COUNCIL ITEM 8D
DATE 12-10-12

ORDINANCE 12 - 74

COUNCIL ITEM 10D
DATE 11/26/12

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND MARTIN MEMORIAL MEDICAL CENTER, INC; PROVIDING AN EFFECTIVE DATE

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into a Lease Agreement between the City of Port St. Lucie and Martin Memorial Medical Center, Inc., said leased premises located in the Community Center, more particularly described in the Lease and all Amendments to the Lease Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective immediately upon its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this _____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

_____
Roger G. Orr, City Attorney

Lease Agreement Amendment

Contract # 20090120 Amendment # 1 Date: December 19, 2011

Contract Title: Lease Agreement for Wellness/Fitness Center-Employee Health & Fitness Center Program

Contractor's Name: Martin Memorial Medical Center, Inc.

Current Expiration: Continuing Contract

The following modifications to the Terms and Conditions contained in Lease Agreement #20090120 between Martin Memorial Medical Center, Inc dated December 19, 2011 and the City of Port St. Lucie are hereby incorporated and made a part of that Agreement.

1. With this Amendment, Martin Memorial Medical Center agrees to offer to the City of Port St. Lucie Employees a Health and Fitness Benefit as described in Attachment "A" and Exhibit "A", hereby incorporated and made a part of this Agreement.

2. All other terms and conditions of the original Lease Agreement and/or Addenda apply.

IN WITNESS WHEREOF, the parties have executed this Agreement at Port St. Lucie Florida, the day and year first above written.

CITY OF PORT ST. LUCIE FLORIDA

By: _____
Jerry A. Bentrott, City Manager

ATTEST:

By: _____
for Karen A. Phillips, City Clerk

By: _____
Authorized Representative of **Martin Memorial Medical Center, Inc.**

State of: Florida

County of: Martin

Before me personally appeared: Donna Griffith
(please print)

Personally known ✓

or Produced Identification: _____
(type of identification)

Identification No. _____

known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that She executed said instrument for the purposes therein expressed.
(he/she)

WITNESS my hand and official seal, this 27 day of March, 2012

_____
Notary Signature

Notary Public-State of Florida at Large

My Commission Expires: Feb 14, 2015.

DANA A. NILSON
Commission # EE 038917
Expires February 14, 2015
Bonded Thru Troy Fain Insurance 800-385-7019

(seal)

ATTACHMENT "A"

AGREEMENT FOR HEALTH AND FITNESS SERVICES
CITY OF PORT ST. LUCIE AND MARTIN MEMORIAL HEALTH AND FITNESS CENTERS

THIS AGREEMENT entered into as of this 19th day of December, 2011, by and between City of Port St. Lucie (hereinafter referred to as "EMPLOYER") AND Martin Memorial Medical Center, Inc. d/b/a the Martin Memorial Health & Fitness Centers, (hereinafter collectively referred to as the "HEALTH AND FITNESS CENTERS").

WITNESSETH

WHEREAS, the HEALTH AND FITNESS CENTERS offer a fitness program consisting of a health and fitness center, fitness classes and exercise supervision; and

WHEREAS, the EMPLOYER has an employee benefit program; and

WHEREAS, the EMPLOYER desires to offer its employees this benefit;

NOW THEREFORE, for good and valuable consideration:

I. RESPONSIBILITIES OF HEALTH AND FITNESS CENTERS

A. All of the HEALTH AND FITNESS CENTERS of Martin Memorial Medical Center, including those to be opened in the future, are available to enrolled employees; to the same extent, they are available to the public.

B. The HEALTH AND FITNESS CENTERS will conduct group orientations during high enrollment periods.

II. RESPONSIBILITIES OF THE EMPLOYER

A. EMPLOYER acknowledges that all membership rules of the HEALTH AND FITNESS CENTERS apply and that each employee and family member enrolled must execute the health risk screening, consent and release of liability forms.

B. EMPLOYER shall comply with the Martin Memorial Health Systems Code of Conduct and applicable MMHS policies. EMPLOYER acknowledges that the MMHS Code of Conduct is available on the MMHS website, at www.mmhs.com.

III. RATES

A. The rate schedule, as shown on Exhibit "A", applies to all EMPLOYER employees and their families. There will be no enrollment fee for employees or family members of EMPLOYER.

B. The family member rate applies to the following family members: a spouse and unmarried children who depend on the parent for support until their 19th birthday and children until their 25th birthday if they are enrolled as full time student at an accredited school or college.

