RESOLUTION NO. 180-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY, THE COMMUNITY REDEVELOPMENT AGENCY AND OMRD, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 23, 2003, the City of Riviera Beach Community Redevelopment Agency ("CRA") issued its request for proposals RFP-03-01 ("RFP") soliciting a developer or developers to redevelop certain beachfront property (the "Project") within the City of Riviera Beach, Florida (the "City"); and

WHEREAS, three (3) developers responded to the RFP; and

WHEREAS, the CRA, after a public review process, ranked the developers who responded to the RFP and directed City and CRA staff to negotiate the terms under which the developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP; and

WHEREAS, when the CRA and the first-ranked developer reached an impasse, the CRA commenced negotiations with the second-ranked developer, and the CRA and the second-ranked developer entered into a Letter of Intent on August 31, 2005; and

WHEREAS, OMRD, LLC ("OMRD") was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project; and

WHEREAS, the City Council and the CRA at a duly called public meeting held on August 23, 2006, approved the preliminary terms and conditions (including the conceptual site plan) of an agreement between the City of Riviera Beach, CRA and OMRD and authorized staff to negotiate and finalize such agreement with OMRD; and

WHEREAS, the City, the CRA and OMRD have negotiated that certain Disposition and Development Agreement (the "Development Agreement"), in the form attached hereto as Exhibit A, pursuant to which each party will undertake certain duties and responsibilities with respect to the financing, development and construction of the Project; and

WHEREAS, the City hereby finds and determines that the proposed Project will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area.

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

SECTION 1. The Mayor and City Clerk are authorized to execute a Disposition and Development Agreement, in the form set forth in Exhibit A attached hereto.

SECTION 2. The Mayor and Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the City Attorney, City special counsel and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 2006.

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RESOLUTION NO. 180-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT
VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: N. DUNCOMBE

A. ILES	AYE
V. LEE	ABSENT
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	NAY

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/13/06

Execution Copy

DISPOSITION AND DEVELOPMENT AGREEMENT

between

the

CITY OF RIVIERA BEACH, FLORIDA,
a Florida municipal corporation

and

THE RIVIERA BEACH
COMMUNITY REDEVELOPMENT AGENCY,
a body corporate and politic created pursuant to
Part III, Chapter 163, Florida Statutes

and

OMRD, LLC,
a Delaware limited liability company

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement ("Agreement") is made this 18 day of December, 2006, by and between THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (and referred to as the "Agency"), created by the City of Riviera Beach pursuant to Chapter 163, Part III of the Florida Statutes, THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation (and referred to in this Agreement as the "City"), and OMRD, LLC, a Delaware Limited Liability Company, its successors and assigns (and referred to as either "OMRD" or "Developer").

WITNESSETH:

WHEREAS, the Agency and City seek the redevelopment of certain property on Singer Island as a community redevelopment project ("Project") pursuant to the City's Community Redevelopment Plan ("CRA Plan");

WHEREAS, the Ocean Mall is an 80,000 square foot shopping center that is located on Singer Island, in the beach area of the Riviera Beach Community Redevelopment Area;

WHEREAS, the Ocean Mall is located on City-owned land described on Exhibit "A' attached hereto ("Ocean Mall Property") which is subject to a long-term lease agreement ("Ocean Mall Lease");

WHEREAS, on May 23, 2003 Agency issued Request for Proposals RFP-03-01 ("RFP") soliciting a developer or developers to lease, construct, operate, and manage the Project;

WHEREAS, three (3) developers responded to the RFP;

WHEREAS, the Agency after a public review process, ranked the developers who responded to the RFP and directed City and Agency staff to negotiate the terms under which the Developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP;

WHEREAS, when the Agency and the first-ranked developer reached an impasse, the Agency commenced negotiations with the second-ranked developer, and the Agency and the second-ranked developer entered into a Letter of Intent on August 31, 2005;

WHEREAS, the Project includes the Ocean Mall Property and additional property that includes streets, sidewalks, parking areas, and recreation areas that are owned by the City described on Exhibit B attached hereto (the additional property is, collectively, "City Property") (the Ocean Mall Property and the City Property are collectively the "Project Site");

WHEREAS, OMRD was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the project;

WHEREAS, the City Council and the Agency at a duly called public meeting held on August 23, 2006, approved the preliminary Terms and Conditions (including the conceptual site plan) of the Agreement between the City of Riviera Beach, Agency and OMRD and authorized staff to negotiate and finalize such Agreement with OMRD;

WHEREAS, portions of the floor area within the Ocean Mall Property are leased to sub-tenants whose leases have remaining terms;

WHEREAS, the City and the Agency propose that the Ocean Mall Property and the City Property will be leased to OMRD;

WHEREAS, OMRD proposes to redevelop the Project Site with a mixed use development comprised of retail/office, condominiums, hotel suites, and other legally recognized residential uses;

WHEREAS, OMRD proposes to include surface parking spaces in the Project which will be available for use by the general public;

WHEREAS, the City and the Agency hereby find and determine that the proposed Project will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area of the City;

WHEREAS, the City and Agency have authorized the negotiation of a definitive agreement to set forth the respective duties and responsibilities of the Parties pertaining to the development of the Ocean Mall Property and the City Property;

WHEREAS, the Parties have concluded negotiations for said definitive agreement, which negotiations have resulted in this Agreement;

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1
RECITALS.

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein as a part of this Agreement.

ARTICLE 2
DEFINITIONS AND MEANING OF TERMS

2.01 For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Actual Damages" has the meaning provided in Article 14.03.

(b) "ADA" means The Americans with Disabilities Act of 1990, as amended, together with any rules or regulations promulgated thereunder, or any successor act thereto.

(c) "Affiliate" or "Affiliates". As used herein, the term Affiliate means with respect to a Person, any other Person that directly or indirectly Controls, is controlled by, or is under common Control with, the specified Person.

(d) "Agency" means the Riviera Beach Community Redevelopment Agency.

(e) "Agreement" means, collectively, this Disposition and Development Agreement and all exhibits and attachments hereto, as any of the same may hereinafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with this Agreement or by mutual consent agreement of the Parties.

(f) "Architect" means any architect, designated by Developer and reasonably approved by City and Agency, having responsibility for the design of the Civic Improvements within the Project.

