

RESOLUTION NO. 95-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A LEASE RENEWAL AGREEMENT WITH R.G. GROUP, INC. d/b/a TIKI WATERFRONT SEA GRILL TO OPERATE A RESTAURANT FROM THE CITY OF RIVIERA BEACH MUNICIPAL MARINA; FOR A THREE (3) YEAR PERIOD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City is the owner of certain real property located at 200 East 13th Street, Riviera Beach, FL 33404, hereinafter "Property"; and

WHEREAS, the City and R. G. Group, Inc., hereinafter "Tenant" entered into that certain Lease dated September 3, 2003, which set forth conditions and covenants for Tenant to perform including but not **limited** to extensive improvements to the Premises in total value in excess of \$100,000; and

WHEREAS, the City and Tenant entered into another Lease Agreement dated December 2004, which provided for a three year lease term with an expiration date of December 2007, with an option to renew the Lease Agreement for an additional five (5) terms of thirty six months per term; and

WHEREAS, the Landlord and Tenant desire to exercise their right of renewal to the Lease Agreement for an additional term of three years; and

WHEREAS, Tenant has performed and kept all conditions and covenants of the aforementioned; and

WHEREAS, the Tenant desires to continue leasing the Premises for the purposes of operating a restaurant.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, AS FOLLOWS:

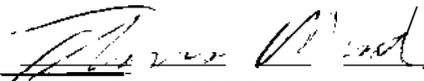
SECTION 1. That the City Council of the City of Riviera ~~Beach~~, Palm Beach County, Florida, approve the Lease Renewal Agreement with R.G. Group, Inc., d/b/a Tiki Waterfront Sea Grill.

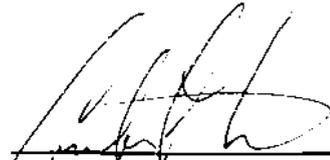
SECTION 2. The Mayor and City Clerk are authorized to execute the Lease Renewal Agreement on behalf of the City.

SECTION 3. This Resolution shall become effective upon its passage by the City Council.

PASSED AND APPROVED this 8 day of sept, 2008.

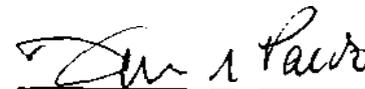
APPROVED:

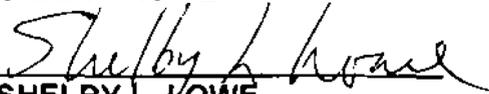

THOMAS MASTERS
MAYOR


CEDRICK A. THOMAS
CHAIRPERSON

ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


DAWN S. PARDO
CHAIR PRO-TEM


SHELBY L. LOWE
COUNCILPERSON


LYNNE L. HUBBARD
COUNCILPERSON


JUDY L. DAVIS
COUNCILPERSON

MOTIONED BY: D. Pardo

SECONDED BY: L. Hubbard

C. THOMAS aye

L. HUBBARD aye

C. THOMAS aye

D. PARDO aye

J. DAVIS aye

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYA, CITY ATTORNEY

DATE: 8/6/08

LEASE RENEWAL

This LEASE RENEWAL entered into this 8 day of August 2008, by and between the City of Riviera Beach, Florida, a municipal corporation, hereinafter referred to as "Landlord" or "City," whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, and R.C. Group, Inc., d/b/a! Tiki Waterfront Sea Grill, a corporation authorized to do business in the State of Florida, whose principal office is located at 12970 N. Shore Drive, Palm Beach Gardens, FL 33410.

WITNESSETH

WHEREAS, the City is the owner of certain real property located at 200 East 13th Street, Riviera Beach, FL 33404, hereinafter "Property"; and

WHEREAS, the City and Tiki Dockside Dining, Inc., entered into a 16-month Lease dated September 3, 2003, which set forth conditions and covenants for Tiki Dockside Dining, Inc. to perform including, but not limited to, making extensive improvements to that certain space designated as the Marina Restaurant, hereinafter referred to as the "Premises" or "Leased Premises"; said improvements to have a total value in excess of \$100,000; and

WHEREAS, the City and Tiki Dockside Dining, Inc., under the new name of R.C. Group, Inc., d/b/a Tiki Waterfront Sea Grill, hereinafter referred to as "Tenant," entered into a second Lease in December 2004, which provided for a three (3) year lease term with an expiration date of December 2007, and an option to renew the Lease for an additional five (5) terms of thirty-six months per term, said option to renew to be at the sole discretion of the Landlord; and

WHEREAS, the Landlord and Tenant desire to exercise their right to renew the Lease, under new terms as set forth herein; and

WHEREAS, the City finds that entering into this Lease Renewal is in the best interests of the City.

NOW, THEREFORE, in consideration of the covenants herein contained, on the part of the Tenant to be kept and performed, the Landlord does hereby enter into this Lease Renewal, hereinafter referred to as "Lease" with Tenant to lease the Premises, which consists of approximately 1,500 square feet of indoor "under air" space and 9,136 square feet of outdoor decking area for a total of 10,636 square feet of space. The Premises do not include the Marina boardwalk area. A site plan of the Premises is shown in Exhibit "A" attached hereto and made a part hereof.

To Have and to Hold the same on the following terms and conditions:

1. RENT

(a) Base Rent: Tenant shall pay the Landlord base rent in the amount of six thousand five hundred dollars (\$6,500) per month. The rent is payable on the 1st day of the month commencing on the Commencement Date.

Execution Copy

(b) Beginning the second year after the Commencement Date of this Lease and each year thereafter, the base rent shall be increased to reflect an adjustment based on the greater of two (2%) percent or the Consumer Price Index ("CPI") whichever is greater. However, the base rent for any new year shall at no time exceed a five percent (5%) increase over the base rent for the prior year.

(c) All rent payments shall be due and payable at Landlord's office at 200 East 13th Street, Riviera Beach, FL 33404, or at such other place as may be designated in writing by Landlord's representative, in advance without demand together with other monthly payments as set forth herein together with applicable Florida Sales Tax on all such payments. Mailing the rent does not constitute payment. It must be received at the designated address to be considered paid. In the event Tenant's payment is not received as set forth herein, Tenant shall also pay a late fee equal to five percent (5%) of the payment that is past due. If Tenant's check is returned unpaid by the bank Tenant shall pay Landlord an additional charge of \$25.00 to cover the expense of process and thereafter Landlord shall have the right to require all payments to be made in the form of cash, cashier's check, or money order.

(d) All taxes, charges, costs, assessments, insurance and expenses that Tenant assumes or agrees to pay hereunder, together with all interest and late charges that may accrue thereon in the event of the failure of Tenant to pay those items and all other damages, costs, expenses and sums that Landlord may suffer or incur, or that may become due by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions (If this Lease, shall be deemed to be additional rent and in the event of non-payment, Landlord shall have all rights and remedies as herein provided for failure to pay rent.

2. LEASE TERM

(a) The Term of this Lease shall be for thirty-six months (three years), hereinafter referred to as "Term," beginning on the later of the following: (i) on the first day after the expiration of the current Lease; which expiration date shall be December 31, 2007; or (ii) the first day of the month following the approval of this Lease by the City Council ("Commencement Date") and continuing through the last day of the thirty-sixth (36th) month after the Commencement Date unless sooner terminated in accordance with the terms of this Lease.

(b) Tenant shall have the right to renew this lease for an additional four (4) Terms of thirty six months (three years per Term). Any such renewal shall require approval by the City Council which approval may be granted in the sole discretion of the City Council. The option to renew shall be exercised by Tenant providing notice to Landlord at least sixty (60) days before the expiration of the existing Term.

(c) Notwithstanding the foregoing, it is understood by all parties that Landlord shall have the right to redevelop or sell the Property and/or the Premises thereon. In the event of Landlord's election to redevelop or sell the Property and/or Premises thereon,

Tenant's tenancy shall continue until Landlord shall have given Tenant a minimum of one hundred eighty (180) days written notice to relocate the leased Premises to a site suitable to Tenant's operation and/or to vacate the leased Premises, as more fully set forth in Paragraph 3 of this Lease.

3. RELOCATION - BUYOUT

(a) In the event Landlord elects to redevelop, sell, or lease control of the Property and/or the Premises thereon to a developing entity, the developing entity and/or the City, in said developing entity's and/or City's discretion, shall provide written notice to Tenant invoking the provisions of this Section of the Lease regarding Relocation-Buyout (hereinafter referred to as "Relocation-Buyout Notice"). Landlord will make reasonable efforts to relocate Tenant from its leased Premises to other facilities located on the City's Property within the Marina. The exact relocation shall be mutually agreed upon between the Tenant and developing entity, and the expense of any relocation shall be borne by the developing entity. If the Tenant, City and developing entity cannot agree upon an appropriate relocation within thirty (30) days of Tenant's receipt of the Relocation-Buyout Notice, relocation efforts shall cease and the Parties shall proceed with the Buyout provisions set forth in Subparagraph (b) below.

(b) In the event the above provisions are not feasible either to the satisfaction of the Tenant and/or the overall redevelopment plan as agreed between the City and the developing entity as provided above, then Tenant shall agree to a buyout of its leased Premises, by the developing entity; the value of the leasehold interest ("the Buyout Amount") shall be determined as follows:

(i) The Landlord shall select an appraisal firm which shall have ninety (90) days from selection to complete the valuation utilizing commercially accepted methods ("Initial Appraisal"). The cost of the appraisal shall be borne by the developing entity at its sole expense.