IV. TERMS/TERMINATION

A. This Agreement is effective the first of January 2012 and shall be incorporated into the existing Lease Agreement.

V. OTHER

A. The contact person at EMPLOYER is:
Name Lisa Marie Lawrence
Phone # 772-871-5222
Email: llawrence@cityofpsl.com

The contact person at the HEALTH AND FITNESS CENTERS is:
Name: Nancy Aldrich, Supervisor Business Office
Phone # 772-223-5945 x 4634
Email: naldrich@mmhs-fla.org
Fax # 772-223-5676

B. Each party agrees to give the other party prompt notice of any claim of liability by any person of any sort in any form of which the party has been made aware.

C. No person shall be the subject of unlawful or unconstitutional discrimination on the basis of race, creed, color, religion, sex, national origin, age, veteran status or disability by either EMPLOYER or by the HEALTH AND FITNESS CENTERS during the term of this Agreement.

D. This Agreement shall not be modified except in writing approved by EMPLOYER and the appropriate officer or board for the HEALTH AND FITNESS CENTERS.

E. This Agreement is not assignable.

F. This Agreement shall be interpreted according to Florida law.

EXHIBIT A

City of PSL
Membership Rates & Hours of Operation
(Rates effective January 1, 2012)
(These are special rates available to this location only)
2195 SE Airoso Blvd
Port. St. Lucie, FL 34984
Phone: 772-344-0451

REGULAR MEMBERSHIP

Payments are accepted by Electronic Fund Transfer (EFT), this is the automatic withdrawal of monthly dues from a checking account or credit card. If a member stops the EFT deduction and then re-starts it within one year, a $35 restart fee will be charged. Members must complete three (3) monthly withdrawals before canceling this membership. Thirty (30) days written notice must be submitted to cancel this membership.

Annual memberships are paid in full in advance with cash, check or credit card.

	Enrollment Fee	Monthly EFT	Annual Fee
Individual Member	$0	$27	$290*
Individual Plus One Family Member	$0	$43	$482*
Family Membership	$0	$8	$100*

Hours of Operation:

Monday - Friday	6:00am – 8:00pm
Saturday	8:00am – 2:00pm
Sunday	8:00am – 2:00pm

Hours of Operation may change for the holidays. Advanced notice will be provided.

*Prices effective for one (1) year subject to change with lease renewal

P.O. Box 9010, Stuart, Florida 34995
PHONE: 772.287.5200
www.mmhs.com

MARTIN MEMORIAL
Health Systems

March 29, 2012

City of Port St. Lucie
121 S.W. Port St. Lucie Blvd.
Building "A" Suite #390
Port St. Lucie, FL 34984
Attn: Lisa Marie Lawrence
Contract Specialist
Office of Management & Budget

Dear Lisa,

Enclosed are two (2) fully signed Amendments #1 to Contract #20090120 entitled, "Lease Agreement for Wellness/Fitness Center-Employee Health & Fitness Center Program including Attachment "A" and Exhibit "A", Membership Rate Sheet between City of Port St. Lucie, and Martin Health & Fitness Services. Please return one (1) signed and fully executed copy to me.

We appreciate your business and hope that you continue your relationship with us. If you have any questions, please feel free to contact me at 772-223-5945, ext. 4634.

In good health,

Nancy Aldrich

Nancy Aldrich, Supervisor
Martin Health & Fitness in Palm City

APR 04 2012

Encl.

Lease Agreement Amendment

Contract #20090120 Amendment # 2 Date: _____

Contract Title: Lease Agreement for Wellness/Fitness Center-Employee Health & Fitness Center Program

Contractor's Name: Martin Memorial Medical Center, Inc.

Current Expiration: Continuing Contract

The following modifications to the Terms and Conditions contained in Lease Agreement #20090120 between Martin Memorial Medical Center, Inc. dated December 19, 2011 and the City of Port St. Lucie (City) are hereby incorporated and made a part of that Agreement.

1. With this Amendment, The City of Port St. Lucie, Parks and Recreation Department will provide Martin Memorial Health and Fitness Center located at the Community Center use of space for the Silver Sneakers program at no rental cost to Martin Memorial Health Systems. The use of space will be provided during the times listed below and location is subject to room availability:

Monday through Friday 11:15 a.m. until 12:15 p.m.

2. All other terms and conditions of the original Lease Agreement and/or Addenda apply.

(Balance of page left intentionally blank)

IN WITNESS WHEREOF, the parties have executed this Agreement at Port St. Lucie Florida, the _____ day of _____, 2012.

CITY OF PORT ST. LUCIE FLORIDA

By: _____
City Manager

ATTEST:

By: _____
City Clerk

By: _____
Authorized Representative of **Martin Memorial Medical Center, Inc.**

State of: _____

County of: _____

Before me personally appeared: _____
(please print)

Personally known _____

or Produced Identification: _____
(type of identification)

Identification No. _____

known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.
(he/she)

WITNESS my hand and official seal, this _____ day of _____, 20____.