(g) "Business Day" or "business day" means a day other than Saturday, Sunday, or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

(h) "City" has the meaning provided in the Recitals to this Agreement.

(i) "City and Agency's Project Representatives" has the meaning provided in Article 9.01.

(j) "City Indemnified Party or Parties" means, collectively, the Agency, the City and their respective elected and appointed officials (including the Agency's chair and members, the Mayor and the City Council members), directors, officers, shareholders, members' employees, agents and representatives and the respective heirs, legal representatives, successors, and assigns of any of the foregoing.

(k) "Civic Improvements" means two hundred (200) surface parking spaces contained within the Phase I Development costing not more than One Million Dollars

($1,000,000), improvements to the beach immediately fronting the Project, as designated by the City, costing not more than One Million Five Hundred Thousand Dollars ($1,500,000), any underground public utility improvements and infrastructure improvements necessary in connection with the development of the Project (including but not limited to replacement, relocation or additions to existing utilities), landscaping, streetscaping and lighting, collectively costing not more than Five Million Dollars ($5,000,000).

(l) "Civic Improvement Funds" means up to Seven Million Five Hundred Thousand Dollars ($7,500,000.00) to be paid to the Developer as provided in Article 6.

(m) "Commence" or "Commencement," as such terms relate to the commencement of construction required hereunder by a specified date, means the issuance by the City of the permit required for the commencement of demolition and/or site work and the commencement of such demolition and/or site work pursuant to and in accordance with such permit.

(n) "Community Benefits Partnership Program" means the agreement between and among the Developer, City, and Agency described in Article 7 below and described in Exhibit "C".

(o) Concept Site Plan" has the meaning set forth in Article 4 and attached hereto as Exhibit "D".

(p) "Construction Agreements" means all agreements executed in connection with any construction work on the Project Site.

(q) "Control". As used herein, the term Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Ownership of more than 50% of the: (a) beneficial interests of a Person shall be conclusive evidence that control exists, or (b) voting interests of a Person shall be conclusive evidence that control exists.

(r) "Council" means the City Council.

(s) "County" means Palm Beach County, Florida.

(t) "Default" or "Event of Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice, lapse of time or both, constitute (in accordance with the terms of this Agreement), an Event of Default of this Agreement.

(u) "Developer" means Developer (and any assignee or transferee of the Developer that is permitted under this Agreement, from and after the date of such permitted assignment or transfer).

(v) "Developer's Project Representatives" has the meaning provided in Article 8.

(w) "Effective Date" means the date on which the last of the Parties execute this Agreement.

(x) "Expiration Date" shall mean (i) with respect to the Phase I Development, the earlier of the issuance of a Final CO for the Phase I Development or the termination of this Agreement with respect to the Phase I Development as expressly permitted in Article 14 hereof, and (ii) with respect to the Phase II Development, the earlier of the issuance of a Final CO for the completed Phase II Development or the termination of the Phase II Development as expressly permitted in Article 14 hereof.

(y) "Final CO" means a final certificate(s) of occupancy issued by the City's Building Department for all or a portion of the Improvements.

(z) "Final Site Plan" has the meaning set forth in Article 4 below.

(aa) "Governmental Authority or Authorities" means the United States of America, the State, the City, the County, Agency and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

(bb) "Improvements" means any and all buildings, structures, additions, betterments or other improvements to be located or constructed by the Developer on the Land, or any part thereof, as the context requires.

(cc) "Infrastructure Improvements" means the infrastructure improvements which are required to be made by the Developer as part of its site plan approval.

(dd) "Land" initially means, collectively, the real property described on Exhibit "A" and "B" to this Agreement, with such subsequent additions, exclusions or other adjustments as may be made in accordance with this Agreement.

(ee) "Leasehold Financing" has the meaning provided in Article 15 hereof.

(ff) "Leasehold Mortgagee" has the meaning provided in Article 15 hereof.

(gg) "Mayor" means the Mayor of the City.

(hh) "Member" means a member of the City Council of the City.

(ii) "Option Agreement" means that certain Option Agreement between the City and the Developer which provides, among other things, that the Tenants under the Phase I Lease and the Phase II Lease will have an option to extend the terms of such Leases to ninety-nine (99) years.

(jj) "Owner" means the City of Riviera Beach, Florida, and any assignee or transferee of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer (by operation of law or otherwise) pursuant to which the entire Owner's interest in the Premises was assigned or transferred to such assignee or transferee; provided, however, that any such assignment or transfer of the Owner's interest in the Premises shall be permitted only if such assignee or transferee is a governmental or quasi-governmental body or entity (including, without limitation, the City or any Agency thereof).

(kk) "Party" means Developer, City, or Agency as indicated by the context. "Parties" means, collectively Developer, City, and Agency.

(ll) "Person". As used herein, the term "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(mm) "Phase I Development" shall consist of approximately 60,000 square feet of retail space open to the public with approximately 400 surface parking spaces, as set forth in the Concept Site Plan, except as modified by agreement of the Developer, Agency and the City and subject to Final Site Plan approval. In the event that the Developer determines in its reasonable discretion that the Phase I Development cannot be supported solely with retail space, then the Developer shall be entitled to have office space within the Phase I Development, not to exceed 20% of the square feet of the Phase I Development, so long as the use of such office space is related to the promotion of tourism or recreation.

(nn) "Phase II Development" shall consist of a building of up to 270 feet in height (maximum) with an approximately 525 car parking facility, as set forth in the Concept Site Plan, except as modified by agreement of the Developer, Agency, and the City and subject to Final Site Plan approval. The building will include 7,000 to 10,000 square feet of banquet/meeting space, restaurants and associated amenities for public and guest use and a mix of up to 325 Resort Units (provided that there are not less than 100 hotel suites).

(oo) "Phase I Lease" means, collectively, the Ground Lease-Retail and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of such Lease or by mutual agreement of the Parties.

(pp) "Phase II Lease" means, collectively, the Ground Lease-Hotel/Resort and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of such lease or by mutual agreement of the Parties.

(qq) "Phase I Construction Commencement Date" has the meaning provided in Article 5.02 below.

(rr) "Phase I Completion Date" has the meaning provided in Article 5.02 below.

(ss) "Phase II Construction Commencement Date" has the meaning provided in Article 5.02 below.

(tt) "Plans and Specifications" has the meaning provided in Article VI below.

(uu) "Premises" has the same meaning as "Leased Premises" set forth in the Phase I Lease and Phase II Lease, respectively.

