely for the convenience of Lessee in equal monthly installments of **\$4,375.00** payable on the first (1<sup>st</sup>) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any renewal terms subject to adjustment as hereinafter set forth. Payment shall be made either by automatic debit; wire transfer; or by a check drawn on a local bank, and shall be made to whoever the Landlord designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason.

### Section 5. Annual Rent Escalation.

For subsequent years the amount of the rent payable will be based on a four (4%) percent per year increase, beginning on January 1, 2008, and shown on the Rent Payment Schedule attached as **Exhibit "B,"** which is incorporated herein.

### Section 6. Taxes.

A. **Real Estate Taxes.** Beginning on the Commencement Date and throughout the term of this Lease thereafter, including any extension terms, Lessee shall pay, as additional rent hereunder, before they become delinquent, all taxes. "Taxes" as used herein, means all *ad valorem* real property taxes and assessments, that are levied or assessed against the Premises or any part thereof, and any rents due from time to time by any lawful taxing authority, whether federal, state, county, school or city, or otherwise, and any and all taxes which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the Commencement Date.

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CITY shall promptly forward to Lessee all notices, bills or invoices CITY receives requiring payment for any of the items set forth above. All taxes for the beginning and ending years of the term hereof, from date hereof, including any extension terms, shall be borne solely by the LESSEE. It is anticipated that taxes shall be paid on occupancy beginning on January 1, 2007 and first payable in November, 2007.

Lessee may contest any tax or assessment it is required to pay and may file protests or otherwise proceed in the name of CITY. Any contest must be made by first posting with the CITY cash in the entire amount claimed to be due by the taxing authority. The CITY may use the cash to pay the taxes or assessment at any time the CITY determines in good faith, that a loss of the property may or could reasonably occur.

**B. Florida Sales and Use Tax.** All Florida Sales and Use taxes, currently levied at six (6%) per cent of the rent payments, or any similar taxes imposed upon payments made by a tenant to a landlord, or upon this lease, whether on the rents, additional rent or the lease or leasing privilege shall be paid in full by Lessee promptly when due or upon demand therefore.

Nothing herein shall be construed so as to require Lessee to pay any income tax, inheritance tax, capital gain tax, franchise tax or corporate stock tax imposed upon or payable by CITY.

**Section 7. Permitted Uses.**

Lessee shall be entitled to develop the Premises for use as an **Office, Retail, Warehouse CPUD**. CITY hereby agrees not to affirmatively interfere with Lessee's efforts to so develop the Premises, except that CITY does have a governmental interest in assuring that Lessee complies with all applicable city ordinances, including those pertaining to zoning and land use. Lessee shall be responsible for the payment of any and all costs incurred in connection with the development of the Premises including the preparation of any applications, plans, surveys or other documents and all impact fees and development fees incurred in connection with development of the Premises.

**Section 8. Encumbrances**

**A. No Encumbrances by CITY.** Nothing contained herein shall be construed so as to require CITY to execute any document or instrument, which would create any financial liability on the part of CITY nor upon the subject premises, nor alter or impair CITY's rights under this Lease. There is no obligation under this Lease for CITY to encumber, convey, burden or subordinate any part of or all of the fee simple interest of the subject premises, or to grant or agree to any condition, which will burden the property beyond the Lease term.

**B. Encumbrances of Lessee's Leasehold Interest.** Lessee may, without being required to obtain CITY's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. CITY shall

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not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

CITY shall provide any Mortgagee of whom CITY has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default CITY sends to Lessee hereunder. Prior to terminating this Lease as the result of any default by Lessee, CITY shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, CITY shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the mortgage curing Lessee's default.

CITY shall from time to time, within ten (10) days after Lessee shall have requested it, execute, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to CITY with the request.

### Section 9. Assignment and Sublease.

A. **General Assignment and Sublease.** Lessee may not assign all or a portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by CITY or other portions of the Premises for any lawful purpose without the consent of CITY, which consent shall not be unreasonably withheld. Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof. No sub-lease can extend beyond the existing term of this Lease. No sub-lease can alter the terms hereof.

B. **Assignment under Section 1031, Internal Revenue Code.** Notwithstanding the provisions of Section 9A. above, the CITY understands and agrees that Lessee may use this Lease and Premises as part of a so-called "like kind exchange" pursuant to Section 1031, Internal Revenue Code. The CITY agrees to cooperate with the Lessee in completing this exchange, including the substitution of Lessee by an escrow agent or other substitute to complete the exchange as provided by the Code. However, the Lessee hereby holds the CITY, its elected and appointed officials, employees, and agents harmless in the event the exchange should fail or be disqualified by the Internal Revenue Service for any reason, or no reason whatsoever. It is understood and agreed that such exchange is solely the responsibility of the Lessee, and its contractors, agents, employees, officers and directors.

**Section 10. Uses Prohibited.**

Lessee shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose or purposes, nor shall Lessee maintain a nuisance on the Premises or use or permit the use thereof for immoral purposes. The Premises may not be used as a toxic waste disposal or storage facility, a solid waste disposal site or any use which could have a harmful effect on the land itself. The Lessee shall not commit waste. No use may be made of the property which would legally impair the right to collect rental adjustments called for herein. CITY shall cooperate with the Lessee's environmental consultants to secure all required approvals from regulatory bodies and agencies.

**Section 11. Improvements, Repairs, Additions, Replacements to the Real Property.**

Through the term of this Lease, the Lessee shall have the right (but not the duty) to construct, erect, or reconstruct any and all manner of buildings, works, or improvements upon the Premises as are permitted by this lease and the then applicable land use, zoning, building and other ordinances of the City.

Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

CITY shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Premises during the term of this Lease.

Lessee's rights, as set forth in this Section 11, shall be subject to the following conditions:

- A. The cost of any such construction, or of any change, alteration or improvements, shall be borne and paid for by Lessee.
- B. The Premises shall, at all times, be kept free of mechanics and material men's liens, and Lessee may be required by CITY to furnish copies of full or partial releases of lien demonstrating the same.
- C. The parties shall enter into a Memorandum of Lease, in recordable form, in form and content acceptable to CITY, and the same shall be recorded prior to the commencement of any work on the premises. The Lessee agrees to execute such further agreements as may be necessary, from time to time, to preserve the leased premises from the imposition of liens. The Lessee shall provide in any contracts and shall require the General Contractor to provide in all sub-contracts and sub-sub-contracts that the parties thereto must look solely to the Lessee for payment and that no liens shall be filed against the land itself.

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- D. During the last three years of any term of the Lease (or any extended term acquired by exercise of an option hereunder), Lessee shall not demolish or remove any building or improvements located on the premises unless Lessee's option to renew for the next ten (10) year period has been exercised in writing. At the end of term hereof, all improvements located on the Premises will become the property of CITY, and at CITY's option, CITY can require Lessee to remove all or any part of the improvements and to place the Premises in their original condition.

**Section 12. Insurance.**

Lessee covenants to provide, during the entire term hereof at Lessee's own cost and expense, as additional rent, by advance payment of premiums, a comprehensive liability policy of insurance protecting CITY and Lessee as their interest may appear against any liability whatsoever, occasioned by accident on or about the demised premises or any appurtenances thereto. Such policy shall be approved by CITY, written by a company rated not less than "AAA", by Best's Register, in an amount not less than One Million Dollars (**\$1,000,000**) to cover the claim of damage from any single person, and not less than Two Million Five Hundred Thousand Dollars (**\$2,000,000**) to cover more than a single claim which may arise from a single action, and in the sum of Five Hundred Thousand Dollars (**\$500,000**) in respect to claims for property damage. Such policy shall insure Lessee and CITY against any liability that may accrue against them or either of them, on account of any occurrence on or to the demised premises during the term thereof, resulting in personal injury, death, property damage, or any other liability whatsoever; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to CITY an original or duplicate original of all such policies, together with evidence of payment of premium thereon, upon the beginning date of this Lease, and from time to time thereafter as premiums shall fall due. CITY may require an increase in the limits of coverage or extent or coverage at any time such increase is deemed commercially reasonable by CITY. CITY may increase the amounts of required insurance coverage provided the same is commercially reasonable.

All insurance coverage called for under the Lease shall contain provisions granting CITY **thirty (30) days notice** prior to termination thereof and shall be written by an insurance company authorized to do business in Florida. Copies of the policies shall be promptly furnished to CITY.

All hazard insurance policies carried by the Lessee covering property located on the demised premises will provide that the CITY is an additional named insured.

**Section 13. Indemnification of CITY.**

In consideration of said Premises being leased to Lessee for the above rental, and for other additional good and valuable considerations the extent and receipt of which are hereby acknowledged, Lessee agrees: that Lessee, at all times, will indemnify and hold harmless CITY

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from all losses, damages, liabilities and expenses, which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Lessee, or consequent upon or arising from any acts, omission, neglect or fault of Lessee, his agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Lessee's failure to comply with any laws, statutes, ordinances, codes or regulations as herein provided; that CITY shall not be liable to Lessee or any damages, losses or injuries to the persons or to property of Lessee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations, and that Lessee will indemnify and keep harmless CITY from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises as a result of the negligence of Lessee, his agents, employees, servants, licensees, visitors, customers, patrons and invitees. All personal property placed or moved into the Leased Premises or Building shall be at the risk of Lessee or the owners thereof, and CITY shall not be liable to Lessee for any damages to said personal property. Lessee shall maintain at all times during the term of this Lease an insurance policy or policies in an amount or amounts sufficient to indemnify CITY and to pay CITY's damages, if any, resulting from any matters set forth hereinbefore in this Paragraph 13. LESSEE WAIVES ALL RIGHTS TO RECOVER FROM CITY FOR ANY DAMAGES CAUSED BY NEGLIGENCE OF CITY, ITS AGENTS OR EMPLOYEES. Lessee's insurance policies shall contain a waiver of the right of subrogation as against the CITY.

**Section 14. Time.**

It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants and conditions of this Lease.

**Section 15. Condemnation.**

- A. If, at any time during the term of this Lease, title to all of the Premises shall be taken by the exercise of the right of condemnation or eminent domain, including by the CITY, this Lease shall terminate and expire on the date of such taking, and the rent and other charges provided to be paid by Lessee shall be apportioned and paid to the date of such taking.
- B. If at any time during the term of this Lease, title to less than all of the Premises shall be taken as aforesaid, this Lease shall continue (unless Lessee shall elect to terminate this Lease by giving notice thereof to CITY within thirty (30) days after the date of such taking, in which case this Lease shall terminate on the date therefore set forth in such notice), except that thereafter the rent shall be reduced to a fraction of the former amount which fraction shall be determined by dividing the area of the untaken portion of the Premises by the area of the Premises immediately before the taking.

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- C. Lessee may, at its option, but shall not be required to, repair, restore, replace or rebuild any damage or destruction to the Premises and improvements located thereon resulting or arising from any taking of all or any part thereof, except that Lessee shall not permit the Premises to remain in an unsafe or illegal condition.
- D. The CITY agrees that for the first ten (10) years of this Lease, the CITY shall not condemn the leasehold interest in the Premises, except for public health, safety and welfare purposes only.

**Section 16. Requirements of Public Authority.**

- A. During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (collectively “regulations”) of the federal, state, county, and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force on the Commencement Date or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 16. If such regulations shall so restrict the use or development of the Premises so as to render the development of the Premises unfeasible in the discretion of Lessee, Lessee shall have the option to terminate this Lease upon thirty (30) days written notice to CITY.
- B. Lessee shall have the right to contest by appropriate legal proceeding diligently conducted in good faith in the name of the Lessee, without costs, liability or expense to CITY, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (A) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceedings. Nothing herein shall delay the payment of all sums due to CITY herein required to be paid.

**Section 17. CITY’s Title/Possession.**

CITY covenants that as of the Commencement Date: CITY shall have the fee simple title to the Premises with full right and authority to make this Lease; the Premises shall then be free and clear of all liens, easements, restrictions, leases and encumbrances except as set forth in **Exhibit “B”** hereto. Lessee shall receive from the CITY a certified title insurance report demonstrating fee simple title vested in the CITY, without material encumbrances that would adversely affect the CITY’s ability to lease the Premises to the Lessee. Lessee at its sole expense, has surveyed

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the property, and has accepted the state of the survey. Lessee shall be delivered possession of the Premises; and Lessee shall have quiet and peaceful possession and enjoyment of the Premises and of all appurtenances thereunto belonging during the term of this Lease including all extension terms. CITY shall have no responsibility to provide any additional title insurance coverage on the Premises.

**Section 18. Care of Premises.**

Lessee shall in nowise violate any of the zoning or other governmental restrictions now or hereafter placed upon the said real property. Lessee shall, at its sole expense, pay for any alterations, improvements, machinery or equipment which may be required by any applicable governing body now or at any time during the term of this Lease.

**Section 19. Conditional Limitations – Lessee Default Provisions.**

This Lease and the term hereof are subject to the limitation that if, at any time during the term of this Lease, any one or more of the following events (herein called an “event of default”) shall occur, that is to say:

- (1) If Lessee shall make an assignment of the Lease for the benefit of its creditors; or
- (2) If any petition shall be filed against Lessee in any court, whether or not pursuant to any Statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, and if any such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be so filed by Lessee; or
- (3) If Lessee shall fail to pay any installment of the rent, or any part hereof, when the same shall become due and payable, and such failure shall continue for thirty (30) days; or
- (4) If Lessee shall fail to pay when due any other charge required to be paid by Lessee hereunder, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee; or
- (5) If Lessee shall fail to perform or observe any other requirement of this Lease (not hereinbefore in this Section 20 specifically referred to) on the part of Lessee to be performed or observed, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee, unless Lessee shall have commenced to cure any such default as is referred to in this sub-

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section five (5) within said thirty (30) day period and diligently pursues such cure to completion;

Then upon the happening of any one or more of the aforementioned events of default, and the expiration of the period of time for remedying the same, CITY may:

- a. Give to Lessee a notice hereinafter called (“notice of termination”) of intention to end the term of this Lease and the term hereof, as well as all of the right, title and interest of the Lessee hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date originally specified herein for the expiration of this Lease had arrived and the Lessee shall then quit and surrender the Premises to CITY, and
- b. CITY may at any time after an event of default re-enter the Premises and remove Lessee therefrom, and all or any of its property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, and
- c. It is expressly and specifically covenanted and agreed that the entire unpaid balance of the basic rental with an estimated adjustment as provided in Paragraph 5 and the entire amount of estimated additional rental to the end of the term, based upon existing additional rentals already accrued, shall, at the sole option of the CITY, immediately become due and payable, and
- d. All of the right, title, estate and interest of Lessee (i) in and to the improvements, all changes, additions, alterations therein, and all renewals and replacements thereof, and (ii) all rents, sub-leases, issues and profits of the Premises, or any part thereof, whether then accrued or to accrue, shall automatically pass to, vest in, and belong to CITY, without further action on the part of either party, free of any claim thereto by Lessee.
- e. CITY shall have any other remedy provided by Florida law.

### Section 20. City’s Defaults.

If CITY fails to perform or observe any requirements or covenant of this Lease to be performed and observed by CITY and such default continues for a period of thirty (30) days after written notice thereof from Lessee to CITY, Lessee shall have the option of terminating this Lease upon thirty (30) days written notice to CITY without waiving any other legal rights hereunder or in the alternative, Lessee shall have the right of specific performance.

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**Section 21. Waivers.**

Failure of CITY or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by CITY or Lessee at any time, express or implied, of any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provisions of this Lease or a consent to any subsequent breach of the same of any other provisions. No acceptance by CITY of any partial payment shall constitute an accord or satisfaction, but shall only be deemed a partial payment on account.

**Section 22. Notices.**

All notices, consents, demands and requests which are required or desired to be given by either party to the other shall be in writing. All such notices, consents, demands and requests shall be sent by hand delivery with written receipt, express courier service with tracking information, or United States certified mail, return receipt requested, postage prepaid, postmarked no later than the date and time required in this Lease, if any, and addressed to the other party at its address set forth in this Lease, or at such other place as it may from time to time designate in a written notice to the other party given pursuant to the provisions of this Section. Notices, consents, demands and requests which are served upon CITY or Lessee in the manner aforesaid, shall be deemed to have been given or served for all purposes hereunder on the third (3<sup>rd</sup>) business day next following the date on which such notice, consent, demand or request shall have been mailed as aforesaid, or upon the date actually received, whichever is earlier.

**Section 23. Governing Law.**

This Lease and the performance of the covenants and terms thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida, and that jurisdiction and venue shall be only in the Nineteenth Judicial Circuit in and for Martin County, Florida.

**Section 24. Partial Invalidity.**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 25. Sales Taxes**

CITY will endeavor to collect and Lessee shall promptly pay all sales or similar type taxes imposed upon the various amounts of money payable as rent hereunder. In the event it is

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

subsequently determined that any amount required to be paid or paid for hereunder is subject to such tax, Lessee shall promptly pay the same and any penalties and interest payable thereon.

**Section 26. Covenants Binding the Respective Parties.**

Except as herein expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of CITY and Lessee and their respective heirs, successors and assigns.

**Section 27. Disposition of Improvements on Termination of Lease.**

On termination of this Lease for any cause, CITY shall become the owner of any building or improvements on the Premises. If Lessee is not in default, Lessee shall however have the right to remove any furniture, fixtures, equipment or other things which may be removed from the premises without changes to any of the buildings or improvements hereinafter located on the Premises.

**Section 28. Broker's Commission.**

Upon substantial completion of the improvements on the property, and issuance of the first Certificate of Occupancy for the development, the CITY agrees to pay DeSantis Commercial, Inc. a real estate broker's commission of \$42,000.00, or at the option of the Lessee to have a partial setoff of the payment of the first rent due under the Lease following the completion of the improvements.

**Section 29. Attorney's Fees and Costs.**

In connection with any litigation arising out of this Lease, the prevailing parties shall be entitled to recover all costs incurred, including reasonable attorneys' fees through and including any and all appellate actions.

**Section 30. Attornment.**

In the event of a transfer of CITY's interests in the Premises or the purchase of the CITY's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or the purchase, pursuant to a power of sale contained in any mortgage, then in any such events, Lessee shall, at CITY's request, attorn to and recognize the transferee or purchaser of the CITY's interest, as the case may be, as CITY under this Lease, for the balance then remaining of the term and thereafter this Lease shall continue as it is directly between such person as "CITY" and "Lessee", it being agreed that no such transferee shall have the right to disturb Lessee's tenancy hereunder so long as Lessee shall not be in default under the terms hereof.

**Section 31. Waiver of Trial by Jury.**

It is mutually agreed by and between CITY and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease, the relationship of CITY and Lessee and Lessee's use of or occupancy of the Premises. Lessee further agrees that it shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based upon nonpayment of rent or any other payment required of Lessee hereunder.

**Section 32. Additional Terms and Conditions.**

- A. If the Lessee fails to pay any sum when due for taxes, insurance or other sums required to be paid under the Lease, the CITY may, at CITY's option and without waiving its right to dispossess Lessee, pay such sum and such sum shall immediately become due and payable as additional rent.
- B. All rents due under the Lease shall bear interest at the rate provided under Florida law.
- C. In the event of judicial or mutual termination of this Lease, Lessee shall provide CITY with a Release and Surrender Agreement with two witnesses, in recordable form, to remove the Memorandum of Lease as a cloud on the title within seven days of written demand therefore.
- D. **This Lease and its performance by either party is contingent upon the following:**
  - 1. The Lessee may cancel this Lease, without cause, within sixty (60) days of its approval by the City Commission, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property. Lessee shall obtain all surveys and estimates it deems necessary for its business purposes, and among other things, shall make application to the Florida Department of Environmental Protection and Florida Department of Transportation for the necessary approvals for its proposed development.
  - 2. The CITY or the Lessee may cancel this Lease if the City Commission fails to approve a Commercial Planned Unit Development (CPUD) following submittal by the Lessee.
  - 3. The CITY or the Lessee may cancel this Lease if the Florida Department of Environmental Protection (FDEP) fails to provide the necessary clearance

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

document and permit for the development planned by the Lessee, following application for the same, by the Lessee, at Lessee's sole expense.

4. The CITY or the Lessee may cancel this Lease, if the City Commission fails to approve the funding and underground construction to move any water or sewer pipes traversing the Premises. If required by the CITY, the Lessee shall provide the actual construction services necessary to relocate the water main, and the CITY shall pay the reasonable cost for the same or at the option of the Lessee provide a credit toward rent for the same.
5. The CITY or the Lessee may cancel this Lease if an appraisal of the rent value, as prepared for the CITY, and obtained within the "due diligence period" above, is not within five (5%) percent (more or less) of the rent required herein.
6. Any "Notice of Cancellation of Lease" sent by one party to the other shall be sent to the CITY indicating its cancellation of the Lease, on or before the expiration of the sixty day period described in subsection 1. above, or as otherwise provided within ten (10) days of the event happening as described in subsections 2 through 5 above. If no such Notice is sent and received, then this Lease shall thereafter remain in full force and effect.
7. In the event that either party shall cancel the Lease as provided herein, then each party shall be responsible for the payment of its own expenses, including all consultants and attorneys fees and costs regarding the Lease, and neither party shall look to the other for the payment of same.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above.

Witnesses:

**CITY:**

CITY OF STUART, FLORIDA,  
a municipal corporation

\_\_\_\_\_  
CAROL S. WAXLER, Mayor

Ground Lease – City of Stuart and N.O.I. Enterprises Corporation

Witnesses:

**LESSEE:**

ROBERT G. DESANTIS and  
JOAN C. DESANTIS, TRUSTEES OF THE  
ROBERT G. DESANTIS REVOCABLE  
TRUST OF 1985

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
ROBERT G. DeSANTIS, Trustee

**EXHIBIT A  
LEGAL DESCRIPTION**

**SKETCH & DESCRIPTION**

THIS IS NOT A SURVEY

**LEGAL DESCRIPTION**

THE EAST 210 FEET OF THE NORTH 518.57 FEET OF GOVERNMENT LOT 1, SECTION 16, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, LESS AND EXCEPT THE RIGHT-OF-WAY FOR S.E. MONTEREY ROAD EXTENSION

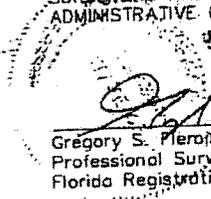
SAID PARCEL CONTAINING 2.34 ACRES MORE OR LESS

**NOTES**

1. BEARINGS SHOWN HEREON ARE REFERENCED TO THE EAST LINE OF FINLEY SUBDIVISION, HAVING A BEARING OF SOUTH 00°16'10" WEST. ALL OTHER BEARINGS ARE RELATIVE THERETO.
2. THIS SKETCH AND LEGAL DESCRIPTION IS NOT A BOUNDARY SURVEY.
3. THIS SKETCH AND LEGAL DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR.

**CERTIFICATION**

I HEREBY CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE.

  
*Gregory S. Piercing*  
Gregory S. Piercing  
Professional Surveyor & Mapper  
Florida Registration No. 4350

2/16/05  
Date

**NORTHSTAR  
GEOMATICS**  
930 S.E. CENTRAL PARKWAY, SUITE 114  
STUART, FLORIDA 34995  
(772) 781-8400 PHONE (772) 781-8452 FAX

CITY OF STUART  
STUART LANDFILL OUTPARCEL

Scale: N/A
Drawn by: BMT
Checked by: GSF
Date: 02/17/05
SHEET 2 OF 2

DR BK 01985 PG 2812

**EXHIBIT B**

<b>Year</b>	<b>Rent</b>
1-6	\$315,000 Prepaid
7	\$66,429
8	\$69,086
9	\$71,850
10	\$74,724
11	\$77,713
12	\$80,821
13	\$84,054
14	\$87,416
15	\$90,913
16	\$94,550
17	\$98,332
18	\$102,265
19	\$106,355
20	\$110,610
21	\$115,034
22	\$119,636
23	\$124,421
24	\$129,398
25	\$134,574
26	\$139,957
27	\$145,555
28	\$151,377
29	\$157,433
30	\$163,730

Years 1 through 6 are being prepaid with the deposit of \$315,000.  
In Year 7, rent will go back to the schedule above.

## CLOSING STATEMENT

<b>LANDLORD:</b>	City of Stuart
<b>TENANT:</b>	The 1031 Exchange Experts, LLC, QI for Robert G. and Joan C. DeSantis, as Trustee of the Robert G. D Revocable Trust of 1985
<b>CLOSING DATE:</b>	February 27, 2006

<b>TENANT'S EXPENSES:</b>	
<b>Prepaid rents</b>	\$315,000.00
<b>Crossroad Architecture</b>	\$2,250.00
<b>McCarthy, Summers et al</b>	\$1,447.24
<b>Ardaman &amp; Associates</b>	\$1,700.00
<b>Crossroads Environmental</b>	\$1,950.00
<b>Sign It!</b>	\$484.16
<b>Total Costs</b>	<b>\$322,831.40</b>
Exchange proceeds transferred from the 1031 Exchange Experts, LLC	\$322,770.83
<b>NET CASH FROM TENANT:</b>	<b>\$60.57</b>

TENANT:

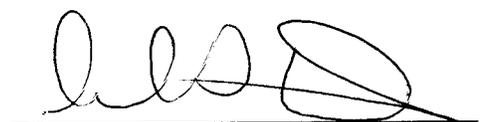
Robert G. DeSantis Revocable Trust of 1985, as Exchanger

  
 Robert G. DeSantis, trustee  
 Dated: 2/23/06

  
 Joan C. DeSantis, trustee  
 Dated: 2/23/06

LANDLORD:

City of Stuart

  
 Carol Waxler, Mayor  
 Dated: 2/27/06



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 35-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO RE-ADOPT THE GROUND LEASE PREVIOUSLY ADOPTED BY RESOLUTION NO. 18-06, AND ADOPTING A FIRST ADDENDUM TO GROUND LEASE WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL ALLOWING THE LESSEE TO PRE-PAY BASIC RENT IN THE AMOUNT OF \$315,000; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The Mayor and City Clerk are hereby authorized to re-adopt the Ground Lease previously adopted by Resolution No. 18-06, and adopting a First Addendum to Ground Lease with Robert G. DeSantis and John C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel allowing the lessee to pre-pay basic rent in the amount of \$315,000.00. A copy of ground lease and addendum are on file in the office of the City Clerk.**

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 27<sup>th</sup> day of February, 2006.