_____
Notary Signature

Notary Public-State of _____ at Large

My Commission Expires: _____.

(seal)

LEASE AGREEMENT

THIS LEASE is made and entered into this 8th day of April, 2010, by and between **Martin Memorial Medical Center, Inc.** P.O Box 9010, Stuart, FL 34995; Telephone: 772-287-5200 ("**Tenant**"), and the **City of Port St. Lucie**, a Florida municipal corporation ("**Landlord**").

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord,-space in the City of Port St. Lucie Community Center consisting of 2,849 gross square feet ("Premises") in the building located at 2195 SE Airoso Boulevard, Port St. Lucie, Florida (Building), for the term and upon the conditions and agreements hereinafter set forth ("Lease"). This Lease shall constitute a binding agreement between the parties.

ARTICLE I
TERM

The term of this Lease shall begin on the 1st day April 2010 and, except as otherwise provided herein, the lease term will continue indefinitely until terminated by one of the parties. Termination, except "for cause", will require a 120 calendar day notice." as set forth more fully in Article XVII. "Lease Year" shall be defined as each 365 consecutive day period throughout the Term, beginning on the 1st day of April 2010 and each anniversary thereof.

Starting April 1, 2013, and every three (3) years there after, both parties agree to open for renegotiation, all current terms and conditions of this Lease Agreement. If parties are unable to achieve a mutually acceptable agreement, either party may cancel this Lease Agreement giving a one hundred twenty (120) calendar days' notice in writing to Tenant.

ARTICLE II
RENT

During the initial Lease Year, Tenant shall pay to Landlord, monthly rent, of $3,323.83. Rent shall be payable in advance, without notice, demand, setoff or deduction on the first day of each month, with the first installment being due on 1st day of April 2010. Monthly rent is based upon a figure of fourteen ($14) dollars per square foot X 2,849 gross square feet of space, for an initial Lease Year total of $39,886.00.

After the initial Lease Year, and for each subsequent Lease Year, the City shall base any monthly rent adjustment, as set forth herein, on the January CPI-U (all items-southern states) of each year. In no case, will the rent decrease from the then current year. The rent also includes the cost of electric, water and sewer, cable, cleaning, (excluding those items set forth in Article IV and Tenant's equipment) and common area maintenance.

ARTICLE III
USE OF PREMISIS

Tenant shall use and occupy the Premises as a wellness/fitness center ("Center") exclusively for Tenant's practice of wellness/fitness center activities and for no other purpose. Tenant shall not use or occupy the Premises in violation of law or of the Certificate of Use or Occupancy issued for the Building of which the Premises are a part, and shall immediately discontinue any use of the Premises which is declared by either any governmental authority having jurisdiction or the Landlord to be a violation of any law, code, regulation or a violation of said Certificate of Use or Occupancy. Tenant shall comply with any direction of any governmental authority having jurisdiction, which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof.

Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire and extended coverage insurance policy covering the Building and/or property located therein, and shall comply with all rules, orders, regulations and requirements of the appropriate Fire Rating Bureau or any other organization performing a similar function. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this paragraph. Tenant shall not do or permit anything to be done in, on or about the Premises which would in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or use or allow the Premises to be used for any immoral, unlawful or objectionable purpose, nor shall Tenant maintain or permit any nuisance or commit or suffer to be committed any waste in, on or about the Premises.

ARTICLE IV
BUILDING SERVICES

Landlord, at no cost or expense to Tenant, shall promptly, and in a workmanlike manner, perform all maintenance and make all repairs and replacements required to keep the Building in good order, condition and repair, except if the need for such maintenance, repairs or replacements is caused by the fault or negligence of Tenant.

The Tenant shall be responsible for all carpet/floor replacement and painting of the Premises.

ARTICLE V
ALTERATION

Tenant may not make any changes, alterations, improvements or additions to the Premises, or attach or affix any articles thereto without Landlord's prior written consent, except that the Tenant may affix exercise equipment as customarily necessary for such equipment. All alterations, additions, or improvements which may be made upon the Premises by Landlord or Tenant (except unattached trade fixtures and office furniture and equipment owned by Tenant) shall not be removed by Tenant, but shall become and remain the property of Landlord. All alterations, improvements and additions to the Premises (as permitted by Landlord) shall be done only by Landlord or contractors or mechanics approved by Landlord, and shall be at Tenant's sole expense and at such times and in such manner as Landlord may approve. If Tenant shall make any alterations, improvements or additions to the Premises not approved by Landlord, Landlord may require Tenant, at the expiration of this Lease, to restore the Premises to substantially the same condition as existed at the commencement of the Term. Any mechanic's or materialmen's lien for which Landlord has received a notice of intent to file or which has been filed against the Premises or the Building arising out of work done for or materials furnished to Tenant, shall be discharged, bonded over, or otherwise satisfied by Tenant within ten (10) days following the earlier of the date Landlord receives (1) notice of intent to file a lien; or (2) notice that the lien has been filed. If Tenant fails to discharge, bond over, or otherwise satisfy any such lien, Landlord may do so at Tenant's expense, and the amount expended by Landlord, including reasonable attorney's fees, shall be paid by Tenant within ten (10) days following Tenant's receipt of a bill from Landlord.