(ii) Upon receipt of the Initial Appraisal, Tenant shall have twenty (20) business days to notify the Landlord and the developing entity whether it accepts same or whether it elects to retain, at its sole expense, a review appraisal firm. The review appraisal (the "Review Appraisal") shall be provided to the Landlord and developing entity within thirty (30) days after the notice to the Landlord and developing entity of Tenant's decision not to accept the Initial Appraisal. Failure of Tenant to provide either its notice not to accept the Initial Appraisal or provide the Review Appraisal within the time limits set forth above shall act as a waiver of its right to contest the Initial Appraisal, and the valuation established by the Initial Appraisal shall be the Buyout Amount. The Initial Appraisal and the Review Appraisal shall consider only the remainder of Tenant's current leasehold Term in establishing the valuation of the leasehold.

(iii) The Parties shall make good faith efforts to resolve any discrepancies between the Initial and Review Appraisals, and if the Parties fail to reach an agreement, the Parties agree to participate in binding arbitration which shall be conducted by a mutually acceptable arbitrator who specializes in business valuations. Said arbitrator shall have thirty (30) days to reach a decision based upon the Initial and Review Appraisals.

4. USE

(a) Tenant, its successors and assigns, shall use the Leased Premises exclusively for the purposes of operating a restaurant. Restaurant operations shall include serving, two or three times a day, (i.e., breakfast, lunch and dinner) hot and cold meals and beverages both on the Premises and to go and selling beer, wine and other alcoholic beverages (with appropriate permits and licenses). Landlord, through its representative, shall provide notice and a two week cure period prior to declaring Tenant in default under this paragraph.

(b) The Premises may not be used for illegal, immoral or improper purposes.

(c) Tenant's failure to comply with any of the requirements set forth in this Section shall be deemed a material breach of this Lease and grounds for termination of same.

5 TENANTS OPERATIONS

(a) Tenant shall employ or lease a suitable and sufficient staff to operate Tenant's Restaurant at the Premises. All persons employed by Tenant shall be employees of Tenant, and in no event shall the Landlord be deemed to be an employer of any persons working for Tenant. The Tenant agrees to obtain a written acknowledgement signed by each of its employees acknowledging that they are employees solely of the Tenant and will look only to the Tenant for employee benefits and payroll. The Tenant agrees that each person employed or associated with the Tenant shall be required to maintain a neat, clean appearance and conduct himself/herself in a professional manner; and, in that regard, the Tenant will cooperate with the Landlord (including giving due consideration to any complaint registered with the Landlord with respect to such person or persons) to assure that such required appearance and conduct is maintained at all times.

(b) Tenant shall cause all of its employees to wear badges or uniforms prominently identifying the worker as an employee of the Tenant. The Tenant shall keep records of all employees and work schedules so as to assure proper identification of its employees and to assure its employees are using Tenant's identification properly.

(c) Tenant shall comply with the Rules and Regulations promulgated by or on behalf of the Landlord relating to the conduct of Tenant and others doing business at the Marina and their invitees, as they presently exist or as they may be amended from time to time. The Landlord's current Marina Rules and Regulations are available at the Marina Office.

6. PARKING AND MARINA SLIPS

(a) Tenant is given the right to use forty-five (45) automobile parking spaces for Tenant's customer use located on the Leased Premises. Landlord's representative shall designate the location of the forty-five (45) spaces, which may be re-designated from time to time. The location for the designated parking spaces will be attached hereto as Exhibit "B." Tenant may provide clearly marked signs stating "Restaurant Parking Only Violators Will Be Towed" or similar language in front of the spaces. Tenant shall have the right to tow automobiles parked illegally in Tenant's designated spaces.

Landlord shall also permit Tenant the right to use and have access to parking spaces for use as valet parking.

(b) Subject to availability, Tenant shall be given one (1) slip at no charge to Tenant, and shall have the right to rent additional slips, if available, from the Marina, at a rate of \$600 per month per slip, for the purpose of customers arriving by boat. Said customers shall be permitted to dock in the Tenant's slip(s), which slip(s) shall be designated by the Marina for Tenant's use and for this purpose, to the extent available and practicable, provided such customers show a valid receipt from the restaurant. Landlord shall not allow liveaboards to dock on boats adjacent to the Leased Premises. "Liveaboards" for the purpose of this section shall be defined as any vessel contemplated as being docked at the marina for a period of one (1) month or greater and which is intended to be occupied by the owner(s) thereof as a residence. All other vessels shall be deemed as transients and not fall within the provisions of this section.

7. PREPARATION OF PREMISES (If Any)

(a) Tenant shall maintain any and all licenses and permits necessary for operation of a restaurant.

(b) Post occupancy, Tenant shall be responsible for cleaning and vacating the Property.

8. IMPROVEMENTS

(a) Tenant shall maintain in good condition all improvements performed by Tenant.

(b) Prior to making any additional improvements, Tenant shall submit to Landlord in writing a detailed description of the proposed improvements. Any such proposed improvements shall be subject to final approval by the City Manager. Tenant agrees all improvements made by Tenant shall remain upon the Premises at the expiration or earlier termination of the Lease and shall become the property of the Landlord.

9. INSURANCE

(a) Prior to execution of this Lease, Tenant shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The certificates shall clearly indicate that the Tenant has obtained insurance of the type, amount, and classification as required for strict compliance with this section and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Landlord. Compliance with the foregoing requirements shall not relieve the Tenant of its liability and obligations under this Lease. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the Tenant shall specifically include the Landlord as an "Additional Insured,"

(b) The Tenant shall maintain, during the life of this Lease, commercial general liability,

including contractual liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence to protect the Tenant from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Lease, whether such operations be by the Tenant or by anyone directly employed by or contracting with the Tenant.

(c) The Tenant shall, if Tenant owns or leases any automobiles, maintain, during the life of this Lease, comprehensive automobile liability insurance in the minimum amount of \$100,000/\$300,000 combined single limit for bodily injury and property damages liability to protect the Tenant from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Tenant or by anyone directly or indirectly employed by the Tenant.

(d) The Tenant shall maintain, during the life of this Lease. Protection and Indemnity Coverage, with a limit of not less than \$200,000.00 per person, per occurrence.

(e) The Tenant shall maintain, during the life of this Lease, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute Section 440.02.

10. PUBLIC UTILITIES

(a) Landlord shall segregate Tenant's utilities from the Marina operations. Tenant shall pay for all utilities used or consumed in or upon the Premises which shall include, but not be limited to, gas, water and sewer, telephones, garbage pickup, and electricity. Unless otherwise stipulated herein and, if applicable, Tenant shall cause all accounts to be placed in Tenant's name no later than thirty (30) days after Landlord provides for separate accounting of each of the utilities outlined above.

(b) If Landlord determines that it is unable to segregate the Solid Waste Authority disposal special assessment fee incurred by Marina operations and Tenant's operations, then Tenant agrees that it shall be responsible for paying twenty percent (20%) of the Solid Waste Authority disposal special assessment fee billed to the Landlord annually. Such payment shall be invoiced to the Tenant and Tenant shall pay the Landlord within thirty (30) days of receipt of said invoice. In that event, Tenant shall not be required to pay in excess of \$7,000.00 per year.

If, however, the Solid Waste Authority disposal special assessment fee can be segregated, then Tenant agrees to pay the full amount as billed by the Solid Waste Authority.

11. TAXES

(a) Tenant shall pay, as additional rent, during the term of the Lease, all real estate taxes

on the Premises and its proportionate share of any real estate taxes assessed by any lawful authority against the Property as part of the common area maintenance costs.

(b) In the event that any governmental authority having jurisdiction shall levy any assessment against the Property, of which the Leased Premises is a part, for public betterment or improvement, Tenant shall also pay to Landlord as additional rent, Tenant's proportionate share of said assessments which proportionate share shall be calculated by multiplying the total assessment by the percentage for which the Tenant's Leased Premises is a portion of the whole premises assessed. Landlord shall take the benefit of the provisions of any statute or ordinance permitting any such assessment for public betterment or improvement to be paid over a period of time. The obligation of Tenant to pay any assessment for improvements shall only be for installments during the period of the tenancy.

(c) Landlord shall estimate these charges annually in advance and Tenant shall pay these estimates upon the same bases as additional rent under the same terms and conditions set forth herein. These estimated charges shall then be adjusted annually based on the actual tax bills. All payments for which tenant shall be obligated under the terms of this Section shall be due and payable ten (10) days after written notice by Landlord to Tenant of the amount due from Tenant. If Tenant shall have paid more than its proportionate share of the sums referred hereunder, Landlord shall credit Tenant's account of next rent payment then due with the over-payment. Tenant shall have the right to proceed for tax reduction with the Clunty Property Appraiser's Office

12. REPAIRS: MAINTENANCE OF PREMISES

(a) Landlord shall deliver the leased premises to Tenant compliant with the Americans With Disabilities Act and Landlord shall maintain such compliance. Landlord shall be responsible for the roof, exterior walls, bearing walls, and the outside of the Premises, including the driveway, parking lot and the existing trees, except as otherwise indicated herein. In the event repairs are necessary, Tenant shall give Landlord prior written notice of the necessity of such repairs; and provided, further, that if any such repair is required by reason of the Tenant's negligence (as well as intentional conduct) or of any of its agents, employees, or customers, or other person using the Premises, with Tenant's consent, expressed or implied, Landlord may make such repairs and add the cost thereof to the next installment of rent which shall thereafter become due within five (5) days of receipt of Landlord's bill concerning such costs. There shall be no allowance to Tenant and no liability on the part of the Landlord by reason of inconvenience or annoyance arising from the making of any repairs, alterations, additions or improvements to the Premises or any portion of the building in which Premises are located. Tenant shall keep the interior of the Premises, which includes, but is not limited to, all electrical, fire alarms and smoke detectors, plumbing, heating, air-conditioning vents and filters, and other mechanical installation therein, all doors and all plate glass and door window glass, in good order and clean and attractive appearance, making all repairs, alterations, replacements and modifications at its own expense and using materials and labor of a kind and quality equal to the original work and shall surrender the Premises at the expiration or earlier termination of this Lease in as good condition as when received, reasonable wear and tear excepted. In the event that Tenant chooses to landscape the areas surrounding the Leased Premises, Tenant shall also be responsible for all future maintenance and upkeep of such landscaping. Except

as herein provided, Landlord shall have no obligation to repair, maintain, alter, replace, or modify the Premises or any part thereof or any electrical, plumbing, heating, air-conditioning, or other mechanical installation therein.

