

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 06-2010

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AMENDING RESOLUTION 15-09 TO REFLECT A MODIFICATION OF OWNERSHIP CHANGE FROM HUIZENGA HOLDINGS, INC. TO SUNSET BAY MARINA AND ANCHORAGE, LLC. AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS LEASE MODIFICATION BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, THE CITY OF STUART AND SUNSET BAY MARINA AND ANCHORAGE, LLC. PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission of the City of Stuart, Florida adopted Resolution 15-09 approving a Sovereignty Submerged Lands Lease between The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, The City of Stuart, and Huizenga Holdings, Inc. for the Southpoint Marina from May 16, 2008 through October 20, 2028.

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

SECTION 1: The City Commission of the City of Stuart, Florida hereby amends Resolution 15-09 to reflect a modification of ownership change from Huizenga Holdings Inc. to Sunset Bay Marina and Anchorage LLC., and authorizes the Mayor and City Clerk to execute a Sovereignty Submerged Lands Lease Modification between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, the City of Stuart and Sunset bay marina and Anchorage LLC. A copy of the Submerged Lands Lease Modification is on file in the office of the City Clerk.

RESOLUTION No. 06-10
Modification Southpoint Marina Anchorage Lease

SECTION 2: This resolution shall take effect upon adoption.

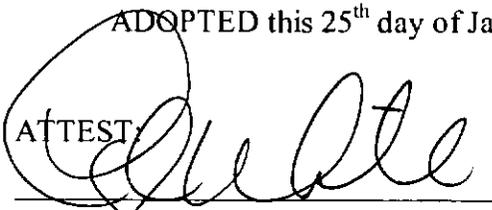
Commissioner HUTCHINSON offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner CHRISTIE and upon being put to a roll call vote, the vote was as follows:

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

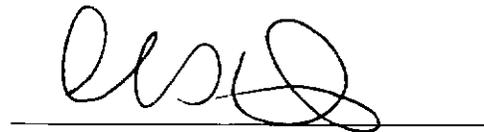
YES	NO	ABSENT
		X
X		
X		
X		
X		

ADOPTED this 25th day of January 2010.

ATTEST

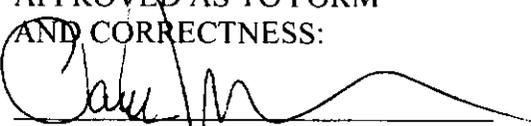


CHERYL WHITE
CITY CLERK



CAROL WAXLER
VICE MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:



PAUL J. NICOLETTI
CITY ATTORNEY



CITY OF STUART, FLORIDA
COMMISSION MEETING
AGENDA ITEM REQUEST

Agenda Backup.

Meeting Date: 1/25/2010

Prepared by: MARY NASH

Ordinance/Resolution No. 06-2010

Title of Item:

MODIFICATION TO THE SUNSET BAY SUBMERGED LAND LEASE

Summary Explanation/Background Information on Agenda Request:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AMENDING RESOLUTION 15-09 TO REFLECT A MODIFICATION OF OWNERSHIP CHANGE FROM HUIZENGA HOLDINGS, INC. TO SUNSET BAY MARINA AND ANCHORAGE, LLC. AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SOVEREIGNTY SUBMERGED LANDS LEASE MODIFICATION BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, THE CITY OF STUART AND SUNSET BAY MARINA AND ANCHORAGE, LLC.

Funding Source:

NA

Recommended Action:

APPROVE RESOLUTION 06-2010 MODIFICATION TO REFLECT CHANGE IN OWNERSHIP

1/14/2010

X *[Signature]*

Department Director

1/14/2010

X *[Signature]*

City Attorney

1/14/2010

X *[Signature]*

City Manager

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

July 7, 2010

Taurean J. Lewis
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

RE: BOT File: 430034296 City of Stuart/Sunset Bay Marina and Anchorage LLC

Please find enclosed your copy of the above named file fully executed and recorded in the public records.

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

Respectfully,

Cherie White, MMC Clerk

Enc.



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary
December 24, 2009

The City of Stuart and
Sunset Bay Marina and Anchorage, LLC
c/o Sam Amerson
121 SW Flagler Avenue
Stuart, Florida 34994

RE: BOT File No.: 430034296

Lessee: The City of Stuart and Sunset Bay Marina and Anchorage, LLC

Dear Mr. Mr. Christie, Ms. Alexander and Mr. Alexander:

Enclosed is a lease instrument, which requires acceptance by your notarized signatures (two witnesses required). Pursuant to Chapter 695, Florida Statutes, the names of the person executing the instrument, the two witnesses, and the notary public must be legibly printed or typewritten directly below that person's signature.

Please complete and return the enclosed data information form that provides us with updated billing information, sales tax information, and other data required pursuant to Section 24.115(4), Florida Statutes.

Please execute and return the enclosed instrument/documents and any additional information requested within 30 days after receipt of this letter. Upon receipt and acceptance, we will transmit the lease instrument for final departmental execution. A fully executed instrument will be provided to you for recording in the county records where the facility is located.

Your cooperation and assistance are appreciated. If you have any questions regarding this matter, please feel free to contact me at the letterhead address above (Mail Station No. 125) or at (850) 245-2720.

Sincerely,

Taurean J. Lewis
Government Operations Consultant I
Bureau of Public Land Administration
Division of State Lands

Enclosures: Lease Instrument, Billing Information Form

By FedEx

RECEIVED

JAN 05 2010

CITY OF STUART
OFFICE OF CITY ATTORNEY



INSTR # 2218050
 OR BK 02461 PG 1164
 Pgs 1164 - 1187 (24pgs)
 RECORDED 06/24/2010 04:12:08 PM
 MARSHA EWING
 CLERK OF MARTIN COUNTY FLORIDA
 RECORDED BY T Copus (asst mgr)

This Instrument Prepared By:
Taurean J. Lewis
 Recurring Revenue Section
 Bureau of Public Land Administration
 3900 Commonwealth Boulevard
 Mail Station No. 125
 Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
 OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS LEASE
 MODIFICATION TO REFLECT CHANGE IN OWNERSHIP

No. 430034296

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to City of Stuart, Florida and Sunset Bay Marina and Anchorage, LLC, a Florida limited liability company, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 05, Township 38 South, Range 41 East, in St. Lucie River, Martin County, containing 562,666 square feet, more or less, as is more particularly described and shown on Attachment A, dated November 18, 2008.

TO HAVE THE USE OF the hereinabove described premises from June 30, 2009, the effective date of this modified lease, through October 20, 2028, the expiration date of this modified lease. The terms and conditions on and for which this lease is granted are as follows:

1. **USE OF PROPERTY:** The Lessee is hereby authorized to operate a 198-slip docking facility (123 permanent slips and 75-day docks/alongside slips) with boat lifts exclusively to be used for mooring of commercial and recreational vessels in conjunction with an upland commercial marine retail office, restaurant, and parking lot, with fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and with liveaboards as defined in paragraph 29, as shown and conditioned in Attachment A, and the State of Florida Department of Environmental Protection, Consolidated Environmental Resource Permit Modification No. 43-0234909-001, dated April 30, 2008, incorporated herein and made a part of this lease by reference. All of the foregoing subject to the remaining conditions of this Lease. The construction of the proposed structures depicted on Page 11 of Attachment A of this modified lease shall be completed no later than April 30, 2013. The failure to complete construction of such authorized structures within this time period shall constitute a material breach of the lease pursuant to Paragraph 13, herein.

2. **LEASE FEES:** The Lessee hereby agrees to pay to the Lessor an annual lease fee of \$58,864.99, plus sales tax pursuant to Section 212.031, Florida Statutes, if applicable, within 30 days of the date of receipt of the invoice. The annual fee for the remaining years of this lease shall be adjusted pursuant to provisions of Rule 18-21.011, Florida Administrative Code. The State of Florida Department of Environmental Protection, Division of State Lands (the "Division") will notify the Lessee in writing of the amount and the due date of each subsequent annual lease payment during the remaining term of this lease. All lease fees due hereunder shall be remitted to the Division, as agent for the Lessor.

[01-01]

ORIGINAL

3. **WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT:** (A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(31), Florida Administrative Code, derived directly or indirectly from the use of sovereignty submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the leased docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder.

4. **LATE FEE ASSESSMENTS:** The Lessee shall pay a late payment assessment for lease fees or other charges due under this lease which are not paid within **30 days after the due date**. This assessment shall be computed at the rate of twelve percent **(12%) per** annum, calculated on a daily basis for every day the payment is late.

5. **EXAMINATION OF LESSEE'S RECORDS:** For purposes of this lease, the Lessor is hereby specifically authorized and empowered to examine, for the term of this **lease including any extensions thereto plus three (3) additional years**, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

6. **MAINTENANCE OF LESSEE'S RECORDS:** The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the entire term of this lease plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

7. **AGREEMENT TO EXTENT OF USE:** This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the State of Florida Department of Environmental Protection, Consolidated Environmental Resource Permit Modification. The Lessee shall not change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.), shall not change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit, or shall not change the type of use of the riparian uplands without first obtaining a regulatory permit/modified permit, if applicable, and the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease.