(vv) "Project" means the development described in Exhibit D consisting of the Phase I Development and the Phase II Development.

(ww) "Proposal" has the meaning provided in the Recitals to this Agreement.

(xx) "Requirement" has the meaning provided in Article 16.

(yy) "Resort Unit(s) means hotel suites, condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units.

(zz) "State" means the State of Florida.

(aaa) "Substantial Completion" shall mean the completion of the applicable Improvements in substantial accordance with the Final Site Plan as confirmed by the Developer's architect.

(bbb) "Temporary CO" means a temporary or conditional certificate(s) of occupancy, as the same may be amended from time to time, issued by the City's Building Department for all or a portion of the Improvements.

(ccc) "Term" means the term of years commencing on the Effective Date and, subject to earlier termination as provided hereunder, expiring at 11:59 p.m. on the Expiration Date.

(ddd) "Transfer" has the meaning provided in 10.02(d).

(eee) "Unavoidable Delays". As used herein, the term "Unavoidable Delay(s)" shall mean any delay which arises, directly or indirectly, from any strike, lockout, labor dispute, inability to obtain materials or labor (in each case outside the reasonable control of the Developer), governmental restrictions, acts of war, act of public enemy, riot, insurrection, terrorist attack, governmental regulation, fire or other acts of God, abnormal weather conditions, litigation which causes a delay (other than litigation among and between the Developer and its Affiliates) or other cause, similar or dissimilar to those enumerated above, beyond the control of Developer (all of the causes set forth above being herein called "Unavoidable Delays").

2.02 Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

2.03 Florida Statutes.

All references herein to Florida Statutes are to Florida Statutes (2006), as amended from time to time.

ARTICLE 3
OBLIGATIONS DURING THE PRE-DEVELOPMENT PERIOD; EFFECTIVENESS AND TERMINATION.

3.01 Effectiveness and Termination.

(a) This Agreement shall be effective as of the Effective Date and shall terminate on the "Expiration Date", unless sooner terminated pursuant to the terms of the Agreement, and subject to all provisions of this Agreement which specifically survive any such termination of the Agreement.

(b) Subject to the provisions of Article 4.04 (c), below, the City and the Agency agree that during the effective term of this Agreement, the City and the Agency will take no action, nor exercise any power or authority in any way which would prevent the design and development of the Project, unless required to do so by a court of competent jurisdiction.

(c) The City and the Agency understand that certain portions of the City Property that are presently utilized for streets, sidewalks, parking areas and/or recreation areas must be abandoned in order to become part of the Project Site and the Premises. In this regard the City

and Agency agree, subject to applicable state statutes and ordinances and the establishment of alternate public right-of-way in accordance with the Final Site Plan, that they will take all such actions as are necessary in order to have such portions of the City Property abandoned.

(d) The City and the Agency agree and acknowledge that the feasibility of the Phase I Development and Phase II Development is predicated on, among other items: (i) the Lease Terms for the Phase I Lease and the Phase II Lease being ninety-nine (99) years, and (ii) the Phase II Development consisting of a building of at least 300 feet in height. Initial drafts of the Phase I Lease, the Phase II Lease and the this Agreement were circulated containing among other items, the provisions referred to in subparagraphs (i) and (ii) above. Subsequent to the circulation of the initial drafts of the Phase I Lease, Phase II Lease and this Agreement, various petitions were circulated challenging the ability of the City to enter into ninety-nine (99) year leases and attempting to limit the height of any buildings constructed on the beach to five (5) stories. As a result of the foregoing challenges: (i) the initial drafts of the Phase I Lease, Phase II Lease and this Agreement were modified to, among other things, limit the terms of the Phase I Lease and Phase II Lease to fifty (50) years so as to permit the Project to continue to be pursued during the period of time that the petitions were reviewed and any required referendums were held, and (ii) the Option Agreement was entered into which provides, among other things, that: (a) if the foregoing petitions were determined not to satisfy Florida law and as a result no referendum is held with respect to such petitions, or (b) referendum(s) are held as a consequence of the petitions and such referendum(s) is/are defeated or if passed deemed not applicable to the Project by a court of competent jurisdiction, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 of the Option Agreement. The Developer hereby waives any claim it might have against the City or Agency as a result of the passage of the referendum described above or a court of competent jurisdiction's reversal of any determination that the petition's did not satisfy Florida law. In addition, the Developer acknowledges that the neither the City nor Agency have a duty to challenge the procedures or result of said petitions or referendums.

(e) Notwithstanding anything contained to the contrary in this Agreement, the Phase I Lease and/or the Phase II Lease, in the event that the amendments to the Phase I Lease, Phase II Lease and this Agreement as set forth in the Option Agreement are not entered into, then the Developer, in its sole and absolute discretion, may: (i) terminate this Agreement with respect to either the Phase I Development and the Phase II Development or the Phase II Development, and (ii) terminate the Phase I Lease and/or the Phase II Lease as applicable. If the Developer terminates this Agreement with respect to both the Phase I Development and the Phase II Development, then the Developer shall have no further obligations under this Agreement or under the Phase I Lease or the Phase II Lease. If the Developer terminates this Agreement with respect to the Phase II Development, then the Developer shall continue to retain all of its rights with respect to the Phase I Development and this Agreement shall be deemed modified to apply only to the Phase I Development and the Phase I Lease will also remain in full force and effect,

as applicable and the Phase II Lease will be terminated. The Developer may not terminate this Agreement solely with respect to the Phase I Development.

ARTICLE 4
CONCEPT AND FINAL SITE PLAN

4.01 Final Site Plan.

City and Agency acknowledge that Developer has prepared and completed a Concept Site Plan for development of the Project Site, attached hereto as Exhibit "D". Developer shall submit a proposed Final Site Plan to the Agency and City for approval, which approval shall not be unreasonably withheld or delayed, but at all times shall be subject to the provisions of Sections 4.02 and 4.04 hereof. The Final Site Plan for the Project shall be similar to the Concept Site Plan, except as modified by agreement of the Agency, City and the Developer, but shall be set forth with greater detail as to elevations, building footprint, architectural features, landscaping, parking, and internal street layout for the entire Project. Upon authorization and approval by the governing body of the City of the Final Site Plan, the Final Site Plan shall be attached hereto as Exhibit E. The City and the Agency agree and understand that the Final Site Plan with respect to Phase I Development may be modified by the Developer with the approval of the City, if the Developer is unable to extinguish an existing tenant or tenants currently occupying any portion of the Ocean Mall Property. The Developer agrees that it shall not apply for any building permit for major components of the Project that is not in substantial conformity with the Final Site Plan, unless the Final Site Plan is modified in the manner hereinafter provided.