Commissioner Mortell offered the foregoing resolution and moved its adoption.

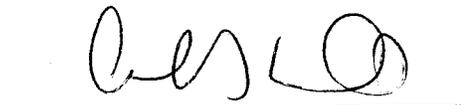
The motion was seconded by Commissioner Hutchinson and upon being put to a

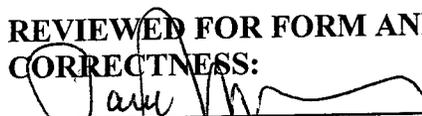
roll call vote, the vote was as follows:

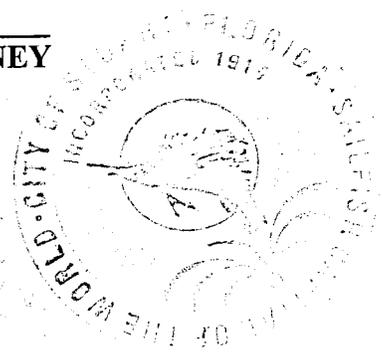
CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		

ATTEST:  
  
CHERYL WHITE  
CITY CLERK

  
CAROL S. WAXLER  
MAYOR

REVIEWED FOR FORM AND LEGAL SUFFICIENCY  
CORRECTNESS:  
  
PAUL J. NICOLETTI, CITY ATTORNEY



**FIRST ADDENDUM  
TO  
GROUND LEASE**

THIS FIRST ADDENDUM to Ground Lease, is made and executed as of the 27<sup>th</sup> day of February, 2006, between THE CITY OF STUART, FLORIDA, Lessor, 121 SW Flagler Avenue, Stuart, Florida 34994 and ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985, "Lessee", 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH**

WHEREAS, Lessor and Lessee are entering into that certain Ground Lease dated as of February 27, 2006;

WHEREAS, the Lessee has requested the Lessor to allow the Lessee to pre-pay Basic Rent in the amount of \$315,000; and

WHEREAS, Lessor has agreed to allow Lessee to pre-pay rent, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Pre-payment of Basic Rent. Within 10 days of the date hereof, Lessee shall pay to Lessor the sum of \$315,000, representing Basic Rent for the following period of time: Commencing January 1, 2007 through December 31, 2012. No rent will need to be paid until January 1, 2013 in the amount of \$66,429 per year or commencing January 1, 2013, the amount of \$5,535.75 per month.

2. Section 5, Rent Escalation, of the Ground Lease is hereby amended to read as follows:

"The amount of rent payable will be based on a four percent (4%) per year increase, beginning on January 1, 2013 and shown on the Rent Payment Schedule attached as Exhibit "B" which is incorporated herein."

3. In the event the Ground Lease is cancelled by Lessee pursuant to Section 32, Additional Terms and Conditions, subparagraph D thereof, Lessor agrees to refund to Lessee the pre-paid rent set forth in paragraph 1 above, to wit, \$315,000 within 5 business days of receipt of said notification pursuant to said subparagraph D of Section 32 of the Ground Lease.

4. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.



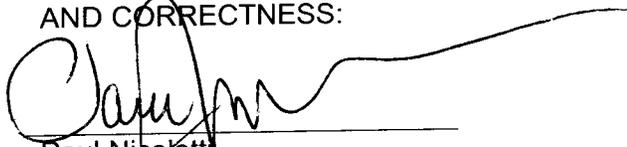
ATTEST:

  
Cheryl White  
City Clerk

"LESSOR"  
CITY OF STUART

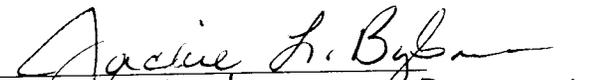
  
Carol Waxler  
Mayor

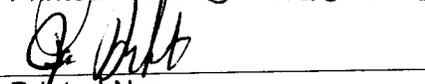
APPROVED AS TO FORM  
AND CORRECTNESS:

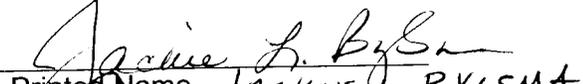
  
Paul Nicoletti  
City Attorney

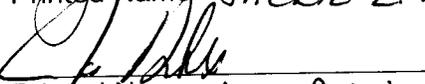
Signed, sealed and delivered  
In the presence of:

"LESSEE"  
ROBERT G. DESANTIS and  
JOAN C. DESANTIS,  
TRUSTEES OF THE ROBERT G.  
DESANTIS REVOCABLE TRUST  
OF 1985

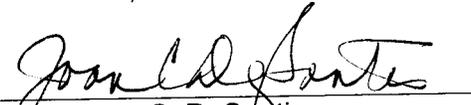
  
Printed Name JACKIE L. BYLSMA

  
Printed Name  
James DeSantis

  
Printed Name JACKIE L. BYLSMA

  
Printed Name James DeSantis

  
By: Robert G. DeSantis  
Its: Trustee  
Dated: 2/27/06

  
By: Joan C. DeSantis  
Its: Trustee  
Dated: 2/27/06



GROUND LEASE

27th CSW

**THIS GROUND LEASE** is made and executed as of the ~~23rd~~ <sup>27th</sup> day of February, 2006, between the **CITY OF STUART**, Florida, hereinafter "CITY," as Lessor, 121 S.W. Flagler Avenue, Stuart, FL 34994, and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, hereinafter "LESSEE", 719 Colorado Avenue, Stuart, Florida 34994.

**Section 1. Demise, Description and Use of Premises.**

In consideration of the sum of Ten and No/100 Dollars (\$10.00) to it in hand paid this day, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY leases to Lessee and Lessee hires from CITY upon the terms and conditions contained herein, for the purpose of conducting thereon any lawful business and for no other purpose, the following described real property located in Martin County, Florida, to wit:

**See Exhibit "A" attached hereto and made a part hereof.**

As used herein, the term "Premises" refers to the real property above described and to any improvements located thereon from time to time during the term hereof.

**Section 2. Commencement and Term.**

The term of this Lease shall commence on the date of full execution of this Lease (the "Commencement Date"). Rent payments due hereunder shall commence on **January 1, 2007** (the "Rent Commencement Date").

The term of this Lease shall continue for an initial period of **THIRTY (30) YEARS** from the commencement date subject to extension or prior termination as set forth herein.

**Section 3. Right to Extend and Rent Adjustment.**

Provided the Lessee is not in default under any of the terms and conditions of this Lease, and provided the Tenant has faithfully performed all of its covenants and undertakings contained in this Lease, Lessee shall have the right and option to extend the term of this Lease for **two (2) consecutive additional terms of TEN (10) YEARS, each** upon the same terms and conditions except that CITY shall have the right to adjust the Rent for the Premises, prior to each additional term, based upon and conforming to current economic rent values as determined by an appraisal of same as prepared herein. The appraisal shall be prepared prior to the time required for notice of term extension by the Lessee, below. For purposes of this section, the appraisal shall be made by a board of three (3) MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Premises. One of the appraisers shall be

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

appointed and paid for by the Lessee, a second appraiser shall be appointed and paid by the CITY, and the third appraiser shall be selected by the first two appraisers so appointed and the third appraiser's fee shall be born one-half (1/2) by the Lessee and one-half (1/2) by the CITY. If the first two appraisers are unable to agree on a third appraiser within fifteen (15) days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the then President of the Florida Society of MAI's, or such successor to the Society exercising similar functions.

The term of the Lease shall be extended from one term to the next by Lessee giving written notice to the CITY not less than one hundred twenty (120) days prior to the end of the current term, or extended term. Such notice shall be sent to the CITY by hand delivery or by certified mail, return receipt requested, at the address of CITY set forth above or such other address as CITY may direct in writing. Optional terms may only be exercised one at a time, and only consecutively.

**Section 4. Basic Rent.**

It is the purpose and intent of the CITY and the Lessee that the rent shall be absolute net to the CITY. Lessee hereby agrees to pay to CITY rent for the leased Premises land, the initial annual sum of **\$52,500.00**, together with the upward adjustments provided herein, payable solely for the convenience of Lessee in equal monthly installments of **\$4,375.00** payable on the first (1<sup>st</sup>) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any renewal terms subject to adjustment as hereinafter set forth. Payment shall be made either by automatic debit; wire transfer; or by a check drawn on a local bank, and shall be made to whoever the Landlord designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason.

**Section 5. Annual Rent Escalation.**

For subsequent years the amount of the rent payable will be based on a four (4%) percent per year increase, beginning on January 1, 2008, and shown on the Rent Payment Schedule attached as **Exhibit "B,"** which is incorporated herein.

**Section 6. Taxes.**

A. **Real Estate Taxes.** Beginning on the Commencement Date and throughout the term of this Lease thereafter, including any extension terms, Lessee shall pay, as additional rent hereunder, before they become delinquent, all taxes. "Taxes" as used herein, means all *ad valorem* real property taxes and assessments, that are levied or assessed against the Premises or any part thereof, and any rents due from time to time by any lawful taxing authority, whether federal, state, county, school or city, or otherwise, and any and all taxes which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the Commencement Date.

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

CITY shall promptly forward to Lessee all notices, bills or invoices CITY receives requiring payment for any of the items set forth above. All taxes for the beginning and ending years of the term hereof, from date hereof, including any extension terms, shall be borne solely by the LESSEE. It is anticipated that taxes shall be paid on occupancy beginning on January 1, 2007 and first payable in November, 2007.

Lessee may contest any tax or assessment it is required to pay and may file protests or otherwise proceed in the name of CITY. Any contest must be made by first posting with the CITY cash in the entire amount claimed to be due by the taxing authority. The CITY may use the cash to pay the taxes or assessment at any time the CITY determines in good faith, that a loss of the property may or could reasonably occur.

**B. Florida Sales and Use Tax.** All Florida Sales and Use taxes, currently levied at six (6%) per cent of the rent payments, or any similar taxes imposed upon payments made by a tenant to a landlord, or upon this lease, whether on the rents, additional rent or the lease or leasing privilege shall be paid in full by Lessee promptly when due or upon demand therefore.

Nothing herein shall be construed so as to require Lessee to pay any income tax, inheritance tax, capital gain tax, franchise tax or corporate stock tax imposed upon or payable by CITY.

**Section 7. Permitted Uses.**

Lessee shall be entitled to develop the Premises for use as an **Office, Retail, Warehouse CPUD**. CITY hereby agrees not to affirmatively interfere with Lessee's efforts to so develop the Premises, except that CITY does have a governmental interest in assuring that Lessee complies with all applicable city ordinances, including those pertaining to zoning and land use. Lessee shall be responsible for the payment of any and all costs incurred in connection with the development of the Premises including the preparation of any applications, plans, surveys or other documents and all impact fees and development fees incurred in connection with development of the Premises.

**Section 8. Encumbrances**

**A. No Encumbrances by CITY.** Nothing contained herein shall be construed so as to require CITY to execute any document or instrument, which would create any financial liability on the part of CITY nor upon the subject premises, nor alter or impair CITY's rights under this Lease. There is no obligation under this Lease for CITY to encumber, convey, burden or subordinate any part of or all of the fee simple interest of the subject premises, or to grant or agree to any condition, which will burden the property beyond the Lease term.

**B. Encumbrances of Lessee's Leasehold Interest.** Lessee may, without being required to obtain CITY's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. CITY shall



**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

CITY shall provide any Mortgagee of whom CITY has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default CITY sends to Lessee hereunder. Prior to terminating this Lease as the result of any default by Lessee, CITY shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, CITY shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the mortgage curing Lessee's default.

CITY shall from time to time, within ten (10) days after Lessee shall have requested it, execute, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to CITY with the request.

**Section 9. Assignment and Sublease.**

A. **General Assignment and Sublease.** Lessee may not assign all or a portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by CITY or other portions of the Premises for any lawful purpose without the consent of CITY, which consent shall not be unreasonably withheld. Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof. No sub-lease can extend beyond the existing term of this Lease. No sub-lease can alter the terms hereof.

B. **Assignment under Section 1031, Internal Revenue Code.** Notwithstanding the provisions of Section 9A. above, the CITY understands and agrees that Lessee may use this Lease and Premises as part of a so-called "like kind exchange" pursuant to Section 1031, Internal Revenue Code. The CITY agrees to cooperate with the Lessee in completing this exchange, including the substitution of Lessee by an escrow agent or other substitute to complete the exchange as provided by the Code. However, the Lessee hereby holds the CITY, its elected and appointed officials, employees, and agents harmless in the event the exchange should fail or be disqualified by the Internal Revenue Service for any reason, or no reason whatsoever. It is understood and agreed that such exchange is solely the responsibility of the Lessee, and its contractors, agents, employees, officers and directors.

**Section 10. Uses Prohibited.**

Lessee shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose or purposes, nor shall Lessee maintain a nuisance on the Premises or use or permit the use thereof for immoral purposes. The Premises may not be used as a toxic waste disposal or storage facility, a solid waste disposal site or any use which could have a harmful effect on the land itself. The Lessee shall not commit waste. No use may be made of the property which would legally impair the right to collect rental adjustments called for herein. CITY shall cooperate with the Lessee's environmental consultants to secure all required approvals from regulatory bodies and agencies.

**Section 11. Improvements, Repairs, Additions, Replacements to the Real Property.**

Through the term of this Lease, the Lessee shall have the right (but not the duty) to construct, erect, or reconstruct any and all manner of buildings, works, or improvements upon the Premises as are permitted by this lease and the then applicable land use, zoning, building and other ordinances of the City.

Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

CITY shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Premises during the term of this Lease.

Lessee's rights, as set forth in this Section 11, shall be subject to the following conditions:

- A. The cost of any such construction, or of any change, alteration or improvements, shall be borne and paid for by Lessee.
- B. The Premises shall, at all times, be kept free of mechanics and material men's liens, and Lessee may be required by CITY to furnish copies of full or partial releases of lien demonstrating the same.
- C. The parties shall enter into a Memorandum of Lease, in recordable form, in form and content acceptable to CITY, and the same shall be recorded prior to the commencement of any work on the premises. The Lessee agrees to execute such further agreements as may be necessary, from time to time, to preserve the leased premises from the imposition of liens. The Lessee shall provide in any contracts and shall require the General Contractor to provide in all sub-contracts and sub-sub-contracts that the parties thereto must look solely to the Lessee for payment and that no liens shall be filed against the land itself.

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

- D. During the last three years of any term of the Lease (or any extended term acquired by exercise of an option hereunder), Lessee shall not demolish or remove any building or improvements located on the premises unless Lessee's option to renew for the next ten (10) year period has been exercised in writing. At the end of term hereof, all improvements located on the Premises will become the property of CITY, and at CITY's option, CITY can require Lessee to remove all or any part of the improvements and to place the Premises in their original condition.

**Section 12. Insurance.**

Lessee covenants to provide, during the entire term hereof at Lessee's own cost and expense, as additional rent, by advance payment of premiums, a comprehensive liability policy of insurance protecting CITY and Lessee as their interest may appear against any liability whatsoever, occasioned by accident on or about the demised premises or any appurtenances thereto. Such policy shall be approved by CITY, written by a company rated not less than "AAA", by Best's Register, in an amount not less than One Million Dollars (**\$1,000,000**) to cover the claim of damage from any single person, and not less than Two Million Five Hundred Thousand Dollars (**\$2,000,000**) to cover more than a single claim which may arise from a single action, and in the sum of Five Hundred Thousand Dollars (**\$500,000**) in respect to claims for property damage. Such policy shall insure Lessee and CITY against any liability that may accrue against them or either of them, on account of any occurrence on or to the demised premises during the term thereof, resulting in personal injury, death, property damage, or any other liability whatsoever; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to CITY an original or duplicate original of all such policies, together with evidence of payment of premium thereon, upon the beginning date of this Lease, and from time to time thereafter as premiums shall fall due. CITY may require an increase in the limits of coverage or extent or coverage at any time such increase is deemed commercially reasonable by CITY. CITY may increase the amounts of required insurance coverage provided the same is commercially reasonable.

All insurance coverage called for under the Lease shall contain provisions granting CITY **thirty (30) days notice** prior to termination thereof and shall be written by an insurance company authorized to do business in Florida. Copies of the policies shall be promptly furnished to CITY.

All hazard insurance policies carried by the Lessee covering property located on the demised premises will provide that the CITY is an additional named insured.

**Section 13. Indemnification of CITY.**

In consideration of said Premises being leased to Lessee for the above rental, and for other additional good and valuable considerations the extent and receipt of which are hereby acknowledged, Lessee agrees: that Lessee, at all times, will indemnify and hold harmless CITY

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

from all losses, damages, liabilities and expenses, which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Lessee, or consequent upon or arising from any acts, omission, neglect or fault of Lessee, his agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Lessee's failure to comply with any laws, statutes, ordinances, codes or regulations as herein provided; that CITY shall not be liable to Lessee or any damages, losses or injuries to the persons or to property of Lessee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations, and that Lessee will indemnify and keep harmless CITY from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises as a result of the negligence of Lessee, his agents, employees, servants, licensees, visitors, customers, patrons and invitees. All personal property placed or moved into the Leased Premises or Building shall be at the risk of Lessee or the owners thereof, and CITY shall not be liable to Lessee for any damages to said personal property. Lessee shall maintain at all times during the term of this Lease an insurance policy or policies in an amount or amounts sufficient to indemnify CITY and to pay CITY's damages, if any, resulting from any matters set forth hereinbefore in this Paragraph 13. LESSEE WAIVES ALL RIGHTS TO RECOVER FROM CITY FOR ANY DAMAGES CAUSED BY NEGLIGENCE OF CITY, ITS AGENTS OR EMPLOYEES. Lessee's insurance policies shall contain a waiver of the right of subrogation as against the CITY.

**Section 14. Time.**

It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants and conditions of this Lease.

**Section 15. Condemnation.**

- A. If, at any time during the term of this Lease, title to all of the Premises shall be taken by the exercise of the right of condemnation or eminent domain, including by the CITY, this Lease shall terminate and expire on the date of such taking, and the rent and other charges provided to be paid by Lessee shall be apportioned and paid to the date of such taking.
- B. If at any time during the term of this Lease, title to less than all of the Premises shall be taken as aforesaid, this Lease shall continue (unless Lessee shall elect to terminate this Lease by giving notice thereof to CITY within thirty (30) days after the date of such taking, in which case this Lease shall terminate on the date therefore set forth in such notice), except that thereafter the rent shall be reduced to a fraction of the former amount which fraction shall be determined by dividing the area of the untaken portion of the Premises by the area of the Premises immediately before the taking.



**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

- C. Lessee may, at its option, but shall not be required to, repair, restore, replace or rebuild any damage or destruction to the Premises and improvements located thereon resulting or arising from any taking of all or any part thereof, except that Lessee shall not permit the Premises to remain in an unsafe or illegal condition.
- D. The CITY agrees that for the first ten (10) years of this Lease, the CITY shall not condemn the leasehold interest in the Premises, except for public health, safety and welfare purposes only.

**Section 16. Requirements of Public Authority.**

- A. During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (collectively “regulations”) of the federal, state, county, and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force on the Commencement Date or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 16. If such regulations shall so restrict the use or development of the Premises so as to render the development of the Premises unfeasible in the discretion of Lessee, Lessee shall have the option to terminate this Lease upon thirty (30) days written notice to CITY.
- B. Lessee shall have the right to contest by appropriate legal proceeding diligently conducted in good faith in the name of the Lessee, without costs, liability or expense to CITY, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (A) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceedings. Nothing herein shall delay the payment of all sums due to CITY herein required to be paid.

**Section 17. CITY’s Title/Possession.**

CITY covenants that as of the Commencement Date: CITY shall have the fee simple title to the Premises with full right and authority to make this Lease; the Premises shall then be free and clear of all liens, easements, restrictions, leases and encumbrances except as set forth in **Exhibit “B”** hereto. Lessee shall receive from the CITY a certified title insurance report demonstrating fee simple title vested in the CITY, without material encumbrances that would adversely affect the CITY’s ability to lease the Premises to the Lessee. Lessee at its sole expense, has surveyed



**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

the property, and has accepted the state of the survey. Lessee shall be delivered possession of the Premises; and Lessee shall have quiet and peaceful possession and enjoyment of the Premises and of all appurtenances thereunto belonging during the term of this Lease including all extension terms. CITY shall have no responsibility to provide any additional title insurance coverage on the Premises.

**Section 18. Care of Premises.**

Lessee shall in nowise violate any of the zoning or other governmental restrictions now or hereafter placed upon the said real property. Lessee shall, at its sole expense, pay for any alterations, improvements, machinery or equipment which may be required by any applicable governing body now or at any time during the term of this Lease.

**Section 19. Conditional Limitations – Lessee Default Provisions.**

This Lease and the term hereof are subject to the limitation that if, at any time during the term of this Lease, any one or more of the following events (herein called an “event of default”) shall occur, that is to say:

- (1) If Lessee shall make an assignment of the Lease for the benefit of its creditors; or
- (2) If any petition shall be filed against Lessee in any court, whether or not pursuant to any Statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, and if any such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be so filed by Lessee; or
- (3) If Lessee shall fail to pay any installment of the rent, or any part hereof, when the same shall become due and payable, and such failure shall continue for thirty (30) days; or
- (4) If Lessee shall fail to pay when due any other charge required to be paid by Lessee hereunder, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee; or
- (5) If Lessee shall fail to perform or observe any other requirement of this Lease (not hereinbefore in this Section 20 specifically referred to) on the part of Lessee to be performed or observed, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee, unless Lessee shall have commenced to cure any such default as is referred to in this sub-



**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

section five (5) within said thirty (30) day period and diligently pursues such cure to completion;

Then upon the happening of any one or more of the aforementioned events of default, and the expiration of the period of time for remedying the same, CITY may:

- a. Give to Lessee a notice hereinafter called (“notice of termination”) of intention to end the term of this Lease and the term hereof, as well as all of the right, title and interest of the Lessee hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date originally specified herein for the expiration of this Lease had arrived and the Lessee shall then quit and surrender the Premises to CITY, and
- b. CITY may at any time after an event of default re-enter the Premises and remove Lessee therefrom, and all or any of its property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, and
- c. It is expressly and specifically covenanted and agreed that the entire unpaid balance of the basic rental with an estimated adjustment as provided in Paragraph 5 and the entire amount of estimated additional rental to the end of the term, based upon existing additional rentals already accrued, shall, at the sole option of the CITY, immediately become due and payable, and
- d. All of the right, title, estate and interest of Lessee (i) in and to the improvements, all changes, additions, alterations therein, and all renewals and replacements thereof, and (ii) all rents, sub-leases, issues and profits of the Premises, or any part thereof, whether then accrued or to accrue, shall automatically pass to, vest in, and belong to CITY, without further action on the part of either party, free of any claim thereto by Lessee.
- e. CITY shall have any other remedy provided by Florida law.

**Section 20. City’s Defaults.**

If CITY fails to perform or observe any requirements or covenant of this Lease to be performed and observed by CITY and such default continues for a period of thirty (30) days after written notice thereof from Lessee to CITY, Lessee shall have the option of terminating this Lease upon thirty (30) days written notice to CITY without waiving any other legal rights hereunder or in the alternative, Lessee shall have the right of specific performance.



**Section 21. Waivers.**

Failure of CITY or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by CITY or Lessee at any time, express or implied, of any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provisions of this Lease or a consent to any subsequent breach of the same of any other provisions. No acceptance by CITY of any partial payment shall constitute an accord or satisfaction, but shall only be deemed a partial payment on account.

**Section 22. Notices.**

All notices, consents, demands and requests which are required or desired to be given by either party to the other shall be in writing. All such notices, consents, demands and requests shall be sent by hand delivery with written receipt, express courier service with tracking information, or United States certified mail, return receipt requested, postage prepaid, postmarked no later than the date and time required in this Lease, if any, and addressed to the other party at its address set forth in this Lease, or at such other place as it may from time to time designate in a written notice to the other party given pursuant to the provisions of this Section. Notices, consents, demands and requests which are served upon CITY or Lessee in the manner aforesaid, shall be deemed to have been given or served for all purposes hereunder on the third (3<sup>rd</sup>) business day next following the date on which such notice, consent, demand or request shall have been mailed as aforesaid, or upon the date actually received, whichever is earlier.

**Section 23. Governing Law.**

This Lease and the performance of the covenants and terms thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida, and that jurisdiction and venue shall be only in the Nineteenth Judicial Circuit in and for Martin County, Florida.

**Section 24. Partial Invalidity.**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 25. Sales Taxes**

CITY will endeavor to collect and Lessee shall promptly pay all sales or similar type taxes imposed upon the various amounts of money payable as rent hereunder. In the event it is

Handwritten signature or initials in the bottom right corner of the page.

**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

subsequently determined that any amount required to be paid or paid for hereunder is subject to such tax, Lessee shall promptly pay the same and any penalties and interest payable thereon.

**Section 26. Covenants Binding the Respective Parties.**

Except as herein expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of CITY and Lessee and their respective heirs, successors and assigns.

**Section 27. Disposition of Improvements on Termination of Lease.**

On termination of this Lease for any cause, CITY shall become the owner of any building or improvements on the Premises. If Lessee is not in default, Lessee shall however have the right to remove any furniture, fixtures, equipment or other things which may be removed from the premises without changes to any of the buildings or improvements hereinafter located on the Premises.