8. **PROPERTY RIGHTS:** The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

9. **INTEREST IN RIPARIAN UPLAND PROPERTY:** During the term of this lease, the Lessee shall maintain a leasehold or fee simple title interest in the riparian upland property and if such interest is terminated, the lease may be terminated at the option of the Lessor. Prior to sale and/or termination of the Lessee's leasehold or fee simple title interest in the upland property, Lessee shall inform any potential buyer or transferee of the Lessee's upland property interest of the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

10. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of this lease, current management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

11. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature arising out of this lease at its expense, and shall indemnify, defend and save and hold harmless the Lessor and the State of Florida from all claims, actions, lawsuits and demands arising out of this lease.

12. VENUE: Lessee waives venue as to any litigation arising from matters relating to this lease and any such litigation between Lessor and Lessee shall be initiated and maintained only in Leon County, Florida.

13. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All costs and attorneys' fees incurred by the Lessor to enforce the provisions of this lease shall be paid by the Lessee. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

CITY OF STUART, FLORIDA
SUNSET BAY MARINA AND ANCHORAGE, LLC
121 SW Flagler Avenue
Stuart, Florida 34994

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

14. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

15. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

16. MAINTENANCE OF FACILITY /RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

17. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area. During the lease term, the Lessee shall post and maintain the placard furnished to the Lessee by the Lessor in a prominent and visible location on the leased premises or adjacent business office of the Lessee. It shall be the responsibility of the Lessee to post the placard in a manner which will provide protection from the elements, and, in the event that said placard becomes illegible at any time during the term of this lease (including any extensions thereof), to notify the Lessor in writing, so that a replacement may be provided.

18. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

19. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

20. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Lessee is in full compliance with the terms of this lease, the Lessee may apply in writing for a renewal. Such application for renewal must be received by Lessor no sooner than 120 days and no later than 30 days prior to the expiration date of the original or current term hereof. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. If the Lessee fails to timely apply for a renewal, or in the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the fee simple title of the City of Stuart, Florida in the riparian upland property more specifically described in Attachment B, and upon the leasehold interest of Sunset Bay Marina and Anchorage, LLC, in the riparian upland property more specifically described in Attachment B, which shall run with the title to said fee simple title to the riparian upland property and with said leasehold interest in the riparian upland property, and shall be binding upon Lessee and Lessee's successors in title or successors in interest.

21. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 13 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

22. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the fee simple title of the City of Stuart, Florida in the riparian upland property and upon the leasehold interest of Sunset Bay Marina and Anchorage, LLC, in the riparian upland property enforceable in summary proceedings as provided by law.

23. RECORDATION OF LEASE: The Lessee, at its own expense, shall record this fully executed lease in its entirety in the public records of the county within which the lease site is located within fourteen (14) days after receipt, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded lease in its entirety which contains the O.R. Book and pages at which the lease is recorded.

24. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

25. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the docking facility.

26. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this lease.

27. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (ACOE) permit if it is required by the ACOE. Any modifications to the construction and/or activities authorized herein that may be required by the ACOE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

28. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

29. LIVEBOARDS: The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

30. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

31. SPECIAL LEASE CONDITIONS:

A. The terms and conditions herein, including those related to assessment of lease fees, may be reviewed at any time during the term of this lease as deemed necessary by the Lessor or its designated agent, and such terms and conditions may be modified or additional conditions may be imposed as deemed necessary by the Lessor. For the purpose of this provision the terms and conditions of this lease, including additional conditions, may be modified for but not limited to the following reasons:

1. to conform to the adoption or revision of Florida Statutes (F.S.), rules, and standards that require the modification of the lease for compliance;
2. to ensure compliance with the federal Endangered Species Act, 16 USC, s. 1531, et seq., and the Florida Endangered and Threatened Species Act of 1977, section 372.072, F.S.;
3. to conform to adoption or revision of rules regarding the assessment of lease fees;
4. to conform to any modification to the terms and conditions of a permit from the State of Florida Department of Environmental Protection, a water management district, the U.S. Army Corps of Engineers, or any other required form of approval; and,
5. to remove any structure declared to be a public nuisance.

B. A minimum of ninety percent (90%) of the wet slips at the docking facility shall be made available for rent to the general public on a "first come, first served" basis, as defined in subsection 18-21.003(25), Florida Administrative Code, with no longer than one-year rental terms, and with no automatic renewal rights or conditions. To help ensure compliance with and to assist in providing public awareness of this requirement, the Lessee shall erect permanent signs at the waterward entrance to the docking facility and at the upland entrance to the docking facility which are clearly visible to passing boaters and the general public. The signs shall contain language clearly indicating that no less than ninety percent (90%) of the wet slips at the docking facility are available for rent to the general public. Any dockage rate sheet publications and dockage advertising for the docking facility shall clearly state that the wet slips are open to the general public on a "first come, first served" basis.

C. A Florida Fish and Wildlife Conservation Commission (FWCC) approved marina educational program (which includes, at a minimum, permanent manatee educational signs, speed zone booklets, and manatee educational brochures) shall be developed and implemented by the Lessee within 30 days prior to completion of construction, and must be maintained for the life of the facility. The Lessee will be responsible for the cost of the educational materials. This educational program shall be developed by the Lessee with the assistance of FWC, and approved by FWC prior to implementation. Marina educational program guidelines can be found at <http://myfwc.com/manatee/signs/Educationplan.pdf>, or can be obtained from FWC. Contact the Florida Fish and Wildlife Conservation Commission, Imperiled Species Management Section at 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 (Telephone 850-922-4330).

D. Within 10 days of completion of the docking facility, handrails and no mooring signs shall be installed along all portions of the docks adjacent to non-mooring areas. Handrails shall be constructed to eliminate access to the docking facility by boaters and shall be maintained for the life of the docking facility.

E. The Lessee shall inform all slip occupants in writing of the availability and requirement to use the sewage pumpout facilities provided on the uplands. The Lessee shall also advise all slip occupants that no overboard discharges of trash, human or animal water shall occur within the leased premises at any time. Discharge from any holding tank or marine sanitation device, including those approved by the United States Coast Guard is strictly prohibited within the leased premises.

F. Upon entering the docking facility or upon registering with the dockmaster, all vessels shall have their sewage holding tanks inspected. All vessels shall have their sewage holding tanks emptied into the sewage pumpout facility prior to mooring. Absolutely no dumping of sewage in any area within the leased premises shall be allowed except at the pumpout station or by an authorized pumpout vessel. All "liveaboard" vessels will be required to have their tanks pumped at the approved station or by an approved vessel not less than every ten days without fail. All "liveaboard" vessels shall be pumped out prior to leaving the docking facility. The Lessee shall maintain daily records of vessels using the pumpouts and specifically identify those that are liveaboards at the docking facility. Copies of the logs shall be submitted to the State of Florida Department of Environmental Protection, Southeast District, Port St. Lucie Branch Office, at 1801 SE Hillmoor Drive, Port St. Lucie, Florida 34952 on an annual basis no later than 60 days after the anniversary date of this lease.

G. The Lessee shall not enter into a subsequent rental, sublease, license or other form of agreement with an owner of a liveaboard for the use of a wet slip on the leased premises for a minimum period of 6 months after the expiration of the previous agreement with said owner of the liveaboard for the use of a wet slip.

H. For vessels with functional heads without holding tanks, the Lessee shall affix an approved seal (e.g., the type used on water meters) on the closed sea cock of each liveaboard vessel that will remain in the boat slip for more than seven consecutive days. The Lessee shall inspect these seals each 30 days (to assure that the sea cock remains closed) and record this in a log which will remain available for inspection by regulatory agencies, during normal working hours. The log entries shall include the following:

1. date of inspection;
2. an entry that the seal has remained intact;
3. identification of the vessel (e.g., name, number); and
4. signature of the inspector _____

WITNESSES:

Mary K. Thurmond
Original Signature

Mary K. Thurmond
Print/Type Name of Witness

Kathy C. Griffin
Original Signature

Kathy C. Griffin
Print/Type Name of Witness

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

(SEAL)

BY: Jeffery M. Gentry
Jeffery M. Gentry, Operations and Management Consultant
Manager, Bureau of Public Land Administration,
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the State
of Florida

STATE OF FLORIDA
COUNTY OF LEON

"LESSOR"

The foregoing instrument was acknowledged before me this 15th day of June, 2010, by
Jeffery M. Gentry Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State
Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

Samuel H. Hsin
DEP Attorney

Kathy C. Griffin
Notary Public, State of Florida

Printed, Typed or Stamped Name of Notary Public
Kathy C. Griffin
My Commission Expires 10/30/2011

Commission/Serial No. _____

WITNESSES:

Cheryl White
Original Signature

Cheryl White
Typed/Printed Name of Witness

Belinda Parker
Original Signature

Belinda Parker
Typed/Printed Name of Witness

STATE OF Florida

COUNTY OF Martin

City of Stuart, Florida

(SEAL)

BY: Michael Mortell
Original Signature of Executing Authority

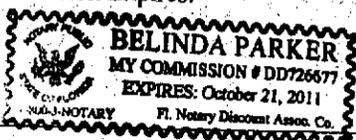
Michael Mortell, Mayor
Typed/Printed Name of Executing Authority

Mayor
Title of Executing Authority

"LESSEE"

The foregoing instrument was acknowledged before me this 2nd day of February, 2010, by
Michael Mortell as Mayor, for and on behalf of City of Stuart, Florida. He is personally known to me or who has produced
_____, as identification.