4.02 City Authority Preserved.

The City's duties, obligations, or responsibilities under any section of this Agreement, specifically including, but not limited to section 4.01, shall not affect the City's right, duty, obligation, authority and power to act in its governmental police power or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law.

4.03 Preparation of Final Site Plan.

Developer is responsible for and shall pay the cost of preparing, submitting and obtaining approval of any version of the Final Site Plan and any revisions or modifications thereto.

4.04 Development Approvals, Permits, and Building Permits.

(a) Applications for Development Approval. Developer shall prepare and submit to the appropriate governmental authorities, including the City, applications for all required permits, and shall bear all costs of preparing such applications, applying for and obtaining such permits, including payment of any and all applicable application, inspection, regulatory and impact fees or charges (whether imposed by the City or another Governmental Authority).

(b) City and Agency Cooperation and Assistance. The City and the Agency shall cooperate with Developer in obtaining all necessary permits required for the construction, completion and opening for business of the Project. If requested by OMRD and authorized by law, the City will join in any application for any permit, or, alternatively, recommend to and urge any governmental authority to which application for any permit has been made that such permit be issued or approved.

(c) City Authority Preserved. The City's duties, obligations, or responsibilities under any section of this Agreement, specifically including, but not limited to, this Article 4.04, shall not affect the City's right, duty, obligation, authority and power to act in its governmental police power or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, any required permitting, licensing or other regulatory approvals by the City shall be subject to the established procedures and requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law.

(d) Review and Approval. The City and the Agency agree that they will take final action on all applications for development approval within the normal process after submission of complete applications and all supporting material. In no event shall the City, due to any provision of this Agreement, be obligated to take any particular action with regard to regulatory approvals, except to promptly review any applications submitted by the Developer through its established processes and in accordance with applicable provision of law.

4.05 Approval of Modifications or Revisions to Final Site Plan by City Manager.

(a) Proposed modification(s) of or revision(s) to the Final Site Plan may be approved by the City Manager without further review or approval of the Council in the following instances:

(1) Alterations of proposed building or structures, which do not result cumulatively in more than a ten (10%) percent modification to the floor area per building, or structure, as found in the Final Site Plan and this Agreement;

(2) Minor cosmetic alterations of the external façade of proposed structures; and

(3) Building locations may be adjusted or rotated to improve open space.

(b) In the event the City Manager, or the City Attorney, is in doubt as to whether a proposed modification or revision conflicts with the express terms of this Agreement, the proposed modification or revision may be acted upon by the City Council. Any denial by the City Manager under this Article 4.06 may be appealed by Developer to the City Council.

ARTICLE 5
CONSTRUCTION, OPERATION AND MANAGEMENT REQUIREMENTS

5.01 Development of the Project Site

Developer shall develop the Project on the Project Site in accordance with this Agreement and the Final Site Plan.

5.02 Obligations With Respect to Construction.

(a) Developer will be obligated (subject to Unavoidable Delays) to:

(1) Commence construction of the Phase I Development (such date of commencement being defined as the "Phase I Construction Commencement Date") within eighteen (18) months after the Effective Date of this Agreement, subject to a one (1) year extension available upon payment of one hundred thousand dollars ($100,00.00) to the City and subject to an additional one (1) year extension upon payment of another two hundred thousand dollars ($200,000.00) to the City.

(2) Commence construction of the Phase II Development (such date of Commencement being defined as the "Phase II Construction Commencement Date") within sixty (60) months after the Effective Date of this Agreement.

(3) Achieve Substantial Completion of the Phase I Development within three (3) years of the Phase I Construction Commencement Date subject to a one (1) year extension upon payment of the sum of one hundred thousand dollars ($100,00.00) to the City and subject to an additional one (1) year extension upon payment of another two hundred thousand dollars ($200,00.00) to the City (the "Phase I Completion Date"); and

(b) The Developer shall be responsible for all demolition of the improvements currently located on the Premises necessary to complete the Project.

(c) The Developer shall construct the Phase I Development in such manner to provide at all times parking and reasonable access to the beach for City residents desiring to utilize the City's beach and beachfront park.

(d) By not later than the Phase II Construction Commencement Date, as such date may be extended pursuant to section 5.02 above, the Developer shall add or cause its contractor to add the City as an "Additional Obligee" on the payment and performance bond provided to its Leasehold Mortgagee. The City's rights under any such payment and performance bond will be subordinate to the rights of any Leasehold Mortgagee under such payment and performance bond.

5.03 Project Components.

(a) Each element or component of the Project shall contain (without material deviation, except as expressly permitted hereby) the square footages set forth in the Final Site Plan and the description of the Phase I Development and Phase II Development set forth herein. The requirements set forth on the Final Site Plan may be varied or adjusted as follows:

(1) Any individual deviation of ten percent (10%) or greater from the applicable requirement of the Final Site Plan must be approved in advance in writing by the City Council; and

(2) Any individual deviation of less than ten percent (10%) from the applicable requirement need not be approved in advance in writing by the City Council; provided that Developer shall notify City and Agency in writing of such reduction prior to Commencement of construction of such component of the Project and be approved by the City Manager or its designee.

5.04 Project Phasing.

The City, the Agency and the Developer agree that the Phase I Development may, at the Developer's sole discretion be constructed in two (2) sub-phases of floor area, each comprised of approximately thirty thousand (30,000) feet of floor area and that the number of the availability of surface parking spaces may vary from time to time in accordance with the construction schedule for the Phase I Development. Developer agrees that not less than two hundred (200) parking spaces will be provided at all times during construction of the Phase I Development. Such parking spaces can not be used for construction parking.

5.05 Regulatory and Design Requirements.

(a) Developer shall construct the Project (and each element or component of the Project) in accordance with all Requirements, including, without limitation, ADA. Developer shall be responsible for timely payment of all applicable permitting, licensing, utility connection and similar fees and charges in connection with the design and construction of the Project.