ARTICLE VI
INDEMNIFICATION/INSURANCE

The Tenant shall indemnify and hold harmless the Landlord, and its Officers and their employees, from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Tenant and all persons employed or utilized by the Tenant in the performance of the Lease. Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of all applicable laws and building and construction codes shall be observed. As consideration for this indemnity provision, the Tenant shall be paid the sum of $10.00 (ten dollars).

The Tenant shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Lease, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as Landlord's review or acceptance of insurance maintained by Tenant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under the Lease. The Landlord, by and through its Risk Management Department, reserves the right, but not the obligation, to review and reject any insurer providing coverage.

The Landlord shall provide property insurance for property and equipment the City may own or lease. The Tenant shall be responsible for purchasing insurance for business and personal property that is not owned or leased by the Landlord as they deem appropriate.

Commercial General Liability for public liability during the lifetime of this Lease shall have minimum limits of $1,000,000 each occurrence, $2,000,000 aggregate for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. All insurance policies shall be issued from a company or companies duly licensed by the State of Florida. All policies shall be on an occurrence-made basis; the City shall not accept claims-made policies.

Tenant shall agree to maintain Business Automobile Liability at a limit of liability not less than $500,000 each occurrence for any auto, owned, non-owned and hired automobiles. In the event the Tenant does not own any automobiles the Business Auto Liability requirement shall be amended allowing Tenant to agree to maintain only Hired & Non-Owned Auto Liability.

The Tenant shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes.

Except as to Workers' Compensation and Employers' Liability, said Certificate(s) and policies shall clearly state that coverage required by the Lease has been endorsed to include the Landlord of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured with a CG 2026-Designated Person or Organization endorsement, or similar endorsement, added to its' Commercial General Liability policy. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, political subdivision of the State of Florida, its officers, employees and agents, and Lease **#90-197102-2009120**. The Certificate of Insurance and policy shall unequivocally provide thirty- (30) days' written notice to the Landlord prior to any adverse changes, cancellation, or non-renewal of coverage there under. Said liability insurance must be acceptable by and approved by the Landlord as to form and types of coverage. In the event that the statutory liability of the Landlord is amended during the term of this Lease to exceed the above limits, the Tenant shall be required, upon thirty - (30) days written notice by the Landlord, to provide coverage at least equal to the amended statutory limit of liability of the Landlord.

Tenant shall agree by entering into this Lease to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Lease to waive subrogation without an endorsement then Tenant shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Tenant enter into such a Lease on a pre-loss basis.

It shall be the responsibility of the Tenant to ensure that all subcontractors comply with the same insurance requirements referenced above. All deductible amounts shall be paid for and be the responsibility of the Tenant for any and all claims under this Lease.

Tenant may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. When required by the insurer, or when Umbrella or Excess Liability is written on "Non-Follow Form," the Landlord shall be endorsed as an "Additional Insured."

OSHA Compliance – The Tenant must agree that the products furnished and application methods will comply with the applicable provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.

ARTICLE VII
ASSIGNMENT AND SUBLETTING

Tenant shall not, either voluntarily or by operation of law, sell, hypothecate, assign or transfer this Lease, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be occupied by anyone other than Tenant or Tenant's employees, without the prior written consent of Landlord. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provision of this Article VII shall be null and void and of no effect and shall constitute a default hereunder. The consent by Landlord to an assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting. Landlord's consent to any assignment or subletting shall not release Tenant from its primary liability under the Lease.

ARTICLE VIII
DAMAGE OR DESTRUCTION

If the Premises are damaged by fire or other casualty (collective "Casualty"), the damage shall be repaired by and at the expense of Landlord, provided such repairs can, in Landlord's reasonable opinion, be made within sixty (60) days after the occurrence of such Casualty without the payment of overtime or other premiums. Until such repairs are completed, the Rent shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of Tenant's Center. However, there shall be no abatement of Rent by reason of any portion of the Premises being unusable for a period equal to one day or less, or if the casualty is due to the negligent acts or omissions of Tenant or Tenant's employees.