My Commission Expires:



Commission/Serial No. _____

Belinda Parker
Signature of Notary Public

Notary Public, State of FL.

Belinda Parker
Printed, Typed or Stamped Name

WITNESSES:

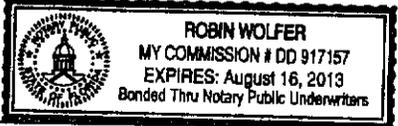
Karen Capelli
Original Signature
KAREN CAPELLI
Typed/Printed Name of Witness

Jessica Karbe Marciniak
Original Signature
Jessica Karbe Marciniak
Typed/Printed Name of Witness

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 14TH day of JANUARY, 2010, by Pamela H. Alexander, who is a Manager of P & J Marina Management, LLC, a Florida limited liability company, on behalf of the limited liability company which is the Manager of Sunset Bay Marina and Anchorage, LLC, a Florida limited liability company, on behalf of the limited liability company. She is personally known to me or has produced _____, as identification.

My Commission Expires:



Commission/Serial No. DD917157

Sunset Bay Marina and Anchorage, LLC,
a Florida limited liability company (SEAL)

BY: P & J Marine Management, LLC,
a Florida limited liability company (SEAL)
its Manager

BY: Pamela H. Alexander
Original Signature of Executing Authority

Pamela H. Alexander
Typed/Printed Name of Executing Authority
Manager
Title of Executing Authority

"LESSEE"

[Signature]
Signature of Notary Public

Notary Public, State of FLORIDA

ROBIN WOLFER
Printed, Typed or Stamped Name

WITNESSES:

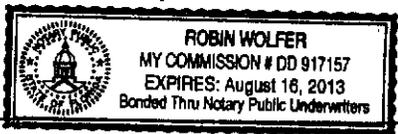
Karen Capelli
Original Signature
KAREN CAPELLI
Typed/Printed Name of Witness

Jessica Karbe Marciniak
Original Signature
Jessica Karbe Marciniak
Typed/Printed Name of Witness

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 14TH day of JANUARY, 2010, by Jay Alexander, who is a Manager of P & J Marina Management, LLC, a Florida limited liability company, on behalf of the limited liability company which is the Manager of Sunset Bay Marina and Anchorage, LLC, a Florida limited liability company, on behalf of the limited liability company. He is personally known to me or has produced _____, as identification.

My Commission Expires:



Commission/Serial No. DD917157

Page 8 of 24 Pages
Sovereignty Submerged Land Lease No. 430034296

Sunset Bay Marina and Anchorage, LLC,
a Florida limited liability company (SEAL)

BY: P & J Marine Management, LLC,
a Florida limited liability company (SEAL)
its Manager

BY: Jay Alexander
Original Signature of Executing Authority

Jay Alexander
Typed/Printed Name of Executing Authority

Manager
Title of Executing Authority

"LESSEE"