(b) Developer will meet as reasonably required with the City and Agency's Project Representative and will take such other actions as are reasonably required to ensure that the

Project (and each element or component of the Project) is being developed in accordance with this Agreement.

ARTICLE 6
FINANCING OF CIVIC IMPROVEMENTS; DESIGN AND CONSTRUCTION OF THE CIVIC IMPROVEMENTS; IMPACT FEES

6.01 Financing of the Civic Improvements.

(a) The Parties have agreed that specified Civic Improvements which will enhance the Project will be funded by the Developer and reimbursed by the City and Agency from the proceeds of the Civic Improvement Funds. The Developer shall be responsible to provide fees to the Agency to cover the Agency's costs for program and construction management services[1] connected with the Phase I and Phase II Development. The City and the Agency shall use all reasonable efforts to obtain the Civic Improvement Funds.

(b) The Developer agrees that the two hundred (200) surface parking spaces contained within the Phase I Development, costing not more than One Million Dollars ($1,000,000) and the improvements to the beach immediately fronting the Project, as designated by the City[2], costing not more than One Million Five Hundred Thousand Dollars ($1,500,000) will be completed by not later than the completion of the construction of the Phase I Development. The balance of the Civic Improvements[3] must be completed by not later than the completion of construction of the Project.

(c) The Civic Improvement Funds will be made available to the Developer as soon as they have been raised by the City but in no event not later than twelve (12) months from the completion in full of the Civic Improvements. If such funds have not been made available to the Developer by such date then, notwithstanding anything contained herein or within the Phase I Lease or the Phase II Lease, to the contrary: (i) the Developer will be entitled to pursue all of its remedies at law or in equity against the City and/or the CRA as a result of such failure to make available to the Developer the Civic Improvement Funds, and (ii) without limiting the foregoing

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[1] Such construction management services shall relate only to the Civic Improvements.

[2] The City shall notify the Developer, within 180 days of the Effective Date of this Agreement, of the proposed improvements to the beach immediately fronting the Project that the City would like done, for the Developer's review and reasonable approval. The City understands and acknowledges that the Developer's approval shall take into account the cost of such improvements and if the Developer determines in good faith that the cost of such improvements will exceed One Million Five Hundred Thousand Dollars ($1,500,000), then the Developer shall be reasonable in not approving such proposed improvements and the City shall modify their request until the cost is less then One Million Five Hundred Thousand Dollars ($1,500,000) and are otherwise reasonably acceptable to the Developer. ,

[3] The Developer shall notify the City within 180 days of the Effective Date of this Agreement, of the proposed additional Civic Improvements, for the City's review and reasonable approval. It is understood that the City's approval will take into account whether the proposed Civic Improvements are consistent with the items contained within the definition of Civic Improvements and that they will not in the aggregate cost more then Five Million Dollars ($5,000,000).

the Developer shall be entitled to set-off against Percentage Rent under the Phase I Lease or Unit Rent or Percentage Rent under the Phase II Lease, the amount of unreimbursed Civic Improvement Funds.

(d) The Developer agrees that the cost of two hundred (200) of the four hundred (400) surface parking spaces which are a part of the Phase I Development shall be constructed at the Developer's cost and are not Civic Improvements.

6.02 Design and Construction of the Civic Improvements.

(a) Developer shall design and construct, or cause the design and construction, of the Civic Improvements. In connection with the design and construction of the Civic Improvements, Developer shall:

(1) Comply with all Requirements, including without limitation, ADA;

(2) For any and all Civic Improvements to be owned by the City after completion, delivery to the City of a construction contract and performance and payment bond in form and substance reasonably satisfactory to the City;

(3) Be responsible for timely payment of all applicable permitting, licensing, utility connection, and similar fees and charges in connection with the design and construction of the Civic Improvements;

(4) Meet as reasonably required with the City and Agency's Representative and will take such other actions as are reasonable required to ensure that the Civic Improvements are being constructed in accordance with this Agreement.

(b) In no event shall any City Indemnified Party have any liability in connection with the construction of the Civic Improvements as a result of or arising from any approvals relating thereto given or withheld (or the right to give or withhold such approvals) pursuant to this Agreement, or as a result of or arising from any other right to review, comment on or evaluate any plans, drawings, specifications or other documents in connection with the construction or operation of the Civic Improvements. In no event shall any such review, approval, comment or evaluation by any City Indemnified Party relieve Developer of any liability or responsibility under this Agreement, it being understood and agreed that City and Agency is all times ultimately relying on Developer's skill, knowledge and professional training and experience in preparing (or causing the preparation of) any plans, drawings, specifications or other documents.

(c) With respect to construction contracts for the Civic Improvements, all change orders that would change, in any material respect, the (A) square footage, (B) layout, (C) volume, (D) structure, (E) façade, (F) projected usage, (G) quality, quantity or nature of constructions materials or (H) equipment or systems shall be subject to the prior approval of the City which will not be unreasonably withheld or delayed.

(d) The Civic Improvements shall be constructed in good and workmanlike manner; shall be free of liens and defects (subject to Developer's right to contest and resolve liens provided herein) and utilizing materials of construction consistent with the proposed scope, magnitude and location of the Project; and shall conform to all Requirements. Upon Substantial Completion of the Civic Improvements, Developer shall furnish the Agency with the following:

(1) A certification of the Architect that in his or her professional judgment, after diligent inquiry, the Civic Improvements have been Substantially Completed and comply with all applicable Requirements;

(2) Either (A) lien waivers in form and substance reasonably satisfactory to the City from each contractor, subcontractor, supplier or materialman retained by or on behalf of Developer in connection with the construction of the Civic Improvements, evidencing that such Persons have been paid in full for all work performed or materials supplied in connection with the construction of the Civic Improvements; or (B) evidence reasonably satisfactory to the City that the Developer has provided a bond or other security of equivalent effect providing for all liens to be removed of record and is diligently pursuing appropriate legal action to discharge such liens (or to contest and resolve such liens in accordance with applicable provisions of this Agreement); and

(3) A complete set of "as built" plans and a survey showing the Civic Improvement(s).