**Section 28. Broker's Commission.**

Upon substantial completion of the improvements on the property, and issuance of the first Certificate of Occupancy for the development, the CITY agrees to pay DeSantis Commercial, Inc. a real estate broker's commission of \$42,000.00, or at the option of the Lessee to have a partial setoff of the payment of the first rent due under the Lease following the completion of the improvements.

**Section 29. Attorney's Fees and Costs.**

In connection with any litigation arising out of this Lease, the prevailing parties shall be entitled to recover all costs incurred, including reasonable attorneys' fees through and including any and all appellate actions.

**Section 30. Attornment.**

In the event of a transfer of CITY's interests in the Premises or the purchase of the CITY's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or the purchase, pursuant to a power of sale contained in any mortgage, then in any such events, Lessee shall, at CITY's request, attorn to and recognize the transferee or purchaser of the CITY's interest, as the case may be, as CITY under this Lease, for the balance then remaining of the term and thereafter this Lease shall continue as it is directly between such person as "CITY" and "Lessee", it being agreed that no such transferee shall have the right to disturb Lessee's tenancy hereunder so long as Lessee shall not be in default under the terms hereof.

**Section 31. Waiver of Trial by Jury.**

It is mutually agreed by and between CITY and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease, the relationship of CITY and Lessee and Lessee's use of or occupancy of the Premises. Lessee further agrees that it shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based upon nonpayment of rent or any other payment required of Lessee hereunder.

**Section 32. Additional Terms and Conditions.**

- A. If the Lessee fails to pay any sum when due for taxes, insurance or other sums required to be paid under the Lease, the CITY may, at CITY's option and without waiving its right to dispossess Lessee, pay such sum and such sum shall immediately become due and payable as additional rent.
- B. All rents due under the Lease shall bear interest at the rate provided under Florida law.
- C. In the event of judicial or mutual termination of this Lease, Lessee shall provide CITY with a Release and Surrender Agreement with two witnesses, in recordable form, to remove the Memorandum of Lease as a cloud on the title within seven days of written demand therefore.
- D. This Lease and its performance by either party is contingent upon the following:**
  - 1. The Lessee may cancel this Lease, without cause, within sixty (60) days of its approval by the City Commission, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property. Lessee shall obtain all surveys and estimates it deems necessary for its business purposes, and among other things, shall make application to the Florida Department of Environmental Protection and Florida Department of Transportation for the necessary approvals for its proposed development.
  - 2. The CITY or the Lessee may cancel this Lease if the City Commission fails to approve a Commercial Planned Unit Development (CPUD) following submittal by the Lessee.
  - 3. The CITY or the Lessee may cancel this Lease if the Florida Department of Environmental Protection (FDEP) fails to provide the necessary clearance



**Ground Lease – City of Stuart and N.O.I. Enterprises Corporation**

document and permit for the development planned by the Lessee, following application for the same, by the Lessee, at Lessee's sole expense.

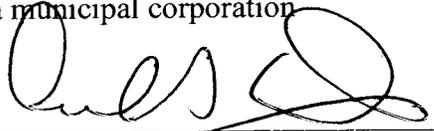
4. The CITY or the Lessee may cancel this Lease, if the City Commission fails to approve the funding and underground construction to move any water or sewer pipes traversing the Premises. If required by the CITY, the Lessee shall provide the actual construction services necessary to relocate the water main, and the CITY shall pay the reasonable cost for the same or at the option of the Lessee provide a credit toward rent for the same.
5. The CITY or the Lessee may cancel this Lease if an appraisal of the rent value, as prepared for the CITY, and obtained within the "due diligence period" above, is not within five (5%) percent (more or less) of the rent required herein.
6. Any "Notice of Cancellation of Lease" sent by one party to the other shall be sent to the CITY indicating its cancellation of the Lease, on or before the expiration of the sixty day period described in subsection 1. above, or as otherwise provided within ten (10) days of the event happening as described in subsections 2 through 5 above. If no such Notice is sent and received, then this Lease shall thereafter remain in full force and effect.
7. In the event that either party shall cancel the Lease as provided herein, then each party shall be responsible for the payment of its own expenses, including all consultants and attorneys fees and costs regarding the Lease, and neither party shall look to the other for the payment of same.

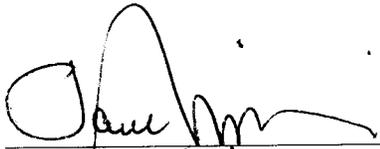
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above.

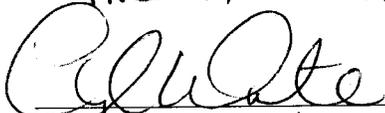
Witnesses:

CITY:

CITY OF STUART, FLORIDA,  
a municipal corporation

  
CAROL S. WAXLER, Mayor

  
PAUL J. NICOLETTI

  
Cheryl White

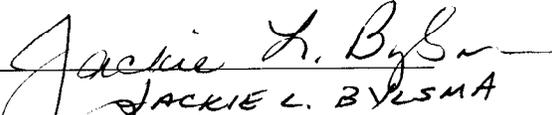


Ground Lease – City of Stuart and N.O.I. Enterprises Corporation

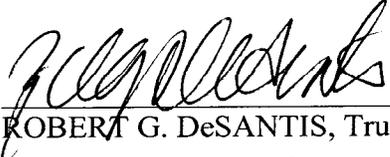
Witnesses:

LESSEE:

ROBERT G. DESANTIS and  
JOAN C. DESANTIS, TRUSTEES OF THE  
ROBERT G. DESANTIS REVOCABLE  
TRUST OF 1985

  
\_\_\_\_\_  
JACKIE L. BYERSMA

  
\_\_\_\_\_  
James DeSantis

  
\_\_\_\_\_  
ROBERT G. DeSANTIS, Trustee

  
\_\_\_\_\_  
JOAN C. DeSANTIS, Trustee



**EXHIBIT A  
LEGAL DESCRIPTION**

**SKETCH & DESCRIPTION**

THIS IS NOT A SURVEY

**LEGAL DESCRIPTION**

THE EAST 210 FEET OF THE NORTH 518.57 FEET OF GOVERNMENT LOT 1, SECTION 16, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, LESS AND EXCEPT THE RIGHT-OF-WAY FOR S.E. MONTEREY ROAD EXTENSION

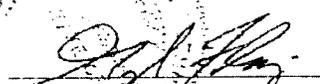
SAID PARCEL CONTAINING 2.34 ACRES MORE OR LESS

**NOTES**

1. BEARINGS SHOWN HEREON ARE REFERENCED TO THE EAST LINE OF FINLEY SUBDIVISION, HAVING A BEARING OF SOUTH 00°16'10" WEST. ALL OTHER BEARINGS ARE RELATIVE THERETO.
2. THIS SKETCH AND LEGAL DESCRIPTION IS NOT A BOUNDARY SURVEY.
3. THIS SKETCH AND LEGAL DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR.

**CERTIFICATION**

I HEREBY CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE.

  
\_\_\_\_\_  
Gregory S. Fleming,  
Professional Surveyor & Mapper  
Florida Registration No. 4350

Date

2/16/05



CITY OF STUART  
STUART LANDFILL OUTPARCEL

Scale: N/A
Drawn by: BMT
Checked by: GSF
Date: 02/17/05
SHEET 2 OF 2

DR BK 01985 PG 2812

**EXHIBIT B**

<b>Year</b>	<b>Rent</b>	
1-6	\$315,000	Prepaid
7	\$66,429	
8	\$69,086	
9	\$71,850	
10	\$74,724	
11	\$77,713	
12	\$80,821	
13	\$84,054	
14	\$87,416	
15	\$90,913	
16	\$94,550	
17	\$98,332	
18	\$102,265	
19	\$106,355	
20	\$110,610	
21	\$115,034	
22	\$119,636	
23	\$124,421	
24	\$129,398	
25	\$134,574	
26	\$139,957	
27	\$145,555	
28	\$151,377	
29	\$157,433	
30	\$163,730	

Years 1 through 6 are being prepaid with the deposit of \$315,000.  
In Year 7, rent will go back to the schedule above.

McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A. - Trust Account  
02/27/2006

61620

Check # 61620

Request # 90715

By PSS

Payee: City of Stuart  
Amount: \$315,000.00  
For: pss 02126918 prepaid rents

Matter ID: 02126918  
Matter Name: DeSantis, Robert G. - Lease with the City of Stuart  
Amount: \$315,000.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

MCCARTHY, SUMMERS, BOBKO, WOOD, SAWYER & PERRY, P.A.  
TRUST ACCOUNT

2400 SE Federal Hwy., 4th Floor  
Stuart, FL 34994  
(772) 286-1700

FIRST NATIONAL BANK  
& TRUST COMPANY  
STUART, FL 34995

63-515/670

61620

61620

\*\*Three hundred Fifteen Thousand dollars and Zero cents\*\*

PAY  
TO THE  
ORDER  
OF

City of Stuart

DATE: 02/27/2006  
AMOUNT: \$315,000.00

VOID AFTER 180 DAYS

*Terrance P. Miller*  
AUTHORIZED SIGNATURE

For pss 02126918 prepaid rents

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑆067005158⑆ 222559608⑆

95436-08-04

# McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.

## Attorneys at Law

Kathryn C. Bass  
Noel A. Bobko  
Nicola Jaye Boone\*  
Mark A. Broderick  
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Steven L. Perry  
Thomas R. Sawyer\*\*  
Rose D. Schneider  
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\*Board Certified Elder Law Lawyer  
\*\*Board Certified Real Estate Lawyer  
\*\*\*Board Certified Wills, Trusts &  
Estates Lawyer

February 9, 2006

CITY OF STUART  
OFFICE OF CITY ATTORNEY

FEB 13 2006

RECEIVED

**VIA FAX and U.S. MAIL**

Paul Nicoletti, Esq.  
City Attorney  
City of Stuart  
121 S. W. Flagler Avenue  
Stuart, Florida 34994

**Re: City of Stuart/N.O.I. Enterprises Corporation/First Addendum to Ground Lease**

Dear Paul:

Enclosed is a proposed First Addendum to Ground Lease for your review.

Very truly yours,

  
Terence P. McCarthy  
TPM/dd

Enclosure  
cc: client

CITY OF STUART, FLORIDA

AGENDA ITEM REQUEST

Meeting Date: February 27, 2006

Prepared by: Paul J. Nicoletti

Title of Item: Resolution No. 35-06, to re-adopt the Ground Lease previously adopted by Resolution No. 18-06, and adopting a First Addendum to Ground Lease with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust

Summary Explanation/Background Information on Agenda Request:

The original Ground Lease was approved by the City Commission, in the name of NOI Enterprises Corporation on January 23, 2006, as requested by Mr. DeSantis. It was later determined that the Lease had to be in the name of the DeSantis Trust to qualify for the favorable tax treatment that Mr. DeSantis was seeking. In addition is a technical addendum to the Lease to allow Mr. DeSantis to pay into the City rent for the first five (5) years, and then pickup the rent payment schedule from where it would be at that time (January 1, 2013). This also enables Mr. DeSantis to take advantage of certain provisions of the federal tax code, and gives the City a substantial amount (\$315,000.00) in prepaid rent.

Recommended Action:

Approve Resolution No. 35-06.

[Signature]
Financial Services Director

2-22-06
Date

[Signature]
Paul J. Nicoletti, City Attorney

2-22-06
Date

[Signature]
David Collier, City Manager

2/22/06
Date



# City of Stuart

121 SW Flagler Avenue • Stuart • Florida 34994  
Telephone (772) 288-5306  
Fax (772) 288-5305

City Clerk's Office

Cherie White, City Clerk  
[cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

March 8, 2006

Robert G. Desantis  
719 Colorado Avenue  
Stuart, Fl. 34994

**REFERENCE: Ground Lease Agreement**

Enclosed please find a copy of the above named agreement with the City of Stuart.

I have also enclosed a copy of the City's adopted Resolution 35-06 for your record.

Should you have any questions or need further information, please do not hesitate to call me at 772-288-5306.

Respectfully,

Cheryl White, CMC

**COPY**

Enc

**NOTICE OF ASSIGNMENT  
OF REAL PROPERTY  
PURCHASE AND SALE AGREEMENT**

Ground Lease See attached Exhibit "A", Stuart, FL 34994

February 22, 2006

RE: Assignment of Real Property Purchase and Sale Agreement

City of Stuart:

This letter is to inform you that Robert G. Desantis and Joan C. DeSantis, Trustees of The Robert G. DeSantis Revocable Trust of 1985 (together, "Exchanger") have assigned all of Exchanger's rights but not its obligations, as the purchaser under that certain Purchase and Sale Agreement by and between Exchanger, as purchaser, and City of Stuart, as seller, to The 1031 Exchange Experts, LLC in order to facilitate a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended.

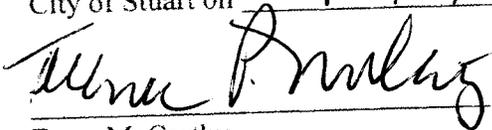
**THE 1031 EXCHANGE EXPERTS, LLC**



Curtis Moore, Exchange Expert

ACKNOWLEDGED BY:

**I HEREBY CERTIFY** that I delivered a copy of this Notice of Assignment to  
City of Stuart on 2/27/06, 2006.



Terry McCarthy  
McCarthy Summers

**ASSIGNMENT OF  
REAL PROPERTY PURCHASE & SALE AGREEMENT  
FOR EXCHANGE PROPERTY**

Ground Lease See attached Exhibit "A", Stuart, FL 34994

**THIS ASSIGNMENT** is entered into, by and between The 1031 Exchange Experts, LLC ("Experts") and Robert G. Desantis and Joan C. DeSantis, Trustees of The Robert G. DeSantis Revocable Trust of 1985 (together, "Exchanger").

**RECITALS**

WHEREAS Exchanger, as purchaser, and City of Stuart ("Seller"), as seller, entered into a certain purchase and sale agreement ("Purchase Agreement") concerning certain real property more particularly described in the Purchase Agreement (the "Replacement Property");

WHEREAS Experts and Exchanger have entered into an Exchange Agreement, in which Experts has agreed to acquire the Replacement Property and transfer same to Exchanger as part of an integrated, interdependent transaction which qualifies as a like-kind exchange in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended;

WHEREAS Seller agreed in the terms of the Purchase Agreement to reasonably cooperate with Exchanger as necessary to enable Exchanger to complete a like-kind exchange;

WHEREAS Exchanger wishes to assign its interest in the Purchase Agreement to Experts, and Experts has agreed to accept such assignment, on the terms and conditions contained herein, and in accordance as the terms and conditions of the Exchange Agreement.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Assignment agree:

1. Exchanger hereby assigns, transfers, and conveys to Experts all of Exchanger's rights, but not its obligations, under the Purchase Agreement, including any security deposit paid in connection with the Purchase Agreement. All obligations, representations, and warranties of Exchanger to Seller shall remain unmodified and survive this Assignment.

2. The assignment described in paragraph 1 above shall be subject to the following conditions: (a) Experts shall direct Seller to convey the Replacement Property directly by deed from Seller to Exchanger; (b) Experts shall pay directly to Seller the net proceeds due to Seller under the terms of the Purchase Agreement, and in accordance with funds transfer instructions received by Experts in connection with the closing of escrow of the Relinquished Property; (c) Exchanger's compliance with the terms and conditions of the Exchange Agreement; and (d) Exchanger's review and approval of any documents related to the transfer of the Replacement Property, including all closing documents.

3. This Assignment may be executed in any number of counterparts, and each shall be considered an original and together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have executed this assignment as their free and voluntary act and deed, on the date indicated by each signature.

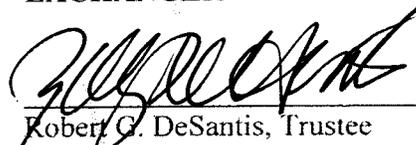
**THE 1031 EXCHANGE EXPERTS, LLC**

  
\_\_\_\_\_

Curtis Moore, Exchange Expert

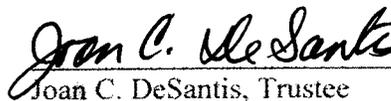
2/22/06  
Date

**THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985,  
EXCHANGER**

  
\_\_\_\_\_

Robert G. DeSantis, Trustee

Feb 22, 2006  
Date

  
\_\_\_\_\_

Joan C. DeSantis, Trustee

Feb 22, 2006  
Date



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 69-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A 45- DAY EXTENSION TO THE GROUND LEASE PREVIOUSLY ADOPTED BY RESOLUTION 35-06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL ALLOWING THE LESSEE TO PRE-PAY BASIC RENT IN THE AMOUNT OF \$315,000; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The City Commission hereby approves a 45-day extension to Ground Lease previously approved by Resolution 35-06 with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel; and authorizes the Mayor and City Clerk to execute an addendum to the Lease for the 45 day extension, upon approval of the City Attorney. A copy of the request for a 45-day extension is attached hereto as "Exhibit A." A copy of the Addendum shall be on file in the office of the City Clerk.**

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 24<sup>th</sup> day of April, 2006.

Commissioner Krauskopf offered the foregoing resolution and moved its adoption.

The motion was seconded by Commissioner Mortell and upon being put to a roll call vote, the vote was as follows:

CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		

ATTEST:

[Signature]  
CHERYL WHITE  
CITY CLERK

[Signature]  
CAROL S. WAXLER  
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]  
PAUL J. NICOLETTI, CITY ATTORNEY



Cheryl A. White  
City Clerk

Resolution 69-06

My lender is requiring a letter from Rob Taylor that the site can be developed and has permits via the city of Stuart. Secondly, the site plan needs to be reviewed by Rob, which I am enclosing with a copy of this letter so the permit can be modified for my use. The drainage plan will be given to Rob when construction plans are completed for additional permit modification.

Rob suggests we contact Dave Peters or Sam at Public Works to determine who we need to speak to at Brown and Caldwell who yearly completes testing of the remediation of the entire site. Paul Stemle of Ardaman & Assoc. needs to review the monitoring of the city on a yearly basis.

Because the city was unable to receive all the comments from their professionals in 30 days, we missed the mailing requirement and the April deadline for the LPA meeting. It will now push us to the May LPA meeting and June commission meeting.

Therefore, we respectfully request a 45-day extension of our due diligence period from April 27, 2006 to June 11, 2006. Since the lease is conditioned upon PUD approval anyway, we think our request is very reasonable. I will ask my attorney, Terry McCarthy, to prepare the extension for your approval. Thank you for your consideration in this regard.

We are reviewing the comments we received from your professionals and plan to have a meeting on Monday, 4/17. We will advise you Mon when we will have those comments dealt with and reapply taking into account comments given to us by your staff.

I've asked my property manager, James DeSantis, to rough ride this project between now and final approvals. Any questions or concerns, should be directed to him at [jld@desantisrealestate.com](mailto:jld@desantisrealestate.com) or 283-4640 ext. 2.

Bob DeSantis

DeSantis Commercial, Inc. REALTORS

719 Colorado Avenue, Stuart, FL 34994

(772) 283-4640, ext. 1

(772) 283-4677 fax

[rgd@desantisrealestate.com](http://rgd@desantisrealestate.com)



EXHIBIT A

**SECOND ADDENDUM  
TO  
GROUND LEASE**

**THIS SECOND ADDENDUM** to Ground Lease, is made and executed as of the 24<sup>th</sup> day of April, 2006, between **THE CITY OF STUART, FLORIDA**, Lessor, 121, SW Flagler Avenue, Stuart, Florida 34994 and **ROBERT G. DESANTIS** and **JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, "Lessee", 719 Colorado Avenue, Stuart, Florida 34994.

**W I T N E S S E T H**

**WHEREAS**, Lessor and Lessee entered into that certain Ground Lease dated as of February 27, 2006, including the First Addendum thereto, dated February 27, 2006 (collectively the "Ground Lease"); and

**WHEREAS**, the Lessor and Lessee have agreed to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Subparagraph D.1. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:

1. The Lessee may cancel this Lease without cause, ~~within sixty (60) days of its approval by the City Commission~~ on or before 5:00 p.m. on June 12, 2006, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property. Lessee shall obtain all surveys and estimates it deems necessary for its business purposes, and among other things, shall make application to the Florida Department of Environmental Protection and Florida Department of Transportation for the necessary approvals for its proposed development.

2. Subparagraph D.6. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:

6. Any "Notice of Cancellation of Lease" sent by one party to the other shall be sent to the CITY indicating its cancellation of the Lease, on or before the expiration of the ~~sixty day~~ period described in subsection 1. above, or as otherwise provided within ten (10) days of the event happening as described in subsections 2 through 5 above. If no such Notice is sent and received, then this Lease shall thereafter remain in full force and effect.

3. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.

ATTEST:



*Cheryl White*  
City Clerk

“LESSOR”

CITY OF STUART

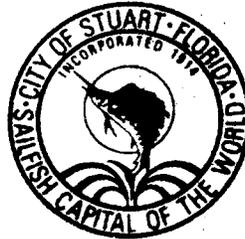
By: 

*Carol Waxler*  
Mayor

APPROVED AS TO FORM  
AND CORRECTNESS:



*Paul Nicoletti*  
City Attorney

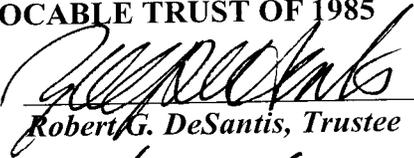


**Cheryl A. White**  
City Clerk

Signed, sealed and delivered  
in the presence of:

"LESSEE"

**ROBERT G. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

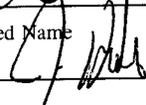
By:   
Robert G. DeSantis, Trustee

Dated: 4-27-06

Jackie L. Bylsma

Jackie L. Bylsma

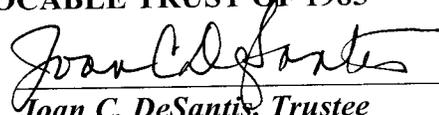
Printed Name



James DeSantis

Printed Name

**JOAN C. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

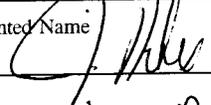
By:   
Joan C. DeSantis, Trustee

Dated: 4.27.06

Jackie L. Bylsma

Jackie L. Bylsma

Printed Name



James DeSantis

Printed Name



# City of Stuart

121 SW Higley Avenue • Stuart • Florida 34994  
Telephone (772) 288-5306  
Fax (772) 288-5305

City Clerk's Office

Cheryl White, City Clerk  
[cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

May 12, 2006

Robert G. Desantis  
719 Colorado Ave  
Stuart, Fl. 34994

REFERENCE: Lease Addendum 2

Enclosed please find your copy of the above named City Lease Addendum 2 for your file.

Should you have any questions or need further information, please do not hesitate to call me at 772-288-5306.

Respectfully,  
**COPY**  
Cheryl White, City Clerk  
City Clerk

Enc

## CITY OF STUART, FLORIDA

## AGENDA ITEM REQUEST

Meeting Date: April 24, 2006

Prepared by: Paul J. Nicoletti

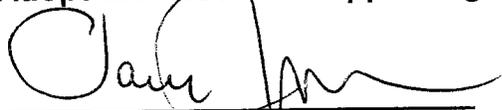
**Title of Item: RESOLUTION 69-06 AUTHORIZING THE EXTENSION OF THE DUE DILIGENCE PERIOD (TO JUNE 11, 2006) FOR THE GROUND LEASE WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL.**

**Summary Explanation/Background Information on Agenda Request:**

Bob DeSantis has requested, and the city staff agrees, that an additional 45 days is required for his due diligence period to accept this Lease. This will enable Mr. DeSantis to perform more site testing (drainage & environmental engineering) than he originally thought necessary, but which is now being required by his lenders. A copy of his request is attached.

**Recommended Action:**

Adopt the Resolution approving the Extension until June 11, 2006.



PAUL J. NICOLETTI  
City Attorney/Interim City Manager

4-19-06

\_\_\_\_\_  
Date



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 101-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A THIRD ADDENDUM TO GROUND LEASE PREVIOUSLY RE-ADOPTED BY RESOLUTION 35-06 AND AMENDED BY 69-06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL AMENDING SUBPARAGRAPH D.1. OF SECTION 32, ADDITIONAL TERMS AND CONDITIONS ALLOWING THE LESSEE TO CANCEL THE LEASE WITHOUT CAUSE ON OR BEFORE 5:00 P.M. ON JUNE 30, 2006; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The City Commission hereby approves a third addendum to ground lease previously re-adopted by resolution 35-06 and amended by 69-06 with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel amending subparagraph D.1. of Section 32, Additional terms and Conditions allowing the Lessee to cancel the lease without cause on or before 5:00 p.m. on June 30, 2006; and authorizes the Mayor and City**

Clerk to execute the third addendum upon approval of the City Attorney. A copy of the Addendum shall be on file in the office of the City Clerk.

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 12<sup>th</sup> day of June, 2006.

Commissioner Mortell offered the foregoing resolution and moved its adoption.