(b) Except at the Commencement Date, Tenant may not alter or install locks without Landlord's written consent, as may be given by the Marina Director, and all keys shall be returned upon Tenant's vacating the Property. In the event Landlord consents to any additional locks, Tenant agrees to provide Landlord's Marina Director a key thereto at Tenant's expense. Any such additional lock shall remain affixed to the Property upon termination of this Lease and shall become the property of Landlord at the time of installation. At the time of termination of this Lease, Tenant shall be responsible for the replacement or cost of replacement for all keys furnished.

13. ALTERATIONS

Except as required by this Lease, Tenant shall not make any alterations, improvements or additions to the Premises during the term of the Lease or any extension thereof without first obtaining the written consent of Landlord. Tenant shall not cut or drill into, or secure any fixture, apparatus or equipment of any kind to any part of the Premises without first obtaining written consent of from the Landlord's representative. All such alterations, improvements and additions made by Tenant shall remain upon the Premises at the expiration or earlier termination of the Lease and shall become the property of the Landlord (except personal property), unless Landlord, through its representative shall, prior to such termination, have given written notice to Tenant to remove same, in which event Tenant shall remove such alterations, improvements and additions and restore the Premises to the same good order and condition in which they were at the commencement of the Lease. Should Tenant fail to do so, Landlord may do so, collecting the cost and expense thereof from Tenant as additional rent or, at Landlord's option, by application of the security deposit required hereunder.

14. COVENANTS OF TENANT

(a) Tenant covenants that it shall:

(1) Comply with the terms of any State or Federal Statute or local ordinance or regulation applicable to Tenant or its use of the Premises, and save the Landlord harmless from penalties, fines, costs, expenses, or damages resulting from its failure to do so.

(2) Comply with the terms and conditions set forth herein relating to the use, operation and maintenance of the Premises and the common areas and facilities.

(3) Give to Landlord prompt written notice of any accident, fire, or damage occurring on or to the Premises and the common area.

(4) Conduct its business on the Premises in a dignified and professional manner and keep the Premises in first-class condition in accordance with high standards of operation.

(5) Comply with all rules and regulations of the Landlord in effect at the time of the execution of the Lease as same may be amended or promulgated from time to time by Landlord, which Landlord shall deem necessary in connection with the Property, of which the Premises are a part, including the installation of such fire extinguishers and other safety equipment as the Landlord may require; and comply with the recommendations of the Landlord's insurance carriers and their rate-making bodies.

(6) Tenant shall have no power or authority to create any lien or permit any lien to attach to the Premises, reversion or other estate of Landlord in the Premises or Property in general or other improvements thereof, and all supplies, contractors, artisans, mechanics, and laborers and other persons contracting with Tenant with respect to the Premises or any part thereof, are hereby charged with notice that the interest of Landlord shall not be subject to liens for improvements made by or on behalf of Tenant, and therefore, Tenant agrees to do all things necessary to prevent the filing of any mechanic's or other liens against the Premises or any part thereof by reasons of work, labor services, or materials supplied or claimed to have been supplied to Tenant, or anyone holding the Premises, or any part thereof, through or under Tenant. If any such lien shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record within ten (10) days after notice of the date of filing. If Tenant shall fail to discharge such lien within said period, then in addition to any other right or remedy of Landlord resulting from Tenant's default, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by procuring the discharge by giving security or in such manner as is, or may be, prescribed by law.

(7) Tenant shall repay Landlord, on demand, all sums disbursed or deposited by Landlord pursuant to the terms and conditions of this Lease, including Landlord's costs, expenses and reasonable attorney's fees and such fees for appeals incurred by Landlord in connection therewith. Likewise, Landlord shall repay Tenant, on demand, all sums disbursed or deposited by Tenant pursuant to the terms and conditions of this Lease which should have been disbursed or deposited by Landlord, including Tenant's cost, expenses and reasonable attorney's fees and such fees for appeals incurred by Tenant in connection therewith.

(b) Tenant covenants that it shall not do any of the following without the prior consent in writing of Landlord or Landlord's representative:

(1) Use or operate any machinery or emit any noises or noxious odors from the Premises that is harmful to the building of which the Premises are a part or disturbing to other Tenants in the Property.

(2) Do or suffer to be done, anything objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the Premises or any part thereof, or on the building of which the Premises may be apart, shall become void or suspended, or be rated as a more hazardous risk than at the date when Tenant receives possession hereunder. In case of a breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant shall pay to Landlord as additional rent

any increases of premiums on insurance carried by Landlord on Landlord's property, or any part thereof, or on the building of which the Premises may be a part, caused in any way by the occupancy of Tenant. Nothing herein contained shall prevent Tenant from utilizing the premises for the Uses described in Paragraph 3 herein.

(3) Commit or suffer to be committed by any person, any waste upon the Premises or common areas or any nuisance or other act which may disturb the quiet enjoyment of any occupant of Landlord's property.

(4) Tenant shall neither use nor occupy the Premises or any part thereof for any unlawful, disreputable, or ultra-hazardous purpose nor operate or conduct its business in a manner constituting a nuisance of any kind in the judgment of Landlord. Tenant shall immediately, on discovery or notice of any unlawful or ultra-hazardous use, take action to halt such activity.

15. RIGHTS OF LANDLORD

Landlord reserves in addition to any rights reserved herein, the following rights with respect to the Premises:

(a) At all reasonable times, through its representative or its duly authorized agents, to go upon and inspect the Premises, and at its option to make repairs, alterations, and additions thereto with prior notice to Tenant. Tenant shall not be personally present, to open and permit an entry by Landlord's representative or agents into the Premises, and if an entry therein shall be necessary in the case of an emergency, it being understood that hurricanes or severe storm warnings shall constitute such an emergency, Landlord or Landlord's representative or agents may make forcible entry without rendering Landlord or such representative or agent liable therefore and without in any manner affecting the obligations and covenants of this Lease. Tenant hereby grants Landlord the necessary licenses to carry out the terms of this provision. It is expressly understood that Landlord, either directly or indirectly, may enter the public spaces of the Premises for the purpose of showing the property to prospective tenants and/or purchasers during the last thirty (30) days of the term of this Lease. Failure of Tenant to cooperate with Landlord with regard to the showing of the property at reasonable times shall be an event of default under Paragraph 27.

(b) After notice from either party of intention to terminate the Lease, or at any time within thirty (30) days prior to the expiration of the Lease, to display "For Lease" signs and such signs shall be placed upon such part of the Premises at any reasonable hour, both during and after normal business hours.

(c) To install or place upon, or affix to, the roof and exterior walls of the Premises or elsewhere, such equipment, signs, displays, antennas, or any other objects or structure of any kind, provided the same shall not materially impair the structural integrity of the building of which the Premises are a part.

(d) The exercise (if any right reserved to Landlord in this provision or otherwise, shall not

be deemed an eviction or disturbance of Tenant's use and possession of the Premises and shall not render Landlord liable in any manner to Tenant or to any other person, provided Tenant's use shall not be unreasonably impaired.

16. DAMAGE TO PREMISES

(a) If the Premises shall be damaged by fire or other casualty of the kind insured against in standard policies of fire insurance with extended coverage, but are not thereby rendered untenable in whole or in part, Landlord shall promptly, after receipt of the insurance proceeds, cause such damage to be repaired and the rent shall not be abated. If, by reason of such occurrence, the Premises shall be rendered untenable only in part, Landlord shall promptly, after receipt of the insurance proceeds, cause the damage to be repaired and the rent, meanwhile, shall be abated proportionately as to the portion of the Premises that cannot reasonably be utilized for the permitted use. If the Premises shall be rendered wholly untenable by reason of such occurrence, Landlord may promptly upon receipt of the insurance proceeds cause such damage to be repaired to its condition as of the commencement of the Lease, and the rent meanwhile shall be abated in whole, provided, however, that there shall be no extension of the term of the Lease by reason of such abatement, or in the alternative, Landlord may terminate the Lease by notice to Tenant, such notice to be given within thirty (30) days of the event rendering the Premises wholly untenable. Such termination by Landlord shall not affect any prior defaults of Tenant. Except as herein provided, there shall be no obligation to Landlord to repair or build in case of fire or other casualty. The rent abatement provided herein shall not apply if Tenant has business interruption insurance.

(b) Notwithstanding the provisions of Paragraph 16(a) above, if the Premises cannot be rendered tenable for the Tenant's needs in whole or in part within two (2) months [from the date of a fire or other casualty, Tenant shall have the right to terminate the Lease, provided the fire or other casualty is not caused by Tenant's negligence or intentional act.

(c) Any damage caused by any negligent or intentional act of Tenant or any of its agents, principals, representatives or employees shall not abate Tenant's responsibility to pay rent.

17. INDEMNIFICATION

(a) Tenant shall indemnify Landlord and its agents and save it harmless from and against any and all claims, actions, damages, liability, and expense, including attorney's fees, in connection with loss of life, personal injury, or damage to property occurring in or arising out of the Premises, adjacent sidewalks, loading platforms or any other areas (except the parking lot unless caused by Tenant's patrons), occasioned wholly or in part by any act, occurrence or omission of Tenant, its agents, subtenants, licensees, contractors, or employees, except to the extent attributable to the grossly negligent or intentional acts or omissions of Landlord, its employees, agents or independent contractors.