(e) Nothing contained herein shall be construed to limit the right of Developer to contest any claim made against Developer by any contractor, subcontractors, materialman, workmen and/or other third persons arising out of or in connection with or because of the construction of the Civic Improvements. Developer shall have final responsibility for resolving, and shall use reasonable efforts to resolve; any such claims and shall consult with the City and Agency and keep the City and Agency fully informed of its actions with respect thereto. However, nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of City, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or to furnishing of any materials for any specific improvement of, alteration to, or repair of, the site where the Civic Improvements are located or any part thereof, nor as giving the Developer any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the City or against assets of the City. NOTICE IS HEREBY GIVEN, AND DEVELOPER SHALL CAUSE ALL CONSTRUCTION AGREEMENTS RELATING TO THE CIVIC IMPROVEMENTS TO PROVIDE, THAT TO THE EXTENT ENFORCEABLE UNDER FLORIDA LAW, CITY SHALL NOT BE LIABLE FOR ANY WORK PERFORMED OR TO BE PERFORMED WITH RESPECT TO THE CIVIC IMPROVEMENTS OR ANY PART THEREOF FOR DEVELOPER OR ANY SUBTENANT OR FOR ANY MATERIALS FURNISHED OR TO BE FURNISHED TO THE PROJECT SITE OR ANY PART THEREOF FOR ANY OF THE

FOREGOING, AND NO MECHANIC'S, LABORER'S, VENDOR'S, MATERIALMAN'S OR OTHER SIMILAR STATUTORY LIEN FOR SUCH WORK OR MATERIALS SHALL ATTACH TO OR AFFECT CITY OR ANY ASSETS OF CITY. The foregoing shall not require Developer to request advance waivers of lien from contractors or subcontractors.

(f) Any warranties in any construction contract entered into by Developer for the construction of the Civic Improvements shall be for the benefit of the City as well as Developer.

(g) Developer shall process permit applications for Civic Improvements for review and approval by the applicable Governmental Authority. Subject to the provisions of Article 4.02 hereof, the City will use all reasonable efforts to cause any Governmental Authority with jurisdiction over the Project to review such permit applications for the purpose of determining compliance with applicable ordinances and code requirements, and will make all reasonable efforts to complete such review within 15 days.

(h) Nothing contained in this Agreement shall grant or be deemed to grant to any contractor or any other Person engaged by Developer with any right of action or claim against the City Indemnified Parties with respect to any work any of them may do in connection with the Civic Improvements. Nothing contained herein shall create or be deemed to create any relationship between the City and Agency and any contractor or any such Person engaged by Developer and the City Indemnified Parties shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Civic Improvements.

ARTICLE 7
COMMUNITY BENEFITS PARTNERSHIP PROGRAM; EQUAL OPPORTUNITY; NON-DISCRIMINATION

7.01 Community Benefits Partnership Program.

(a) A Community Benefits Partnership Program has been developed with respect to the Project in the form attached hereto as Exhibit C, which has been approved by the City and the Agency.

(b) The Developer shall contribute to the Community Benefits Partnership Program an amount equal to 1% of the hard construction costs for the Phase I Development and the Phase II Development, to be paid (except as provided below) at the time of receipt by the Developer of the last of all the building permits for both the Phase I Development and the Phase II Development. The Developer's contribution to the City pursuant to the terms of the Community Benefits Partnership Program shall be as follows:

(1) Two Hundred Fifty Thousand ($250,000.00) Dollars, to be applied to the amount to be paid pursuant to subparagraph (b) above, at the time of the non- appealable site plan approval for the Phase I Development or any part thereof; and

(2) To the extent not already paid pursuant to subparagraph (b) above, Two Hundred Fifty Thousand ($250,000.00) Dollars at the time of the issuance of all the building permits for the Phase I Development or either sub-phase thereof, to be applied to the amount to be paid pursuant to subparagraph (b) above.

(c) If the Developer terminates this Agreement with respect to the Phase II Development, then the Developer shall not have to make any contribution to the Community Benefits Partnership Program with respect to the Phase II Development and the balance, if any, of 1% of the hard construction costs for the Phase I Development, required to be contributed to the Community Benefits Partnership Program pursuant to subparagraph 7.01 (b) above, shall be paid by the Developer at later of : (i) time of receipt by the Developer of the last of all the building permits for the Phase I Development, or (ii) the Developer's election to terminate this Agreement with respect to the Phase II Development.

ARTICLE 8

8.01 Non-Discrimination.

(a) Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, creed, national origin, sex, age, disability, marital status or sexual orientation. Developer shall act in compliance with all Federal, state and local anti-discrimination laws.

ARTICLE 9
PROJECT REPRESENTATIVES; KEY PERSONNEL; PROJECT ADMINISTRATION

9.01 Project Representatives.

(a) Developer may, from time to time, designate up to two Persons as its project representatives. In this regard the Developer initially hereby designates Daniel Catalfumo and Norton Herrick as the "Developer's Project Representatives" to represent Developer in all of its dealings with City and Agency and the City and Agency's and Agency's Project Representative relating to the Project. City and Agency shall direct all communications regarding the Project to both Developer's Project Representatives.

(b) Within 30 days after execution hereof, City and Agency will designate an individual (or his successor appointed for such purpose) as the "City's and Agency's Project Representative" to represent City and Agency in all of its dealings with Developer and Developer's Project Representative relating to the Project. Developer shall direct all communications regarding the Project to the City and Agency's Project Representatives.

9.02 Project Administration.

(a) The Project Representatives will meet regularly with each other and with other representatives of the Parties throughout the implementation of the Project and the Civic Improvements. The frequency and scope of such meetings shall be determined mutually by the Project Representatives, in their reasonable judgment, based on the then-current status of Project implementation.

(b) Developer shall maintain appropriate records concerning the progress of the Project, including information with regard to design and construction of the Project. In addition, Developer shall maintain detailed records with regard to the design and construction of the Civic Improvements, including contracts and subcontracts. The Project progress documents and the Civic Improvements records shall be available for inspection by the City and/or the Agency at an office of the Developer located within Palm Beach County during normal business hours.

ARTICLE 10
INSURANCE

10.01 Insurance With Respect to the Civic Improvements.

Commencing with the commencement of construction of the Civic Improvements, Developer shall procure and continue in effect public liability and property damage insurance with respect to the construction of the Civic Improvements and name the City as an additional insured. Such public liability insurance shall cover liability for death or bodily injury in any one accident, mishap or casualty in a sum of not less than $2,000,000.00, and shall cover liability for property damage in one accident, mishap or casualty in the amount of not less than $500,000.00. Property damage insurance shall consist of standard builder's risk coverage in an amount not less than replacement value.