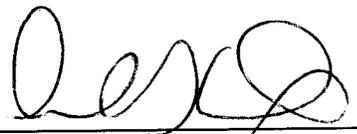
The motion was seconded by Commissioner Hutchinson and upon being put to a

roll call vote, the vote was as follows:

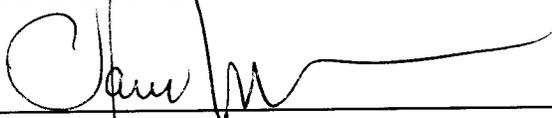
CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER  
JAMES A. CHRISTIE, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
		✓
✓		
✓		

ATTEST:  
  
CHERYL WHITE  
CITY CLERK

  
CAROL S. WAXLER  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
PAUL J. NICOLETTI,  
CITY ATTORNEY



Cheryl A. White  
City Clerk

**THIRD ADDENDUM  
TO  
GROUND LEASE**

**THIS THIRD ADDENDUM** to Ground Lease, is made and executed as of the 12 day of June, 2006, between **THE CITY OF STUART, FLORIDA**, "Lessor," 121 SW Flagler Avenue, Stuart, Florida 34994 and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, "Lessee," 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH**

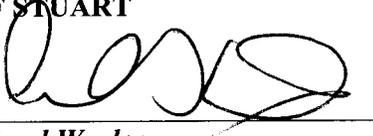
**WHEREAS**, Lessor and Lessee entered into that certain Ground Lease dated as of February 27, 2006, including the First Addendum, dated February 27, 2006, and Second Addendum, dated April 24, 2006, thereto (collectively the "Ground Lease"); and

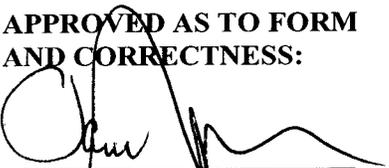
**WHEREAS**, the Lessor and Lessee have agreed to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

- 1. Subparagraph D.1. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:
  - 1. The Lessee may cancel this Lease without cause, on or before 5:00 p.m. on June 30, 2006, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property.
  - 2. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.

**ATTEST:**  
  
 Cheryl White  
 City Clerk

**"LESSOR"**  
**CITY OF STUART**  
 By:   
 Carol Waxler  
 Mayor

**APPROVED AS TO FORM  
AND CORRECTNESS:**  
  
 Paul Nicoletti  
 City Attorney

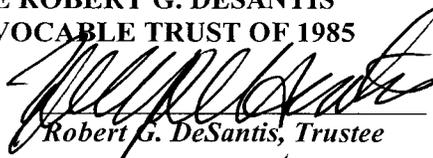


Signed, sealed and delivered  
In the presence of:

“LESSEE”

**ROBERT G. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

By:

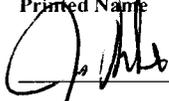
  
Robert G. DeSantis, Trustee

Dated:

6/30/06

Jackie L. Bylsme  
Jackie L. Bylsme

Printed Name



James DeSantis

Printed Name

**JOAN C. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

By:

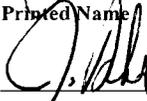
  
Joan C. DeSantis, Trustee

Dated:

6/30/06

Jackie L. Bylsme  
Jackie L. Bylsme

Printed Name



James DeSantis

Printed Name

AGENDA ITEM REQUEST

15

MEETING DATE JUNE 12, 2006

PREPARED BY: MARY NASH

RESOLUTION 101-06

TITLE OF ITEM

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A THIRD ADDENDUM TO GROUND LEASE PREVIOUSLY RE-ADOPTED BY RESOLUTION 35-06 AND AMENDED BY 69-06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL AMENDING SUBPARAGRAPH D.1. OF SECTION 32, ADDITIONAL TERMS AND CONDITIONS ALLOWING THE LESSEE TO CANCEL THE LEASE WITHOUT CAUSE ON OR BEFORE 5:00 P.M. ON JUNE 30, 2006; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

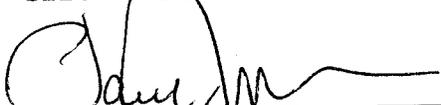
SUMMARY EXPLANATION/BACKGROUND INFORMATION

SEE ATTACHED PROPOSED RESOLUTION AND ADDENDUM.

DEPARTMENT HEAD RECOMMENDED ACTION:

MOTION TO PASS PROPOSED RESOLUTION AND ADDENDUM.

\_\_\_\_\_  
CITY ATTORNEY

  
\_\_\_\_\_  
DAVID COLLIER

\_\_\_\_\_  
DATE

6-6-06

\_\_\_\_\_  
DATE

**McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.**  
**Attorneys at Law**

Kathryn C. Bass  
Noel A. Bobko  
Nicola Jaye Boone\*  
Mark A. Broderick  
Terence P. McCarthy\*\*  
Kenneth A. Norman  
Steven L. Perry  
Thomas R. Sawyer\*\*  
Rose D. Schneider  
Jane F. Strike  
Robert P. Summers\*\*  
Patricia I. Taylor  
Steven J. Wood\*\*\*

2400 S.E. Federal Highway • Fourth Floor  
Stuart, FL 34994

Tel 772 286-1700  
Fax 772 283-1803

John D. McKey, Jr.  
Of Counsel

E-Mail: [info@mcsumm.com](mailto:info@mcsumm.com)  
[www.McCarthySummers.com](http://www.McCarthySummers.com)  
Personal Email: [tpm@mcsumm.com](mailto:tpm@mcsumm.com)

\*Board Certified Elder Law Lawyer  
\*\*Board Certified Real Estate Lawyer  
\*\*\*Board Certified Wills, Trusts &  
Estates Lawyer

June 6, 2006

**VIA HAND DELIVERY**

Paul Nicoletti, Esq.  
City Attorney  
City of Stuart  
121 S. W. Flagler Avenue  
Stuart, Florida 34994

***Re: DeSantis, as Trustee/Lease with the City of Stuart***

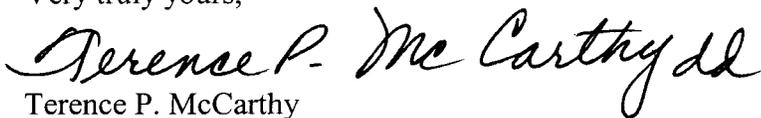
Dear Paul:

I am writing in regard to the Ground Lease between DeSantis, as Trustee and the City of Stuart dated as of February 27, 2006, as amended. As you know, the Due Diligence Period of the Lessee expires at 5:00 p.m. on June 12, 2006. Although we all believe that the City Commission will extend the Due Diligence Period until June 30, 2006, any action by the City Commission will occur after 5:00 p.m. on June 12, 2006.

In order to preserve my client's rights under the Ground Lease, this letter shall serve as notice to the City of the cancellation of the Ground Lease by the Lessee, pursuant to Section 32 of the Ground Lease. Obviously, in the event the City extends the Due Diligence Period until June 30, 2006, this notice of cancellation should be deemed revoked and of no further force or effect.

I believe we are all confident that the Due Diligence Period will be extended, and I look forward to working with you on the Ground Lease

Very truly yours,



Terence P. McCarthy

TPM/dd

cc: client



# City of Stuart

121 SW Flagler Avenue • Stuart • Florida 34994  
Telephone (772) 288-5306  
Fax (772) 288-5305

City Clerk's Office

Cheryl White, City Clerk

[cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

June 21, 2006

McCarthy Summers, Bobko, Wood, Sawyer & Perry, P.A.  
Att: Terence McCarthy  
2400 SE Federal Highway, Fourth Floor  
Stuart, FL 34994

REFERENCE: DeSantis, as Trustee /City of Stuart lease agreement Third Addendum

Enclosed for your file is a certified copy of the above named document on behalf of your client.

Also for the record, I have enclosed a certified copy of the City's adopted Resolution 101-06.

Should you have any questions or need further information, please do not hesitate to call me at 772-288-5306.

Respectfully,



Cheryl White, CMC  
City Clerk



Enc.



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 118-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A FOURTH ADDENDUM TO GROUND LEASE PREVIOUSLY RE-ADOPTED BY RESOLUTION 35-06, 69-06 AND AMENDED BY 101-06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL AMENDING SUBPARAGRAPH D.1. OF SECTION 32, ADDITIONAL TERMS AND CONDITIONS ALLOWING THE LESSEE TO CANCEL THE LEASE WITHOUT CAUSE ON OR BEFORE 5:00 P.M. ON JULY 11, 2006; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**\* \* \* \* \***

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The City Commission hereby approves a fourth addendum to ground lease previously re-adopted by resolution 35-06, 69-06 and amended by 101-06 with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel amending subparagraph D.1. of Section 32, Additional terms and Conditions allowing the Lessee to cancel the lease without cause on or before 5:00 p.m. on July 11, 2006; and authorizes the**

Res- 118-06

Mayor and City Clerk to execute the fourth addendum upon approval of the City Attorney. A copy of the Addendum shall be on file in the office of the City Clerk.

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 26<sup>th</sup> day of June, 2006.

Commissioner Krauskopf offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner Mortell and upon being put to a roll call vote, the vote was as follows:

CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER  
JAMES A. CHRISTIE, COMMISSIONER

YES	NO	ABSENT
		x
x		
x		
x		
x		

ATTEST:  
  
CHERYL WHITE  
CITY CLERK

  
~~CAROL S. WAXLER~~ MARY HUTCHINSON  
VICE MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
PAUL J. NICOLETTI,  
CITY ATTORNEY



Cheryl A. White  
City Clerk

**FOURTH ADDENDUM  
TO  
GROUND LEASE**

**THIS FOURTH ADDENDUM** to Ground Lease, is made and executed as of the 26<sup>th</sup> day of June, 2006, between **THE CITY OF STUART, FLORIDA**, "Lessor," 121 SW Flagler Avenue, Stuart, Florida 34994 and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, "Lessee," 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH**

**WHEREAS**, Lessor and Lessee entered into that certain Ground Lease dated as of February 27, 2006, including the First Addendum, dated February 27, 2006, Second Addendum, dated April 24, 2006, and Third Addendum, dated June 12<sup>th</sup>, thereto (collectively the "Ground Lease"); and

**WHEREAS**, the Lessor and Lessee have agreed to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Subparagraph D.1. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:
  1. The Lessee may cancel this Lease without cause, on or before 5:00 p.m. on July 11, 2006, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property.
  2. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.

**"LESSOR"**

**CITY OF STUART**

By: \_\_\_\_\_

*Carol W. Hutchinson*  
**MARY HUTCHINSON**  
Vice Mayor

**ATTEST:**

*Cheryl White*  
\_\_\_\_\_  
**Cheryl White**  
City Clerk

**APPROVED AS TO FORM  
AND CORRECTNESS:**

*Paul Nicoletti*  
\_\_\_\_\_  
**Paul Nicoletti**  
City Attorney

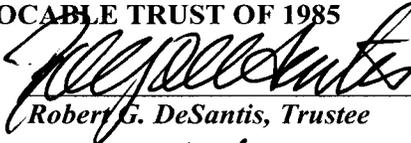


**Cheryl A. White**  
City Clerk

Signed, sealed and delivered  
In the presence of:

“LESSEE”

**ROBERT G. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

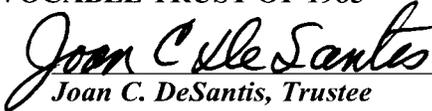
By:   
Robert G. DeSantis, Trustee

Dated: 6/6/06

  
Jackie L. Bylsma  
Printed Name

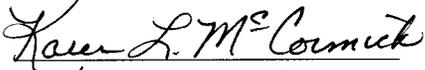
  
KAREN L. MCCORMICK  
Printed Name

**JOAN C. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

By:   
Joan C. DeSantis, Trustee

Dated: 6/6/06

  
Jackie L. Bylsma  
Printed Name

  
KAREN L. MCCORMICK  
Printed Name



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 123-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A FIFTH ADDENDUM TO GROUND LEASE PREVIOUSLY RE-ADOPTED BY RESOLUTION 35-06, 69-06, 101-06 AND AMENDED BY 118--06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL AMENDING SUBPARAGRAPH D.1. OF SECTION 32, ADDITIONAL TERMS AND CONDITIONS ALLOWING THE LESSEE TO CANCEL THE LEASE WITHOUT CAUSE ON OR BEFORE 5:00 P.M. ON JULY 25, 2006; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**\* \* \* \* \***

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that**

**SECTION 1: The City Commission hereby approves a fifth addendum to ground lease previously re-adopted by resolution 35-06, 69-06, 101-06 and amended by 118-06 with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel amending subparagraph D.1. of Section 32, Additional terms and Conditions allowing the Lessee to cancel the lease without cause on or before 5:00 p.m. on July 25, 2006; and**

amending subparagraph D.1. of Section 32, Additional terms and Conditions allowing the Lessee to cancel the lease without cause on or before 5:00 p.m. on July 25, 2006; and

authorizes the Mayor and City Clerk to execute the fifth addendum upon approval of the City Attorney. A copy of the Addendum shall be on file in the office of the City Clerk.

**SECTION 2:** This resolution shall take effect upon adoption.

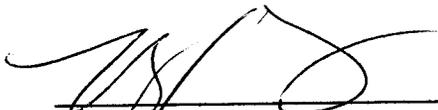
PASSED AND ADOPTED this 10<sup>th</sup> day of July, 2006.

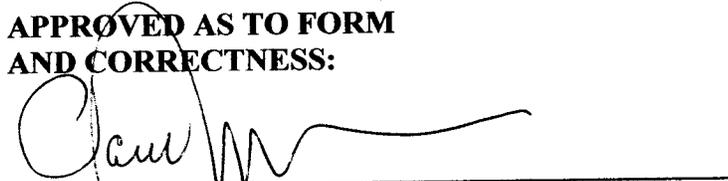
Commissioner Krauskopf offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner Christie and upon being put to a roll call vote, the vote was as follows:

CAROL S. WAXLER, MAYOR  
 MARY HUTCHINSON, VICE MAYOR  
 JEFFREY KRAUSKOPF, COMMISSIONER  
 MICHAEL J. MORTELL, COMMISSIONER  
 JAMES A. CHRISTIE, COMMISSIONER

YES	NO	ABSENT
		x
x		
x		
x		
x		

ATTEST:  
  
 \_\_\_\_\_  
 CHERYL WHITE  
 CITY CLERK

  
 \_\_\_\_\_  
~~CAROL S. WAXLER~~ MARY HUTCHINSON  
 vice MAYOR

APPROVED AS TO FORM  
 AND CORRECTNESS:  
  
 \_\_\_\_\_  
 PAUL J. NICOLETTI,  
 CITY ATTORNEY



**Cheryl A. White**  
 City Clerk

**FIFTH ADDENDUM  
TO  
GROUND LEASE**

<sup>Fifth</sup>  
~~THIS FOURTH~~ ADDENDUM to Ground Lease, is made and executed as of the 10<sup>th</sup> day of July, 2006, between **THE CITY OF STUART, FLORIDA**, "Lessor," 121 SW Flagler Avenue, Stuart, Florida 34994 and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, "Lessee," 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH**

**WHEREAS**, Lessor and Lessee entered into that certain Ground Lease dated as of February 27, 2006, including the First Addendum, dated February 27, 2006, Second Addendum, dated April 24, 2006, Third Addendum, dated June 12, 2006, and Fourth Addendum, dated June 26<sup>th</sup> thereto (collectively the "Ground Lease"); and

**WHEREAS**, the Lessor and Lessee have agreed to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Subparagraph D.1. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:
  1. The Lessee may cancel this Lease without cause, on or before 5:00 p.m. on July 25, 2006, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property.
2. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.

**"LESSOR"**

**CITY OF STUART**

By:

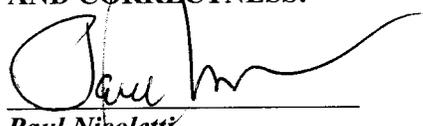
  
Carol Wacker **MARY HUTCHINSON**

**Vice Mayor**

**ATTEST:**

  
Cheryl White  
**City Clerk**

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
Paul Nicoletti  
**City Attorney**



**Cheryl A. White**  
**City Clerk**

Signed, sealed and delivered  
In the presence of:

Jackie L. Bylsma  
Jackie L. Bylsma

Printed Name

J. DeSantis  
James DeSantis

Printed Name

Jackie L. Bylsma  
Jackie L. Bylsma

Printed Name

J. DeSantis  
James DeSantis

Printed Name

“LESSEE”

ROBERT G. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985

By:

Robert G. DeSantis  
Robert G. DeSantis, Trustee

Dated:

July 17th, 2006

JOAN C. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985

By:

Joan C. DeSantis  
Joan C. DeSantis, Trustee

Dated:

7/17/06



# City of Stuart

121 SW Flagler Avenue • Stuart • Florida 34994  
Telephone (772) 288-5306  
Fax (772) 288-5305

City of Stuart

City of Stuart  
[www.cityofstuart.com](http://www.cityofstuart.com)

July 13, 2006

Robert G Desantis  
713 Colorado Avenue  
Stuart, Fl. 34994

REFERENCE: 5<sup>th</sup> Addendum to Ground Lease / City of Stuart

Enclosed please find one original above named agreement for execution by Robert & Joan DeSantis. Once fully executed kindly, mail the original back to my attention at the address above and retain a copy for your records along with the enclosed a copy of the City's adopted Resolution 123-06.

Should you have any questions or need further information, please do not hesitate to call me at 772-288-5306.

Respectfully,

  
Cheryl White, CMC  
City Clerk

Enc

7

**CITY OF STUART, FLORIDA**  
**AGENDA ITEM REQUEST**

**Meeting Date: July 10, 2006**

**Prepared by: Paul J. Nicoletti**

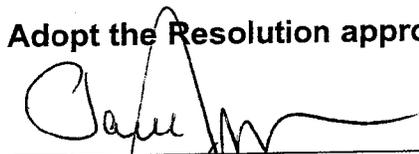
**Title of Item: RESOLUTION 123-06 AUTHORIZING THE EXTENSION OF THE DUE DILIGENCE PERIOD (TO JULY 25, 2006) FOR THE GROUND LEASE WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL.**

**Summary Explanation/Background Information on Agenda Request:**

The City is requesting an extension, and Bob DeSantis has agreed, that an additional couple of weeks is required for our due diligence period to accept this Lease. This enable us to review and analyze the Appraisal of the property to determine if the rent is sufficient for us to proceed.

**Recommended Action:**

**Adopt the Resolution approving the Extension until July 25, 2006.**



**PAUL J. NICOLETTI**  
**City Attorney/Interim City Manager**

7-5-05  
\_\_\_\_\_  
Date



# City of Stuart

121 SW Flagler Avenue • Stuart • Florida 34994  
Telephone (772) 288-5306  
Fax (772) 288-5305

<http://www.cityofstuart.com>

[www.cityofstuart.com](http://www.cityofstuart.com)

July 13, 2006

Robert G Desantis  
713 Colorado Avenue  
Stuart, Fl. 34994

REFERENCE: 5<sup>th</sup> Addendum to Ground Lease / City of Stuart

Enclosed please find one original above named agreement for execution by Robert & Joan DeSantis. Once fully executed kindly, mail the original back to my attention at the address above and retain a copy for your records along with the enclosed a copy of the City's adopted Resolution 123-06.

Should you have any questions or need further information, please do not hesitate to call me at 772-288-5306.

Respectfully,

Cheryl White CMC  
City Clerk

Enc



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 132-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A SIXTH ADDENDUM TO GROUND LEASE PREVIOUSLY RE-ADOPTED BY RESOLUTION 35-06, 69-06, 101-06, 118-06 AND AMENDED BY 123--06 WITH ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST FOR THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD LANDFILL PARCEL AMENDING SUBPARAGRAPH D.1. OF SECTION 32, ADDITIONAL TERMS AND CONDITIONS ALLOWING THE LESSEE TO CANCEL THE LEASE WITHOUT CAUSE ON OR BEFORE 5:00 P.M. ON AUGUST 15, 2006; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN ADDENDUM UPON APPROVAL OF THE CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

**\* \* \* \* \***

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The City Commission hereby approves a sixth addendum to ground lease previously re-adopted by resolution 35-06, 69-06, 101-06, 118-06 and amended by 123-06 with Robert G. DeSantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel amending subparagraph D.1. of Section 32, Additional terms and Conditions**

allowing the Lessee to cancel the lease without cause on or before 5:00 p.m. on August 15, 2006; and

authorizes the Mayor and City Clerk to execute the sixth addendum upon approval of the City Attorney. A copy of the Addendum shall be on file in the office of the City Clerk.

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 24th day of July , 2006.

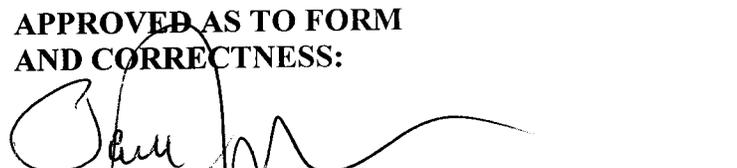
Commissioner Krauskopf offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner Christie and upon being put to a roll call vote, the vote was as follows:

CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER  
JAMES A. CHRISTIE, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

ATTEST:  
  
CHERYL WHITE  
CITY CLERK

  
CAROL S. WAXLER  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:  
  
PAUL J. NICOLETTI,  
CITY ATTORNEY



**SIXTH ADDENDUM  
TO  
GROUND LEASE**

**THIS SIXTH ADDENDUM** to Ground Lease, is made and executed as of the 24 day of <sup>July</sup>~~August~~, 2006, between **THE CITY OF STUART, FLORIDA**, "Lessor," 121 SW Flagler Avenue, Stuart, Florida 34994 and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985**, "Lessee," 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH**

**WHEREAS**, Lessor and Lessee entered into that certain Ground Lease dated as of February 27, 2006, including the First Addendum, dated February 27, 2006, Second Addendum, dated April 24, 2006, Third Addendum, dated May 6, 2006, Fourth Addendum, dated May 30, 2006, and Fifth Addendum, dated July 10, 2006 thereto (collectively the "Ground Lease"); and

**WHEREAS**, the Lessor and Lessee have agreed to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein and in the Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Subparagraph D.1. of Section 32, Additional Terms and Conditions, is hereby amended to read as follows:
  1. The Lessee may cancel this Lease without cause, on or before 5:00 p.m. on August 15, 2006, and shall use said time as a "due diligence period," within which to completely satisfy itself of any and all requirements concerning the Lease and the intended development of the Property.
  2. All of the terms and conditions of the Ground Lease not amended hereby shall remain in full force and effect.

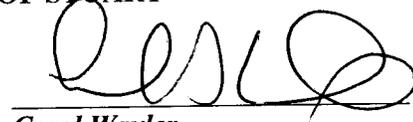
**ATTEST:**

  
\_\_\_\_\_  
*Cheryl White*  
City Clerk

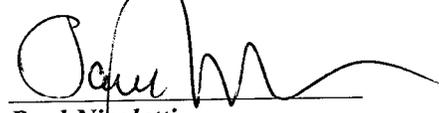
**"LESSOR"**

**CITY OF STUART**

By:

  
\_\_\_\_\_  
*Carol Waxler*  
Mayor

**APPROVED AS TO FORM  
AND CORRECTNESS:**

  
\_\_\_\_\_  
*Paul Nicoletti*  
City Attorney

Signed, sealed and delivered  
In the presence of:

Jackie L. Bylsma  
Jackie L. Bylsma  
Printed Name

[Signature]  
James DeSantis  
Printed Name

Jackie L. Bylsma  
Jackie L. Bylsma  
Printed Name

[Signature]  
James DeSantis  
Printed Name

“LESSEE”

**ROBERT G. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

By: [Signature]  
Robert G. DeSantis, Trustee

Dated: 8/2/06

**JOAN C. DESANTIS, TRUSTEE OF  
THE ROBERT G. DESANTIS  
REVOCABLE TRUST OF 1985**

By: [Signature]  
Joan C. DeSantis, Trustee

Dated: 8/2/06



INSR # 1976197  
OR BK 02200 PG 2487  
Pg 2487 - 2511 (25095)  
RECORDED 11/28/2006 02:35:16 PM  
MARSHA EWING  
CLERK OF HARTIN COUNTY FLORIDA  
RECORDED BY C Burker

**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 186-06**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AMENDED AND RESTATED GROUND LEASE BETWEEN THE CITY OF STUART, FLORIDA HEREINAFTER "CITY" AS LESSOR AND ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985 AND VIVIAN JONES AND ROBERT JONES, AS CO-TRUSTEES OF THE VIVIAN I. JONES INTER VIVOS DECLARATION OF TRUST, DATED SEPTEMBER 9, 2003 AND JAMES DESANTIS, HEREINAFTER COLLECTIVELY, "LESSEE"; OF THE 2+ ACRE PARCEL AT THE NORTH EAST CORNER OF THE OLD CITY LANDFILL PARCEL. PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\*\*\*\*\*

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:**

**SECTION 1: The Mayor and City Clerk are hereby authorized to adopt the Restated Ground Lease with Robert G. Desantis and Joan C. DeSantis, Trustees of the Robert G. DeSantis Revocable Trust of 1985, and Vivian Jones and Robert Jones, as Co-Trustees of the Vivian I. Jones Inter Vivos Declaration of Trust, dated September 9, 2003 and James DeSantis, all collectively called Lessee, of the 2+ acre parcel at the North East corner of the Old City Landfill Parcel. A copy of ground lease and addendum are on file in the office of the City Clerk.**

**SECTION 2:** This resolution shall take effect upon adoption.

PASSED AND ADOPTED this 9<sup>th</sup> day of October, 2006.

Commissioner Christie offered the foregoing resolution and moved its adoption.

The motion was seconded by Commissioner Mortell and upon being put to a

roll call vote, the vote was as follows:

CAROL S. WAXLER, MAYOR  
MARY HUTCHINSON, VICE MAYOR  
JEFFREY KRAUSKOPF, COMMISSIONER  
MICHAEL J. MORTELL, COMMISSIONER  
JAMES A. CHRISTIE, JR., COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

ATTEST:  
[Signature]  
CHERYL WHITE  
CITY CLERK

[Signature]  
CAROL S. WAXLER  
MAYOR

APPROVED AS TO FORM  
CORRECTNESS:  
[Signature]  
PAUL J. NICOLETTI  
CITY ATTORNEY

## **AMENDED AND RESTATED GROUND LEASE**

***THIS AMENDED AND RESTATED GROUND LEASE*** is made and executed as of the 27<sup>th</sup> day of October, 2006, between the **CITY OF STUART, Florida**, hereinafter "CITY," as Lessor, 121 S.W. Flagler Avenue, Stuart, FL 34994, and **ROBERT G. DESANTIS and JOAN C. DESANTIS, TRUSTEES OF THE ROBERT G. DESANTIS REVOCABLE TRUST OF 1985 and VIVIAN JONES and ROBERT JONES, as Co-trustees of The Vivian I. Jones Inter Vivos Declaration of Trust, dated September 9, 2003, and JAMES DeSANTIS**, hereinafter collectively, "Lessee", 719 Colorado Avenue, Stuart, Florida 34994.

