

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Greater Construction Corporation Estoppel Certificate

DEPARTMENT: Administrative Services **DIVISION:** Support Services

AUTHORIZED BY: Steve Howard **CONTACT:** Meloney Lung **EXT.** 5256

Agenda Date <u>9/26/06</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute Greater Construction Corporation Estoppel Certificate (for leased office space in Casselberry for the Health Department and Community Services)

BACKGROUND:

The County currently leases office space (9,372 square feet) in Greater Market Place for the Health Department and Community Services. The current lease was effective on March 1, 2005 and is due to expire on February 28, 2010.

By contract, the County is required to provide an Estoppel Certificate whenever the landlord is re-financing, selling, or conducting other activities that count on our monthly rental payment. It affirms that the County agrees to the terms of the original lease, establishes that neither party is in default, and what terms the County intends to be bound to in the future.

Since the County could not meet the requested timeframe to process the certificate with BCC approval, the County Attorney's office provided a letter to the landlord affirming that the Estoppel would go to the BCC for approval at the earliest possible time (September 26, 2006) and they did not anticipate any difficulties obtaining BCC approval at that time. Greater Construction Corporation has accepted this letter.

Reviewed by:	<u>[Signature]</u>
Co Atty:	<u>[Signature]</u>
DFS:	<u> </u>
Other:	<u> </u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>CASS01</u>

District 1, Commissioner Dalari

THIS INSTRUMENT WAS PREPARED BY AND
WHEN RECORDED SHOULD BE RETURNED TO:

Randolph J. Rush, Esq.
Winderweedle, Haines, Ward
& Woodman, P.A.
Post Office Box 880
Winter Park, Florida 32790-0880

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), is dated as of the 20th day of July 2006, and is executed by and among EQUITRUST LIFE INSURANCE COMPANY, an Iowa corporation ("Lender"), with its principal office at 5400 University Avenue, West Des Moines, Iowa 50266, Attn: Real Estate and Commercial Mortgage Manager; Seminole County ("Tenant"), having an address of 1101 East First Street, Sanford, Florida, 32771; and Greater Properties, Inc., a Florida corporation ("Borrower") having an address of 1033 SR 436, Casselberry, FL 32707.

WITNESSETH:

WHEREAS, Borrower is the owner in fee simple of that certain real property and all improvements thereon situated in the City of Casselberry, County of Seminole, State of Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Seminole County ("Tenant") has entered into that certain Lease Agreement dated February 2, 2005, as the same may have been or may be amended, with Borrower covering a portion of the Property consisting of certain premises more fully described in said Lease ("Leased Premises");

WHEREAS, by Mortgage, Security Agreement, Financing Statement and Fixture Filing with Absolute Assignment of Rents and Leases, as the same may be amended or otherwise modified from time to time (the "Mortgage") and by an Absolute Assignment of Leases, Rents and Income, as the same may be amended or otherwise modified from time to time ("Assignment of Leases"), recorded or to be recorded in the Official Records of Seminole, Florida, concurrently with or prior to the recordation of this Agreement, Borrower has granted a first mortgage lien and security interest in the Property and the Leased Premises and an assignment of all leases, rents and income to and from the Property and the Leased Premises to Lender; and

WHEREAS, Tenant agrees to subordinate the Lease to the lien and charge of the Mortgage and the Assignment of Leases, and Tenant desires to be assured of continued

occupancy of the Leased Premises under the terms of the Lease, subject to the terms of the Mortgage and Assignment of Leases;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. The Lease, and all estates, rights and interests, (including but not by way of limitation, any renewal, extension or expansion options set forth or contained therein), liens and charges therein contained or created thereunder, are and shall be and continue to be subject and subordinate in all respects to the lien, terms, provisions, rights, conditions and effect (collectively the "lien") of the Mortgage and the Assignment of Leases insofar as the lien affects the Property, the Leased Premises and all real and personal property of which the Leased Premises forms a part, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage and the Assignment of Leases; to the full extent of the indebtedness secured by the Mortgage and the Assignment of Leases, with the same force and effect as if the Mortgage and the Assignment of Leases had both been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Lender should succeed to the interest of Borrower under the Lease, whether by foreclosure of the Mortgage, or by deed in lieu of foreclosure, or otherwise, Lender agrees not to affect or disturb Tenant's right to possession of the Leased Premises so long as Tenant has not defaulted or is not in default under any of the terms, covenants or conditions of the Lease.