[Signature]
Signature of Notary Public

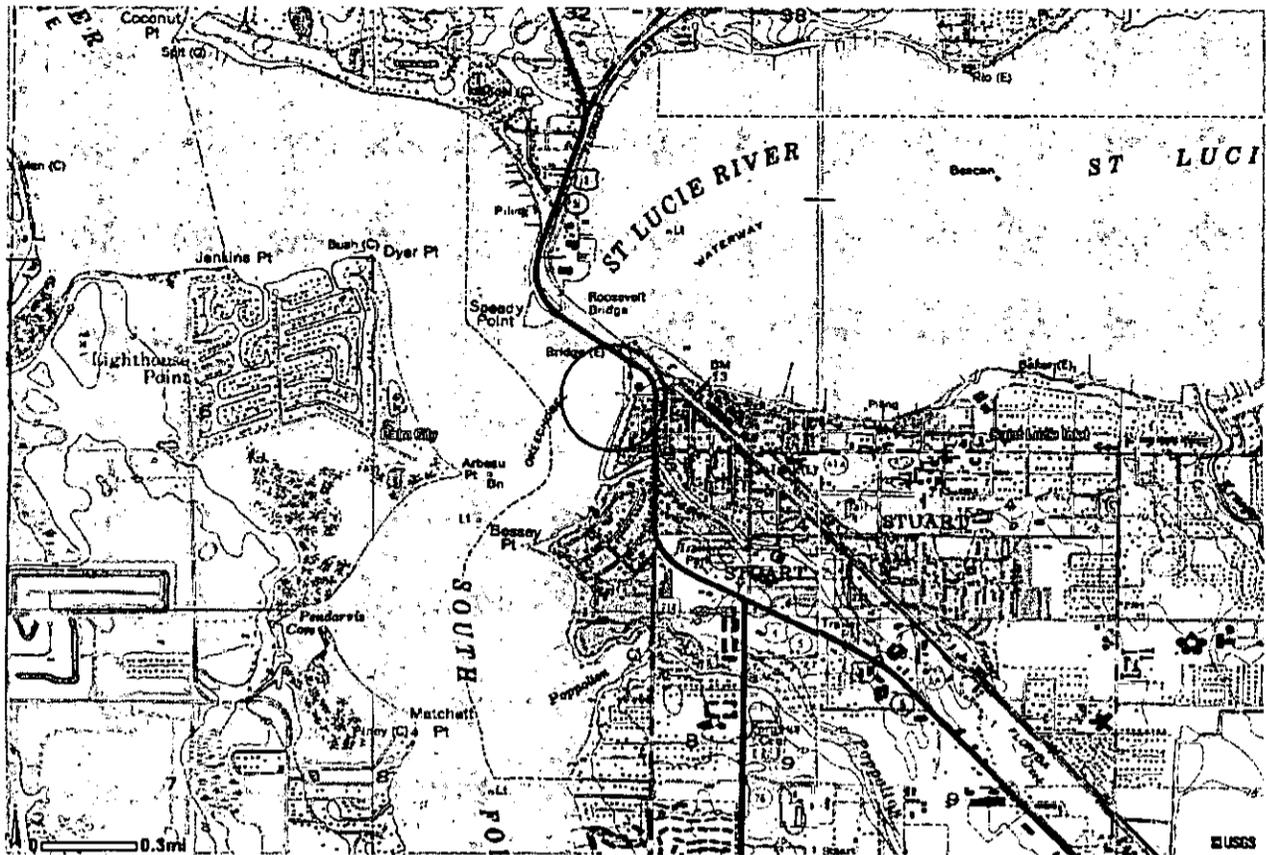
Notary Public, State of FLORIDA

ROBIN WOLFER
Printed, Typed or Stamped Name

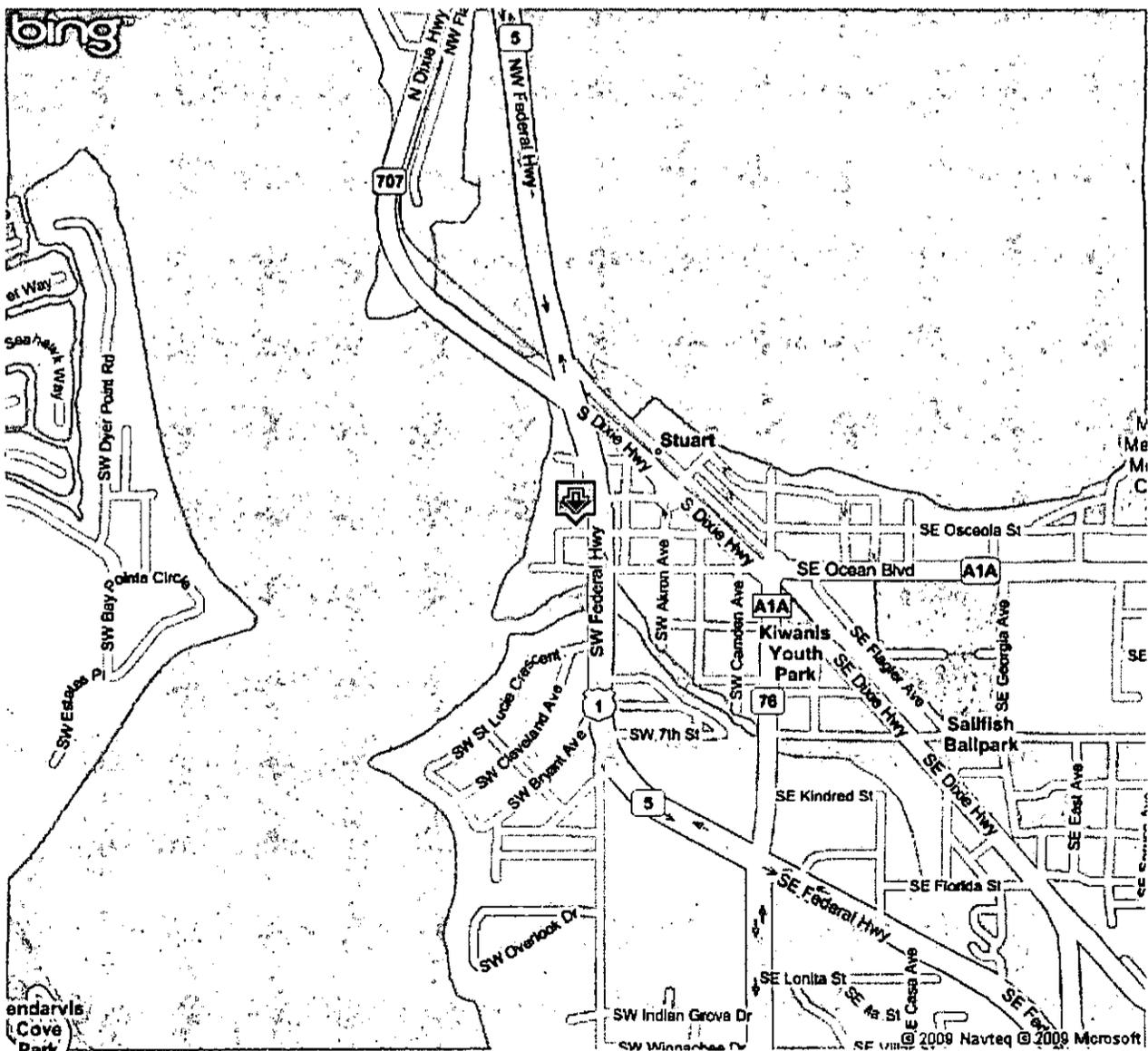
Section: 05

Township: 38 South

Range: 41 East



Facility Address: SW Atlanta Ave, Stuart, FL 34994



SHEET NO.	2
OF	3 SHEETS
PROJECT NO.	98-15D

DATE	REVISIONS
3/28/05	EDIT MHW ELEVATION
7/20/05	REVISE PER CLIENT
9/28/05	REVISE PER CLIENT
03/27/06	REVISE PER CLIENT
11/22/06	REVISE PER CLIENT
11/16/08	REVISED DOCKS PER CLIENT

**ANCHORAGE DOCKING SUBMERGED
LAND LEASE II**

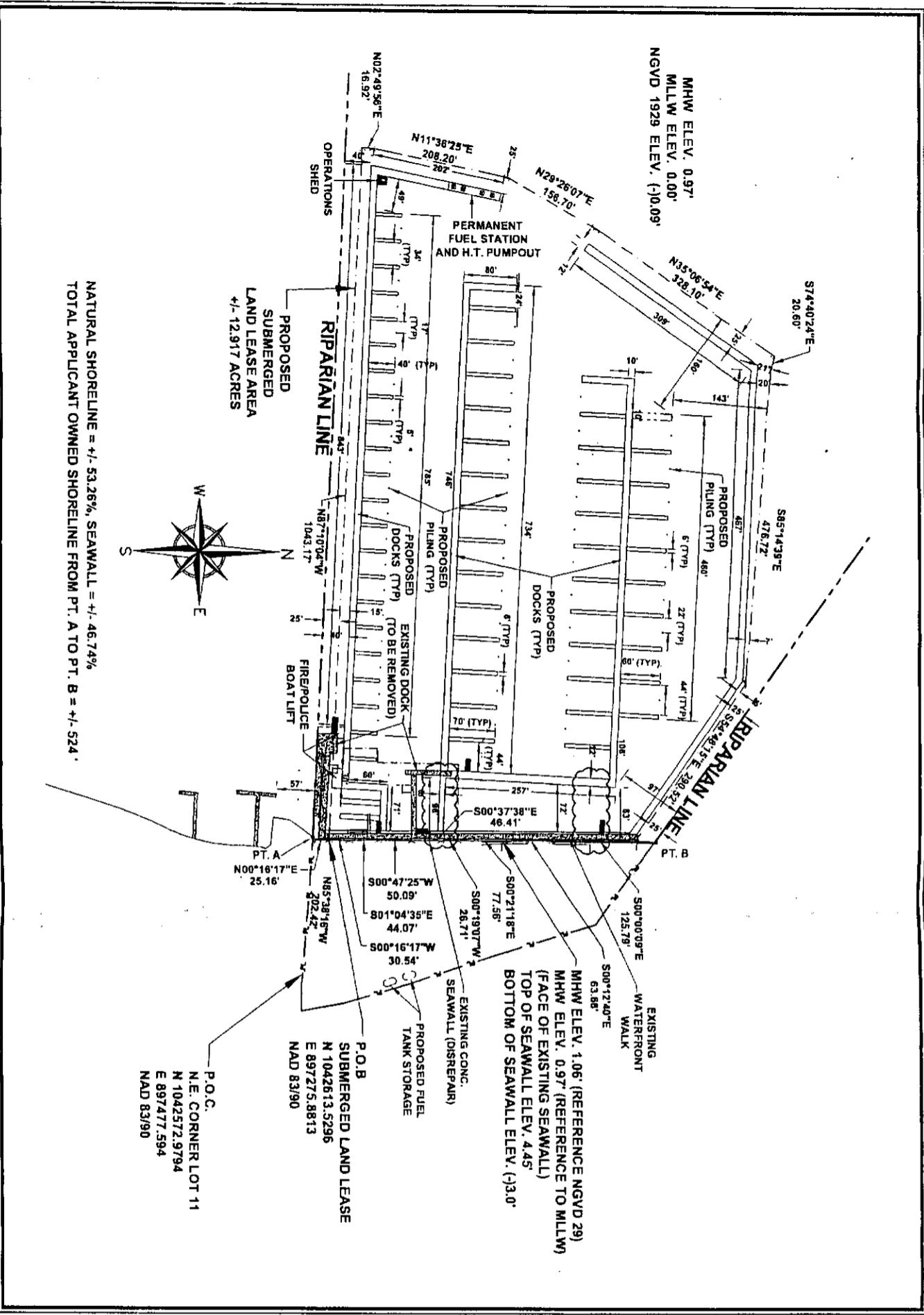
SPECIFIC PURPOSE SURVEY

EAST BAY GROUP, LLC

DATE	02/23/2005
SCALE	1" = 200'
FIELD BK.	
DRAWING BY	D.B.
CHECKED BY	E.A.L.

B BETSY LINDSAY, INC.
SURVEYING AND MAPPING

7857 SW JACK JAMES DRIVE STUART, FLORIDA 34987
 (772)286-5733 (772)286-5805 FAX
 LICENSED BUSINESS NO. 6632



NATURAL SHORELINE = +/- 53.26%, SEAWALL = +/- 46.74%
 TOTAL APPLICANT OWNED SHORELINE FROM PT. A TO PT. B = +/- 524'

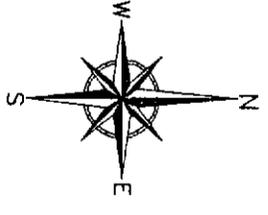
PROPOSED
SUBMERGED
LAND LEASE AREA
+/- 12.917 ACRES

P.O.B.
SUBMERGED LAND LEASE
N 1042613.5296
E 897275.8813
NAD 83/90

P.O.C.
N.E. CORNER LOT 11
N 1042572.9794
E 897477.594
NAD 83/90

MHW ELEV. 1.06' (REFERENCE NGVD 29)
 MHW ELEV. 0.97' (REFERENCE TO MLLW)
 (FACE OF EXISTING SEA WALL)
 TOP OF SEA WALL ELEV. 4.45'
 BOTTOM OF SEA WALL ELEV. (-)3.0'