### **Section 1. Demise, Description and Use of Premises.**

In consideration of the sum of Ten and No/100 Dollars (\$10.00) to it in hand paid this day, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY leases to Lessee and Lessee hires from CITY upon the terms and conditions contained herein, for the purpose of conducting thereon any lawful business and for no other purpose, the following described real property located in Martin County, Florida, to wit:

See Exhibit "A" attached hereto and made a part hereof.

As used herein, the term "Premises" refers to the real property above described and to any improvements located thereon from time to time during the term hereof.

### **Section 2. Commencement and Term.**

The term of this Lease shall commence on the date of full execution of this Lease (the "Commencement Date"). Rent payments due hereunder shall commence on April 1, 2007 (the "Rent Commencement Date").

The term of this Lease shall continue for an initial period of THIRTY (30) YEARS from the commencement date subject to extension or prior termination as set forth herein.

### **Section 3. Right to Extend and Rent Adjustment.**

Provided the Lessee is not in default under any of the terms and conditions of this Lease, and provided the Tenant has faithfully performed all of its covenants and undertakings contained in this Lease, Lessee shall have the right and option to extend the term of this Lease for two (2) consecutive additional terms of TEN (10) YEARS, each upon the same terms and conditions except that CITY shall have the right to adjust the Rent for the Premises, prior to each additional term, based upon and conforming to current economic

rent values as determined by an appraisal of same as prepared herein. In no event shall rent be less than the prior term. The appraisal shall be prepared prior to the time required for notice of term extension by the Lessee, below. For purposes of this section, the appraisal shall be made by a board of three (3) MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Premises. One of the appraisers shall be appointed and paid for by the Lessee, a second appraiser shall be appointed and paid by the CITY, and the third appraiser shall be selected by the first two appraisers so appointed and the third appraiser's fee shall be born one-half (1/2) by the Lessee and one-half (1/2) by the CITY. If the first two appraisers are unable to agree on a third appraiser within fifteen (15) days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the then President of the Florida Society of MAI's, or such successor to the Society exercising similar functions.

The term of the Lease shall be extended from one term to the next by Lessee giving written notice to the CITY not less than one hundred twenty (120) days prior to the end of the current term, or extended term. Such notice shall be sent to the CITY by hand delivery or by certified mail, return receipt requested, at the address of CITY set forth above or such other address as CITY may direct in writing. Optional terms may only be exercised one at a time, and only consecutively.

#### **Section 4. Basic Rent.**

It is the purpose and intent of the CITY and the Lessee that the rent shall be absolute net to the CITY. Lessee hereby agrees to pay to CITY rent for the leased Premises land, the initial annual sum of \$52,500.00, together with the upward adjustments provided herein, payable solely for the convenience of Lessee in equal monthly installments of \$4,375.00 payable on the first (1<sup>st</sup>) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any renewal terms subject to adjustment as hereinafter set forth. Payment shall be made either by automatic debit; wire transfer; or by a check drawn on a local bank, and shall be made to whoever the Landlord designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason, except as provided in Section 28. Lessee has prepaid rent in the amount of \$315,000.00. This payment of \$315,000.00 represents basic rent for the following period of time: commencing April 1, 2007 through March 31, 2013. No rent will need to be paid until April 1, 2013. Commencing April 1, 2013 rent in the amount of \$66,429.00 per year shall be due and payable in equal monthly installments of \$5,535.75.

#### **Section 5. Annual Rent Escalation.**

For subsequent years the amount of the rent payable will be based on a four (4%) percent per year increase, beginning on April 1, 2008, and shown on the Rent Payment Schedule attached as Exhibit "B," which is incorporated herein.

**Section 6. Taxes.**

A. Real Estate Taxes. Beginning on the Commencement Date and throughout the term of this Lease thereafter, including any extension terms, Lessee shall pay, as additional rent hereunder, before they become delinquent, all taxes. "Taxes" as used herein, means all ad valorem real property taxes and assessments, that are levied or assessed against the Premises or any part thereof, and any rents due from time to time by any lawful taxing authority, whether federal, state, county, school or city, or otherwise, and any and all taxes which are imposed in lieu of, or in addition to any such real property taxes whether of the foregoing character or not and whether in existence at the Commencement Date.

CITY shall promptly forward to Lessee all notices, bills or invoices CITY receives requiring payment for any of the items set forth above. All taxes for the beginning and ending years of the term hereof, from date hereof, including any extension terms, shall be borne solely by the LESSEE. It is anticipated that taxes shall be paid on occupancy beginning on April 1, 2007 and first payable in November, 2007.

Lessee may contest any tax or assessment it is required to pay and may file protests or otherwise proceed in the name of CITY. Any contest must be made by first posting with the CITY cash in the entire amount claimed to be due by the taxing authority. The CITY may use the cash to pay the taxes or assessment at any time the CITY determines in good faith, that a loss of the property may or could reasonably occur.

B. Florida Sales and Use Tax. All Florida Sales and Use taxes, currently levied at six (6%) per cent of the rent payments, or any similar taxes imposed upon payments made by a tenant to a landlord, or upon this lease, whether on the rents, additional rent or the lease or leasing privilege shall be paid in full by Lessee promptly when due or upon demand therefore.

Nothing herein shall be construed so as to require Lessee to pay any income tax, inheritance tax, capital gain tax, franchise tax or corporate stock tax imposed upon or payable by CITY.

**Section 7. Permitted Uses.**

Lessee shall be entitled to develop the Premises for use as an Office, Retail, Warehouse CPUD. CITY hereby agrees not to affirmatively interfere with Lessee's efforts to so develop the Premises, except that CITY does have a governmental interest in assuring that Lessee complies with all applicable city ordinances, including those pertaining to zoning and land use. Lessee shall be responsible for the payment of any and all costs incurred in connection with the development of the Premises including the preparation of any applications, plans, surveys or other documents and all impact fees and development fees incurred in connection with development of the Premises.

**Section 8. Encumbrances.**

A. No Encumbrances by CITY. Nothing contained herein shall be construed so as to require CITY to execute any document or instrument, which would create any financial liability on the part of CITY nor upon the subject premises, nor alter or impair CITY's rights under this Lease. There is no obligation under this Lease for CITY to encumber, convey, burden or subordinate any part of or all of the fee simple interest of the subject premises, or to grant or agree to any condition, which will burden the property beyond the Lease term.

B. Encumbrances of Lessee's Leasehold Interest. Lessee may, without being required to obtain CITY's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. CITY shall not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

CITY shall provide any Mortgagee of whom CITY has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default CITY sends to Lessee hereunder. Prior to terminating this Lease as the result of any default by Lessee, CITY shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, CITY shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the mortgage curing Lessee's default.

CITY shall from time to time, within ten (10) days after Lessee shall have requested it, execute, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to CITY with the request.

**Section 9. Assignment and Sublease.**

A. General Assignment and Sublease. Lessee may not assign all or a portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by CITY or other portions of the Premises for any lawful purpose without the consent of CITY, which consent shall not be unreasonably withheld. Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof No sub-lease can extend beyond the existing term of this Lease. No sub-lease can alter the terms hereof.

B. Assignment under Section 1031, Internal Revenue Code. Notwithstanding the provisions of Section 9A. above, the CITY understands and agrees that Lessee may use this Lease and Premises as part of a so-called "like kind exchange" pursuant to Section

1031, Internal Revenue Code. The CITY agrees to cooperate with the Lessee in completing this exchange, including the substitution of Lessee by an escrow agent or other substitute to complete the exchange as provided by the Code. However, the Lessee hereby holds the CITY, its elected and appointed officials, employees, and agents harmless in the event the exchange should fail or be disqualified by the Internal Revenue Service for any reason, or no reason whatsoever. It is understood and agreed that such exchange is solely the responsibility of the Lessee, and its contractors, agents, employees, officers and directors.

**Section 10. Uses Prohibited.**

Lessee shall not use or permit the use of the Premises, or any part thereof, for any illegal purpose or purposes, nor shall Lessee maintain a nuisance on the Premises or use or permit the use thereof for immoral purposes. The Premises may not be used as a toxic waste disposal or storage facility, a solid waste disposal site or any use which could have a harmful effect on the land itself the Lessee shall not commit waste. No use may be made of the property which would legally impair the right to collect rental adjustments called for herein. CITY shall cooperate with the Lessee's environmental consultants to secure all required approvals from regulatory bodies and agencies.

**Section 11. Improvements, Repairs, Additions, Replacements to the Real Property.**

Through the term of this Lease, the Lessee shall have the right (but not the duty) to construct, erect, or reconstruct any and all manner of buildings, works, or improvements upon the Premises as are permitted by this lease and the then applicable land use, zoning, building and other ordinances of the City.

Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Premises, and shall use all reasonable precaution to prevent waste, damage or injury.

CITY shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Premises during the term of this Lease.

Lessee's rights, as set forth in this Section 11, shall be subject to the following conditions:

- A. The cost of any such construction, or of any change, alteration or improvements, shall be borne and paid for by Lessee.
- B. The Premises shall, at all times, be kept free of mechanics and material men's liens, and Lessee may be required by CITY to furnish copies of full or partial releases of lien demonstrating the same.

- C. The parties shall enter into a Memorandum of Lease, in recordable form, in form and content acceptable to CITY, and the same shall be recorded prior to the commencement of any work on the premises. The Lessee agrees to execute such further agreements as may be necessary, from time to time, to preserve the leased premises from the imposition of liens. The Lessee shall provide in any contracts and shall require the General Contractor to provide in all sub-contracts and subsub-contracts that the parties thereto must look solely to the Lessee for payment and that no liens shall be filed against the land itself.
- D. During the last three years of any term of the Lease (or any extended term acquired by exercise of an option hereunder), Lessee shall not demolish or remove any building or improvements located on the premises unless Lessee's option to renew for the next ten (10) year period has been exercised in writing. At the end of term hereof, all improvements located on the Premises will become the property of CITY, and at CITY's option, CITY can require Lessee to remove all or any part of the improvements and to place the Premises in their original condition.

**Section 12. Insurance.**

Lessee covenants to provide, during the entire term hereof at Lessee's own cost and expense, as additional rent, by advance payment of premiums, a comprehensive liability policy of insurance protecting CITY and Lessee as their interest may appear against any liability whatsoever, occasioned by accident on or about the demised premises or any appurtenances thereto. Such policy shall be approved by CITY, written by a company rated not less than "AAA", by Best's Register, in an amount not less than One Million Dollars (\$1,000,000) to cover the claim of damage from any single person, and not less than Two Million Five Hundred Thousand Dollars (\$2,000,000) to cover more than a single claim which may arise from a single action, and in the sum of Five Hundred Thousand Dollars (\$500,000) in respect to claims for property damage. Such policy shall insure Lessee and CITY against any liability that may accrue against them or either of them, on account of any occurrence on or to the demised premises during the term thereof, resulting in personal injury, death, property damage, or any other liability whatsoever; and said policies shall include indemnity against loss, expense and damage of any and every kind, including costs of investigation and attorney's fees, and other costs of defense. Lessee agrees to pay all premiums for all policies promptly as additional rent and deliver to CITY an original or duplicate original of all such policies, together with evidence of payment of premium thereon, upon the beginning date of this Lease, and from time to time thereafter as premiums shall fall due. CITY may require an increase in the limits of coverage or extent or coverage at any time such increase is deemed commercially reasonable by CITY. CITY may increase the amounts of required insurance coverage provided the same is commercially reasonable.

All insurance coverage called for under the Lease shall contain provisions granting CITY thirty (30) days notice prior to termination thereof and shall be written by an insurance

company authorized to do business in Florida. Copies of the policies shall be promptly furnished to CITY.

All hazard insurance policies carried by the Lessee covering property located on the demised premises will provide that the CITY is an additional named insured.

**Section 13. Indemnification of CITY.**

In consideration of said Premises being leased to Lessee for the above rental, and for other additional good and valuable considerations the extent and receipt of which are hereby acknowledged, Lessee agrees: that Lessee, at all times, will indemnify and hold harmless CITY from all losses, damages, liabilities and expenses, which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Lessee, or consequent upon or arising from any acts, omission, neglect or fault of Lessee, his agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Lessee's failure to comply with any laws, statutes, ordinances, codes or regulations as herein provided; that CITY shall not be liable to Lessee or any damages, losses or injuries to the persons or to property of Lessee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations, and that Lessee will indemnify and keep harmless CITY from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against CITY and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises as a result of the negligence of Lessee, his agents, employees, servants, licensees, visitors, customers, patrons and invitees. All personal property placed or moved into the Leased Premises or Building shall be at the risk of Lessee or the owners thereof, and CITY shall not be liable to Lessee for any damages to said personal property. Lessee shall maintain at all times during the term of this Lease an insurance policy or policies in an amount or amounts sufficient to indemnify CITY and to pay CITY's damages, if any, resulting from any matters set forth hereinbefore in this Paragraph 13. LESSEE WAIVES ALL RIGHTS TO RECOVER FROM CITY FOR ANY DAMAGES CAUSED BY NEGLIGENCE OF CITY, ITS AGENTS OR EMPLOYEES. Lessee's insurance policies shall contain a waiver of the right of subrogation as against the CITY.

**Section 14. Time.**

It is understood and agreed between the parties hereto that time is of the essence of all the terms, provisions, covenants and conditions of this Lease.

**Section 15. Condemnation.**

- A. If, at any time during the term of this Lease, title to all of the Premises shall be taken by the exercise of the right of condemnation or eminent

domain, including by the CITY, this Lease shall terminate and expire on the date of such taking, and the rent and other charges provided to be paid by Lessee shall be apportioned and paid to the date of such taking.

- B. If at any time during the term of this Lease, title to less than all of the Premises shall be taken as aforesaid, this Lease shall continue (unless Lessee shall elect to terminate this Lease by giving notice thereof to CITY within thirty (30) days after the date of such taking, in which case this Lease shall terminate on the date therefore set forth in such notice), except that thereafter the rent shall be reduced to a fraction of the former amount which fraction shall be determined by dividing the area of the untaken portion of the Premises by the area of the Premises immediately before the taking.
- C. Lessee may, at its option, but shall not be required to, repair, restore, replace or rebuild any damage or destruction to the Premises and improvements located thereon resulting or arising from any taking of all or any part thereof, except that Lessee shall not permit the Premises to remain in an unsafe or illegal condition.
- D. The CITY agrees that for the first ten (10) years of this Lease, the CITY shall not condemn the leasehold interest in the Premises, except for public health, safety and welfare purposes only.

**Section 16. Requirements of Public Authority.**

- A. During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations (collectively "regulations") of the federal, state, county, and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force on the Commencement Date or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 16. If such regulations shall so restrict the use or development of the Premises so as to render the development of the Premises unfeasible in the discretion of Lessee, Lessee shall have the option to terminate this Lease upon thirty (30) days written notice to CITY.
- B. Lessee shall have the right to contest by appropriate legal proceeding diligently conducted in good faith in the name of the Lessee, without costs, liability or expense to CITY, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in

paragraph (A) of this Section and, if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay such compliance therewith until the final determination of such proceedings. Nothing herein shall delay the payment of all sums due to CITY herein required to be paid.

**Section 17. CITY's Title/Possession.**

CITY covenants that as of the Commencement Date: CITY shall have the fee simple title to the Premises with full right and authority to make this Lease; the Premises shall then be free and clear of all liens, easements, restrictions, leases and encumbrances except as set forth in Exhibit "C" hereto. Lessee shall receive from the CITY a certified title insurance report demonstrating fee simple title vested in the CITY, without material encumbrances that would adversely affect the CITY's ability to lease the Premises to the Lessee. Lessee at its sole expense, has surveyed the property, and has accepted the state of the survey. Lessee shall be delivered possession of the Premises; and Lessee shall have quiet and peaceful possession and enjoyment of the Premises and of all appurtenances thereunto belonging during the term of this Lease including all extension terms. CITY shall have no responsibility to provide any additional title insurance coverage on the Premises.

**Section 18. Care of Premises.**

Lessee shall in nowise violate any of the zoning or other governmental restrictions now or hereafter placed upon the said real property. Lessee shall, at its sole expense, pay for any alterations, improvements, machinery or equipment which may be required by any applicable governing body now or at any time during the term of this Lease.

**Section 19. Conditional Limitations — Lessee Default Provisions.**

This Lease and the term hereof are subject to the limitation that if, at any time during the term of this Lease, any one or more of the following events (herein called an "event of default") shall occur, that is to say:

- (1) If Lessee shall make an assignment of the Lease for the benefit of its creditors; or
- (2) If any petition shall be filed against Lessee in any court, whether or not pursuant to any Statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, and if any such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be so filed by Lessee; or

- (3) If Lessee shall fail to pay any installment of the rent, or any part hereof, when the same shall become due and payable, and such failure shall continue for thirty (30) days; or
- (4) If Lessee shall fail to pay when due any other charge required to be paid by Lessee hereunder, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee; or
- (5) If Lessee shall fail to perform or observe any other requirement of this Lease (not hereinbefore in this Section 20 specifically referred to) on the part of Lessee to be performed or observed, and such failure shall continue for thirty (30) days after written notice thereof from CITY to Lessee, unless Lessee shall have commenced to cure any such default as is referred to in this sub-section five (5) within said thirty (30) day period and diligently pursues such. cure to completion;

then upon the happening of any one or more of the aforementioned events of default, and the expiration of the period of time for remedying the same, CITY may:

- a. Give to Lessee a notice hereinafter called ("notice of termination") of intention to end the term of this Lease and the term hereof; as well as all of the right, title and interest of the Lessee hereunder, shall wholly cease and expire in the same manner and with the same force and effect as if the date originally specified herein for the expiration of this Lease had arrived and the Lessee shall then quit and surrender the Premises to CITY, and
- b. CITY may at any time after an event of default re-enter the Premises and remove Lessee therefrom, and all or any of its property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, and
- c. It is expressly and specifically covenanted and agreed that the entire unpaid balance of the basic rental with an estimated adjustment as provided in Paragraph 5 and the entire amount of estimated additional rental to the end of the term, based upon existing additional rentals already accrued, shall, at the sole option of the CITY, immediately become due and payable, and
- d. All of the right, title, estate and interest of Lessee (i) in and to the improvements, all changes, additions, alterations therein, and all renewals and replacements thereof, and (ii) all rents, sub-leases, issues and profits of the Premises, or any part thereof; whether then accrued or to accrue, shall automatically pass to, vest in, and belong to CITY, without further action on the part of either party, free of any claim thereto by Lessee.

e. CITY shall have any other remedy provided by Florida Florida law.

**Section 20. City's Defaults.**

If CITY fails to perform or observe any requirements or covenant of this Lease to be performed and observed by CITY and such default continues for a period of thirty (30) days after written notice thereof from Lessee to CITY, Lessee shall have the option of terminating this Lease upon thirty (30) days written notice to CITY without waiving any other legal rights hereunder or in the alternative, Lessee shall have the right of specific performance.

**Section 21. Waivers.**

Failure of CITY or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by CITY or Lessee at any time, express or implied, of any breach of any provisions of this Lease shall be deemed a waiver of a breach of any other provisions of this Lease or a consent to any subsequent breach of the same of any other provisions. No acceptance by CITY of any partial payment shall constitute an accord or satisfaction, but shall only be deemed a partial payment on account.

**Section 22. Notices.**

All notices, consents, demands and requests which are required or desired to be given by either party to the other shall be in writing. All such notices, consents, demands and requests shall be sent by hand delivery with written receipt, express courier service with tracking information, or United States certified mail, return receipt requested, postage prepaid, postmarked no later than the date and time required in this Lease, if any, and addressed to the other party at its address set forth in this Lease, or at such other place as it may from time to time designate in a written notice to the other party given pursuant to the provisions of this Section. Notices, consents, demands and requests which are served upon CITY or Lessee in the manner aforesaid, shall be deemed to have been given or served for all purposes hereunder on the third (3<sup>rd</sup>) business day next following the date on which such notice, consent, demand or request shall have been mailed as aforesaid, or upon the date actually received, whichever is earlier.

**Section 23. Governing Law.**

This Lease and the performance of the covenants and terms thereof shall be governed, interpreted, construed and regulated in accordance with the laws of the State of Florida, and that jurisdiction and venue shall be only in the Nineteenth Judicial Circuit in and for Martin County, Florida.

**Section 24. Partial Invalidity.**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or

unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 25. Sales Taxes**

CITY will endeavor to collect and Lessee shall promptly pay all sales or similar type taxes imposed upon the various amounts of money payable as rent hereunder. In the event it is subsequently determined that any amount required to be paid or paid for hereunder is subject to such tax, Lessee shall promptly pay the same and any penalties and interest payable thereon.

**Section 26. Covenants Binding the Respective Parties.**

Except as herein expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of CITY and Lessee and their respective heirs, successors and assigns.

**Section 27. Disposition of Improvements on Termination of Lease.**

On termination of this Lease for any cause, CITY shall become the owner of any building or improvements on the Premises. If Lessee is not in default, Lessee shall however have the right to remove any furniture, fixtures, equipment or other things which may be removed from the premises without changes to any of the buildings or improvements hereinafter located on the Premises.

**Section 28. Broker's Commission.**

Upon substantial completion of the improvements on the property, and issuance of the first Certificate of Occupancy for the development, the CITY agrees to pay DeSantis Commercial, Inc. a real estate broker's commission of \$42,000.00, or at the option of the Lessee to have a partial setoff of the payment of the first rent due under the Lease following the completion of the improvements.

**Section 29. Attorney's Fees and Costs.**

In connection with any litigation arising out of this Lease, the prevailing parties shall be entitled to recover all costs incurred, including reasonable attorneys' fees through and including any and all appellate actions.

**Section 30. Attornment.**

In the event of a transfer of CITY's interests in the Premises or the purchase of the CITY's interest therein in a foreclosure sale or by deed in lieu of foreclosure under any mortgage or the purchase, pursuant to a power of sale contained in any mortgage, then in any such events, Lessee shall, at CITY's request, attorn to and recognize the transferee

or purchaser of the CITY's interest, as the case may be, as CITY under this Lease, for the balance then remaining of the term and thereafter this Lease shall continue as it is directly between such person as "CITY" and "Lessee", it being agreed that no such transferee shall have the right to disturb Lessee's tenancy hereunder so long as Lessee shall not be in default under the terms hereof.

**Section 31. Waiver of Trial by Jury.**

It is mutually agreed by and between CITY and Lessee that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter arising out of or in any way connected with this Lease, the relationship of CITY and Lessee and Lessee's use of or occupancy of the Premises. Lessee further agrees that it shall not interpose any counterclaim or counterclaims in a summary proceeding or in any action based upon nonpayment of rent or any other payment required of Lessee hereunder.

**Section 32. Additional Terms and Conditions.**

- A. If the Lessee fails to pay any sum when due for taxes, insurance or other sums required to be paid under the Lease, the CITY may, at CITY's option and without waiving its right to dispossess Lessee, pay such sum and such sum shall immediately become due and payable as additional rent.
- B. All rents due under the Lease shall bear interest at the rate provided under Florida law.
- C. In the event of judicial or mutual termination of this Lease, Lessee shall provide CITY with a Release and Surrender Agreement with two witnesses, in recordable form, to remove the Memorandum of Lease as a cloud on the title within seven days of written demand therefore.
- D.
  - 1. The Lessor, at its expense, shall take all actions necessary to obtain the appropriate permits, or permit modifications, as appropriate, from the Florida Department of Environmental Protection (the "DEP"), in order to permit surface water drainage generated by the Lessee's intended improvements to be located upon the Premises to drain to certain drainage facilities located upon property of the Lessor adjacent to the Premises.
  - 2. Lessor and Lessee acknowledge and agree that certain utility lines of Lessor traverse the Premises as depicted on Exhibit "D" attached hereto and incorporated herein (the "Utility Lines"). Lessor represents to Lessee that these are the only utility lines of Lessor located on the Premises. In the event it is necessary in the future for the Lessor, or its agents, to repair or replace the Utility Lines, Lessor shall promptly repair, replace and restore to its original condition any

damage caused to the Premises caused by the Utility Lines or by the Lessor, or its agents, in the repair or replacement of the Utility Lines.

- 3. Lessor agrees to cooperate and help expedite the permits required for the installation of the culvert across the front boundary line and agrees to permit Lessee to install a temporary culvert at Lessee's sole option in order to gain access to the Property until the complete culvert permit is obtained.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above.