(b) Tenant shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications, when applicable, including, but not

limited to, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Lease or any renewal thereof.

(c) Notwithstanding anything contained in this Section shall be construed or interpreted as consent by the Landlord to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

18. TRADE FIXTURES

All trade fixtures installed by Tenant in the Premises shall remain the property of Tenant and shall be removable at the expiration or earlier termination of the Lease or any renewal or extension thereof, provided Tenant shall not at such time be in default of any provision herein; and provided further, that in the event of such removal, Tenant shall have repaired the damage caused by such removal, and promptly restored the Premises to its original order and condition. Any such trade fixture not removed at or prior to such termination shall become the fixture of the Landlord. Ceiling fans, light fixtures and air-conditioning, heating and plumbing equipment, whether or not installed by Tenant, shall not be removable at the expiration or earlier termination of the Lease, or at the expiration of any renewal or extension thereof, and shall become the property of the Landlord subject to the reimbursement provisions contained herein.

19. ASSIGNING, MORTGAGING, SUBLETTING

(a) Tenant shall not directly or indirectly assign, create a security interest in, pledge, mortgage, or encumber any legal or equitable interest in the Lease, in whole or in part, or sublet the whole or any part of the Premises, or permit the use of the whole or any part hereof by a license or concessionaire or any person without first obtaining the written consent of Landlord, which consent may not be unreasonably withheld. In the event that such assignment, subletting, licensing, or granting of a concession is consented to, Tenant shall nevertheless remain liable for the performance of all the provisions of the Lease.

(b) Any approved assignment by Tenant of the Lease or sub-leasing of the Premises, shall forever terminate all rights of Tenant to possession of the Premises, notwithstanding any provision in any such assignment or sublease to the contrary, and notwithstanding Landlord's consent to such assignment or sublease. Thereafter, Landlord may exercise against any subtenant or assignee all rights and remedies herein provided upon default, without notice to Tenant, and Tenant shall have no right to re-enter the Premises upon default of the assignee or sublessee. but Tenant shall remain liable, jointly and severally, with any assignee or subtenant for the performance of all of the covenants and conditions of the Lease, including, but not limited to, the payment to Landlord of all payments due or to become due to Landlord hereunder.

20. SUBORDINATION: ATTORNMENT

(a) This Lease is subject and subordinate to any and all mortgages now or hereafter placed by the Landlord on the property of which the Premises are a part, provided, however, that as to any future mortgages, Landlord shall use its best efforts to obtain from the holder of the Mortgage

or the Trustee in such deed of trust an agreement that the Lease shall remain in full force and effect and shall not be divested or in any way affected by foreclosure or other default proceedings under such mortgage, deed of trust or obligation secured thereby, so long as Tenant shall not be in default under the terms of the Lease. Tenant agrees to execute any forms or agreements that may reasonably be requested by any such mortgagee or trustee. If Tenant shall fail at any time to execute, acknowledge, and deliver any such form or agreement, Landlord, in addition to any other remedies available in consequence thereof may execute, acknowledge, and deliver the same as Tenant's attorney-in-fact and in Tenant's name. Tenant hereby irrevocably makes, constitutes, and appoints Landlord, its successors, and assigns, its attorney-in-fact for that purpose.

(b) Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, agree to the Purchaser upon any such foreclosure or sale and recognize such Purchaser as Landlord under the Lease.

21. PERFORMANCE OF TENANT'S COVENANTS

Tenant shall perform all of the covenants and conditions on its part to be performed, and it will immediately, upon receipt of written notice, where notice of non-performance is required by the Lease, comply with the requirements of such notice, and further, if Tenant shall violate any covenant or condition herein, whether or not notice is required, Landlord may, at its option, do or cause to be done any or all of the things required by the Lease. In so doing, Landlord shall have the right to cause its agents, employees, and contractors to enter upon the Premises and in such event shall have no liability to Tenant for any loss or damages resulting in any way from such action. Tenant hereby grants Landlord all necessary licenses required to carry out the terms of this provision. Tenant shall pay to Landlord, within ten (10) days of demand, any monies paid or expenses incurred by Landlord in taking such actions, including attorney's fees and such sums shall be collectible from Tenant as additional rent hereunder.

22. CUSTOM AND USAGE

Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the covenants and conditions of the Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of Landlord in refraining from so doing at any time or times. The failure of Landlord at any time to enforce its rights under such covenants and conditions strictly in accordance with the same shall not be construed as having created a custom, waiver or estoppel in any way or manner contrary to the specific covenants and conditions of the Lease or as having in any way or manner modified the same.

23. SURRENDER AND HOLDING OVER

(a) Tenant, upon expiration or termination of the Lease, either by lapse of time or otherwise, shall peaceably surrender to Landlord the Premises in broom clean condition and in good repair as required in the Lease. In the event that Tenant shall fail to surrender the Premises upon demand, Landlord, in addition to all other remedies available to it hereunder, shall have the right to

receive, as liquidated damages for all the time Tenant shall so retain possession of the Premises or any part thereof, an amount equal to twice the base rent specified in the Lease, as applied to such period together with all other payments required hereunder as additional rent.

(b) If Tenant remains in possession of the Premises with Landlord's consent but without execution of a new written Lease, Tenant shall be deemed to occupy the Premises as a Tenant from month to month, but otherwise shall be subject to all the covenants and conditions of the expired and/or terminated Lease.

24. CONDEMNATION

(a) If the whole or a portion of the Premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, this Lease shall cease and terminate as of the date on which title shall vest thereby in that authority and the rent reserved hereunder shall be apportioned and paid up to date. Said portion taken or condemned must be of the kind that renders the Premises untenable for the use described in Section 4 herein.

(b) In the event of any taking or condemnation in whole or in part, the entire resulting award of consequential damages shall belong to Landlord without any deduction therefrom for the value of the unexpired term of this Lease or for any other estate or interest in the Premises now or later vested in Tenant. Tenant assigns to Landlord all its right, title, and interest in any and all such awards. However, Tenant shall not be prohibited from pursuing its own action for damages against the condemning authority.

25. UNAVOIDABLE DELAY - FORCE MAJEURE

(a) Notwithstanding anything in this Lease to the contrary, in the event that Landlord or Tenant shall be delayed or hindered and/or prevented from doing or performing any act or thing required hereunder by reason of any matters beyond the reasonable control of Landlord or Tenant related to acts of God, war, terrorism, strikes, or governmental restrictions, then Landlord and Tenant shall not be liable or responsible for any such delays and the period for the performance of any such act or things shall be extended for a period equivalent to the period of such delay and this Lease and the obligations of Tenant to pay rent hereunder and perform and comply with all of the terms and provisions of this Lease shall in no way be affected, impaired, or excused; neither shall either party be entitled to terminate this Lease.

(b) In the event that Homeland Security measures need to be taken pursuant to Federal, State or Local law or to secure the premises or protect the health, safety, or welfare of visitors to the restaurant or the marina, Tenant shall comply with such measures as directed by Landlord or its agents or appropriate authorities, and Tenant shall not be responsible for any expenses related to the implementation or execution of such measures. Notwithstanding anything in the foregoing to the contrary, Landlord shall have no liability for loss, damages or expenses, directly or indirectly, arising from Tenant's inability to use the premises, including but not limited to, incidental, exemplary, consequential, loss of goodwill, work stoppage or other commercial loss or damages, even if Landlord has been advised of the possibility of such loss, damages, or expenses which may arise as a

result of the necessity to take Homeland Security measures.

26. ESTOPPEL STATEMENT

Within ten (10) days after request therefore by Landlord or any mortgagee, or if in the event that upon any sale, assignment or hypothecation of the Premises by Landlord, an estoppel statement shall be required from Tenant, Tenant shall deliver in recordable Conn (and signed by Tenant, if an individual, or properly authorized representative of Tenant if Tenant is not an individual) a statement to any proposed mortgagee or purchaser, or to Landlord (as the case may be) certifying (if such be the case) that the Lease is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of rent, and that there are no defenses or offsets to the Lease claimed by Tenant and any other information required by Landlord.

27. EVENTS OF DEFAULT

The occurrence of any of the following shall, in addition to any other events of default provided herein, constitute an event of default hereunder:

(a) The filing of a petition by or against Tenant for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of Tenant or Tenant's property; or an assignment by Tenant for the benefit of creditors; or the taking possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Tenant; or if a temporary or permanent receiver or trustee shall be appointed for Tenant or for Tenant's property and such temporary (or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment; or any other execution, levy, attachment or other process unlawful in Tenant's interest in the leasehold estate or any part thereof; or if any Judgment entered against Tenant has not been satisfied or bonded within thirty (30) days of the date of the judgment.

(b) Failure of Tenant to pay when due any installment of rent hereunder, or any other sum herein required to be paid by Tenant if such payment remains unpaid for more than fifteen (15) days after receipt of written notice of such failure to pay from Landlord.

(c) Vacation or abandonment of the Premises or permitting the same to be empty and unoccupied, or the failure to open and actively conduct its business for a period of five (5) consecutive calendar days, without written consent of Landlord, except in the case of casualty, fire, Homeland Security or force majeure.

(d) Tenant's removal or attempt to remove Tenant's goods or property from or out of the Premises other than in the ordinary and usual course of business, without having first paid and satisfied Landlord for all rent which may become due during the entire term of the Lease.

(e) Tenant's failure to perform or observe any other provision of the Lease, after written notice and demand, provided that, if such failure is of such a character as not to permit immediate compliance in the sole opinion of Landlord, then Tenant's failure to proceed diligently and

immediately upon receipt of notice to commence the cure of such failure, and thereafter to complete such cure with all reasonable dispatch within fifteen (15) days after written notice from Landlord.