CHANNEL AS SCALED FROM
 MAINTENANCE DREDGING
 CONTROL DATA MAP SHEET 4 OF 4
 D.O. FILE # 120A-30,786



CONDITION OF SHORELINE
 % NATURAL SHORELINE = ±53.26%
 % SEAWALL = ±46.74%

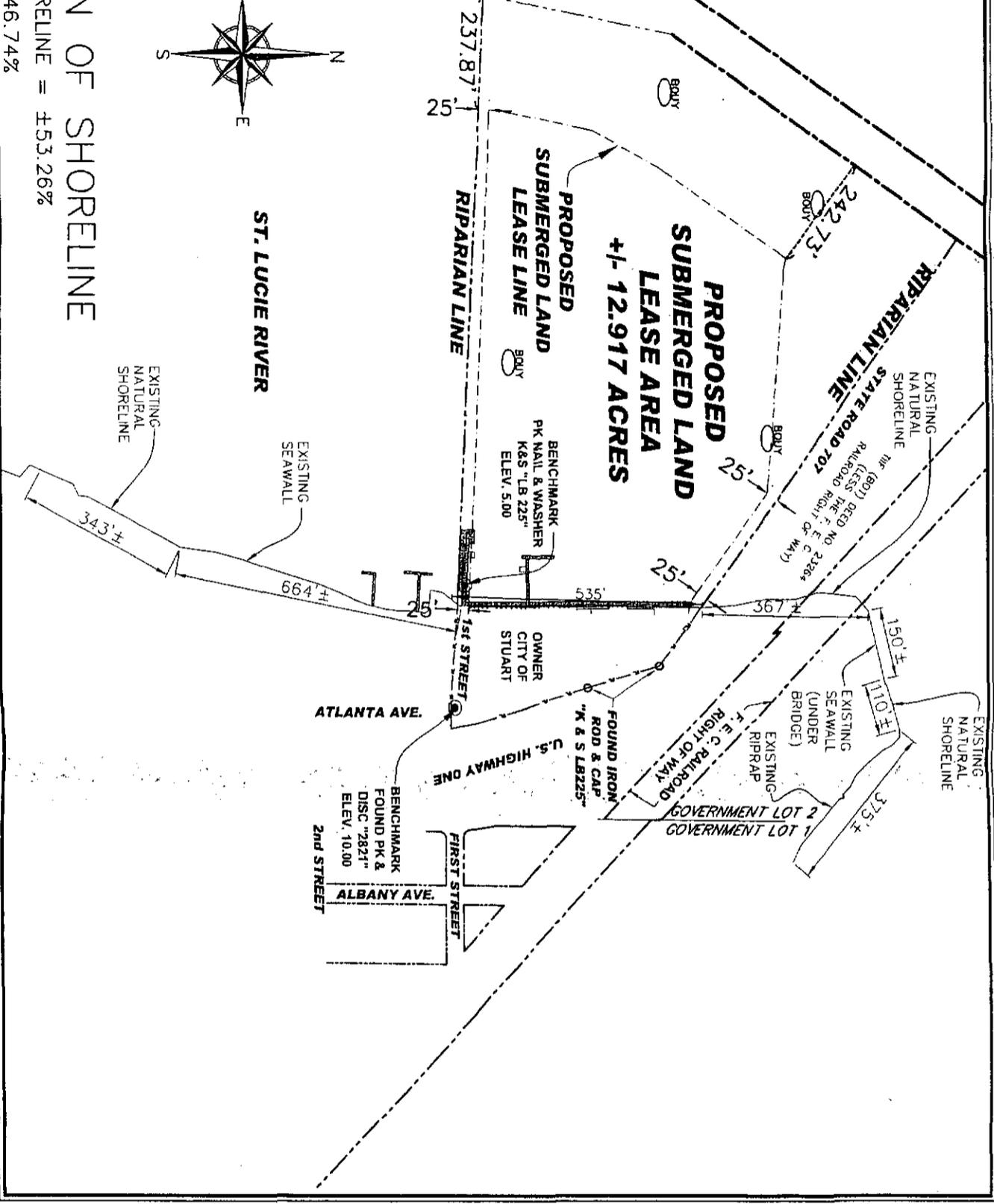
DATE	REVISIONS
3/28/05	EDIT MHW ELEVATION
7/26/05	REVISE PER CLIENT
9/28/05	REVISE PER CLIENT
03/27/06	REVISE PER CLIENT
11/22/06	REVISE PER CLIENT
11/18/08	REVISED DOCKS PER CLIENT

SHEET NO. 3
 OF 3 SHEETS
 PROJECT NO. 98-15D

ANCHORAGE DOCKING SUBMERGED
 LAND LEASE II
 SPECIFIC PURPOSE SURVEY
 EAST BAY GROUP, LLC

DATE 02/29/2005
 SCALE 1" = 300'
 FIELD BK. DR. J. B. B.
 DRAWING BY D.B.
 CHECKED BY E.A.L.

B BETSY LINDSAY, INC.
 SURVEYING AND MAPPING
 7897 SW JACK JAMES DRIVE STUART, FLORIDA 34987
 (772) 286-5763 (772) 286-5847 FAX
 LICENSED BUSINESS NO. 0862



MARSHA STILLER
CLERK OF CIRCUIT COURT
MARTIN COUNTY

RECORDED & VERIFIED
BY D.C.

04-QCD.17-06/93

01306292

98 JUN 30 AM 10:16

Prepared under the supervision of:

Laurice C. Mayes, Esq. *[Signature]*

Legal description prepared by:

Horst Korn

Florida Department of Transportation
3400 W. Commercial Boulevard
Fort Lauderdale, Florida 33309

COUNTY : Martin
SECTION : 89010-2548
STATE ROAD: 5 (US 1)
PARCEL NO.: 126 (Part)

DOC-DEED # *[Signature]* MARSHA STILLER
DOC-MTG # _____ MARTIN COUNTY
DOC-ASM # _____ CLERK OF CIRCUIT COURT
INT. TAX # _____ BY *[Signature]* D.C.

PUBLIC PURPOSE QUITCLAIM DEED

THIS INDENTURE, made this 22nd day of June, 1998,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an
Agency of the State of Florida, as the Party of the First Part and the CITY OF STUART, a
political subdivision of the State of Florida, the Party of the Second Part.

WITNESSETH

WHEREAS, the hereinafter described property held by the Department of
Transportation is no longer used or needed and the Secretary of the Department on
June 22, 1998 has approved conveyance of said property to the Grantee for the
amount of Six Hundred Twenty-Five Thousand dollars, \$625,000.00, (fifty percent of market
value), to be used solely for public purposes, pursuant to the provisions of Section 337.25(4),
Florida Statutes.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That the Party of the
First Part does hereby remise, release and quitclaim unto the Party (Parties) of the Second part,
and assigns, forever, all the right, title and interest of the State of Florida and/or the State of
Florida Department of Transportation to the property described on **Exhibit "A"**, attached hereto
and made a part hereof.

TO HAVE AND TO HOLD the said premises and the appurtenances thereof unto
the Party (Parties) of the Second Part.

IT IS UNDERSTOOD THAT if the property herein conveyed ceases to be used
for a public purpose, title shall revert to the State of Florida Department of Transportation,
unless otherwise provided herein. The uses considered to be "public purpose" shall be as defined
in **Exhibit "B"**, attached hereto and made a part hereof. It is further agreed and understood by
the parties, however, that if the Grantee ever desires to use the property, or any portion thereof,
for a non-public purpose, the Grantee shall pay Grantor the full market value as determined by
the Grantor's appraised value at the time of the appraisal, of the property to be used for a non-
public purpose, exclusive of all improvements constructed thereon from the date of this
conveyance, said appraised amount being offset by any sums previously paid to Grantor by
Grantee for the property. Upon receipt of the full purchase price for the portion of property to be
used for non-public purpose, Grantor shall release the public purpose restrictions relative to such
property.

THIS CONVEYANCE IS made subject to any unpaid taxes, assessments, liens, or
encumbrances of any nature whatsoever which the Party (Parties) of the Second Part hereunder
and herein assumes.

IN WITNESS WHEREOF, the State of Florida Department of Transportation has

OR BK1 3 1 9 PGI 2 2 5

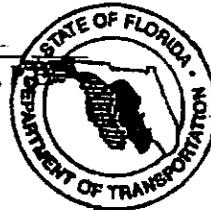
caused these presents to be signed in the name of the State of Florida and in the name of the State of Florida Department of Transportation by its District Secretary, District IV and its seal to be hereunto affixed, attested by its Executive Secretary, on the date first above written.

Signed, sealed and delivered in our presence as witnesses:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

[Signature]
Name: DANIA LUCAS

By: [Signature]
RICK CHESSER,
District Secretary
District IV



[Signature]
Name: Rhonda Thomas

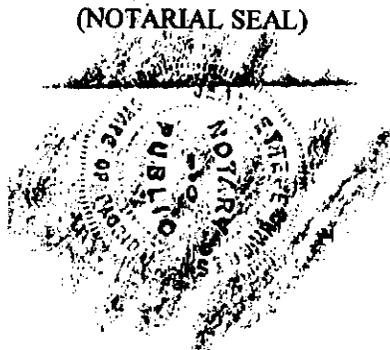
Attest: [Signature]
MARIA GUTIERREZ
Executive Secretary

STATE OF FLORIDA)
COUNTY OF BROWARD)

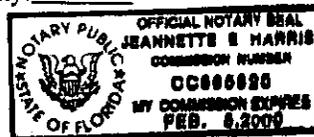
BEFORE ME, the undersigned authority, this day personally appeared, RICK CHESSER, District Secretary, District IV and MARIA GUTIERREZ, Executive Secretary of the State of Florida Department of Transportation, respectively, to me known to be the persons described in and who executed the foregoing instrument, and they severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned, and that they affixed thereto the official seal of said State of Florida Department of Transportation, and the said instrument is the act and deed of said Department.

WITNESS my hand and official seal this 22nd day of June, 1996.