Witnesses:

CITY:

Mary Nash  
MARY NASH  
Printed Name

Paul J. Nicolett  
PAUL J. NICOLETT  
Printed Name

CITY OF STUART, FLORIDA, a  
municipal corporation  
By: Carol S. Waxler, Mayor

Witnesses:

LESSEE:

Jackie L. Bylsma  
Jackie L. Bylsma  
Printed Name

Terrence P. McEntee  
TERRENCE P. MCEENTEE  
Printed Name

ROBERT G. DeSANTIS and JOAN C. DeSANTIS, TRUSTEES OF THE ROBERT DeSANTIS REVOCABLE TRUST OF 1985

By: Robert G. DeSantis, Trustee

By: Joan C. DeSantis, Trustee

Witnesses:

Connie L. Newcross

Connie L. Newcross

Printed Name

Wayne Newcross

Wayne Newcross

Printed Name

Witnesses:

Jackie L. Bylsma

Jackie L. Bylsma

Printed Name

Theresa P. Mullaney

Theresa P. Mullaney

Printed Name

LESSEE:

VIVIAN I. JONES and ROBERT D. JONES, as CO-TRUSTEES OF THE VIVIAN I. JONES INTER VIVOS DECLARATION OF TRUST DATED SEPTEMBER 9, 2003

By: Vivian I. Jones  
Vivian Jones, Trustee

By: Robert D. Jones  
Robert Jones, Trustee

LESSEE:

James DeSantis  
James DeSantis

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT A  
LEGAL DESCRIPTION

SKETCH & DESCRIPTION

THIS IS NOT A SURVEY

LEGAL DESCRIPTION

THE EAST 210 FEET OF THE NORTH 518.57 FEET OF GOVERNMENT LOT 1, SECTION 16,  
TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, LESS AND EXCEPT  
THE RIGHT-OF-WAY FOR S.E. MONTEREY ROAD EXTENSION

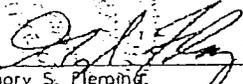
SAID PARCEL CONTAINING 2.34 ACRES MORE OR LESS

NOTES

1. BEARINGS SHOWN HEREON ARE REFERENCED TO THE EAST LINE OF FINLEY SUBDIVISION, HAVING A BEARING OF SOUTH 00°16'10" WEST. ALL OTHER BEARINGS ARE RELATIVE THERETO.
2. THIS SKETCH AND LEGAL DESCRIPTION IS NOT A BOUNDARY SURVEY.
3. THIS SKETCH AND LEGAL DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR.

CERTIFICATION

I HEREBY CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE.

  
 \_\_\_\_\_  
 Gregory S. Piercing  
 Professional Surveyor & Mapper  
 Florida Registration No. 4350

\_\_\_\_\_ 2/16/05  
 Date



CITY OF STUART  
STUART LANDFILL OUTPARCEL

Scale: N/A
Drawn by: BMT
Checked by: CSF
Date: 02/17/05
SHEET 2 OF 2

DR BK 01985 PG 2812

EXHIBIT "B"

RENT PAYMENT SCHEDULE

**EXHIBIT B**

<b>Year</b>	<b>Rent</b>	
1-6	\$315,000	Prepaid
7	\$66,429	
8	\$69,086	
9	\$71,850	
10	\$74,724	
11	\$77,713	
12	\$80,821	
13	\$84,054	
14	\$87,416	
15	\$90,913	
16	\$94,550	
17	\$98,332	
18	\$102,265	
19	\$106,355	
20	\$110,610	
21	\$115,034	
22	\$119,636	
23	\$124,421	
24	\$129,398	
25	\$134,574	
26	\$139,957	
27	\$145,555	
28	\$151,377	
29	\$157,433	
30	\$163,730	

Years 1 through 6 are being prepaid with the deposit of \$315,000.  
In Year 7, rent will go back to the schedule above.

EXHIBIT "C"  
ENCUMBRANCES

EXHIBIT "C"  
**Commonwealth Land Title Insurance Company**  
*COMMITMENT FORM*  
**Schedule B-II**

Commitment No.:

Agent's File Reference:  
02126919

- II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of The Underwriter:
1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.
  2. Any owner and mortgagee policies issued pursuant hereto will contain under Schedule B the standard exceptions set forth at the inside cover hereof unless an affidavit of possession and a satisfactory current survey are submitted, an inspection of the premises is made, it is determined the current year's taxes or special assessments have been paid, and it is determined there is nothing of record which would give rise to construction liens which could take priority over the interest(s) insured hereunder (where the liens would otherwise take priority, submission of waivers is necessary).
  3. Any owner policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
  4. The lien of all taxes for the year 2006 and thereafter, which are not yet due and payable.
  5. Any lien provided by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.
  6. Rights of tenants occupying all or part of the insured land under unrecorded leases or rental agreements.
  7. Drainage Easement to the State of Florida as recorded in Official Records Book 103, page 14.
  8. Easement in favor of Florida Power & Light Company as recorded in Official Records Book 699, page 2557.
  9. Ordinance Number 2019-05 as recorded in Official Records Book 1987, page 2711 and Ordinance Number 2020-05 as recorded in Official Records Book 1987, page 2719.
  10. Subject to the terms and conditions contained in the proposed Lease by and between City of Stuart, a Florida municipal corporation to Vivian I. Jones and Robert D. Jones, as Co-Trustee of the Vivian I. Jones Inter Vivos Declaration of Trust dated September 9, 2003 and Robert G. DeSantis and Joan C. DeSantis, as Trustees of the Robert G. DeSantis Revocable Trust of 1985 and James DeSantis

NOTE: All recording references in the commitment/policy shall refer to the Public Records of Martin County, Florida, unless otherwise noted.

EXHIBIT "D"

UTILITY LINES



# City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Cherie White  
City Clerk

PHONE 772-288-5306  
FAX (772) 288-5305  
Email [cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

November 17, 2006

Clerk of the Circuit Court  
Recording Office  
P.O. Box 9016  
Stuart, Fl. 34995

RE: Amended & Restated Ground Lease Desantis

Please record the above-mentioned original document and kindly return the original recorded document to the City of Stuart, City Clerk to the address above.

If you have any questions please feel free to give me a call.

Thank you,

*Cherie White, CMC*

Cherie White, CMC  
City Clerk

Enc.

**COPY** CW

**McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.**  
**Attorneys at Law**

Kathryn C. Bass  
Noel A. Bobko  
Nicola Jaye Boone\*  
Terence P. McCarthy\*\*  
Kenneth A. Norman  
Steven L. Perry  
Thomas R. Sawyer\*\*  
Rose D. Schneider  
Jane F. Strike  
Robert P. Summers\*\*  
Patricia I. Taylor  
Steven J. Wood\*\*\*

2400 S.E. Federal Highway  
Fourth Floor  
Stuart, FL 34994  
  
Tel 772 286-1700  
Fax 772 283-1803

John D. McKey, Jr.  
Of Counsel

<http://www.mcsumm.com>

Personal E-Mail: [pss@mcsumm.com](mailto:pss@mcsumm.com)

\*Board Certified Elder Law Lawyer  
\*\*Board Certified Real Estate Lawyer  
\*\*\*Board Certified Wills, Trusts &  
Estates Lawyer

November 16, 2006

City Attorney's Office  
Paul Nicoletti, Esq.  
121 SW Flagler Street  
Stuart, Florida 34994

*Via: hand delivery*

RE: XXX SE Monterey Road Ext., Stuart, FL 34994  
City of Stuart sale to Vivian I. Jones and Robert D. Jones, as Co-Trustee of the Vivian I.  
Jones Inter Vivos Declaration of Trust dated September 9, 2003 and Robert G.  
DeSantis and Joan C. DeSantis, as Trustees of the Robert G. DeSantis Revocable  
Trust of 1985 and James DeSantis

Dear Mr. Nicoletti:

Enclosed please find the Original Amended and Restated Ground Lease, for your file. Please let  
me know if your require anything further.

Thank you,  


Pam Sloan  
Legal Assistant to  
Terence P. McCarthy, Esq.

*enclosure*



INSTR # 1972577  
 OR BK 02196 PG 1396  
 Pgs 1396 - 1397 (2pgs)  
 RECORDED 11/08/2006 02:35:35 PM  
 MARSHA EWING  
 CLERK OF MARTIN COUNTY FLORIDA  
 RECORDED BY C Burkes

This Instrument Prepared By:  
 ROBERT P. SUMMERS, ESQUIRE  
 McCARTHY, SUMMERS, BOBKO,  
 WOOD, SAWYER & PERRY, P.A.  
 2400 S.E. Federal Highway, Fourth Floor  
 Stuart, Florida 34994



INSTR # 1979430  
 OR BK 02205 PG 1301  
 Pgs 1301 - 1302 (2pgs)  
 RECORDED 12/11/2006 03:49:29 PM  
 MARSHA EWING  
 CLERK OF MARTIN COUNTY FLORIDA  
 RECORDED BY C Burkes

After Recording, Return To:

**LANDLORD'S ESTOPPEL**

In consideration of and as an inducement to SEACOAST NATIONAL BANK, a National Banking Association, whose mailing address is P.O. Box 9012, Stuart, Florida 34995-9012, hereinafter referred to as the "Lender", to lend monies to ROBERT G. DeSANTIS and JOAN C. DeSANTIS, TRUSTEES OF THE ROBERT G. DeSANTIS REVOCABLE TRUST OF 1985 U/A/D MAY 24, 1985, VIVIAN I. JONES and ROBERT D. JONES, TRUSTEES OF THE VIVIAN I. JONES INTERVIVOS DECLARATION OF TRUST U/A/D SEPTEMBER 9, 2003, AND JAMES DeSANTIS, jointly and severally, whose mailing address is c/o The DeSantis Group, 719 Colorado Avenue, Stuart, Florida 34994, hereinafter referred to as the "Borrower" or "Lessee", the undersigned, CITY OF STUART, FLORIDA, a municipal corporation, whose mailing address is 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter referred to as the "Landlord", from whom the Borrower has, by virtue of the Amended and Restated Ground Lease dated October 9, 2006 (the "Lease"), leased to Borrower certain premises situate in Martin County, Florida, at 1180 S.E. Monterey Road Extension, Stuart, Florida (the "Premises"), more particularly described as follows:

The East 210 feet of the North 518.57 feet of Government Lot 1, Section 16, Township 38 South, Range 41 East, lying in Martin County, Florida, less and except the right-of-way for S.E. Monterey Road Extension.

upon which Lender is or is intended to become the holder of a Leasehold Mortgage given by Borrower in favor of Lender, hereby

- (1) Certifies that the Borrower is not in default under any terms of the Lease of the Premises;
- (2) Agrees with Borrower and the Lender that in the event of any default under the Lease or the site plan as approved by the Landlord, or any other obligation of Borrower in favor of Landlord, Landlord will not terminate the Lease or take any other action to enforce any claim with respect thereto without giving to the Lender not less than thirty (30) days prior written notice identifying the default and providing Lender with the right to cure such default within said period or to enter into a new lease on the Premises for a term equal to the then unexpired term of the Lease containing the same covenants and conditions as the Lease, which election shall be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the



**Section 8. Encumbrances.**

A. No Encumbrances by CITY. Nothing contained herein shall be construed so as to require CITY to execute any document or instrument, which would create any financial liability on the part of CITY nor upon the subject premises, nor alter or impair CITY's rights under this Lease. There is no obligation under this Lease for CITY to encumber, convey, burden or subordinate any part of or all of the fee simple interest of the subject premises, or to grant or agree to any condition, which will burden the property beyond the Lease term.

B. Encumbrances of Lessee's Leasehold Interest. Lessee may, without being required to obtain CITY's consent, encumber its Leasehold interest in the Premises together with all improvements placed thereon by Lessee, as security for any indebtedness of Lessee. CITY shall not be required to subordinate its fee interest in the Premises to the lien of any mortgage, which Lessee may execute.

CITY shall provide any Mortgagee of whom CITY has actual knowledge who holds a mortgage on Lessee's leasehold interest with a copy of any notice of default CITY sends to Lessee hereunder. Prior to terminating this Lease as the result of any default by Lessee, CITY shall provide any such Mortgagee an equal period within which to cure any default by Lessee or in the alternative, CITY shall give the Mortgagee the right to elect to receive a new lease on the Premises for a term equal to the then unexpired term of this Lease containing the same covenants and conditions as this Lease, such right of election to be in effect for thirty (30) days following the expiration of any grace period granted to Lessee and said right to be conditioned upon the mortgage curing Lessee's default.

CITY shall from time to time, within ten (10) days after Lessee shall have requested it, execute, acknowledge and deliver to the Lessee, or such other party as may be directed by Lessee an estoppel letter in recordable form certifying any fact pertaining to the Lease reasonably requested by Lessee or any mortgage or prospective mortgage of the leasehold interest. It is intended that any statement delivered pursuant to the provisions of this Section be relied upon by any such mortgage. Lessee shall prepare such instrument and deliver same to CITY with the request.

**Section 9. Assignment and Sublease.**

A. General Assignment and Sublease. Lessee may not assign all or a portion of this Lease or sublease the whole or any part of the Premises, including portions of any improvements erected thereon by CITY or other portions of the Premises for any lawful purpose without the consent of CITY, which consent shall not be unreasonably withheld. Lessee shall remain liable for the full performance of its covenants and obligations under this Lease for the entire term hereof. No sub-lease can extend beyond the existing term of this Lease. No sub-lease can alter the terms hereof.

B. Assignment under Section 1031, Internal Revenue Code. Notwithstanding the provisions of Section 9A. above, the CITY understands and agrees that Lessee may use this Lease and Premises as part of a so-called "like kind exchange" pursuant to Section

# City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

**Cherie White**  
City Clerk

**PHONE 772-288-5306**  
**FAX (772) 288-5305**  
**Email [cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)**

November 6, 2006

Clerk of the Circuit Court  
Recording Office  
P.O. Box 9016  
Stuart, Fl. 34995

RE: Landlord's Estoppel/ Robert Desantis/ Penn Plaza

Please record the above-mentioned original document and kindly return the original recorded document to the City of Stuart, City Clerk to the address above.

If you have any questions please feel free to give me a call.

Thank you,

*Cherie White*, CMC

Cherie White, CMC  
City Clerk

Enc.

**COPY**

# City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

**Cherie White**  
City Clerk

**PHONE 772-288-5306**  
**FAX (772) 288-5305**  
**Email [cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)**

December 6, 2006

Clerk of the Circuit Court  
Recording Office  
Att: Charlotte Burkey  
P.O. Box 9016  
Stuart, Fl. 34995

RE: Re-Record Landlord Estoppel /Robert Desantis/Penn Plaza

Please re-record the above-mentioned original documents and kindly return the original recorded document to the City of Stuart, City Clerk to the address above.

If you have any questions please feel free to give me a call.

Thank you,

*Cherie White*, CMC

Cherie White, CMC  
City Clerk

Enc.

# City of Stuart

*Adelphi Capital of the World*

BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 150-07

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A 30' DRAINAGE EASEMENT DEED ON CITY PROPERTY KNOW AS PENN PLAZA AND LEASED BY ROBERT AND JOAN DESANTIS; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

\* \* \* \* \*

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The City Commission of the City of Stuart hereby authorizes the Mayor and City Clerk to execute a 30' drainage easement deed on City property know as Penn Plaza and leased by Robert and Joan DeSantis. A copy of each the 30' Drainage Easement Deed is on file in the office of the City Clerk.

SECTION 2: This resolution shall take effect upon adoption.

Res. 150 -07  
DeSantis – Drainage Easement Deed

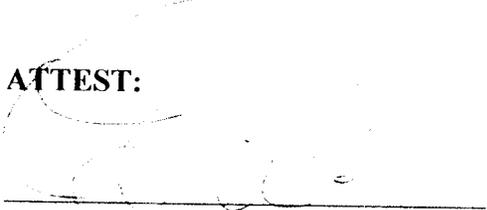
Commissioner Waxler offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner Krauskopf and upon being put to a roll call vote, the vote was as follows:

MARY HUTCHINSON, MAYOR  
JEFFREY KRAUSKOPF, VICE MAYOR  
JAMES A. CHRISTIE, COMMISSIONER  
MICHAEL MORTELL, COMMISSIONER  
CAROL WAXLER, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

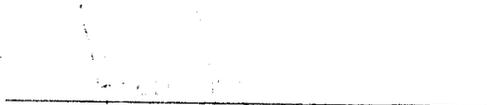
ADOPTED this 8th day of October 2007.

ATTEST:

  
\_\_\_\_\_  
CHERYL WHITE  
CITY CLERK

  
\_\_\_\_\_  
MARY HUTCHINSON  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
\_\_\_\_\_  
PAUL J. NICOLETTI  
CITY ATTORNEY



INSTR # 2047735  
CIR BK 02288 PG 1541  
Pg 1541 - 1544 (4pgs)  
RECORDED 12/31/2007 12:48:36 PM  
MARGHA FRING  
CLERK OF MARTIN COUNTY FLORIDA  
RECORDED BY T. Coats (asst. mgr)

This instrument prepared by  
City Attorney Paul J. Nicoletti  
121 S.W. Flagler Avenue  
Stuart, Florida 34994

5

E A S E M E N T     D E E D  
FOR PENN PLAZA

*October* THIS EASEMENT DEED made this 25 day of  
2007 by CITY OF STUART, A municipal  
corporation of the State of Florida, 121 S.W. Flagler Avenue,  
Stuart, Florida 34994 hereinafter referred to as the "Grantor,"  
and ROBERT G. DESANTIS AND JOAN C. DESANTIS, TRUSTEES OF THE  
ROBERT G. DESANTIS REVOCABLE TRUST OF 1985, 719 Colorado Avenue,  
Stuart, Florida 34994, hereinafter the "Grantee."

WITNESSETH: The Grantor, for and in consideration of  
good and valuable consideration receipt of which is hereby  
acknowledged, does hereby convey to the Grantee an easement in,  
over and across the following described real property located in  
the City of Stuart, Martin County, Florida:

SEE ATTACHED LEGAL DESCRIPTION  
EXHIBIT "A."

This easement is conveyed for the purpose of the  
installation and maintenance by the Grantee of an underground  
drainage pipe and necessary appurtenances thereto. Grantor  
reserves the right to use the said real property for any purpose  
not inconsistent with its use by the Grantee.

Witness our hands and signatures on the day and year first above written.

Witnesses:

[Signature]  
PAUL J. NICOLETTI

[Signature]  
PAUL J. NICOLETTI

MAYOR:

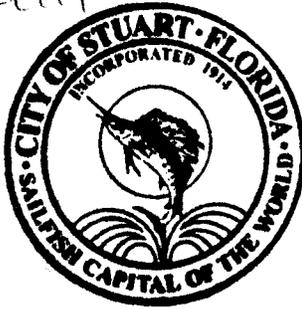
[Signature]  
MARY HUTCHINSON

MAYOR

ATTEST:

[Signature]  
CHERYL WHITE

CITY CLERK

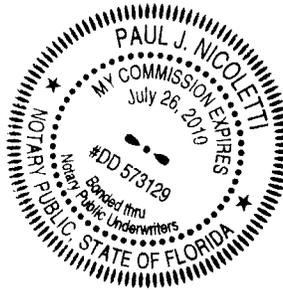


ACKNOWLEDGEMENT

State of Florida  
County of Martin

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by MAYOR, MARY HUTCHINSON and CITY CLERK, CHERYL WHITE, who is personally known to me or who produced \_\_\_\_\_ as identification, and who did (did not) each take an oath.

[Signature]



NOTARY PUBLIC  
County of Martin  
State of Florida

My commission expires:

STEPHEN J. BROWN, INC.

LICENSED BUSINESS NUMBER: 6484

SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS

619 EAST 5TH STREET, STUART, FLORIDA 34994

(772) 288-7176

### 30' DRAINAGE EASEMENT

A PARCEL OF LAND LYING IN SECTION 16, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, AND BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 16, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA; THENCE SOUTH 00°18'35" WEST, ALONG THE EAST LINE OF SAID SECTION 16, FOR A DISTANCE OF 518.57 FEET; THENCE, DEPARTING SAID EAST LINE, NORTH 89°35'35" WEST, FOR A DISTANCE OF 180.14 FEET TO THE POINT OF BEGINNING OF A 30 FOOT DRAINAGE EASEMENT; THENCE SOUTH 00°36'35" WEST, FOR A DISTANCE OF 30.00 FEET; THENCE NORTH 89°35'35" WEST, FOR A DISTANCE OF 319.92 FEET; THENCE NORTH 09°03'18" EAST, FOR A DISTANCE OF 30.34 FEET; THENCE SOUTH 89°35'35" EAST, FOR A DISTANCE OF 315.47 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 9,531 SQUARE FEET, 0.22 ACRES, +/-.

#### NOTES:

ALL BEARINGS ARE REFERENCED TO THE EAST LINE OF SECTION 16, CALCULATED AS S00°18'35"W, ALL OTHERS RELATIVE THERETO.

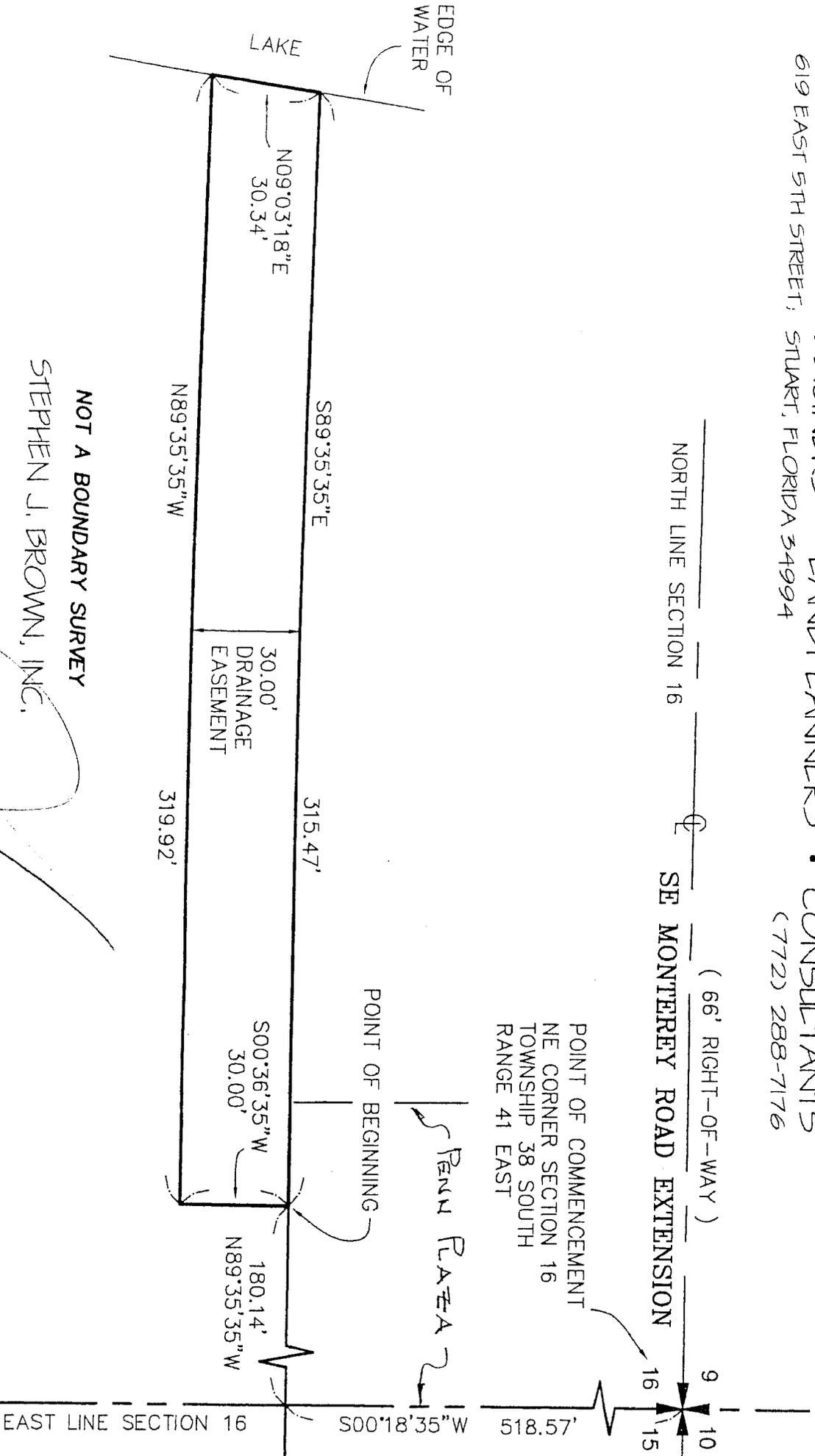
THIS LAND DESCRIPTION SHALL NOT BE VALID UNLESS IT IS PROVIDED IN ITS ENTIRETY, CONSISTING OF 2 SHEETS, WITH SHEET 2 BEING THE SKETCH OF THE DESCRIPTION.

FILE:

JOB #:	5023-01-01
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	01/30/2007
SCALE:	N/A
SHEET:	ONE OF TWO

STEPHEN J. BROWN, INC.  
 SURVEYORS • DESIGNERS • LANDPLANNERS • CONSULTANTS  
 619 EAST 5TH STREET, STUART, FLORIDA 34994

LICENSED BUSINESS NUMBER: 6484  
 (772) 288-7176



NOT A BOUNDARY SURVEY

STEPHEN J. BROWN, INC.

STEPHEN J. BROWN, PROFESSIONAL SURVEYOR AND MAPPER  
 REGISTRATION NO. 4049, STATE OF FLORIDA  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
 RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

JOB #:	5023-01-01
DRAWN BY:	S.J.B.
CHECKED BY:	S.J.B.
DATE:	01/30/2007
SCALE:	1" = 40'
SHEET:	TWO OF TWO

FILE

FEDERAL PLAZA

# McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.

Attorneys at Law

Kathryn C. Bass  
Noel A. Bobko  
Nicola Jaye Boone\*  
Terence P. McCarthy\*\*  
Kenneth A. Norman  
Steven L. Perry  
Vincent P. Rollo, Jr.  
Thomas R. Sawyer\*\*  
Rose D. Schneider  
Jane F. Strike  
Robert P. Summers\*\*  
Patricia I. Taylor  
Steven J. Wood\*\*\*

2400 S.E. Federal Highway · Fourth Floor  
Stuart, FL 34994

Tel 772 286-1700  
Fax 772 283-1803

John D. McKey, Jr.  
Of Counsel

E-Mail: info@mcsumm.com  
www.McCarthySummers.com  
Personal Email: tpm@mcsumm.com

\*Board Certified Elder Law Lawyer  
\*\*Board Certified Real Estate Lawyer  
\*\*\*Board Certified Wills, Trusts &

February 21,

From the Office of Paul J. Nicoletti

**VIA HAND DELIVERY**

Paul Nicoletti, Esq.  
City Attorney  
City of Stuart  
121 S. W. Flagler Avenue  
Stuart, Florida 34994

Re: *City of Stuart Lease With DeSantis*

Dear Paul:

I am happy to say that my clients are initiating construction of their project on the property they lease from the City. My clients are concerned, however, with a number of issues:

1. The encroachments by neighboring property owners on both the east and west sides have never been removed. During the course of my client's construction, these encroachments may be completely destroyed. This destruction will, undoubtedly, cause numerous complaints to the City. My client does not want to be hindered or delayed because of these complaints.