(f) Notwithstanding any provision in this Lease to the contrary, any Tenant default or breach hereunder is subject to notice and cure provisions set forth herein and other matters which are not within Tenant's control.

(g) Landlord's failure to perform any of its terms or conditions as set forth herein if Landlord remains in default for more than thirty (30) days after receipt of written notice of such default from Tenant.

28. LANDLORD'S REMEDIES UPON DEFAULT BY TENANT

(a) Upon the occurrence of any event or events of default or other breach of this Lease by Tenant, Landlord shall have the option to pursue any one or more of the following remedies: (i) Landlord shall have the right, at its election, to cancel and terminate this Lease and dispossess Tenant; (ii) Landlord shall have the right to declare all amounts and rents due under this Lease [or the remainder of the existing term (and any applicable extension or renewal thereof) to be immediately due and payable, and thereupon all rents and other charges due hereunder to the end of the initial term and any renewal term, if applicable, shall be accelerated; (iii) Landlord may elect to enter and repossess the Premises and relet the Premises for Tenant's account, holding Tenant liable in damages for all expenses incurred in any such reletting and for any difference between the amount of rent received from such reletting and the rent due and payable under the term of this Lease; and (iv) Landlord may enter upon the Premises and do whatever Tenant is obligated to do under this Lease (and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action).

(b) Landlord shall be entitled, as a strict matter of right, to the appointment of a receiver of the business operated at the Premises without notice and without an opportunity by Tenant to object prior to the appointment. Tenant acknowledges that its rights are adequately protected by its right to seek dissolution of the receivership.

(c) Landlord is hereby granted a valid lien for all rent and other sums of money which at any time be owing by Tenant to Landlord upon all property of Tenant which may at any time be in or about the Premises. Said property shall not be removed from the Premises without the consent of Landlord until all arrears in rent as well as any and all other sums of money due hereunder shall first have been paid, provided further that the lien herein granted may be foreclosed in the manner and form provided by law for the foreclosure of chattel mortgages, or in any other manner provided by law. Tenant shall, at the request of Landlord, execute and deliver such additional documents as may be reasonably required to perfect this security interest.

(d) The various rights and remedies, powers, options and elections of Landlord reserved, expressed, or contained in the Lease are distinct, separate and cumulative, and not one of them shall

be deemed to be exclusive of the other rights, remedies, powers or options provided herein or are now or may hereafter be conferred upon Landlord by statute or by law or equity.

(e) No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest rent due. nllr shall any endorsement at statement all any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in the Lease.

(f) No receipt of money by Landlord from Tenant after default or cancellation of this Lease shall: (i) reinstate, continue, or extend the term or affect any notice given to Tenant, (ii) operate as a waiver of the right of Landlord to enforce the *payment* of rent and additional rent then due or to become due, or (iii) operate as a waiver of the right of Landlord to recover possession of the Premises by suit, action, proceeding, or other remedy. After service of notice of termination and forfeiture as herein provided and the expiration of the time specified therein, the commencement of any suit, action, proceeding, or other remedy, or final order or judgment for possession of the Premises, Landlord may demand, receive and collect any monies due, without in any manner affecting such notice, order or judgment. Any and all such monies so collected shall be deemed to be payment on account of the use and occupation of the Premises or at the election of Landlord, on account of the liability of Tenant hereunder.

(g) Any sums which may be expended by Landlord in accordance with the terms of this Lease that are paid on behalf of Tenant or due to Tenant's default hereunder shall bear interest at the highest rate allowed under Florida law and Tenant shall be liable for such sums plus such interest as additional rent hereunder.

29. AUTHORITY

(a) All persons executing the Lease on behalf of a corporate tenant (or other entity) personally represent and warrant that they have been authorized to execute the Lease by such tenant. Evidence of such authority shall be provided upon request.

(b) Tenant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the Landlord upon request.

(c) Tenant shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations required for any work done pursuant to this Lease from any federal, state, regional, county, or city agency.

(d) The Landlord's representative under this Lease shall be the City Manager or the City Manager's designee.

30. LIABILITY OF LANDLORD

(a) Tenant shall look solely to Landlord's interest in the Property and in only Landlord's personal property used in connection with the Property for the satisfaction of any judgment or decree requiring the payment of money by Landlord, based upon any default hereunder, and no other property or asset of Landlord shall be subject to levy, execution, or enforcement procedure for the satisfaction of such judgment or decree.

(b) The provisions herein permitting Landlord to enter and inspect the Premises are made to ensure that Tenant is in compliance with the terms and conditions hereof and to make repairs that Tenant has failed to make. Landlord shall not be liable to Tenant for any entry on the Premises for inspection purposes. Landlord's right to inspect the Premises shall be on reasonable notice to the Tenant except in emergency circumstances.

31. LEGAL EXPENSES

In the event that it shall become necessary for Landlord to employ the services of all attorney to interpret or enforce any of its rights under the Lease or to collect any sums due to it under the Lease or to remedy the breach of any covenant of the Lease on the part of Tenant to be kept or performed, Tenant shall pay to Landlord such reasonable fees and costs as shall be charged by Landlord's attorney for such services. Should suit be brought for the recovery of possession of the Premises, or for rent or any other sum due Landlord under the Lease, or because of the breach of either parties' covenants and obligations under the Lease, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including such fees and costs on appeal.

32. EASEMENTS, AGREEMENTS, OR ENCUMBRANCES

The parties shall be bound by all existing easements, agreements, and encumbrances of record relating to the Premises including, but not limited to any deed or plat restrictions.

33. TIME OF THE ESSENCE

Time is of the essence in all provisions of this Lease.

34. QUIET ENJOYMENT

Landlord warrants that Tenant shall be granted peaceable and quiet enjoyment of the Premises free from any eviction or interference by Landlord if Tenant pays the rent and other charges provided herein and otherwise fully performs and complies with the terms, conditions and provisions of this Lease.

35. SIGNS

No sign or visual advertisement shall be placed on the exterior of the Premises except in accordance with the standards set forth on the Sign Addendum attached hereto and made a part

hereof as **Exhibit "e"**. All signs shall be subject to the appropriate governmental regulations and final approval of Landlord's representative.

36. ENVIRONMENTAL REGULATIONS

(a) Landlord's Representations Concerning Compliance With Environmental Laws:

Landlord represents, to the best of its knowledge, that the premises are in full compliance with all Federal, State, County and Municipal environmental laws, ordinances, rules regulations and requirements and that there are no hazardous or toxic substances, pollutants or waste or any fill materials in, on, under or about the premises.

(b) Landlord's Responsibilities and Indemnification:

(1) Landlord is responsible for compliance and remediation that may be required by any applicable environmental laws, including, but not limited to ISRA (Industrial Site Recovery Act), when violation occurred prior to the commencement of the term of this Lease.

(2) Landlord shall indemnify, defend and hold Tenant harmless from and against all claims, liabilities, losses, damages, penalties and costs foreseen and unforeseen, including without limitation counsel, engineering, and other professional or expert fees which Tenant may incur resulting directly or indirectly, wholly or partly, with regard to Landlord's obligations under this Section. Nothing contained in this Provision shall be construed or interpreted as consent by the Landlord to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

(c) Tenant's Responsibilities and Indemnification:

(1) Tenant is responsible for compliance and remediation that may be required by any applicable environmental laws, including, but not limited to ISRA (Industrial Site Recovery Act). If a violation occurs as a result of Tenant's actions after the commencement of the term of this Lease, Tenant shall promptly provide all information within Tenant's control reasonably requested by Landlord or by any local, state or federal agency with respect to any such violation.

(2) Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, liabilities, losses, damages, penalties and costs foreseen and unforeseen, including without limitation counsel, engineering, and other professional or expert fees which Landlord may incur resulting directly or indirectly, wholly or partly, with regard to this paragraph.

37. ENTIRETY OF CONTRACTUAL AGREEMENT

The Lease and all Amendments and Exhibits set forth all of the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Premises

and there are no covenants, promises, conditions, or understandings either oral or written between them other than herein set forth. Except as otherwise provided, no subsequent alteration, change or addition to the Lease shall be binding upon the Landlord or Tenant unless reduced to writing and signed by both parties. Except at Landlord's option, no part of this Lease may be recorded in any public records of any municipality or county records.

38. VENUE

This Lease and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the contract will be held in Palm Beach County.

39. INVALID PROVISIONS

If any provision of the Lease shall be determined to be void by any court of competent jurisdiction or any law enacted subsequent to the date hereof, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect.

40. TERMINOLOGY AND CAPTIONS

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Lease" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Lease in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Lease, nor shall such headings affect the meaning or interpretation of this Lease.

41. SUCCESSORS AND ASSIGNS

All rights, obligations and liabilities given to, or imposed upon, the parties hereto shall extend to and bind the respective heirs, executors, administrators, successors, sublessees, licensees, concessionaires and assigns of such parties hereof. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as hereinabove set forth. Nothing contained in the Lease shall in any manner restrict Landlord's right to assign or encumber the Lease and, in the event Landlord sells its interest in the Property and the purchaser assumed Landlord's obligations and covenants, Landlord shall thereupon be relieved of all obligations hereunder.