(NOTARIAL SEAL)



[Signature]
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: 2/5/2000
Serial No., if any: _____



OR BK 1 3 1 9 PG 1 2 2 6

SURPLUS PROPERTY

PARCEL NO. 126 (PART)

SECTION 89010-2548

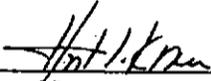
That part of Lots 9, 10, 11, and 12 of the Plat of FRENCH'S SUBDIVISION, according to the plat thereof as recorded in Plat Book 5, Page 41 of the Public Records of Palm Beach (now Martin) County, Florida; that part of Lot 2 in Block 2 of THE FINAL PLAT OF KITCHING'S ADDITION to the TOWN OF STUART, according to the plat thereof as recorded in Plat Book 2, Page 86 of the Public Records of Palm Beach (now Martin) County, Florida, and that part of Government Lot 2, all in Section 5, Township 38 South, Range 41 East, lying in Martin County, Florida, being more particularly described as follows:

BEGIN at the Southwest corner of said Lot 9, being on the Northerly Existing Right of Way line for 1st Street; thence South $85^{\circ}37'52''$ East along the Southerly line of said Lot 9, and said Northerly Existing Right of Way line, a distance of 171.00 feet; thence South $89^{\circ}35'38''$ East along said Southerly line, and said Existing Right of Way line, a distance of 29.22 feet; thence North $10^{\circ}30'29''$ West along the Westerly Existing Right of Way line for State Road 5, a distance of 35.31 feet to the beginning of a curve concave Southwesterly having a chord bearing of North $16^{\circ}36'19''$ West; thence Northwesterly along said curve having a radius of 2,793.54 feet, through an angle of $02^{\circ}08'26''$, an arc distance of 104.36 feet to the end of said curve; thence North $17^{\circ}40'32''$ West, a distance of 140.40 feet to the beginning of a curve concave Northeasterly having a chord bearing of North $17^{\circ}17'07''$ West; thence Northwesterly along said curve having a radius of 11,530.41 feet, through an angle of $00^{\circ}46'49''$, an arc distance of 157.02 feet to the end of said curve; thence North $54^{\circ}48'15''$ West, a distance of 151.14 feet to the present Meandering Line for South Fork River; thence South $00^{\circ}08'29''$ West along said Meandering Line, a distance of 488.47 feet to a point on said Northerly Existing Right of Way line for 1st. Street; thence South $85^{\circ}37'52''$ East along said Northerly Existing Right of Way line, a distance of 50.67 feet to the POINT OF BEGINNING.

Containing 1.899 acres, more or less.

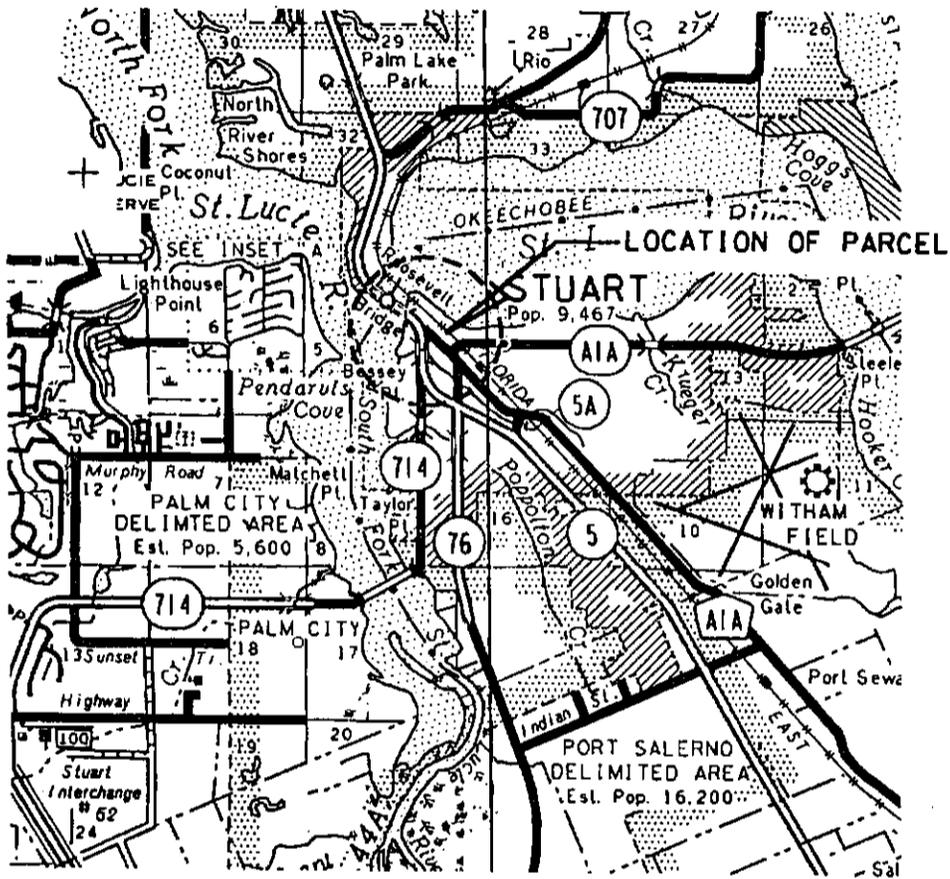
I hereby certify that, to the best of my knowledge and belief, the attached legal land descriptions of Parcel 126(PART) as shown on the Florida Department of Transportation Right of Way Map for Section 89010-2548 are true, accurate and were prepared under my direction.

I further certify that, said legal land descriptions are in compliance with the Minimum Technical Standards as set forth by the Florida Board of Professional Land Surveyors, pursuant to Section 472.027, Florida Statutes


 Name of Surveyor
 Florida Professional Land Surveyor No. 3509
 Date: 10/30/97
 Florida Department of Transportation

ORBK 3 1 9 PGI 2 2 7

RGE. 41 EAST



TWP. 38 SOUTH

LOCATION MAP

SCALE: 1" = 1 MILE

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
DISTRICT 4
SURVEYING & MAPPING
3400 WEST COMMERCIAL BLVD.
(305) 777-4550

NOT A SURVEY

FLORIDA DEPARTMENT OF TRANSPORTATION. RIGHT OF WAY SURVEYING AND MAPPING			
RIGHT OF WAY PARCEL SKETCH			
STATE ROAD NO. 5		MARTIN	COUNTY
BY	DATE	APPROVED BY	DATE
PRELIM WILHJELM	10-09-97	<i>[Signature]</i>	10-24-97
FINAL T. BROWN	10-20-97		
CHECKED GUILIANO	10-21-97		
MAPS PREPARED BY		DISTRICT ADMIN. OF SURVEY & MAPPING	
DISTRICT 4		FIELD BOOK NO. 'S	
W.P.I. NO. 4116229		N/A	
		SCALE: 1" = 1 MILE	
SECTION 89010-2548		SHEET 1 OF 2	

REVISION	BY	DATE

111ed2 /usr2/proj/r/116229 parw126a.dgn

OR BK1 3 1 9 PG1 2 2 8

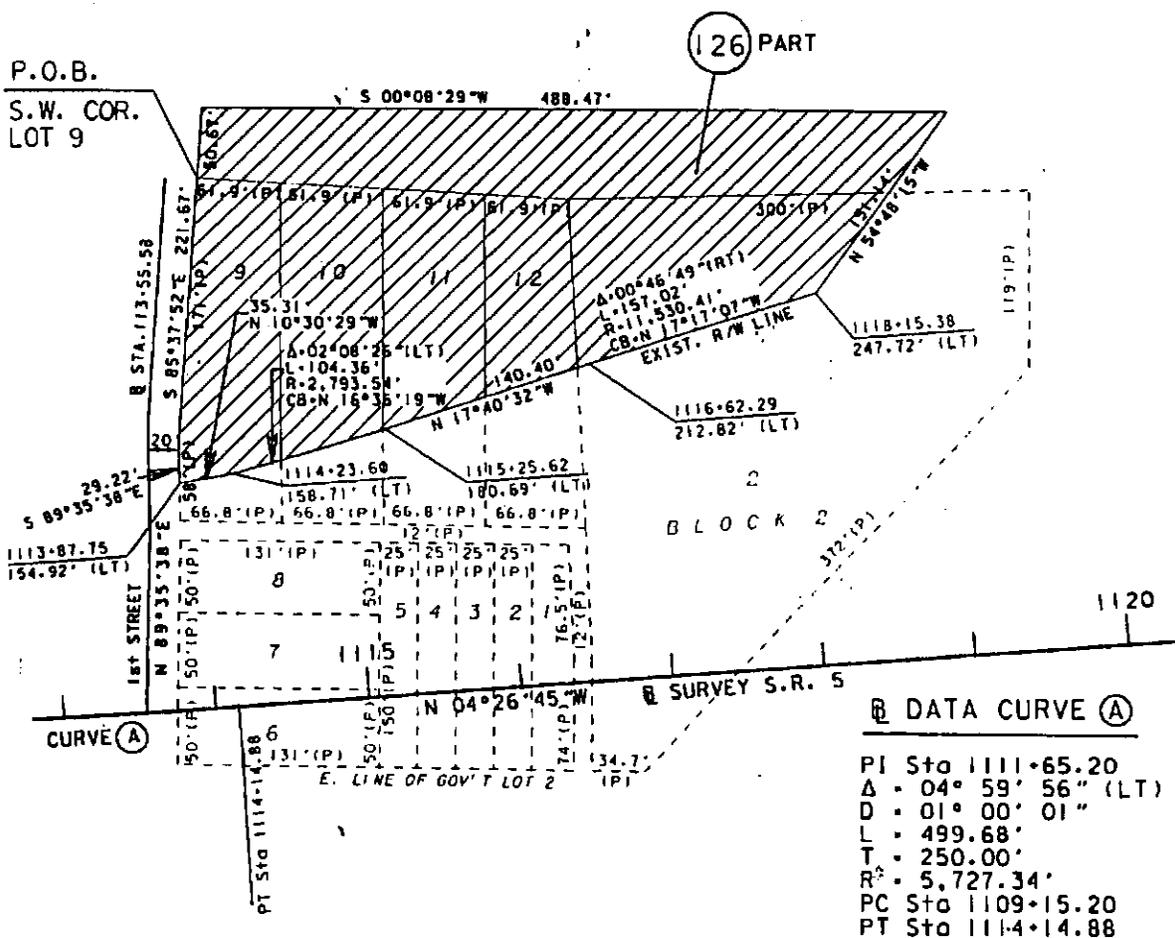
SEC. 5, TWP. 38 S., RGE. 41 E.