2. There is currently a monitoring well located in an area that will be paved during the course of my client's construction. The City may want to consider moving the well to an area that will not be paved. The same also applies with respect to the water main, force main and IQ water line located on the easterly portion of the property.

As part of the Lease Agreement between the parties, the City agreed to allow my client to use drainage facilities located on City property off of the leased site. I enclose herewith a sketch and a legal description of the drainage easement where my client's underground drainage pipe will be located providing drainage from my client's site to the lake located on the City site. Once again, this is all in accordance with the Lease between the parties. Within this drainage easement, my client will be locating an underground drainage pipe at substantial cost. Our fear, at this point, is that the existence and location of this drainage pipe may be forgotten in the future, and a future use of this adjoining City property by either the City or a lessee from the City could cause considerable harm to

To: \_\_\_\_\_ *SAM*

Please:

Revise and resubmit

Draft letter for my signature

Review and comment

Meet with me

Informational only

Date: *2/23/07*

*Stuart* 

\_\_\_\_\_ *Paul*

\_\_\_\_\_

\_\_\_\_\_

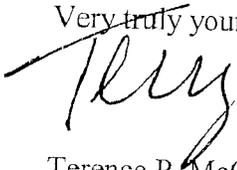
McCARTHY, SUMMERS, BOBKO, WOOD, SAWYER & PERRY, P.A.

Paul Nicoletti, Esq.  
City Attorney  
February 21, 2007  
Page 2

my client's facilities. At this point, we would like to have the City grant a temporary easement over this property for the benefit of my client and future lessees of my client's project in an effort to publicly memorialize the location of this drainage facility.

If you would like to discuss these matters further, I will be happy to do so at your convenience.

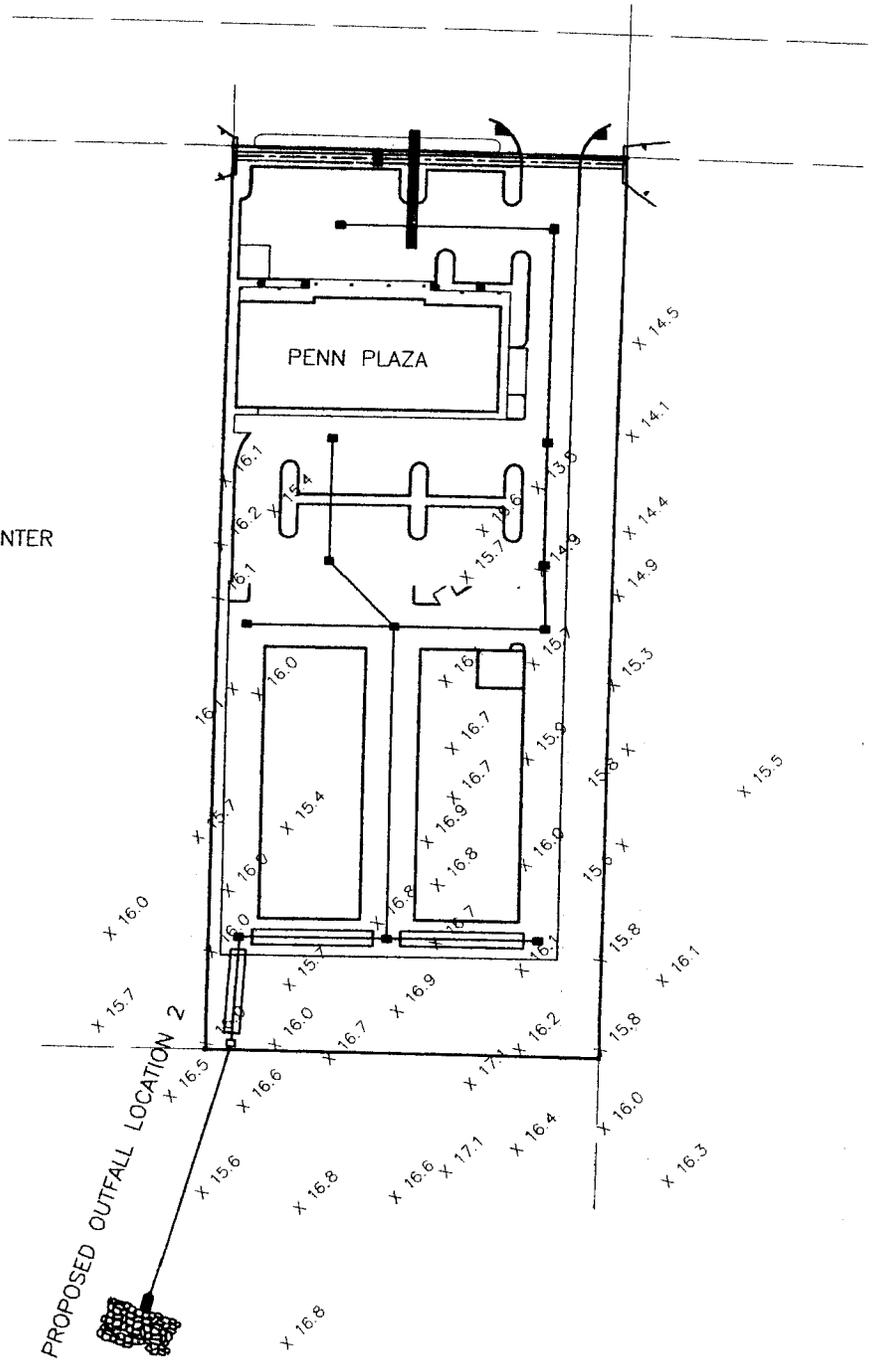
Very truly yours,



Terence P. McCarthy, Esq.  
TPM/dd

Enclosure



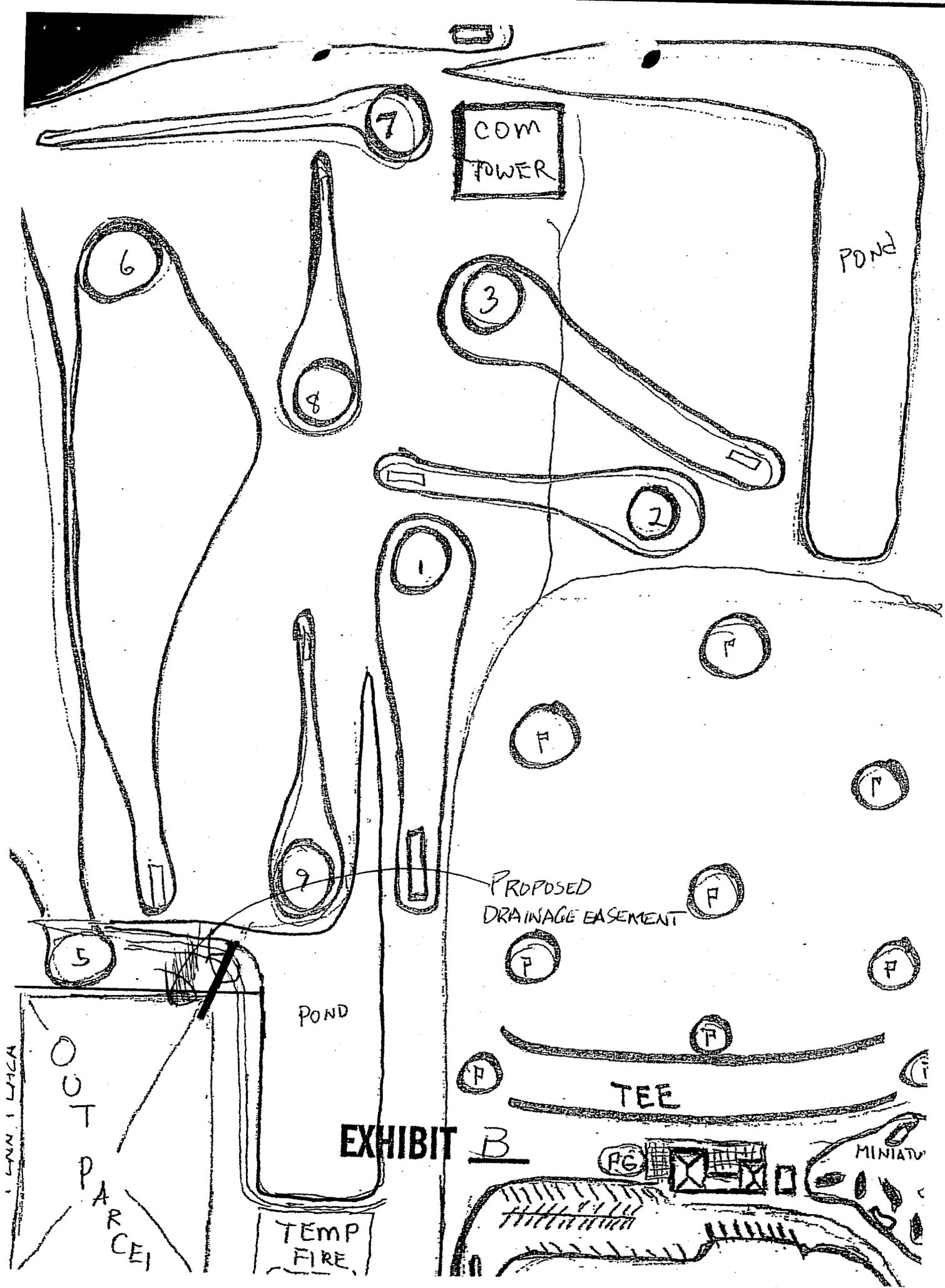


CUSTOM AUTO CENTER

LAKE

SCALE  
APPROXIMATELY  
1" = 100'

<p>CALL US TODAY!          1-800-875-8229          1-708-477-7770          FAX: 708-477-7770          WWW: WWW.CENTURYSERVICES.COM</p>		<p>Project No. 08-08          Date: November 2008          Drawn By: [Name]          Checked By: [Name]</p>	
<p><b>PENN PLAZA</b>          OUTFALL DRAIN</p>		<p>Professional Engineer          State of Illinois          License No. 000000000</p>	
<p>City of Chicago          Department of Public Works          Engineering Division</p>		<p>Project Name and Number          Address: [Address]          Phone: [Phone]</p>	
<p>Sheet No. 2</p>		<p>Scale: 1" = 100'</p>	



COM  
TOWER

POND

POND

PROPOSED  
DRAINAGE EASEMENT

TEE

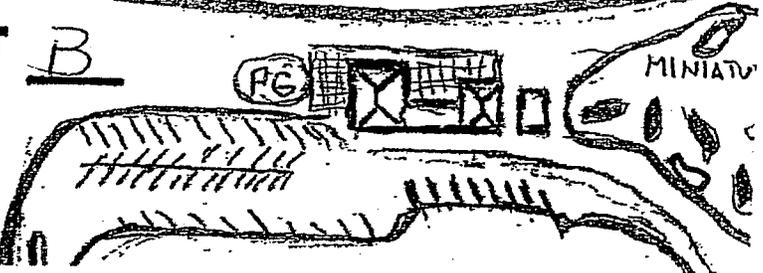
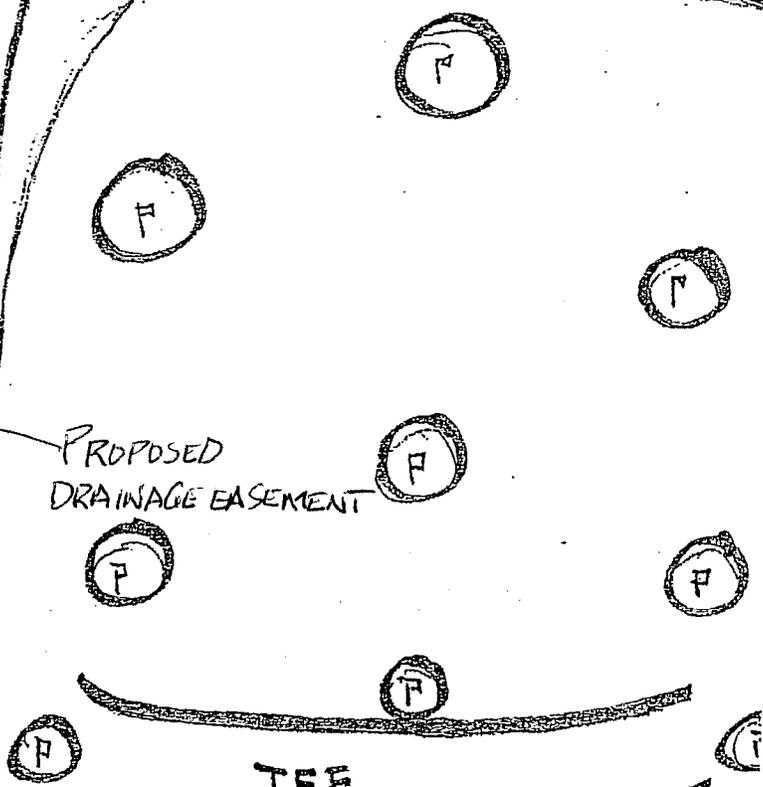
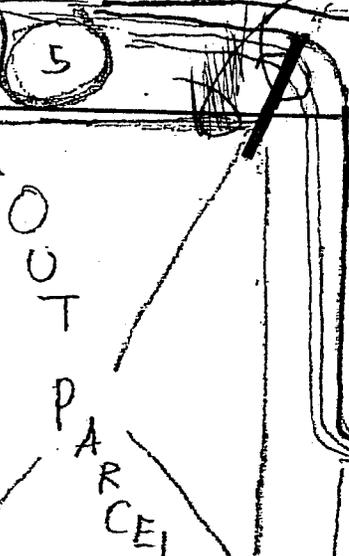
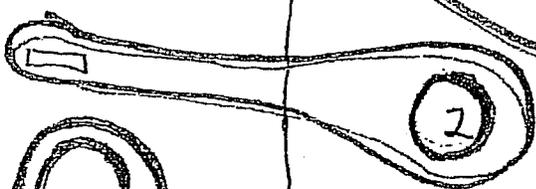
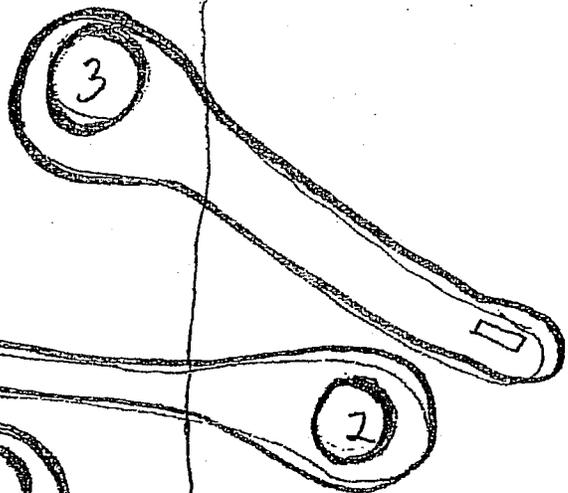
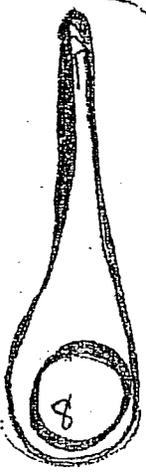
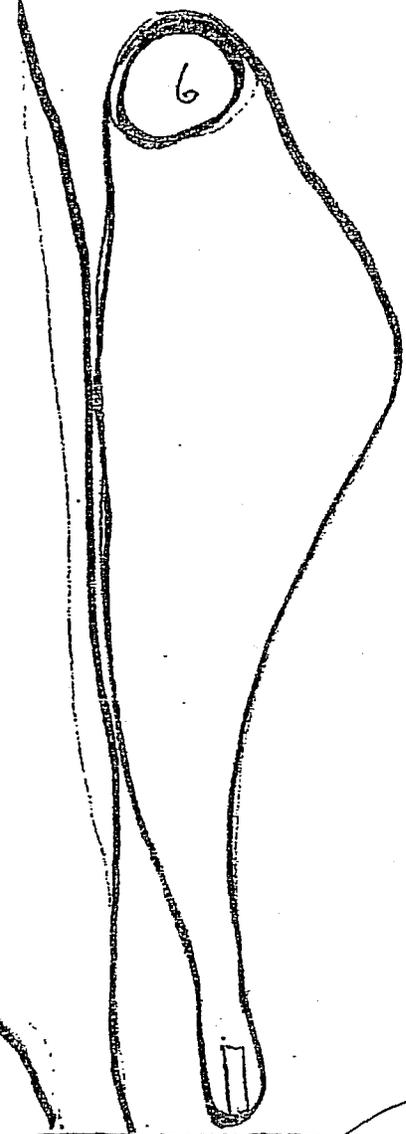
MINIATURE

EXHIBIT B

TEMP  
FIRE

OUT  
PARCEL

1/24/11 LAMCA



CITY OF STUART, FLORIDA

AGENDA ITEM REQUEST

**Meeting Date:** October 8, 2007

**Prepared by:** Samuel T. Amerson, PE

**Resolution No. 150-07**

**Title of Item:** Adopt a resolution authorizing the mayor and city clerk to execute a 30' drainage easement deed on city property known as Penn Plaza. Presented by Samuel T. Amerson, PE, Public Works Director

**Summary Explanation/Background Information on Agenda Request:** A portion of the "Old City Landfill" was leased to Robert and Joan DeSantis for commercial development

In order to provide a positive, legal stormwater outfall for the site an easement will be required.

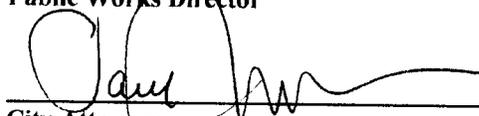
Staff has reviewed the site plan and finds the request to be acceptable.

**Funding Source:** N/A

**Recommended Action:** Adopt a resolution authorizing the mayor and city clerk to execute a 30' drainage easement deed on city property known as Penn Plaza.

  
Public Works Director

10/02/07  
Date

  
City Attorney

10-2-07  
Date

  
City Manager

10/2/07  
Date

# City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Cherie White  
City Clerk

PHONE 772-288-5306  
FAX (772) 288-5305  
Email [cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

October 26, 2007

Clerk of the Circuit Court  
Recording Office  
Att: Charlotte Burkey  
P.O. Box 9016  
Stuart, Fl. 34995

RE : Easement Deed Penn Plaza

Please record the above mentioned document and return to original back to my attention to the address above.

Should you have any questions regarding this request please feel free to contact me.

Thank you,

*Cherie White, CMC*  
**COPY COPY**  
Cherie White, CMC  
City Clerk

Enc.

**FIRST AMENDMENT TO  
AMENDED AND RESTATED GROUND LEASE**

**THIS FIRST AMENDMENT** is made and executed as of the 1 day of July, 2010, by and between the **CITY OF STUART**, Florida (hereinafter referred to as the "City") as Lessor, 121 S.W. Flagler Avenue, Stuart, FL 34994, and **ROBERT G. DeSANTIS and JOAN C. DESANTIS, Trustees of the Robert G. DeSantis Revocable Trust Of 1985 and VIVIAN JONES and ROBERT JONES, as Co-Trustees of The Vivian I. Jones Inter Vivos Declaration of Trust, dated September 9, 2003, and JAMES DESANTIS** (hereinafter collectively referred to as "Lessee"), 719 Colorado Avenue, Stuart, Florida 34994.

**WITNESSETH:**

**WHEREAS**, the City and the Lessee entered into that certain Amended and Restated Ground Lease made and executed as of the 9<sup>th</sup> day October, 2006 (the "Ground Lease") for the lease by the Lessee from the City of certain real property, as more particularly set forth in the Ground Lease; and

**WHEREAS**, the City and the Lessee have determined that it is necessary and proper to amend the Ground Lease.

**NOW, THEREFORE**, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Section 3. Right to Extend and Rent Adjustment. of the Lease is hereby amended in its entirety to read as follows:

**"Section 3. Right to Extend and Rent Adjustment.**

Provided the Lessee is not in default under any of the terms and conditions of this Lease, and provided the Tenant has faithfully performed all of its covenants and undertakings contained in this Lease, the Lessee shall have the right and option to extend the term of this Lease for two (2) consecutive additional terms of TEN (10) YEARS, each upon the same terms and conditions except that CITY shall have the right to adjust the Rent for the Premises, prior to each additional term, based upon and conforming to current economic rent values as determined by an appraisal of same as prepared herein. The appraisal shall set forth the fair market rental for the real property described in Exhibit "A" attached hereto (the "Land"). The appraisal shall not take into account any improvements located upon the Land since the Lessee will have constructed and paid for these improvements separately. In no event shall rent be less than the prior term. The

appraisal shall be prepared prior to the time required for notice of term extension by the Lessee, below. For purposes of this section, the appraisal shall be made by a board of three (3) MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Premises. One of the appraisers shall be appointed and paid for by the Lessee, a second appraiser shall be appointed and paid for the CITY, and the third appraiser shall be selected by the first two appraisers so appointed and the third appraiser's fee shall be borne one-half (1/2) by the Lessee and one-half (1/2) by the CITY. If the first two appraisers are unable to agree on a third appraiser within fifteen (15) days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the then President of the Florida Society of MAI's, or such successor to the Society exercising similar functions.

The term of the Lease shall be extended from one term to the next by the Lessee giving written notice to the CITY not less than one hundred twenty (120) days prior to the end of the current term, or extended term.. Such notice shall be sent to the CITY by hand delivery or by certified mail, return receipt requested, at the address of the CITY set forth above or such other address as the CITY may direct in writing. Optional terms may only be exercised one at a time, and only consecutively.

2. Section 4. Basic Rent. of the Ground Lease is hereby amended in its entirety to read as follows:

**"Section 4. Basic Rent.**

It is the purpose and intent of the City and the Lessee that the rent shall be absolute net to the City. Lessee hereby agrees to pay to the City rent for the Leased Premises land, the initial annual sum of Thirty-One Thousand Five Hundred Dollars (\$31,500.00) and NO/100, together with the upward adjustments provided herein, payable solely for the convenience of Lessee in equal monthly installments of Two Thousand Six Hundred Twenty-Five Dollars (\$2,625.00) and NO/100 payable on the first day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any renewal terms subject to adjustment as hereinafter set forth. Payment shall be made either by automatic debit, wire transfer, or by a check drawn on a local bank and shall be made to whoever the Landlord designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason, except as provided in Section 28. Lessee has prepaid the rent in the amount of Two Hundred Ninety Five Thousand Seven Hundred Seventy Four and 65/100 Dollars (\$295,774.65). This payment of \$295,774.65 represents Basic Rent for the following period of time: April 1, 2007 through and including the basic rent due on April 1, 2016, with a shortfall of \$20,475.00 for the basic rent due on April 1, 2016. The Lessee agrees to pay this basic rent shortfall of \$20,475.00 in equal monthly installments of \$1,706.25 starting on April 1, 2016 and continuing on the first day of each month thereafter. When the Lessee makes these payments, basic rent

shall have been paid through and including March 31, 2017. Starting April 1, 2017 the basic rent shall be adjusted pursuant to Section 5, as set forth below.

3. Section 5. Annual Rent Escalation. of the Ground Lease is hereby deleted in its entirety and replaced with the following:

**“Section 5. Rent Adjustment.**

A. The City shall have the right to adjust the basic rent for the Premises for the lease year April 1, 2017 through March 31, 2018 based upon and conforming to the then current economic rent values as determined by the appraisal of the real property described in Exhibit “A” attached hereto (the “Land”), as prepared herein. The appraisal shall set forth the fair market rental for the Land as of April 1, 2017. Said appraisal shall not take into account any improvements located upon the Land since the Lessee will have constructed and paid for these improvements separately. In no event shall rent be less than the prior lease year. The appraisal shall be prepared prior to March 1, 2018. For the purposes of this section, the appraisal shall be made by a board of three MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Land. One of the appraisers shall be appointed and paid for by the Lessee, the second appraiser shall be appointed and paid for by the City, and the third appraiser shall be selected by the first two appraisers who are appointed and the third appraiser’s fee shall be born ½ by the Lessee and ½ by the City. If the first two appraisers are unable to agree on a third appraiser within 15 days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser, or such other appraiser whose appointment was not made as aforesaid, shall be appointed by the then President of the Florida Society of MAI’s, or such successor to the society exercising similar functions. The City and the Lessee agree that the basic rent for the Premises shall then be adjusted using the appraised value on the Land as set forth above and the annual basic rent for the period starting April 1, 2017 shall be due and payable monthly in advance starting April 1, 2017 and continuing on the first day of each month thereafter. The rent thereafter shall be subject to rental adjustments as set forth in subparagraph B below.

B. The basic rent amount shall increase each year starting on April 1, 2018 and continuing on the first day of each April of each year thereafter, without limitation, based upon the federal Consumer Price Index, specifically the CPI-U-South Region or other comparable index if the CPI-U-South Region is not published. The “CPI-U-South Region” means the index of consumer prices developed and updated by the U.S. Department of Labor Statistics for urbanized areas within the defined southern US region. See Exhibit “B” - Bureau of Labor Statistics Appendix CPI-U-South Region, includes expenditures by urban wage earners and clerical workers, professional, managerial and technical workers, the self-employed, short-term workers, the unemployed, retirees and others not in the labor force. The rent payments due shall be pro-rated and shall be adjusted accordingly. The same adjustments will take place in each

year of any term which is created by exercise of the renewal option provided herein. In no event will the base rent be less than in any prior year.