If such repairs cannot, in Landlord's reasonable opinion, be made within sixty (60) days, Landlord may, at its option, make them within a reasonable time, not to exceed one hundred twenty (120) days, and in such event this Lease shall continue in effect and the Rent shall be apportioned in the manner provided above. Landlord's election to make such repairs must be evidenced by written notice to Tenant within thirty (30) days after the occurrence of the damage.

If Landlord does not so elect to make such repairs which cannot be made within sixty (60) days, then either party may, by written notice to the other, cancel this Lease as of the date of the casualty. A total destruction of the Building in which the Premises are located shall automatically terminate the Lease.

ARTICLE IX
DEFAULTS

The occurrence of any of the following shall constitute a material default and breach of the Lease:

1. The vacating or abandonment of the Premises by Tenant.
2. A failure by Tenant to pay the Rent by the date due

3. A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, provided that the Landlord shall give the Tenant written notice thereof and a reasonable time within which to cure the default.
4. The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.
5. A failure by Tenant to operate as a wellness/fitness center on the leased premises during the entire term with due diligence and efficiency
6. A failure to maintain insurance coverage as set forth herein.

Tenant shall not be in default in the performance of any obligation provided for herein, except with reference to the non-payment of Rent, a failure to maintain insurance coverage, and the failure to operate a Wellness/Fitness Center until Tenant has failed to perform such obligation within thirty (30) days after written notice by Landlord to Tenant specifying wherein Tenant has failed to perform such obligation. A failure to pay rent, maintain insurance coverage or operate a fitness center shall constitute an immediate default of the Lease Agreement and subject Tenant to a termination of Lease with cause.

Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligations within thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation. Provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

ARTICLE X
REMEDIES

In the event Tenant commits an act of default as set forth in Article IX, Landlord may terminate this Lease, subject to the Tenant's right to cure, as set forth above. Upon termination for cause, Tenant shall have thirty (30) days to vacate the premises and Landlord shall have the right to collect an amount equal to: all expenses incurred by Landlord in recovering possession of the Premises, including reasonable attorney's fees; all reasonable costs and charges for the care of the Premises while vacant; all reasonable costs incurred in restoring the Premises to its original condition; and damages for lost rent, subject to Landlord's mitigation.

ARTICLE XI
RULES AND REGULATIONS

Tenant shall observe faithfully and comply strictly with the Rules and Regulations set forth in Exhibit "A" in this Lease and made a part hereof, and such other rules and regulations as Landlord may from time to time reasonably adopt for the safety, care, and cleanliness of the Building or the preservation of good order therein. Landlord shall not be liable to Tenant for violation of any such Rules and Regulations, or for the breach of any covenant or condition in any lease by any other tenant in the Building. By the signing of this Lease, Tenant acknowledges that Tenant has read and has agreed to comply with such Rules and Regulations.

ARTICLE XII
RIGHT OF ACCESS

Upon reasonable notice to Tenant, Landlord and its agents shall have free access to the Premises during all reasonable hours for the purpose of examining the same to ascertain if they are in good repair, to make reasonable repairs as required hereunder (provided, however, Landlord shall have no obligation as a result of such examination to make any repairs other than expressly set forth herein), and to exhibit the same to prospective purchasers or tenants.

ARTICLE XIII
END OF TERM

At the termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition and repair as at the Commencement Date, reasonable wear and tear accepted, and will leave the Premises broom-clean. If not then in default, Tenant shall have the right prior to said termination to remove any equipment, furniture, trade fixtures or other personal property placed in the Premises by Tenant, provided that Tenant promptly repairs any damage to the Premises caused by such removal.

In the event of holding over by Tenant after the expiration of this Lease, Tenant shall pay a sum equal to one and one-half (1 ½) times the sum of the monthly installment of Rent which is in effect at the expiration of the Lease. Any holding over without the written consent of Landlord shall thereafter constitute a tenancy at sufferance.

ARTICLE XIV
TRANSFER OF LANDLORD'S INTEREST

"Not Applicable"

ARTICLE XV
ESTOPPEL CERTIFICATE, ATTORNMENT, AND NON-DISTURBANCE

"Not Applicable"

ARTICLE XVI
NOTICES

Any notice required or permitted to be given hereunder shall be in writing and may be given by (1) hand-delivery and shall be deemed given on the date of delivery; (2) registered or certified mail and shall be deemed given the third day following the date of mailing; or (3) overnight delivery and shall be deemed given the following day, or via electronic mail and shall be deemed given on the day of delivery.