3. In the event that Lender shall succeed to the interest of Borrower under the Lease, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease, subject to the terms and conditions set forth in this Agreement. Accordingly, from and after such event, Lender and Tenant shall have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Borrower had before Lender succeeded to the interest of Borrower; provided, however, that notwithstanding anything to the contrary set forth in this paragraph, Lender shall not be:

(i) Liable for any act, omission, breach or default of any prior landlord (including the Borrower) or that occurred or arose prior to the date that Lender succeeded to the interest of Borrower under the Lease; or

(ii) Subject to or bound by any offsets, deductions, claims, causes of action or defenses which Tenant might have against any prior landlord (including the Borrower) or against the Lease or any provisions thereof or payments thereunder; or

(iii) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including the Borrower); or

(iv) Bound by or subject to any amendment or modification of the Lease made without the written consent of Lender; or

(v) Bound to recognize any security or other refundable deposit made by Tenant with any prior landlord (including the Borrower); or

(vi) Bound to make any improvements or alterations agreed to by any prior landlord (including Borrower).

4. In the event that Lender or anyone else acquires title to or the right to possession of the Leased Premises or Property upon the foreclosure of the Mortgage, or upon the sale of the Leased Premises or Property by Lender or its successors or assigns, after foreclosure, or acquisition of title by deed in lieu thereof, or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but shall remain bound unto the new owner so long as the new owner agrees to be bound to Tenant under all terms, covenants and conditions of the Lease, subject to all terms, covenants and conditions of this Agreement.

5. In the event Lender or any other new owner shall exercise its or their rights under the Assignment of Leases, or the absolute assignment of rents under the Mortgage whereby the Lease rights of Borrower have been assigned to Lender, Tenant agrees to make all payments of rent or other sums payable by Tenant under the Lease directly to Lender or such other new owner (as the case may be) upon written notice by Lender or such other new owner to Tenant.

6. Tenant hereby warrants and represents, covenants and agrees with Lender:

(i) Not to alter, amend or modify the Lease in any respect without the prior written consent of Lender;

(ii) To deliver to Lender a duplicate of each notice of default delivered to Borrower at the same time as such notice is given to Borrower;

(iii) That Tenant is now the sole owner of the leasehold estate created by the Lease and shall not hereafter assign, mortgage, lien or encumber the Lease or any interest therein, or sublease all or any part of the Leased Premises except as may be expressly permitted by the terms thereof, and that notwithstanding any assignment, mortgage, lien, encumbrance or any sublease, Tenant shall remain primarily liable for the observance and performance of all of its agreements and obligations under the Lease;

(iv) Not to seek to terminate the Lease by reason of any default of Borrower without prior written notice thereof to Lender and the lapse thereafter of such time as under the Lease was granted to remedy the default, within which time Lender, at its option, may remedy any such default and Tenant shall accept any such cure or remedy

from Lender; provided, however, that with respect to any default of Borrower under the Lease which cannot reasonably be remedied by Borrower or Lender within such time, if Lender or Borrower commences to cure such default within such time and thereafter diligently proceeds with such efforts, Lender or Borrower shall be permitted such time as is reasonably necessary to complete curing such default;

(v) Not to anticipate the payment of rent, deposits or other sums due under the Lease or make payment of any rent or other sums due, under Lease for more than 30 days in advance of the date due; and

(vi) To promptly certify in writing to Lender, in connection with any proposed assignment of the Mortgage and Assignment of Leases, whether or not any default on the part of Borrower or Tenant then exists under the Lease and to specify in reasonable detail the nature of any claimed default.

7. Tenant acknowledges and agrees that Lender has not assumed and does not have any obligation or liability under or pursuant to the Lease by reason of the Mortgage or the Assignment of Leases until Lender forecloses the Mortgage or accepts a deed in lieu of foreclosure, and then Lender shall be obligated under the Lease subject to the terms of this Agreement.

8. Tenant hereby acknowledges and agrees that (i) any foreclosure successor (including Lender) shall have the right to assign its rights and obligations under the Lease to any other person to whom the Property is transferred, and upon such assignment such foreclosure successor shall have no further obligation or liability under the Lease, and (ii) the obligations of any foreclosure successor under the Lease shall not be personal obligations of such foreclosure successor, and recourse on such obligations may be had only against the right, title and interest of such foreclosure successor in and to the Property.