The Developer shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all of Developer's employees as required by Florida Statutes. In the event that the Developer does not carry such Workers' Compensation Insurance and chooses not to obtain same, then Developer shall in accordance with §440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the City.

The proceeds from Developer's casualty insurance hereunder shall be paid and applied only as determined by Developer. Any insurance carried by Developer hereunder, at Developer's option, may be carried under an insurance policy(ies), self-insurance or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other locations of Developer or its Affiliates, or any combination thereof; provided that any self insurance or proposed insurer having less than a Best's Key Rating of A-VII or less shall be subject to the prior written consent of the City, such consent not to be unreasonably withheld.

ARTICLE 11
TRANSFER AND ASSIGNMENT

The Developer has the absolute right to transfer this Agreement with respect to the Phase I Development and/or the Phase II Development to another Person in connection with any assignment or subletting permitted pursuant to either the Phase I Lease and/or the Phase II Lease. Notwithstanding the foregoing, if the Developer assigns or transfers either the Phase I Lease or the Phase II Lease, as permitted therein, prior to completion of the construction of the Phase I Development or the Phase II Development, as applicable, then this Agreement shall not be assigned or transferred to any non-Affiliated Person without the consent of the City and the City agrees that: (i) such consent shall not be unreasonably withheld or delayed, and (ii) if the City has not responded to the Developer's request for such consent within thirty (30) days of receipt of such request, then such consent shall automatically, immediately and irrevocably be deemed given on the thirty-first (31st) day following Developer's request for such consent.

ARTICLE 12
CONDEMNATION

12.01 Definition of Taking. For purposes of this article, any of the following three events shall be deemed a "Taking": (a) if any part of the Premises is taken or condemned through the exercise of the power of eminent domain by any governmental or private board, body, or agency having the right to exercise such power, (b) if any part of the Premises is conveyed to any condemning authority under threat of condemnation before or after proceedings have been commenced to acquire the property by the condemning authority, or (c) if a "Taking" is judicially declared in any proceeding involving the Premises in which City is a party.

12.02 Allocation of Award. Prior to the Effective Date (as such term is defined in the Phase I Lease or the Phase II Lease) of the Phase I Lease or the Phase II Lease, City and Developer agree that any award or compensation on account of any Taking of any of the Premises which is the subject of either the Phase I Lease or the Phase II Lease will be allocated as follows:

(a) Developer shall receive that portion of the Award or compensation allocable to its leasehold estate so Taken and all awards for any Improvements located on the Premises, subject to City's right to receive the reversionary estate interest in such Improvements; and

(b) City shall be entitled to receive that portion of the award or compensation allocable to its reversionary estate, as encumbered by the Phase I Lease and/or the Phase II Lease, as applicable.

12.03 Condemnation Proceedings. Both City and Developer may appear in any such proceeding or action, to negotiate, prosecute, and adjust any claim for any award or compensation on account of any Taking as it relates to their respective interest in the Premises. All amounts paid in connection with any Taking of the Premises shall be applied pursuant to this

article, and all such amounts are defined as the "Award." City shall have no interest in any Award or any portion of it made in respect of Developer's leasehold estate or the Improvements, except as to its reversionary interest in them, all of which shall belong to and be paid to Developer. However, any claim or interest by Leasehold Mortgagee shall be deducted from Developer's Award and shall not reduce any compensation granted to City, and Developer shall have no interest in any Award or any portion of it made in respect of the City's reversionary estate.

12.04 Continuation. The foregoing provisions regarding a Condemnation shall govern prior to the Effective Dates of the respective Phase I Lease and Phase II Lease, thereafter the respective provisions of each such leases regarding Condemnation shall govern.

ARTICLE 13
EVENTS OF DEFAULT

13.01 Each of the following events shall be an "Event of Default" hereunder:

(a) if the Developer has not Commenced construction of the Phase I Development by the Phase I Construction Commencement Date as such date may be extended in accordance with this Agreement; or

(b) if the Developer has not Commenced construction of the Phase II Development by the Phase II Construction Commencement Date as such date may be extended in accordance with this Agreement; or

(c) if the Developer has not achieved Substantial Completion of the Phase I Development by the Phase I Completion Date as such date may be extended in accordance with this Agreement; or

(d) if Developer fails to observe or perform in any material respect any other term, covenant or condition of this Agreement on Developer's part to be observed or performed and Developer shall fail to remedy such Default within thirty (30) days after notice of such Default is given by City or Agency with respect to such Default or, if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure, it being understood that Developer shall have no further grace or cure period with respect to any matter(s) not so susceptible to cure), Developer shall fail (1) within thirty (30) days after the giving of such notice of Default to institute all reasonable steps (and from time to time, as reasonably requested by City or Agency, Developer shall advise City and Agency of the steps being taken) necessary to remedy such Default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) diligently prosecute to completion the remedy of such Default, provided however that if such default has not been cured within (1) year then the City and the Developer shall meet to discuss how best to complete the

cure of such default and to set a timeframe in which such default will attempted to be fully cured; or

(e) if Developer makes or suffers a Transfer which is not expressly permitted under Article 10; or

(f) if Developer admits, in writing, that it is generally unable to pay its debts as such become due; or

(g) if Developer makes an assignment for the benefit of creditors; or

(h) if Developer and if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected: (a) files a voluntary petition under Title 11 of the United States Code, (b) files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or (c) seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Premises, and any of the foregoing are not stayed or dismissed within ninety (90) days after such filing or other action; or

(i) if: (a) within ninety (90) days after the commencement of a proceeding against Developer (if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected) which seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state, or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, vacated or stayed on appeal, or (b) within ninety (90) days after the appointment, without the consent or acquiescence of Developer (if as a result thereof Developer's performance or ability to perform any of Developer's obligations under this Agreement is materially adversely affected), of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Premises, such appointment has not been dismissed, vacated or stayed on appeal.

ARTICLE 14
REMEDIES, DAMAGES AND TERMINATION

14.01 If an Event of Default occurs under Articles 13.01 (a), (b) or (c) the City may elect to do either of the following: (i) enforce performance or observance by Developer of the applicable provisions of this Agreement; or (ii) terminate this Agreement solely with respect to either the Phase I Development or the Phase II Development as applicable; except with respect to an Event

of Default under Article 13.01(a), in which event the City may terminate this Agreement with respect to both the Phase I Development and the Phase II Development.