All notices shall be provided to the following addresses, unless and until either party provides the other party with written notice of a change of address:

Landlord: City of Port St. Lucie
Parks & Recreation Department
Community Center
2195 SE Airoso Boulevard
Port St. Lucie, FL 34984
Attn: Dianne White

Tenant: Martin Memorial Medical Center, Inc.
300 Hospital Avenue
Stuart, FL 34994
Attn: Matt Kelly, Director

ARTICLE XVII
TERMINATION

Either party may terminate this Lease without cause by giving the other party a one hundred twenty (120) calendar days' notice in writing and as set forth in Article I. Upon delivery of said notice and upon expiration of the one hundred twenty (120) day period, the Tenant shall discontinue all services in connection with the performance of this Lease and shall proceed to remove its equipment, and cancel promptly all existing contracts insofar as such contracts are chargeable to this Lease. Termination or expiration shall not relieve Tenant of any obligations set forth in this Lease or incurred during the term of the Lease including, but not limited to, indemnification of Landlord as provided herein.

The City may terminate this Lease with cause upon default of the Tenant as set forth in Articles IX and X by giving the Tenant thirty - (30) days' notice in writing. Upon delivery of said notice and prior to the expiration of the thirty - (30) days' period, the Tenant shall discontinue all services in connection with the performance of this Lease and shall proceed to remove its equipment, and cancel promptly all existing contracts insofar as such contracts are chargeable to this Lease. Termination or expiration shall not relieve Tenant of any obligations set forth in this Lease or incurred during the term of the Lease including, but not limited to, indemnification of Landlord as provided herein.

ARTICLE XVIII
SPECIAL CONDITIONS

A. ADDITIONAL CONSIDERATION:

As additional consideration for the lease of the premises, Tenant agrees as follows:

To supply all equipment and personnel relative to the successful operation and management of a wellness/fitness center as contemplated by Tenant. The Tenant shall be responsible for all maintenance required on its equipment.

The operation of the Center shall include, but not be limited to, the following services:

(a) Educational
(b) Health education,
(c) Sports related injuries prevention,
(d) Fitness education,
(e) Nutritional education,
(f) Rehabilitation education,
(g) Guest lectures from physicians, nurses, therapists, and the like,
(h) Fitness Services,
(i) Screen/physicals, strengthening programs, including, flexibility programs, etc.

The Landlord holds/conducts health related services and some private/public supported events that are not covered under this Lease and Tenant agrees that by entering into this Lease that Landlord shall not be prohibited from holding these services or events.

B. SPECIFIC REQUIREMENTS.

1. Tenant further agrees to the following:
   (a) All equipment provided by Tenant will be safe, durable, and of top quality.

   (b) Tenant will maintain all equipment in safe operating condition.

(c) Tenant shall be responsible for all carpet/floor repairs and painting of leased space.

2. Hours of Operation. The hours of operation will be from 6:00 a.m. until 8:30 p.m., Monday through Saturday, and 8:00 a.m. until 2:00 p.m. on Sunday. The Center shall close on all City holidays. If it is found that the hours are not adequate, or upon first opening there is no demand for late/early hours, then they will be adjusted per agreement between Landlord and Tenant.

3. The Tenant shall provide the City with monthly participation numbers.

4. The Tenant shall provide the City with a list of current members on a quarterly basis; the information shall include, name, address and telephone numbers for each member. The City agrees not to use this list in formation of a solicitation, nor shall the list be sold for any other venture.

5. The Tenant shall meet with City staff on a quarterly basis to discuss any issues.

6. Should the membership become too crowded for safe operation, memberships will be limited to Port St. Lucie residents (given that expansion and hour changes cannot be made).

7. The Tenant will handle all complaints that arise from the operation of the center pursuant to written policies approved by Landlord.

8. The Center will be staffed by qualified personnel.

C. TENANT'S RELATIONSHIP TO THE LANDLORD.

1. The Tenant as Independent Contractor. It is expressly agreed and understood that the Tenant is in all respects an independent contractor as to the operation of the Center. The method utilized to operate the Center shall be the responsibility of the Tenant.

   (a) The day-to-day supervision and control of the Tenant's employees and subcontractors is the responsibility solely of the Tenant.
   (b) The Landlord shall, additionally, throughout the life of the Lease have the right of reasonable approval or rejection of all planned educational programs.

2. Subcontracting. The Tenant may not subcontract services to be performed hereunder without the prior approval of the Landlord, which shall not be unreasonably withheld. No such approval will be construed as making the Landlord a party to, such subcontract nor shall approval be construed as subjecting the Landlord to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Tenant of its liability and obligation under this Lease.