42. NOTICES

All notices required in this Lease shall be sent by certified mail, return receipt requested, and if sent to the Landlord shall be mailed to:

Riviera Beach Marina
Attn: Marina Director
200 East 13th Street
Riviera Beach, FL 33404

with a copy to:
City Manager
City of Riviera Beach
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

and if sent to the Tenant shall be mailed to:

Tiki Waterfront Sea Grill
Attn: Robert H. Gregory, Jr.
12970 N. Shore Drive
Palm Beach Gardens, FL 33410

With copy to:

Keith Ragon
12209 Coconut Row
Palm Beach Gardens, FL 33410

And to:

Law Office of Wayne M. Richards, P.A.
Attn: Wayne M. Richards, Esq.
2001 Broadway, Suite 101
Riviera Beach, Florida 33404

43. PREPARATION

This Lease shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

44. MATERIALITY

All provisions of the Lease shall be deemed material, in the event Tenant fails to comply with any of the provisions contained in this Lease or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Lease and Landlord may at its option and without notice terminate this Lease.

45. CONFLICT OF INTEREST

(a) Tenant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance required hereunder, as provided for in Florida Statutes Section 112.311. The Tenant further represents that no person having any such conflicting interest shall be employed for said performance.

(b) Tenant shall promptly notify Landlord, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Tenant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance and the nature of work that the Tenant intends to undertake and request an opinion of the Landlord as to whether the association, interest or circumstance would, in the opinion of the

Landlord, constitute a conflict of interest if entered into by the Tenant. The Landlord agrees to notify the Tenant of its opinion by certified mail within thirty (30) days of receipt of notification by the Tenant. If, in the opinion of the Landlord, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Tenant, the Landlord shall so state in the notification and the Tenant shall, at its option, enter into said association, interest or circumstance and it shall be deemed not a conflict of interest with respect to services provided to the Landlord by the Tenant under the terms of this Lease.

46. ACCESS AND AUDITS

Tenant shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing work on the Leased Premises for at least three (3) years after completion of this Lease. The Landlord shall have access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours, at the Tenant's place of business.

47. NONDISCRIMINATION

Tenant will not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, marital status or handicap.

48. MISCELLANEOUS

- (a) INTENTIONALLY DELETED.
- (b) Landlord, through its representative, will provide adequate police or security presence of Leased Premises so as to minimize adverse effects to Tenant's use and enjoyment of the Premises, which may be contemplated by operations of neighboring facilities and the weekend and holiday activities.
- (c) Landlord, through its representative, will provide adequate pest control so as to minimize potential rodent infestation that may result from neighboring facilities.
- (d) INTENTIONALLY DELETED.
- (e) In the event that the Leased Premises are going to be leased beyond the initial Term of this Lease, Landlord agrees that it will negotiate with Tenant in good faith for an extension of this Lease prior to soliciting proposals from others to operate the Leased Premises.

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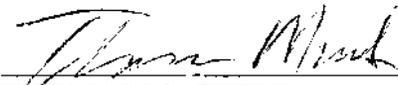
LEASE RENEWAL WITH THE CITY OF RIVIERA BEACH

IN WITNESS WHEREOF, the Parties unto this Lease Renewal have set their hands and seals on the day and date first written above.

CITY OF RIVIERA BEACH

TENANT

R.G. GROUP, INC., a Florida corporation,
d.b.a. TIKIWATERFRONT EAGRILL

BY: 
THOMAS MASTERS
MAYOR

BY: 
ROBERT H. GREGORY, JR.
PRESIDENT

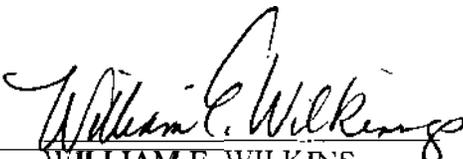
ATTEST:

BY: 
CARRIE E. WARD, MMC
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

AS TO TERMS AND CONDITIONS

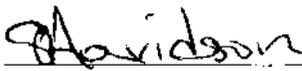
BY: 
PAMALA H. RYAN
CITY ATTORNEY

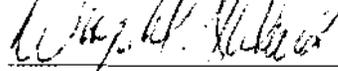
BY: 
WILLIAM E. WILKINS
CITY MANAGER

DATE: 8/5/08

WITNESSES FOR CITY

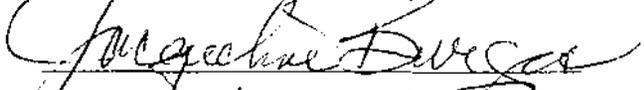
WITNESSES FOR TENANT

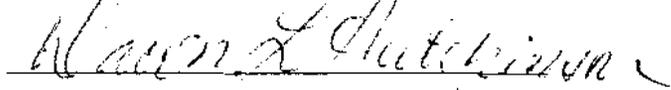




Print Name: Simone Davidson

Print Name: WAYNE H. PICHARD





Print Name: Jacqueline Burgess

Print Name: Dawn Hutcheson

EXHIBIT C

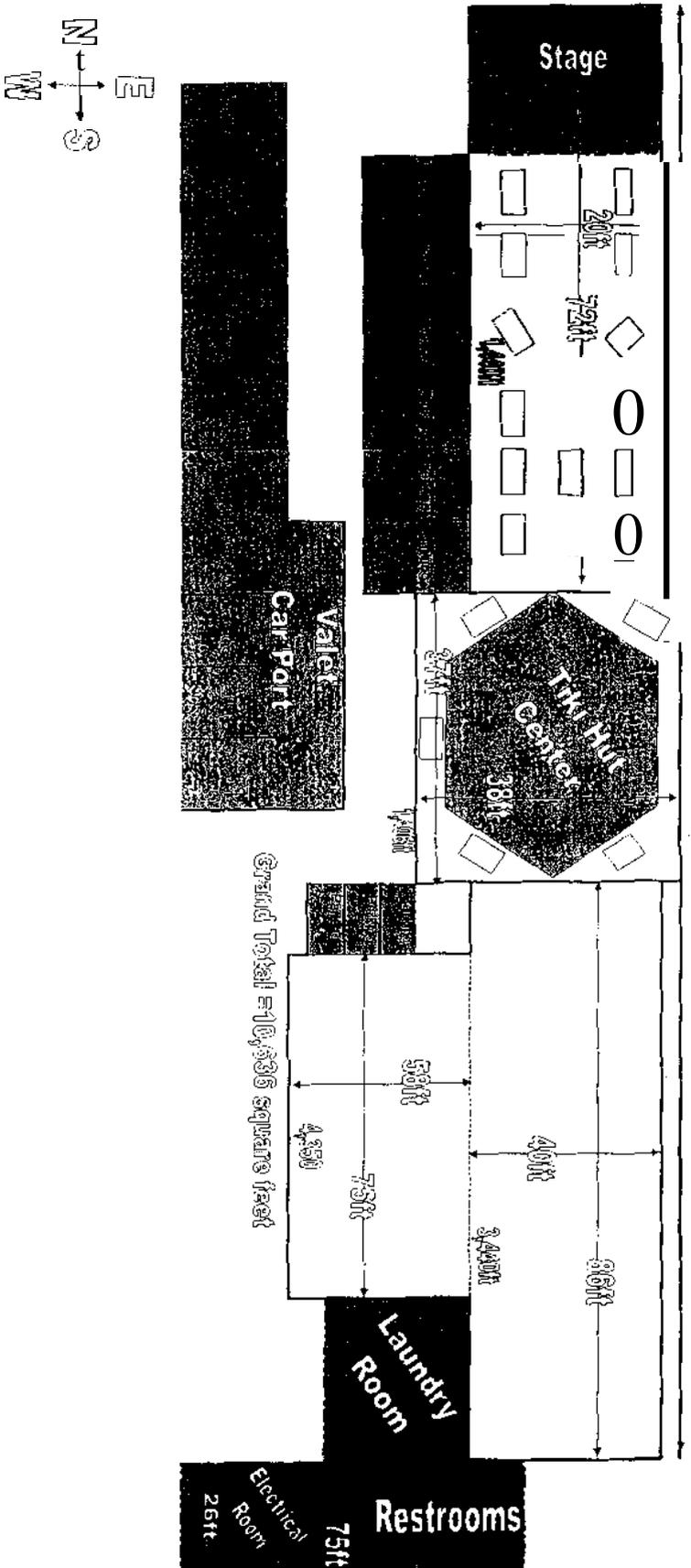
SIGN REQUIREMENTS

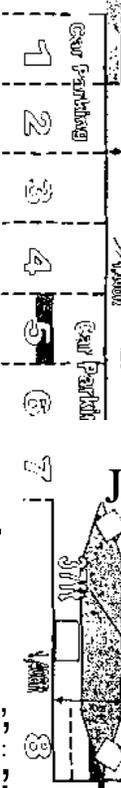
The following criteria apply to all fascia signage:

- (a) **All** signage and installation thereof shall be at the sole expense of the Tenant.
- (b) All signage must comply with the sign ordinances imposed by the local governmental authorities.
- (c) Design drawings subject to written approval of Landlord prior to installation.
- (d) City hereby conceptually approves signage for the restaurant on the boat barn (2 sides), at the fuel dock and on top of the Tiki hut, subject to Tenant's presentation of the sign package to the City's Community Development Department.