LEGEND:
 B - BASELINE P.B. - PLAT BOOK
 C - CENTERLINE PG. - PAGE
 CB - CHORD BEARING R - RADIUS
 L - LENGTH RGE. - RANGE
 LT - LEFT SEC. - SECTION
 (P) - PLAT TWP. - TOWNSHIP
 P.O.B. - POINT OF BEGINNING

SCALE 1" = 100'

FRENCH'S SUBDIVISION P.B. 5, PG. 41 (PALM BEACH COUNTY RECORDS)
 FINAL PLAT OF KITCHING'S ADDITION TO THE TOWN OF STUART, FLORIDA PB. 2, PG. 86 (PALM BEACH COUNTY RECORDS)

AREA OF PARCEL 126 PART - 1.899 ACRES



NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE RIGHT OF WAY MAP FOR STATE ROAD 5 (U.S.1) STATE PROJECT NO. 89010-2548 SHEET 2 OF 12.
- THIS SKETCH EXIST SOLELY FOR THE PURPOSE OF ILLUSTRATING THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED.
- HATCHED AREA TO BE SUPPLUS PROPERTY.
- ALL DIMENSIONS ARE CALCULATED UNLES OTHERWISE NOTED.

NOT A SURVEY

FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY SURVEYING AND MAPPING			
RIGHT OF WAY PARCEL SKETCH			
STATE ROAD NO.5(U.S.1)		MARTIN COUNTY	
PRELIM	WILHELM	10-09-97	APPROVED BY
FINAL	T.BROWN	10-20-97	
CHECKED	GUILIANO	10-21-97	DISTRICT ADMIN. OF SURVEY & MAPPING
MAPS PREPARED BY		FIELD BOOK NO.'S	
DISTRICT 4		N/A	
W.P.L. NO. 4116229		SCALE 1" = 100'	
SECTION 89010-2548		SHEET 2 OF 2	

1116d2 (var2)proj/r/116229 parcel26b.dgn

OR BK 1319 PG 1229

EXHIBIT B

FLORIDA

LAWTON CHILES
GOVERNOR



DEPARTMENT OF TRANSPORTATION

805 Suwannee Street Tallahassee, Florida 32399-0490

November 6, 1997

THOMAS F. BAARF, Jr.
SECRETARY

MEMORANDUM

TO: Kenneth M. Towemak, Director, Office of Right of Way

FROM: Pamela S. Leslie, General Counsel *pl*

COPIES: J. Garner, K. Kuester, M. Akridge, B. Telfair, J. Boltz

SUBJECT: Legal Definition of "Public Purpose Use" for Local Government Surplus Property Conveyances

QUESTIONS PRESENTED

What is the legal definition of a "public purpose use" for purpose of conveying Department owned surplus property to local governments for no consideration (or less than market value) as referenced in Section 337.25 (4)(h), Florida Statutes? Would the proposed use(s) of the above referenced property by the local municipality meet the requirements of a public purpose use?

BACKGROUND

In your memorandum to me dated October 22, 1997, you described the proposed use(s) in the above questions as follows:

First, local municipality would convey a leasehold interest in the property to a non-profit organization (for consideration) for use as a maritime museum, which would generate income from ticket sales and boat rentals.

Secondly, the local municipality would acquire the property for use as an "upscale park marina and anchorage facilities which are reasonably and customarily incidental thereto."

BRIEF ANSWERS

1. Section 337.25(4), Florida Statutes, has no definition of public purpose in the statute and there is no legal precedent on the statutory provision. Therefore, this opinion is guided by

OR BK 1 3 1 9 PG 1 2 3 0

MEMORANDUM

Page Two

November 6, 1997

the definition of public purpose, utilized for eminent domain proceedings under Article X, Section 6, of the Florida Constitution and the issuance of bonds under Articles VII and XII of the Florida Constitution. The constitution requires the government to control the terms and manner of the property's enjoyment by the public.

2. A marina and any necessary facilities incidental thereto will be considered a public purpose under the definition utilized in the areas of eminent domain and bond issuance.

DISCUSSION

Under Section 337.25(4), Florida Statutes, the Department can convey its surplus property to local governments for little or no consideration only if the property is to be utilized for a public purpose. Unfortunately, Chapter 337, Florida Statutes, does not contain a definition of "public purpose." Therefore, it is necessary to consider other areas which do define "public purpose." Such areas include eminent domain, bond issuances, and even tax exemption under the Florida Constitution. In all of the above areas, the definition of "public purpose" is the same. A widely accepted definition of "public purpose" is: "A use to be public must be fixed and definite. It must be one in which the public, as such, has an interest, and the terms and manner of its enjoyment must be within the control of the state..." 21 Fla. Jur2d, Eminent Domain, §27 (citing Daneter Land Co. v. Florida Public Service Co., 128 So. 402 (Fla. 1930)). In addition, "a public use must be available to all people equally, although it is not essential that the benefits of the use be received by the whole public or even a large part of it." Deven-Aire Villas Homeowners Assn., No. 4, Inc. v. Americable Associates, Ltd., 490 So. 2d 60 (Fla. 3d DCA 1985).

The definition of "public use" is virtually identical to the definition of "public purpose," and the two terms are often used interchangeably. However, "public use" and "public purpose" have been distinguished by the Supreme Court, which stated, "the concept of public purpose must be read more broadly to include projects which benefit the state in a tangible, foreseeable way." Department of Transportation v. Fortune Federal Savings and Loan Assn., 532 So. 2d 1267 (Fla. 1988). In Fortune Federal, the court found that a statute permitting the Department to condemn an entire tract of land if such a taking would reduce costs (i.e. preclude the award of business damages), even if only a portion of the land was needed, was constitutional. The court held that the purpose of "cutting acquisition costs to expand the financial base for further public projects" was a valid public purpose. Thus, even if the property is not needed for a public use, it may still serve a public purpose.

In the context of bond issuance, under Article IX, Section 10, of the 1885 Constitution superseded by Articles VII and XII, the Court held that "if the paramount purpose is a public purpose, such project may as an incident thereto lawfully benefit private corporations or individuals." State v. Jacksonville Port Authority, 204 So. 2d 881 (Fla. 1967). In Jacksonville Port Authority, the Court held that a shipyard with repair facilities leased to private corporation was not a "public purpose" because the facility was for the private use of a private corporation and because the public had no

OR BK1 3 1 9 PGI 2 3 1

MEMORANDUM

Page Three

November 6, 1997

control or dominion over the facility. See id. at 884. In contrast, the lease of substantial areas of a public park to a private enterprise to run a golf course, swimming pool, and related activities was still within the public purpose of recreation regardless of whether private facilities were employed to accomplish the use. See Baycol, Inc. v. Downtown Development Authority, 315 So. 2d 451 (Fla. 1975). In Panama City v. State, 93 So. 2d 608 (Fla. 1957), the Court held that concession buildings on the waterfront consisting of tackle shops, drug stores, novelty shops, and even beauty salons were a "necessary adjunct" to the main public enterprise, a marina. The Court did not even discuss the possibility that a marina was not a public purpose, but rather focused its analysis on the other facilities to be operated by private enterprise. The Court found that because the private benefits were merely incidental to the main public purpose, a marina, the overall project still fell within the definition of "public purpose."

CONCLUSION

The marina, park, and other facilities in the scenarios referred to in the request for an opinion will fall within the definition of a "public purpose" as long as the governmental entity has control over the facilities and the public has an interest in and ability to utilize the facilities. Therefore, a transfer of property such as a marina or maritime museum would be valid "public purpose" under Section 337.25(4)(h), Florida Statutes, and the controlling constitutional provisions.