3. Deficiencies. In the event that the Landlord determines that there are deficiencies in the services provided by the Tenant under the Lease, the Landlord shall notify the Tenant in writing as to the precise nature of any such deficiencies. Within ten (10) working days of receipt of such notice, Tenant shall take reasonable steps to correct any deficiencies.

4. Advertising and Erecting Signs.

   (a) The Tenant shall be required to submit any proposed erection of a sign either inside or outside the premises at least ten (10) days prior to the proposed advertisement date.

(b) The Tenant shall be required to comply with the Landlord's sign ordinance.

5. Telephone Services. The Tenant shall be responsible for providing the telephones it intends to utilize; however, they must be compatible with the phone line system installed in the Building. The Tenant shall also be responsible for any fees associated with the telephone system utilized by them along with any long distance calls issued from its phones. The Tenant must coordinate any telephone installation with the Landlord.

The Tenant shall have the exclusive right to operate a fitness center within the Community Center building and property. The Landlord shall not own, operate or lease a fitness center within two (2) miles of the Community Center.

ARTICLE XX
MISCELLANEOUS PROVISIONS

1. Attorney's Fees. In the event suit is brought by either party against the other for a breach or default under the terms of this Lease, the prevailing party shall be entitled to reasonable attorney's fees, which sum shall be fixed by the court.
2. Time of Essence. Time is of the essence with respect to the performance of every provision of this Lease.
3. Incorporation of Prior Agreements. Amendments – This Lease contains all of the agreements of the parties hereto with respect to any matter covered and mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
4. No Waiver– No waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord. The subsequent acceptance of Rent shall not be deemed a waiver of any preceding breach by Tenant of any term, covenant or condition of the Lease, other than the failure of Tenant to pay the particular Rent so accepted.
5. Quiet Enjoyment. Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises throughout the Term, subject to the terms and conditions of the Lease.
6. Binding Effect. This Lease shall be binding upon, and inure to the benefit of the parties hereto, their successors and assigns. However, nothing in this Article shall be deemed to amend the provisions of Article VII on Assignment and Subletting.
7. Governing Law. This Lease shall be governed by the laws of the State of Florida and is to be governed by the laws of Florida in all respects, without reference to the laws of any other state or nation. The venue of any action taken to enforce this Contract shall be in St. Lucie County, Florida.

IN WITNESS WHEREOF, the parties have executed this Contract at Port St. Lucie, Florida, the day and year first above written.

CITY OF PORT ST. LUCIE, FLORIDA

By: _____

INTERIM City Manager, JERRY A. BENTROTT

ATTEST:

By: _____

City Clerk, KAREN A. PHILLIPS

By: _____, President & CEO

Authorized Representative of **Martin Memorial Medical Center, Inc**

State of: Florida

County of: Martin

Before me personally appeared: Mark E. Robitaille

(please print)

Please check one:

Personally known ✓

Produced Identification: _____

(type of identification)

Identification No. _____

and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

(he/she)

WITNESS my hand and official seal, this 29 day of March, 2010

Dana A. Nilson

Notary Signature

DANA A. NILSON
Commission DD 640102
Expires February 14, 2011
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public-State of Florida at Large

My Commission Expires Feb 14, 2011.

(*seal*)

EXHIBIT "A"
OF LEASE AGREEMENT

RULES AND REGULATIONS

1. CONDUCT

Tenant shall not conduct its practice or business, or advertise such business, profession or activities of Tenant conducted in the Premises in any manner which violates local, state or federal laws or regulations.

2. HALLWAYS AND STAIRWAYS

Tenant shall not obstruct or use for storage, or for any purpose other than ingress and egress, the sidewalks, entrance, passage, courts, corridors, vestibules, halls, and stairways of the Building.

3. NUISANCES

Tenant shall not make or permit any noise, odor or act that is objectionable to other occupants of the Building to emanate from the Premises, and shall not create or maintain a nuisance thereon.

4. MUSICAL INSTRUMENTS, ETC.

Tenant shall not install or operate any phonograph, musical instrument, radio receiver or similar device in the Building in such manner as to disturb or annoy other tenants of the Building or the neighborhood.

5. LOCKS

No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism thereof. Tenant must upon their termination of its tenancy restore to Landlord all keys to the Premises and toilet rooms either furnished to or otherwise procured by Tenant, and in the event of loss of any keys so furnished, Tenant shall pay to Lessor the cost thereof. The Facility Administrator shall have a key for the Premises at all times.