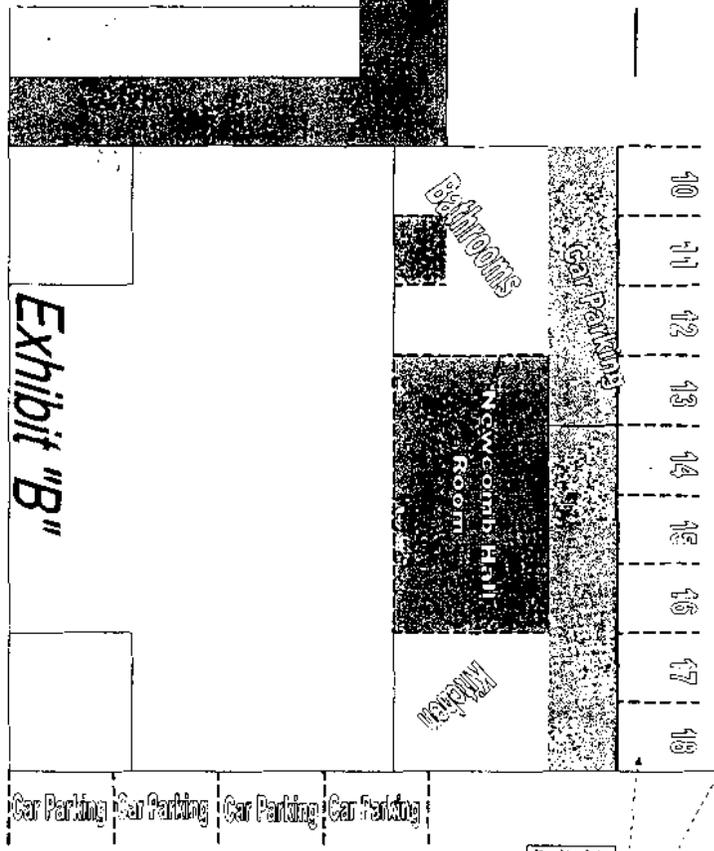
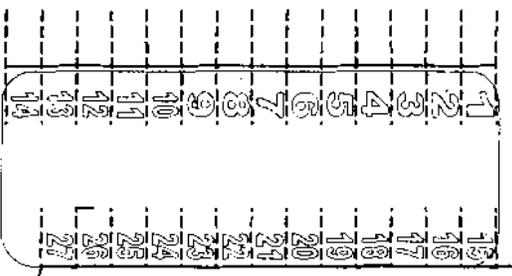
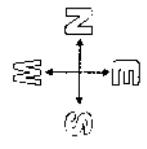
TIKI WATERFRONT SEA GRILL LEASE AREA

Exhibit "A"





27 EXTRA PARKING SPACES
(Total 45 spaces)



EXISTING PARKING SPACES TIKI HAS ACCESS TO: 181

RESOLUTION NO. 96-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN ADDENDUM TO INCREASE THE POINT ALLOCATION FOR THE LOCAL AND MINORITY PARTICIPATION SECTION OF RFP 2008-001 FOR THE REDEVELOPMENT OF THE CITY OF RIVIERA BEACH MUNICIPAL MARINA AND OTHER SURROUNDING PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach (City) and the Community Redevelopment Agency (CRA) approved RFP 2008-001 for the redevelopment of the City of Riviera Beach Municipal Marina and other surrounding property on June 25, 2008; and

WHEREAS, the City and the CRA desire to encourage proposers to enhance plans for Local and Minority Participation in the responses to RFP 2008-001 by allocating additional points to the "Local and Minority Participation Plan" category; and

WHEREAS, the CRA met on July 21, 2008 and approved the addendum to increase the point allocation in the Local and Minority Participation Plan section in RFP 2008-001.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. The City Council hereby approves the addendum to RFP 2008-001 which reads as follows:

Local and Minority Participation Plan

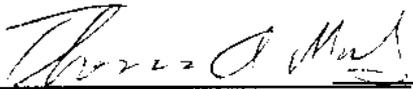
The quality of the proposed Local and Minority Participation Plan including but not limited to, business participation, job creation and job training. (Please review Local and Minority participation policies starting on page 20) Total points available for this factor are ~~5~~ 15 points.

SECTION 2. This resolution shall take effect immediately upon its approval and passage.

PASSED and APPROVED this 8 day 0, August, 2008

RESOLUTION NO. 96-08
PAGE 2

APPROVED:



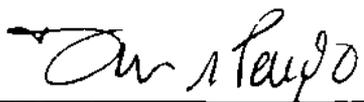
THOMAS A. MASTERS
MAYOR



CEDRI K.A. THOMAS
CHAIRPERSON

ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



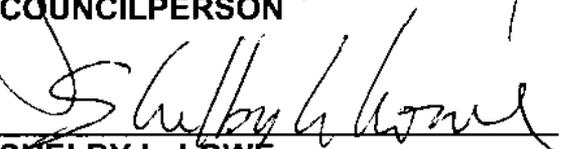
DAWN S. PARDO
CHAIR PRO TEM



JUDY L. DAVIS
COUNCILPERSON



LYNNE L. HUBBARD
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: D. PARDO

SECONDED BY: J. DAVIS

C. THOMAS AYE

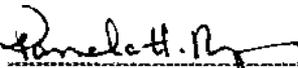
D. PARDO AYE

J. DAVIS AYE

L. HUBBARD AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE 7/30/08

RESOLUTION NO. 97-08 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, URGING THE FLORIDA LEGISLATURE TO ENACT THE "NICOLE HORNSTEIN ACT" CONCERNING EQUINE ACTIVITIES AND PROTECTIVE MEASURES FOR MINORS RIDING HORSES ON PUBLIC ROADWAYS OR PUBLIC TRAILS, BY REQUIRING THE WEARING OF A HELMET OR OTHER HEADGEAR PROTECTION; AND PROVIDNG FOR AN EFFECTIVE DATE.

WHEREAS, Senate Bi11964, sponsored by Senator Dave Aronberg, and House Bill 305, sponsored by Representative Shelley Vana, were filed in the 2008 Regular Legislative Session of the Florida Legislature; and

WHEREAS, these two bills propose protective measures that provide life-saving and serious injury protection to minors while horseback riding on public roadway and public trails; and

WHEREAS, the proposed Nicole Hornstein Act requires that any equine rider who is under 16 years of age must wear a helmet that meets applicable American Society of Testing and Materials standards for protective headgear used in horseback riding when such activity occurs in public locations including, but not limited to, roadways or rights-of-way, equestrian and recreational trails, parks or preserves, or public school sites, etc; and

WHEREAS, the family of Nicole Hornstein has requested that all municipalities in Palm Beach County adopt resolutions formally encouraging and supporting their efforts in the Legislature to enact the proposed act, since it is ultimately designed to protect all minor residents from serious or fatal injury when engaging in equine activities throughout the county and the state; and

WHEREAS, the City of Riviera Beach can play an important role in helping to alert its minor residents to the dangers of riding horses unprotected by approved headgear by encouraging the adoption of similar legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA THAT:

SECTION 1: Passage of the Nicole Hornstein Act will help ensure any equine rider under 16 years of age will wear a helmet that meets applicable American Society of Testing and Materials standards for protective headgear used in horseback riding when such activity occurs in public locations including, but not limited to roadways or rights-of-way, equestrian and recreational trails, parks or preserves or public school sites, etc.

SECTION 2: The Florida Legislature should enact the Nicole Hornstein Act.

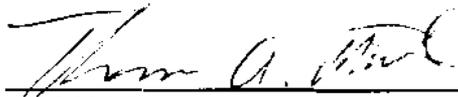
SECTION 3: A copy of this Resolution be transmitted to Senator Jeff Atwater,

Senator Dave Aronberg, Representative Shelley Vana as well as the Chair and members of the Palm Beach County State Legislative Delegation

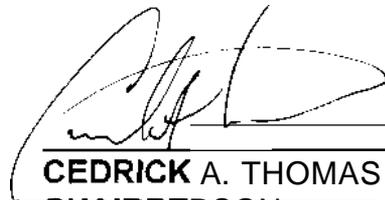
SECTION 4: This Resolution shall take effect upon its passage and approval by the City Council.

PASSED and APPROVED this 8 day of August 2008.

APPROVED:



THOMAS A. MASTERS
MAYOR

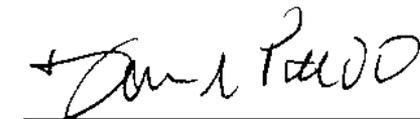


CEDRICK A. THOMAS
CHAIRPERSON

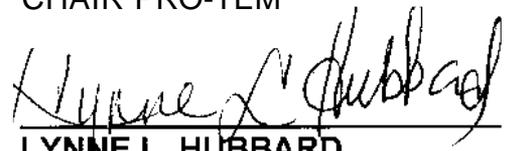
ATTEST:



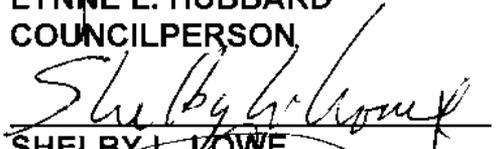
CARRIE W. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



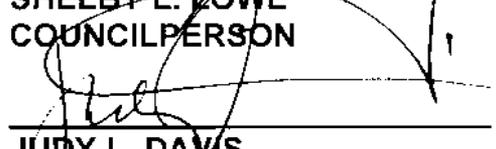
DAWN S. PARDO
CHAIR PRO-TEM



LYNNE L. HUBBARD
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON



JUDY L. DAVIS
COUNCILPERSON

MOTIONED BY: D. PARDO

SECONDED BY: J. DAVIS

C. THOMAS AYE

D. PARDO AYE

L. HUBBARD AYE

S. LOWE AYE

J. DAVIS AYE

REVIEWED AS TO LEGAL SUFFICIENCY

H. _____
PAMALA HANNA RYAN CITY ATT NE

DATE: 8/6/08 _____

RESOLUTION NO. 98-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE CONTINUANCE OF THE CITY'S HEALTH INSURANCE COVERAGE WITH CIGNA TO PROVIDE MEDICAL INSURANCE FOR CITY'S EMPLOYEES FOR THE POLICY YEAR 2008-2009 AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENTS FROM VARIOUS CITY DEPARTMENTAL ACCOUNTS IN THE ESTIMATED AMOUNT OF \$3,799,030 FOR HEALTH INSURANCE.

WHEREAS, the City of Riviera Beach is in need of continuing **its health insurance, and**

WHEREAS, staff recommends continuing the City's health **insurance coverage with CIGNA.**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. That staff is hereby authorized to bind coverage **for the City of Riviera Beach for health insurance coverage with CIGNA** to provide medical insurance for City employees for the policy year 2008-2009.