WK:jt

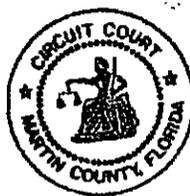
LAST
PAGE

ORBK1 3 1 9 PGI 2 3 2

510

INSTR # 2166730
OR BK 02410 PG 2303
Pg 2303 - 23061 (4pgs)
RECORDED 09/04/2009 03:50:08 PM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY T Copus (asst mgr)

This instrument prepared by:
Paul K. Hines, Esq.
Gunster, Yoakley & Stewart, P.A.
800 S.E. Monterey Commons Blvd., Suite 200
Stuart, FL 34996



MEMORANDUM OF ASSIGNMENT OF GROUND LEASE

THIS MEMORANDUM OF ASSIGNMENT OF GROUND LEASE ("Memorandum") is made as of the 30th day of June 2009, by and between **HUIZENGA HOLDINGS, INC.**, a Florida for profit corporation ("Assignor"), and **SUNSET BAY MARINA AND ANCHORAGE, LLC**, a Florida limited liability company ("Assignee").

WITNESSETH:

WHEREAS, on October 23, 2006, Assignor entered into that certain Absolute Net-Non-Subordinated Ground Lease (Southpoint Project) with the City of Stuart, Florida, as lessor ("Lessor") and Assignor, as lessee, as amended by that certain First Amendment to Ground Lease dated September 28, 2007 and that certain Second Amendment to Ground Lease dated January 28, 2008 (collectively, the "Ground Lease"), which Ground Lease is evidenced by that certain Memorandum of Lease recorded in Official Records Book 2200, Page 2518, of the Public Records of Martin County, Florida (the "MOL");

WHEREAS, pursuant to the terms of the Ground Lease, Lessor and Assignor entered into that certain Memorandum of Right of First Refusal recorded in Official Records Book 2200, Page 2524, of the Public Records of Martin County, Florida (the "ROFR");

WHEREAS, Assignor and Assignee have entered into that certain Assignment of Ground Lease dated the date hereof (the "Assignment") with respect to the Ground Lease and the ROFR which Assignment provides that Assignor has assigned to Assignee all of its right, title and interest in and to the Ground Lease, the MOL and the ROFR (collectively, the "Ground Lease Documents") and Assignee has assumed all of Assignor's obligations under the Ground Lease Documents, all in accordance with the terms, covenants and conditions set forth in the Assignment; and

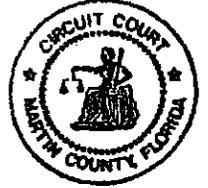
WHEREAS, Assignor and Assignee desire to enter into this Memorandum to give notice of said Assignment and all of its terms, covenants and conditions to the same extent as if the same were fully set forth herein.

NOW, THEREFORE, in consideration of the Assignment and mutual covenants and agreements set forth herein, Assignor and Assignee hereby agree as follows:

1. The above recitals are true and correct and are hereby incorporated into this Memorandum by this reference. All terms used but not defined herein shall have the meaning ascribed to them in the Assignment.

2. The sole purpose of this Memorandum is to give notice of said Assignment and all its terms, covenants and conditions to the same extent as if the same were fully set forth herein. The Assignment contains certain other rights and obligations in favor of Assignor and Assignee which are more fully set forth therein.

3. The terms, covenants and conditions contained in the Assignment shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.



(SIGNATURE PAGE FOLLOWS)

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

June 23, 2010

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

COPY

RE: Recording of Sovereignty Submerged Lands Lease / Sunset Bay Marina

Please record the above-mentioned original documents, and kindly return the original recorded document interoffice envelope 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 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

February 8, 2010

Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
Att: Taurean J. Lewis

RE: BOT Lease 430034296 / City of Stuart & Sunset Bay Marina and Anchorage LLC

Enclosed please find (2) original lease instruments for signature by your agency. Upon full execution please forward one original back to my attention, to the address above, so that we may officially record the document into the public records of Martin County.

Should you have any questions or need further information, please do not hesitate to call Charles Iverson at 772-288-5320

Respectfully,

Cherie White, MMC, City Clerk

Enc.

COPY



GUNSTER

ATTORNEYS AT LAW

Our File Number: 10758.00043
Writer's Direct Dial Number: (772) 223-2220
Writer's E-Mail Address: stessem@gunster.com

January 19, 2010

HAND DELIVERY

Mr. Paul J. Nicoletti
City Attorney
City of Stuart
121 SW Flagler Avenue
Stuart, FL 34994

RECEIVED

JAN 19 2010

CITY OF STUART
OFFICE OF CITY ATTORNEY

Re: Sovereignty Submerged Lands Lease Modification to Reflect Change of Ownership (the "Lease") by and between Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, as Lessor and the City of Stuart, Florida and Sunset Bay Marina and Anchorage, LLC, as Lessee

Dear Paul:

In connection with the above referenced Lease, enclosed please find three original executed copies of the Lease signed by Sunset Bay Marina and Anchorage, LLC and P & J Marine Management, LLC. In addition, we have enclosed the original Billing Information Form Payments for Lease No. 430034296.

We presume that once the City has executed the Lease, you will forward it to the Florida Department of Environmental Protection. Please send us a copy of the signed Lease, together with a copy of your transmittal letter to the Florida Department of Environmental Protection.

If you have any questions in this regard, please do not hesitate to let us know.

Sincerely,

Sharon A. Tessem
Florida Registered Paralegal

Enclosures

cc: Robert Raynes, Jr., Esq.
Cris Branden

STUART 244807.1

BILLING INFORMATION FORM
PAYMENTS FOR LEASE NO. 430034296

Billing Contact Person: PAM ALEXANDER
Billing Address: 615 SW ANCHORAGE WAY
Post Office Box: _____
City: STUART
State: FL Zip Code: 34994
Telephone Number: (772) 283-9225
Area Code
Fax Number: (772) 283-7361
Area Code
E-Mail Address: preince@mac.com & rwolfere@jycheholdings.com
Facility Address: 615 SW Anchorage Way
City: Stuart
State: FL Zip Code: 34994

BOT No.: 430034296
City of Stuart, Florida
Sunset Bay Marina & Anchorage, LLC

SALES TAX CERTIFICATION/EXEMPTION

Six percent (6%) sales tax is due on each lease fee payment unless the Lessee can claim an ownership exemption. I/We are exempt from sales tax for the reason checked below.

- Government Agency: _____ (Exemption Number)
- Exempt Organization: _____ (Exemption Number)
- Lease and collect sales tax on all available dock spaces.
_____ (Sales Tax Number)
- Lease and collect sales tax on some available dock spaces but fully assume the responsibility to remit six percent sales tax on that portion of space on which no sales tax is charged.
_____ (Sales Tax Number)
- None of the above can be claimed.

A copy of the Florida Annual Resale Certificate For Sales Tax or the Certificate of Exemption must accompany this form to claim this exemption pursuant to Section 212.07(1)(b), F.S.

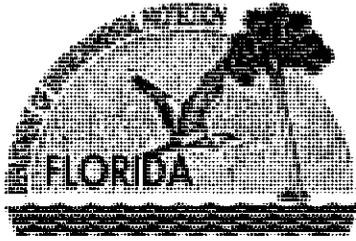
If Lessee is a Business/Corporation, Federal Employer Identification Number: 26-2485720

I/We certify that the above information is correct and agree to NOTIFY THE BUREAU OF PUBLIC LAND ADMINISTRATION'S ACCOUNTING SECTION AT (850) 245-2720 within 30 days of the date of any change in the above designated billing agent, phone number, fax number or Lessee's tax status.

Signed: [Signature] _____
Lessee/Authorized Entity Date

For Recurring Revenue Section Use Only

Billing Form to Accountant: _____	_____/_____/_____
Originator's signature	
Data Entered by Accountant: _____	_____/_____/_____
Accountant's signature	



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

June 16, 2010

City of Stuart/Sunset Bay Marina
Attn: Sam Amerson
121 SW Flagler Avenue
Stuart, FL 34994

BOT Lease No. 430034296
Lessee: City of Stuart, Sunset Bay Marina and Anchorage, LLC

Dear Mr. Amerson:

Enclosed is a fully executed **original** lease for **your** records. The lease requires the Lessee to have the fully executed **original** lease (all pages) recorded within 14 days after receipt of this letter. The **original** lease is to be recorded in the official records of the county where the leased site is located. **Please provide within 10 days following recordation, a copy of the recorded lease to Michelle Brady** at the letterhead address above (Mail Station No. 125).

If the billing agent, phone number or fax number change, or there is a change in the lessee's tax status, please notify the BUREAU OF PUBLIC LAND ADMINISTRATION'S ACCOUNTING SECTION at (850) 245-2720 within 30 days of the date of any change.

Any future correspondence or inquiries should be directed to this office at the letterhead address above (Mail Station No. 125) or at 850/245-2720.

Thank you for your assistance and cooperation in this matter.

Sincerely,

Kathy C. Griffin
Government Operations Consultant I
Bureau of Public Land Administration
Division of State Lands

/kcg

Enclosures

cc: File

DEP, SE District Office