6. OBSTRUCTING LIGHT, DAMAGE

The sash doors, sashes window glass doors, lights and skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilets and urinals shall not be used for any purpose other than those for which they were intended and constructed, and no rubbish, newspapers or other substance of any kind shall be thrown into them. Waste and excessive or unusual use of water shall not be allowed. Tenant shall not mark, drive nails, screw or drill into, paint, nor in any way deface the walls, ceilings, partitions, floors, wood, stone or iron work, except customary attachment of exercise equipment. The expense of any breakage, stoppage or damage resulting from a violation of this rule by Tenant shall be borne by Tenant. Tenant shall be permitted to hang pictures on office walls, but it must be done in a workmanlike manner and in such a way as not to damage or deface such walls.

7. WIRING

Electrical wiring of every kind shall be introduced and connected only as directed by Landlord, and no boring nor cutting of wires will be allowed except with the consent of Landlord. The location of the telephone, call boxes, etc., shall be subject to the approval of Landlord.

8. EQUIPMENT, MOVING, FURNITURE, ETC.

Landlord shall approve the weight, size and position of all fixtures, equipment and other property brought into the Building, and the times of moving which must be done under the supervision of Landlord. Landlord will not be responsible for any loss of or damage to any such equipment or property from any cause, and all damage done in the Building by moving or maintaining any such property shall be repaired at the expense of Tenant. All equipment shall be installed as required by law, and in accordance with and subject to written approval received on written application of Tenant.

9. REQUIREMENTS OF TENANT

The requirements of Tenant will be attended to only upon application at the office of the Landlord. Employees shall not perform any work nor do anything outside their regular duties unless under special instructions from Landlord. No employees shall admit any person, Tenant or otherwise, to any other office without instruction from the office of Landlord. All janitorial services personnel, guards, or any outside contractors employed by Tenant shall be subject to the regulations and control of Landlord, but shall not act as an agent or servant of Landlord.

10. MEDICAL AND HAZARDOUS WASTES

Tenant shall comply with all policies established from time to time by Landlord regarding the storage and disposal of hazardous substances, wastes and materials, and medical, special or infectious wastes.

11. ACCESS TO BUILDING

Any person entering or leaving the Building may be questioned by Building security regarding his/her business in the Building and may be required to sign in and out. Anyone who fails to provide a satisfactory reason for being in the Building may be excluded.

12. VEHICLES, ANIMALS, REFUSE

Tenant shall not allow anything to be placed on the outside ledges of the Premises or to be thrown out of the windows of the Building. No bicycle or other vehicle, and no animal shall be brought into the offices, halls, corridors, or any other parts of the Building by Tenant or the agents, employees or invitees of Tenant, and Tenant shall not place or permit to be placed any obstruction or refuse in any public part of the Building.

13. EQUIPMENT DEFECTS

Tenant shall give Landlord prompt notice of any accidents to or defects in the water pipes, gas pipes, electric lights and fixtures, heating apparatus, or any other service equipment.

14. PARKING

Unless otherwise specified by Landlord, Tenant and its employees may park automobiles only in spaces designated by Landlord for such purpose and shall in no event park in spaces reserved for public parking. Tenant agrees that Landlord assumes no responsibility of any kind whatsoever in reference to such automobile parking area or the use thereof by Tenant or its agents or employees.

15. CONSERVATION AND SECURITY

Tenant will see that all windows and doors are securely locked, and that all faucets and electric light switches are turned off before leaving the Building.

16. SIGNAGE

Tenant shall not place any sign upon the Premises or the Building without Landlord's prior written consent.

PORT ST. LUCIE CITY COUNCIL
AGENDA ITEM REQUEST

Meeting Date: November 26, 2012

Public Hearing ____ Ordinance XX Resolution ____ Motion ____

Item: #20090120, Lease Agreement for Operation of a Wellness/Fitness Center – Ordinance

Recommended Action:

Approval: to adopt an Ordinance for the Lease Agreement and Amendments with Martin Memorial Health Systems.

Exhibits: Department memo attached [ ] yes [X] no

Ordinance, Copies of Lease Agreement, Amendment #1, and Amendment #2

Summary Explanation/Background Information:

In 2009, the City of Port St. Lucie (City) and Martin Memorial Medical Center (MMMC) with approval from City Council entered into a Lease Agreement. This Agreement was for MMMC to operate a Wellness/Fitness Center at the Community Center. At that time no ordinance was adopted due to an oversight and staff is requesting that City Council adopt an ordinance at this time.

The Wellness/Fitness Center has proven to be beneficial to the City and continues to provide the citizens of the City enjoyment and an opportunity to "Live Well".

Director of OMB concurs with award. ____ City Manager concurs with award _____

Submitted by: *Sherman Conrad*

Title: Director, Parks and Recreation Date Submitted: November 8, 2012

RECEIVED
NOV 19 2012
City Manager's Office