4. Miscellaneous.

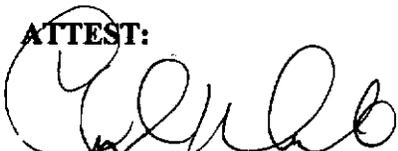
Conflict. In the event of a conflict between the provisions of this Amendment and the Ground Lease, this Amendment shall control. Except as specifically modified herein, all terms and conditions of the Lease shall remain in full force and effect.

Definitions. All terms capitalized but not defined herein shall have the meanings ascribed thereto in the Ground Lease.

Counterparts and Fax Execution. This Amendment may be executed in counterparts, each of which shall be binding and each of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have placed their signatures on the dates set forth below.

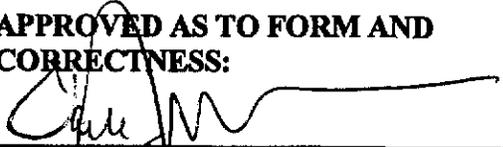
ATTEST:

  
\_\_\_\_\_  
Cheryl White  
City Clerk

CITY:

  
\_\_\_\_\_  
Michael Mortell  
Mayor

APPROVED AS TO FORM AND  
CORRECTNESS:

  
\_\_\_\_\_  
Paul J. Nicoletti  
City Attorney



Witnesses:

LESSEE:

Robert G. DeSantis Revocable Trust Of 1985

By:

[Signature]  
Robert G. DeSantis, Trustee

[Signature]

KAREN L. MCCORMICK  
Printed Name

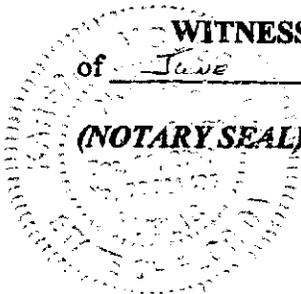
[Signature]

Gina Bochenek  
Printed Name

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 22nd day of JUNE, 2010, by Robert G. DeSantis, Trustee of the Robert G. DeSantis Revocable Trust of 1985, on behalf of the Trust. He [] is personally known to me or [] has produced as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of JUNE, 2010.

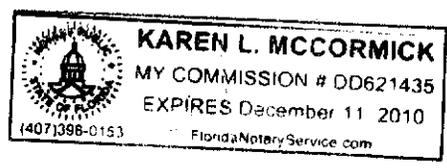


[Signature]

Notary Public

Printed Name: KAREN L. MCCORMICK

My Commission Expires: 12-11-10



Witnesses:

Karen L. McCormick

KAREN L. MCCORMICK  
Printed Name

Gina Bochenek

Gina Bochenek  
Printed Name

Robert G. DeSantis Revocable Trust Of 1985

By: Joan C. DeSantis  
Joan C. DeSantis, Trustee

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 22nd day of JUNE, 2010, by Joan C. DeSantis, Trustee of the Robert G. DeSantis Revocable Trust of 1985, on behalf of the Trust. She [  ] is personally known to me or [  ] has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of JUNE, 2010.

(NOTARY SEAL)

Karen L. McCormick  
Notary Public  
Printed Name: KAREN L. MCCORMICK  
My Commission Expires: 12-11-10



**Witnesses:**

Karen L. McCormick

KAREN L. MCCORMICK  
Printed Name

Gina Bochenek

Gina Bochenek  
Printed Name

**The Vivian I. Jones Inter Vivos Declaration of Trust, Dated September 9, 2003**

By: Vivian I. Jones  
*Vivian I. Jones, Co-Trustee*

**STATE OF FLORIDA  
COUNTY OF MARTIN**

The foregoing instrument was acknowledged before me this 31st day of JUNE, 2010, by Vivian I. Jones, Co-Trustee of The Vivian I. Jones Inter Vivos Declaration of Trust, Dated September 9, 2003, on behalf of the Trust. She [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 31st day of JUNE, 2010.

(NOTARY SEAL)

Karen L. McCormick

Notary Public

Printed Name: KAREN L. MCCORMICK

My Commission Expires: 12-11-10



Witnesses:

Karen L. McCormick

KAREN L. MCCORMICK  
Printed Name

Gina Bochenek

Gina Bochenek  
Printed Name

The Vivian I. Jones Inter Vivos Declaration of Trust, Dated September 9, 2003

By: Robert Jones  
Robert Jones, Co-Trustee

STATE OF FLORIDA  
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 21st day of JUNE, 2010, by Robert Jones, Co-Trustee of The Vivian I. Jones Inter Vivos Declaration of Trust, Dated September 9, 2003, on behalf of the Trust. He [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day of JUNE, 2010.

(NOTARY SEAL)

Karen L. McCormick  
Notary Public  
Printed Name: KAREN L. MCCORMICK  
My Commission Expires: 12-11-10



Witnesses:

Karen L. McCormick

KAREN L. MCCORMICK

Printed Name  
Gina Bochenek

Gina Bochenek

Printed Name

James DeSantis  
James DeSantis

**STATE OF FLORIDA  
COUNTY OF MARTIN**

The foregoing instrument was acknowledged before me this 24th day of JUNE, 2010, by **James DeSantis**. He [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 24th day of JUNE, 2010.

(NOTARY SEAL)

Karen L. McCormick

Notary Public

Printed Name: KAREN L. MCCORMICK

My Commission Expires: 12-11-10



**EXHIBIT "A"**

**Legal Description**

EXHIBIT A  
LEGAL DESCRIPTION

SKETCH & DESCRIPTION

THIS IS NOT A SURVEY

LEGAL DESCRIPTION

THE EAST 210 FEET OF THE NORTH 518.57 FEET OF GOVERNMENT LOT 1, SECTION 16,  
TOWNSHIP 38 SOUTH, RANGE 41 EAST, MARTIN COUNTY, FLORIDA, LESS AND EXCEPT  
THE RIGHT-OF-WAY FOR S.E. MONTEREY ROAD EXTENSION

SAID PARCEL CONTAINING 2.34 ACRES MORE OR LESS

NOTES

1. BEARINGS SHOWN HEREON ARE REFERENCED TO THE EAST LINE OF FINLEY SUBDIVISION, HAVING A BEARING OF SOUTH 00°16'10" WEST. ALL OTHER BEARINGS ARE RELATIVE THERETO.
2. THIS SKETCH AND LEGAL DESCRIPTION IS NOT A BOUNDARY SURVEY.
3. THIS SKETCH AND LEGAL DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR.

CERTIFICATION

I HEREBY CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE.

  
\_\_\_\_\_  
Gregory S. Pieroni,  
Professional Surveyor & Mapper  
Florida Registration No. 4350

2/16/05  
Date

 **NORTHSTAR  
GEOMATICS**  
630 E.E. CENTRAL PARKWAY, SUITE 110  
STUART, FLORIDA 34995  
(772) 781-8488 PHONE (772) 781-8487 FAX

CITY OF STUART  
STUART LANDFILL OUTPARCEL

Scale: N/A
Drawn by: GWT
Checked by: GWT
Date: 02/17/05
SHEET 2 OF 2

DR BK 01P85 PG 2812

*dr*

**EXHIBIT "B"**

**Bureau of Labor Statistics Appendix CPI-U-South Region**

Mid-Atlantic Information Office

Internet: [www.bls.gov/m3/](http://www.bls.gov/m3/)

Information Contact:

Gerald Perrins  
(215) 597-3282

PLS - 4544  
For Release:

Media Contact:

Shella Watkins  
(215) 861-5600

Wednesday, June 17, 2009

SOUTH REGION CONSUMER PRICE INDEX: MAY 2009 (PDF)

The Consumer Price Index for All Urban Consumers (CPI-U) for the South<sup>4</sup> increased 0.3 percent in May to 207.265 (1982=64=100), the Bureau of Labor Statistics of the U.S. Department of Labor reported today. Shella Watkins, the Bureau's regional commissioner, noted that the increase was predominantly due to higher prices for transportation, particularly gasoline. Lower costs for apparel moderated the overall increase in the CPI, while the remaining six major categories had little or no change in May. The energy index increased 3.7 percent over the month, while food costs were unchanged. The core inflation rate, as measured by the all items less food and energy index, was also unchanged during the month.

Chart A. 1-month and 12-month percent changes ended May 2009 for the major categories of the CPI-U for the South region, not seasonally adjusted

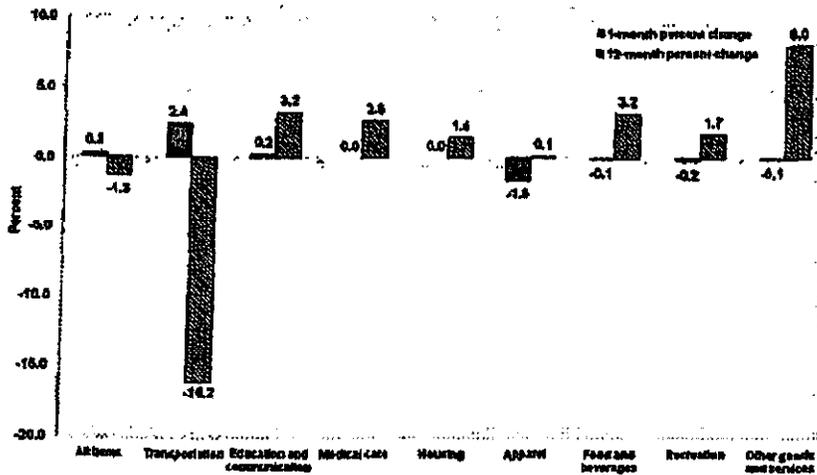


Chart data

Over the last 12 months, prices in the South decreased 1.3 percent, as a sharp decline in transportation costs was partially offset by increases in all of the remaining major categories. This was the largest 12-month decrease in the history of the index, dating back to December 1966. Energy costs in the region declined 26.4 percent, while food prices increased 3.3 percent since last May. Over the same period, the core inflation rate was 2.0 percent.

Among the major categories, the transportation index increased 2.4 percent during May, due almost entirely to higher motor fuel costs, which advanced 8.5 percent. Over the year, transportation costs decreased 16.2 percent, dominated by a 41.3-percent drop in motor fuel prices. This was the seventh consecutive month of over-the-year declines in the transportation index and the largest 12-month decrease since the inception of the series in December 1966.

Prices for education and communication edged up 0.2 percent in May. Over the year, education and communication costs increased 3.2 percent.

The index for medical care was unchanged in May, as costs for both components, medical care services and medical care commodities, showed no change. Over the year, the medical care index advanced 2.6 percent, as prices increased for both medical care services (2.3 percent) and medical care commodities (3.3 percent).

The index for housing was unchanged over the month. The shelter index, which includes rent of primary residence, lodging away from home, owners' equivalent rent of primary residence, and tenants' and household insurance, was unchanged since April. Household furnishings and operations costs were also unchanged over the month. The fuels and utilities index declined 0.4 percent in May, as costs for utility (piped) gas service decreased 3.4 percent and electricity costs were unchanged. Since May 2008, the housing index rose 1.4 percent in the South as increases

Clerk's Note:  
 Legibility of this document  
 determined to be substandard

Rent of primary residence (1)								
Owners' equivalent rent of primary residence (1) (2)	216,644	2.2	0.1	216,997	2.1	0.1		
Fuels and utilities	212,621	-1.3	-0.4	213,034	-0.8	-0.3		
Household energy	181,813	-3.1	-0.6	182,558	-2.4	-0.4		
Gas (piped) and electricity (3)	185,282	-2.0	-0.5	184,586	-1.6	-0.4		
Electricity (3)	182,462	4.2	0.0	180,252	4.0	0.1		
Utility (piped) gas service (3)	189,074	-28.8	-3.4	181,713	-29.3	-5.3		
Household furnishings and operations	130,190	2.6	0.0	124,881	2.4	0.1		
Apparel	133,342	0.1	-1.6	133,554	0.3	-1.3		
Transportation	172,112	-16.2	2.4	168,081	-18.1	1.8		
Private transportation	170,349	-16.5	2.5	166,469	-16.4	2.9		
New and used motor vehicles (2)	92,418	-1.6	0.3	88,850	-3.9	0.6		
New vehicles	139,692	1.2	0.0	139,564	1.2	0.1		
New cars and trucks (2) (4)	95,018	1.1	0.0					
New cars (4)	143,131	1.8	0.2					
Used cars and trucks	121,453	-10.1	1.5	122,107	-10.1	1.5		
Motor fuel	190,274	-11.3	8.5	190,270	-11.3	8.4		
Gasoline (all types)	180,279	-40.8	9.0	180,380	-40.8	9.0		
Gasoline, unleaded regular (4)	168,477	-41.6	9.2	168,549	-41.6	9.3		
Gasoline, unleaded midgrade (4) (5)	200,530	-39.6	8.8	200,654	-39.6	8.9		
Gasoline, unleaded premium (4)	191,504	-38.6	7.9	191,358	-38.6	7.9		
Medical care	359,773	2.6	0.0	358,842	2.7	0.0		
Medical care commodities	292,173	3.3	0.0	285,251	3.3	0.0		
Medical care services	376,267	2.3	0.0	361,006	2.5	0.0		
Professional services	314,816	2.5	0.2	316,234	2.5	0.2		
Recreation (2)	113,571	1.7	-0.2	112,173	1.7	-0.3		
Education and communication (2)	122,082	3.2	0.3	117,712	2.8	0.2		
Other goods and services	360,569	6.0	-0.1	380,351	10.2	-0.1		
Commodities	169,818	-5.6	0.7	169,573	-7.2	1.8		
Services	245,556	1.9	0.0	244,136	2.1	0.0		
All items less shelter	201,822	-2.7	0.4	197,902	-3.8	0.6		
All items less medical care	196,684	-1.6	0.3	195,851	-2.4	0.5		
Energy	181,487	-28.4	3.7	181,353	-27.1	4.0		
All items less energy	218,848	2.3	0.0	206,335	2.2	0.0		
All items less food and energy	216,231	2.0	0.0	204,955	2.0	0.0		
South size A (more than 1,500,000)	209,235	-1.2	0.1	206,271	-2.1	0.3		
South size B/C (50,000 to 1,500,000) (6)	131,777	-1.4	0.3	129,885	-2.2	0.4		
South size D (nonmetropolitan, less than 50,000)	209,563	-0.8	0.0	208,989	-1.7	1.0		

Footnotes  
 (1) This index series was calculated using a Laspeyres estimator. All other item stratum index series were calculated using a geometric means estimator.  
 (2) Indexes for CPI-U on December 1982=100 base; CPI-W on a December 1984=100 base.  
 (3) Indexes on a December 1997=100 base.  
 (4) Special index based on a substantially smaller sample.  
 (5) Indexes on a December 1993=100 base.  
 (6) Indexes on a December 1996=100 base.  
 South region includes the District of Columbia and the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

CITY OF STUART

**INVOICE**

**Customer**

Name Desantis Commercial Realtors  
 Address \_\_\_\_\_  
 City Stuart State FL ZIP 34994  
 Phone \_\_\_\_\_

**Misc**

Date 7/2/2010  
 Order No. \_\_\_\_\_  
 Rep \_\_\_\_\_  
 FOB \_\_\_\_\_

Qty	Description	Unit Price	TOTAL
1	Advertising cost: Project Name: DEPT: 1130 ACCT: 0548		
1	Administrative Fee 3% Postage Mailing		
1	Recording Fee:		
1	Dept: 001 Copy Acct: 369100		
1	Dept:001 Record Acct: 208100 Ground Lease Amendment 1st Amendm	\$ 120.50	\$ 120.50
		SubTotal	\$ 120.50
		Shipping	
		Tax Rate(s) 0.00%	\$ -
		<b>TOTAL</b>	<b>\$ 120.50</b>

**Payment**

Select One...

Tax Rate(s)

Comments PAYMENT DUE UPON RECEIPT

Name \_\_\_\_\_  
 CC # \_\_\_\_\_  
 Expiree \_\_\_\_\_

Office Use Only: SEE ABOVE

PLEASE MAKE CHECK PAYABLE TO : "City of Stuart "  
 mail to the City of Stuart, City Clerk 121 SW Flagler Avenue, Stuart, Fl. 34994

QUESTIONS OR COMMENTS REGARDING THIS INVOICE SHOULD BE  
 DIRECTED TO THE CITY OF STUART, CITY CLERK, AT 772-288-5306

# City of Stuart

121 S. W. Flagler Avenue • Stuart • Florida 34994

Cherie White  
City Clerk

PHONE 772-288-5306  
FAX (772) 288-5305  
Email [cwhite@ci.stuart.fl.us](mailto:cwhite@ci.stuart.fl.us)

July 2, 2010

Clerk of the Circuit Court  
Att: Recording, Tammy Copus  
P.O. Box 9016  
Stuart, Fl. 34995

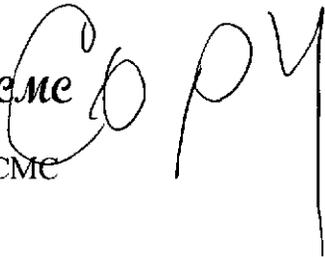
RE: First Amendment to Amended and restated ground lease Desantis/Jones  
Please record the above mentioned document, into the Public Records of Martin County and return the original back to me in the return, interoffice envelope addressed to the City of Stuart City Clerk.

Should you have any questions regarding this request please feel free to contact me at 772-288-5306.

Thank you,

Cherie White, **cmc**

Cherie White, CMC  
City Clerk  
Enc.





www.desantisrealestate.com



Individual Members

Robert G. DeSantis, CCIM, CRB, GRI  
Realtor

~~rgd@desantisrealestate.com~~

- Commercial/Investment Property
- Consulting
- Property Management
- Leasing
- Sales

June 25, 2010

Mayor Michael Mortell  
City of Stuart  
121 SW Flagler Avenue  
Stuart, FL 34994

Dear Mike:

Please find enclosed one (1) original Ground Lease Amendment for Penn Plaza executed by all parties. We would appreciate your approval by executing this original and then copies can be made for everyone.

We have sent copies to Paul Nicoletti and Dan Hudson for their review. Please advise when we can pick up our copy for our records and Terry McCarthy, our attorney's, records.

Any legal questions should be directed to Mr. McCarthy and any business issues to myself.

Thank you for your cooperation and anticipated approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. DeSantis", written in a cursive style.

Robert G. DeSantis, CCIM, CRB, GRI  
President  
rdes@desantisrealestate.com

cc: Paul Nicoletti  
Dan Hudson  
Terry McCarthy  
Penn Plaza Partners



BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA

RESOLUTION No. 19-2010

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AMENDMENT TO THE AMENDED AND RESTATED GROUND LEASE WITH THE ROBERT G DESANTIS AND JOAN C. DESANTIS REVOCABLE TRUST OF 1985 AND THE VIVIAN I. JONES INTER VIVOS TRUST AND JAMES DESANTIS (LESSEES) OF CITY PROPERTY LOCATED AT THE OLD CITY LANDFILL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

\* \* \* \* \*

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

Section 1: The Mayor and City Clerk are hereby authorized to execute an amendment to the Restated Ground Lease with Robert G. Desantis and Joan C. Desantis, Trustees of the Robert G. Desantis Revocable Trust of 1985, and Vivian Jones and Robert Jones, as Co-Trustees of the Vivian I. Jones Inter Vivos Declaration of Trust, dated September 9, 2003 and James Desantis, all collectively called "Lessee" for the 2+ acre parcel at the North East corner of the Old City Landfill Parcel previously approved by Resolution 186-06 on October 9, 2006, amending Sections 3, 4 and 5 to read in their entirety as found in the attached Amendment 2 which is incorporated herein.

Section 2: This resolution shall take effect upon adoption.

Res. 19-2010  
Desantis Ground Lease Amendment

Commissioner HUTCHINSON offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner CHRISTIE and upon being put to a roll call vote, the vote was as follows:

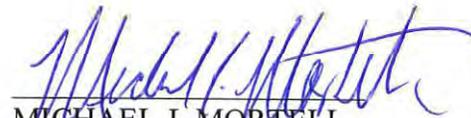
MICHAL J. MORTELL, MAYOR  
CAROL S. WAXLER, VICE MAYOR  
JAMES A CHRISTIE, JR., COMMISSIONER  
MARY L. HUTCHINSON, COMMISSIONER  
JEFFREY A. KRAUSKOPF, COMMISSIONER

YES	NO	ABSEN T
✓		
✓		
✓		
	✓	
	✓	

Adopted this 12 day of ~~March~~<sup>April</sup>, 2010.

ATTEST:

  
\_\_\_\_\_  
CHERYL WHITE  
CITY CLERK

  
\_\_\_\_\_  
MICHAEL J. MORTELL  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
\_\_\_\_\_  
PAUL J. NICOLETTI  
CITY ATTORNEY



### Section 3. Right to Extend and Rent Adjustment.

Provided the Lessee is not in default under any of the terms and conditions of this Lease, and provided the Tenant has faithfully performed all of its covenants and undertakings contained in this Lease, Lessee shall have the right and option to extend the term of this Lease for two (2) consecutive additional terms of TEN (10) YEARS, each upon the same terms and conditions except that CITY shall have the right to adjust the Rent for the Premises, prior to each additional term, based upon and conforming to current economic rent values as determined by an appraisal of same as prepared herein. In no event shall rent be less than the prior term. The appraisal shall be prepared prior to the time required for notice of term extension by the Lessee, below. For purposes of this section, the appraisal shall be made by a board of three (3) MAI qualified appraisers, who are State Certified Appraisers, and who are familiar with appraising facilities similar to the Premises. One of the appraisers shall be appointed and paid for by the Lessee, a second appraiser shall be appointed and paid by the CITY, and the third appraiser shall be selected by the first two appraisers so appointed and the third appraiser's fee shall be born one-half (1/2) by the Lessee and one-half (1/2) by the CITY. If the first two appraisers are unable to agree on a third appraiser within fifteen (15) days after the appointment of the second of them to be appointed, or if any party refuses or neglects to appoint an appraiser as herein provided, then such third appraiser or such other appraiser whose appointment was not made as aforesaid shall be appointed by the then President of the Florida Society of MAI's, or such successor to the Society exercising similar functions. The term of the Lease shall be extended from one term to the next by Lessee giving written notice to the CITY not less than one hundred twenty (120) days prior to the end of the current term, or extended term. Such notice shall be sent to the CITY by hand delivery or by certified mail, return receipt requested, at the address of CITY set forth above or such other address as CITY may direct in writing. Optional terms may only be exercised one at a time, and only consecutively.

### Section 4. Basic Rent.

Res. 19-2010  
Desantis Ground Lease Amendment

It is the purpose and intent of the CITY and the Lessee that the rent shall be *absolute net to the CITY*. Lessee hereby agrees to pay to CITY rent for the leased Premises land, the initial annual sum of \$52,500.00, together with the upward adjustments provided herein, payable solely for the convenience of Lessee in equal monthly installments of \$4,375.00 payable on the first (1<sup>st</sup>) day of each month, in advance, from the Rent Commencement Date throughout the term of this Lease, including any renewal terms subject to adjustment as hereinafter set forth. Payment shall be made either by automatic debit; wire transfer; or by a check drawn on a local bank, and shall be made to whoever the Landlord designates, in writing, from time to time. All sums due as rent or additional rent shall be paid without set-off for any reason, except as provided in Section 28. Lessee has prepaid rent in the amount of \$315,000.00. This payment of \$315,000.00 represents basic rent for the following period of time: commencing April 1, 2007 through March 31, 2013. No rent will need to be paid until April 1, 2013. Commencing April 1, 2013 rent in the amount of \$66,429.00 per year shall be due and payable in equal monthly installments of \$5,535.75.

Section 5. Annual Rent Escalation.

For subsequent years the amount of the rent payable will be based on a four (4%) percent per year increase, beginning on April 1, 2008, and shown on the Rent Payment Schedule attached as Exhibit "B," which is incorporated herein.

Res. 19-2010  
Desantis Ground Lease Amendment

AMENDMENT "1"

The Amended and Restated Ground Lease shall be amended to include the following provisions in language acceptable to the City Attorney:

This Amendment is subject to the Lessee obtaining a loan modification which lowers its overall periodic loan payments within 120 days of this Resolution, and that the original rent schedule will be reinstated beginning in Year 11, e.g., April 1, 2017.

The initial prepaid period shall be extended from six (6) years to ten (10) years from the Commencement Date, spreading the prepaid rent over the ten year period at the rate of \$315,000 at the rate of \$31,500 per year.

At the end of 10 years from the Commencement Date, the value of the land will be reappraised based upon its contribution to the overall value of the project, and a fair market value rent will be established for the remaining 20 years of the lease, which is based upon appraisal done at that time.

OR

AMENDMENT "2"

The Amended and Restated Ground Lease shall be amended to include the following provisions in language acceptable to the City Attorney:

The initial prepaid period shall be extended from six (6) years to ten (10) years from the Commencement Date, spreading the prepaid rent over the ten year period at the rate of \$315,000 at the rate of \$31,500 per year.

At the end of 10 years from the Commencement Date, the value of the land will be reappraised based upon its contribution to the overall value of the project, and a fair market value rent will be established for the remaining 20 years of the lease, which is based upon appraisal done at that time.

Existing language:

**1. 1st addendum & readopt lease see page 22  
Res 35-06**

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**2nd addendum  
see page 50  
Res 69-06**

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**3rd addendum see page  
58 Res 101-06**

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**4th addendum see page  
65  
Res 118-06**

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**5th addendum see page 65 Res 123-06**

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**6th addendum see page 76 Res 132-06**

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**Amended & Restated Lease see page 80**

**2. Amendment to the 1st Amended and restated lease agreement see page 142 Res 19-2010**

**3. Landlords Estoppel see page**

**4. pgf 125 1st Amend. to amended and Restated Ground Lease**

**5. Pg. 112 Res.150-07 Easement Deed/ Drainage**