9. All notices to be given pursuant to this Agreement shall be sufficient if delivered to a nationally recognized overnight delivery service, addressed to the following described addresses of the parties hereto, or to such other address as a party may request in writing: (1) If to Borrower, then at its address first set forth above in this Agreement; (2) if to Tenant, then at its address first set forth above in this Agreement; and (3) if to Lender, then at its address first set forth above in this Agreement, Attn: Real Estate and Commercial Mortgage Manager, with a copy to Morain & Pugh, PLC, 5400 University Avenue, West Des Moines, Iowa 50266. Any time period provided in the giving of any notice hereunder shall commence upon, and notice given in accordance herewith shall be effective upon, the date delivered to said overnight delivery service.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and assigns. This Agreement may be executed by the parties hereto in one, two or more counterparts, all of which

LENDER:

EQUITRUST LIFE INSURANCE
COMPANY, an Iowa corporation

By: _____
Name: _____
Title: _____

STATE OF IOWA)
) ss.
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ___ day of _____, 200___,
by _____ as _____ of EQUITRUST LIFE
INSURANCE COMPANY, an Iowa corporation, on behalf of such corporation. S/He is []
personally known to me or [] has produced _____ as
identification.

Name: _____
Notary Public
My Commission Expires: _____

[SIGNATURE PAGE TO SNDA]

TENANT ESTOPPEL CERTIFICATE

EquiTrust Life Insurance Company
5400 University Avenue
West Des Moines, Iowa 50266

RE: **Lender:** EquiTrust Life Insurance Company

Landlord: Greater Properties, Inc., a Florida corporation

Property: Goodings Plaza I & II, Sausalito Road

Tenant: Seminole County

Lease: Lease Agreement between Landlord and Tenant dated February 2, 2005 as the same may have been amended or modified (attached hereto as Exhibit A)

Leased Premises: Suite 108/148

To Whom It May Concern:

This is to confirm that the Tenant hereby acknowledges that the above-referenced Landlord has assigned or may assign its interests under the above Lease to Lender in connection with a loan made or to be made by Lender to Landlord (the "Loan"). The undersigned Tenant has been asked to execute this Tenant Estoppel Certificate as an inducement to Lender to make the Loan, which Loan shall be secured by, among other things, a Mortgage, Security Agreement, Financing Statement and Fixture Filing with Absolute Assignment of Rents and Leases (the "Mortgage"). The undersigned acknowledges that Lender's willingness to make the Loan is based, in part, upon Lender's reliance on the truth and accuracy of the statements made herein, and Tenant understands and agrees that Lender will and shall be entitled to rely upon this Tenant Estoppel Certificate. Tenant hereby represents, warrants and certifies to Lender as follows:

1. Tenant has accepted, is satisfied with and is in full possession of the Leased Premises. The current term of the Lease began on March 1, 2005 and will expire on February 28, 2010. Tenant has or claims no right or option to renew or extend the term of the Lease except as follows:

Three (3) at One (1) years

(if there are no options to renew or extend the term, please write "NONE")¹.

¹If any answer is left blank on this Certificate, such blank shall mean that the answer is "NONE."

September 1, 2006

Greater Properties, Inc.
1033 State Road 436, Suite 121
Casselberry, Florida 32707

EquiTrust Life Insurance Company
Attn: Real Estate and Commercial Mortgage Manager
5400 University Avenue
West Des Moines, Iowa 50266

To Whom It May Concern:

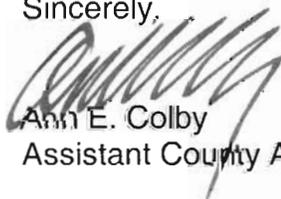
The undersigned, as Assistant County Attorney for Seminole County, Florida, hereby makes the following statements for the benefit of the above named parties.

I have reviewed the Estoppel Certificate concerning Seminole County's Lease of property located at Goodings Plaza I & II, Sausalito Road, Casselberry, Florida. This document accurately sets forth the terms of the agreement between the parties, establishes that neither party is in default, and sets forth the terms upon which Seminole County intends to be bound in the future. This document has been approved by me for submission to, approval of, and execution by the Board of County Commissioners for Seminole County, Florida (the "BCC"). This document has been placed on the Consent Agenda for approval by the BCC at its regular meeting on September 26, 2006. After diligent inquiry, I am unaware of any reason why these documents would not be approved by the BCC for signature in the ordinary course of business on September 26, 2006.

By Seminole County Code, the BCC is the only entity authorized to approve and execute the above referenced document. The Chairman of the BCC is authorized to execute documents on behalf of the BCC after approval by the BCC. This letter is being provided to explain that, although the documents have been approved by staff for execution, this cannot legally occur until September 26, 2006.

Should you have any further questions, please feel free to call or write.

Sincerely,



Ann E. Colby
Assistant County Attorney

AEC/lpk

cc: Meloney Lung, Manager, Support Services