SECTION 2. That the Finance Director is authorized to make **payment for the City's contribution to health insurance costs from various City departmental accounts in the estimated amount of \$3,799,030** for health insurance.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption by the City Council.

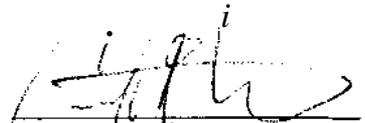
PASSED AND APPROVED this 20th **day of** August, 2008.

RESOLUTION NO. 98-08

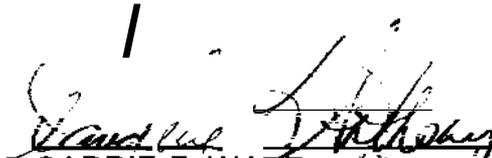
PAGE 2

APPROVED:


THOMAS A. MASTERS
MAYOR


CEDRICK A. THOMAS
CHAIRPERSON

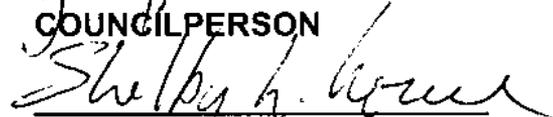
ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK


DAWN PARDO
CHAIR PRO T C.M.


LYNNE L. HUBBARD
COUNCILPERSON


JUDY L. DAVIS
COUNCILPERSON

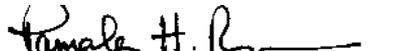

SHELBY LOWE
COUNCILPERSON

Motioned by: J. Davis

Seconded by: D. Pardo

C. THOMAS nay
D. PARDO aye
L. HUBBARD aye
J. DAVIS aye
S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY


Pamala H. Ryan, City Attorney

DATE 8/20/08

RESOLUTION NO. 100-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE CHANGE ORDER NUMBER ONE TO THE INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE CITY OF RIVIERA BEACH FOR FUNDING IN THE AMOUNT OF \$50,000 FOR BICENTENNIAL PARK AUSTRALIAN PINES REMOVAL PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has established and funded a Public Lands Grant Program which ~~will~~ assist municipalities and other public agencies with removal of invasive non-native vegetation from publicly owned lands and related educational activities; and

WHEREAS, the nine prohibited invasive non-native plant species include Air Potato, Australian Pine, Brazilian Pepper, Carrotwood, Earleaf Acacia, Kudzu, Old-world Climbing Fern, Melaleuca, and Queensland Umbrella Tree; and

WHEREAS, the City of Riviera Beach has Australian Pines in Bicentennial Park and desires to remove the invasive non-native plant and

WHEREAS, the City has been unable to complete the project by the original date; and

WHEREAS, the City and Palm Beach County have agreed to extend the completion date for the project to February 28, 2009 and revise certain other provisions of the Interlocal Agreement so that they are consistent with the new completion date.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. That the Mayor and City Clerk are authorized to execute Change Order Number One to the Interlocal Agreement with the Board of County Commissioners on behalf of the City of Riviera Beach.

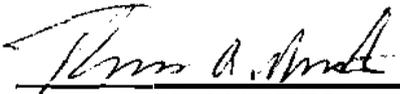
SECTION 2. This Resolution shall take effect immediately upon its approval.

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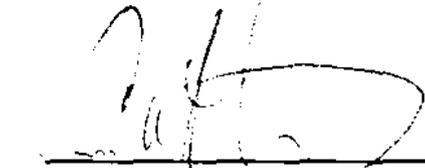
RESOLUTION NO. 100-08
PAGE: 2.

PASSED AND APPROVED THIS 20th DAY OF August, 2008.

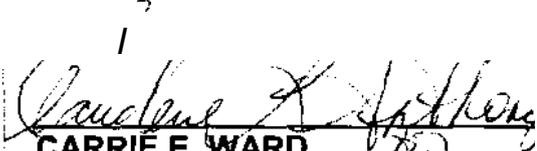
APPROVED:



THOMAS A. MASTERS
MAYOR



CEDRICK A. THOMAS
CHAIRPERSON



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



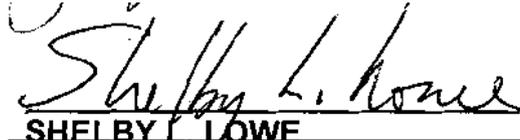
DAWN S. PARDO
CHAIR PRO TEM



LYNNE L. HUBBARD
COUNCILPERSON



J. AVIS
COUNCILPERSON



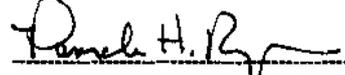
SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: L. Hubbard

SECONDED BY: D. Pardo

- C THOMAS aye
- D. PARDO aye
- L. HUBBARD aye
- J. DAVIS aye
- S. LOWE aye

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE, 8/14/08

INTERLOCAL AGREEMENT
BETWEEN
PALM BEACH COUNTY AND CITY OF RIVIERA BEACH
2007 Public Lands Grant Program - City of Riviera Beach - Bicentennial Park
Bicentennial Park Australian Pines Removal
District 7

CHANGE ORDER NO. 001

GRANTEE:

City of Riviera Beach
600 W. Blue Heron Blvd
Riviera Beach, FL 33404

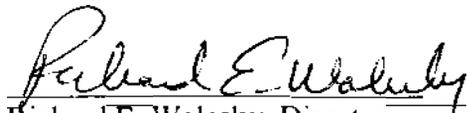
THIS AGREEMENT, entered into on the 6th day of November, 2007, is hereby revised as follows:

- Article 11, Page 6, is revised to read, in its entirety, as follows: The term of this Agreement shall be effective on the date of execution of the Agreement by both parties and shall continue in full force until February 28, 2009, unless otherwise terminated as provided herein. This Agreement may be terminated by either party upon thirty (30) days written notice by the terminating party to the other party, provided that the County will not arbitrarily or unreasonably deny funding to Grantee under the terms and conditions set forth herein.

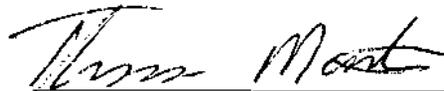
All other terms and conditions of the Agreement shall remain unchanged.

PALM BEACH COUNTY
FOR ITS BOARD OF COUNTY
COMMISSIONERS

CITY OF RIVIERA BEACH



Richard E. Walesky, Director
Environmental Resources Management



8/12/08
Date

8/20/08
Date

RESOLUTION NO. 101-08

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF RIVIERA BEACH, PALM
BEACH COUNTY, FLORIDA, RATIFYING
CHAIRPERSON'S DECLARATION OF A
STATE OF LOCAL EMERGENCY FOR
TROPICAL STORM FAY; AND PROVIDING
AN EFFECTIVE DATE.**

WHEREAS, section 252.38(3)(a), Florida Statutes (2007), grants the City of Riviera Beach the authority and power to request State assistance or invoke emergency-related mutual aid assistance by declaring a state of local emergency in the event of an emergency affecting the City of Riviera Beach; and

WHEREAS, section 252.38(3)(a), Florida Statutes (2007), further empowers the City of Riviera Beach to waive the procedures and formalities otherwise required of a political subdivision by law pertaining to a number of actions that can be taken to ensure the health, safety, and welfare of the **community, in accordance with the authority set forth therein; and**

WHEREAS, Governor Charlie Crist by Executive Order 08-170 declared a State of Emergency on August 14, 2008, for the entire State of Florida, and Palm Beach County declared a state of local emergency effective at 12 noon on August 18, 2008; and

WHEREAS, the City's Emergency Preparedness Plan designates the City Manager as the Incident Manager for all major emergencies and disasters; and

WHEREAS, Tropical Storm Fay had the capacity to pose a significant, imminent, and dangerous threat to the health, safety, and welfare of the inhabitants of the City of Riviera Beach, Florida; and

WHEREAS, the Chairperson of the City Council of the City of Riviera Beach declared a State of Local Emergency for the City of Riviera Beach on August 18, 2008, said declaration to be ratified by the City Council at a subsequent special meeting or at the next regular meeting of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

RESOLUTION 101-08
PAGE 2

SECTION 1. That the foregoing recitals are true and hereby incorporated herein.

SECTION 2. That the City Council hereby ratifies the Chairperson's "Declaration of State of Local Emergency" imposed during Tropical Storm Fay, and hereby confirms and approves all actions taken by the Chairperson and City Manager on August 18, 2008, and thereafter as it relates to carrying out the purposes of the Declaration.

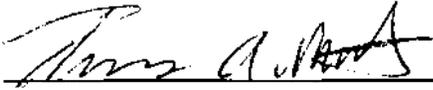
SECTION 3. That this resolution shall take effect upon its passage and approval by City Council.

APPROVED AUGUST 20, 2008

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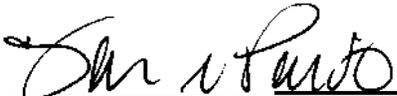
RESOLUTION NO. 101-08
PAGE-3-

APPROVED:



17 / 1 / 1'

CEDRICK A. THOMAS
CHAIRPERSON


DAWN S. PARDO
CHAIR PRO TEM


LYNNE L. HUBBARD
COUNCILPERSON


JUDY L. DAVIS
COUNCILPERSON.


SHELBYL OWE
COUNCIL RSON

MOTIONED BY: J. DAVIS

SECONDED BY: D. PARDO

C. THOMAS AYE

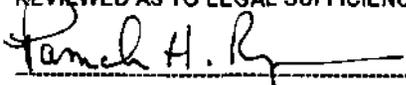
D. PARDO AYE

LHUBBARD AYE

J. DAVIS AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 8/20/08