14.02 If an Event of Default occurs under any other material provision of this Agreement, City and Agency may elect to do either of the following: (i) enforce performance or observance by Developer of the applicable provisions of this Agreement; or (ii) recover from Developer Actual Damages (as defined herein below); provided, that neither the City nor the Agency may terminate this Agreement as a result of such Default and provided, further, that if the Developer fails to make its contribution pursuant to 7.01 (b), the City shall not issue the Developer the requested building permit.

14.03 "Actual Damages" means an amount equal to the sum of (i) any and all amounts paid by City or Agency to cure any Default; and (ii) any and all costs, fees and expenses incurred by City or Agency, whether through direct personnel cost or through engaging third-party consultants, to pursue the rights and remedies of City and Agency, as a result of or in connection with an Event of Default under this Agreement.

14.04 Strict Performance.

(a) No failure by Agency to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of Developer's Default or an Event of Default, and no partial payment of any amounts due under this Agreement during the continuance (or with City's or Agency's knowledge of the occurrence) of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or compiled with by either party, or no Default by either party, shall be waived, altered or modified except by performance or by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Partial payment by Developer to City and Agency of any amounts due under this Agreement shall be without prejudice to, and shall not constitute a waiver of, any rights of Developer against City and Agency provided for under this Agreement. Developer's compliance with any request or demand made by City and Agency shall not be deemed a waiver of Developer's right to contest the validity of such request or demand.

14.05 Right to Enjoin Defaults.

(a) In the event of City or Agency's Default or Event of Default, Developer shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise.

14.06 Remedies Under Bankruptcy and Insolvency Codes.

(a) If an order for relief is entered or if any stay of proceeding or other act becomes effective against Developer, or in any proceeding which is commenced by or against Developer, under the present or any future federal bankruptcy code or in a proceeding which is commenced by or against Developer, seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable Federal, state, or other bankruptcy or insolvency statute or law, City and Agency shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law, or this Agreement.

14.07 Separate and Independent Leases.

(a) The City, Agency, and Developer agree that for the purposes of this Agreement the Phase I Development and the Phase II Development are separate developments and the Phase I Lease and the Phase II Lease are separate and independent leases. Consequently, in the event that the City terminates this Agreement with respect to the Phase I Development pursuant to Article 13.01(c) or terminates this Agreement with respect to the Phase II Development pursuant to Article 13.01(b), then: (i) this Agreement shall remain in full force and effect with respect to the other phase and this Agreement shall be deemed modified to apply to the Phase I Development or the Phase II Development, as applicable, and (ii) the Phase I Lease or the Phase II Lease will also remain in full force and effect as applicable.

ARTICLE 15

15.01 Developer shall have the right at any time and from time to time to encumber its interest in the Phase I Development or the Phase II Development with one or more leasehold mortgages (the "Leasehold Financing"). Upon receipt of written notice from Developer of the existence of any Person providing a leasehold mortgage to Developer (each, a Leasehold Mortgagee), City agrees to provide such Leasehold Mortgagee with copies of any notices of default delivered to Developer. Any such notice of default shall state the nature of the alleged default and shall specify what is the claimed to be in default. Each Leasehold Mortgagee shall also be given notice of any dispute proceedings between City and Developer, if any.

15.02 Cure Rights. In the event of a monetary default by Developer hereunder, City shall accept payment by or at the instigation of any Leasehold Mortgagee in accordance with the terms hereof as if the same had been undertaken by Developer.

15.03 Non-Monetary Defaults and Cure Rights. In the event of a non-monetary default by Developer hereunder, City shall accept any curative acts undertaken by or at the instigation of any Leasehold Mortgagee in accordance with the terms of this Article as if the same had been undertaken by Developer. Notwithstanding the foregoing the City shall not be obligated to accept any curative acts undertaken by or at the instigation of any Leasehold Mortgagee with

respect to defaults under Articles 13.01(a), (b) or (c) hereof. In connection with the foregoing each Leasehold Mortgagee shall have the following rights:

(a) cure or cause to be cured within sixty (60) days of City's notice any existing monetary defaults; and

(b) cure or cause to be cured any non-monetary defaults within ninety (90) days of City's notice of same, that such Leasehold Mortgagee can cure using diligent and commercially reasonable efforts.

If, at the end of said ninety (90) day period, the Leasehold Mortgagee is in compliance with the conditions set forth in Sections A and B immediately set forth above, but the Event of Default is of such a nature that it cannot be reasonably remedied within such ninety (90) day period, the time for completion of said steps shall be further extended upon the same conditions for such period as shall be reasonably necessary to complete such steps with reasonable diligence.

15.04 New Disposition and Development Agreement. In the event of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, if requested by any Leasehold Mortgagee in writing within thirty (30) days of such rejection or disaffirmance, City shall enter into a new Disposition and Development Agreement with the Leasehold Mortgagee or its designee. Such new Disposition and Development Agreement shall be effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in this Disposition and Development Agreement. Such written request by any Leasehold Mortgagee shall be accompanied by a copy of such proposed new Disposition and Development Agreement, duly executed, and acknowledged by the proposed new assignee, and the Leasehold Mortgagee shall have cured (or caused to be cured) all defaults under this Disposition and Development Agreement which are susceptible to being cured by the Leasehold Mortgagee and paid to City all expenses and reasonable attorneys' fees incurred by City in connection with the Events of Default upon which the termination was premised and the preparation, execution and delivery of the replacement Disposition and Development Agreement. The provisions of this Section shall survive the termination, rejection or disaffirmance of this Disposition and Development Agreement and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by City, Developer and the Leasehold Mortgagee. The new Disposition and Development Agreement shall be on the same terms and conditions as this Disposition and Development Agreement. City's obligation to enter into the new Disposition and Development Agreement shall be conditioned upon the following: (i) the Leasehold Mortgagee shall have cured all monetary defaults and commenced, and diligently prosecuted, the cure of all reasonably curable non-monetary defaults; and (ii) the Leasehold Mortgagee shall reimburse City for all reasonable costs and expenses incurred in reviewing the new Disposition and Development Agreement.

15.05 Amendment. The cancellation, surrender or amendment of this Disposition and Development Agreement by Developer, shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee.

15.06 Estoppel Certificates. Within thirty (30) days after written request therefor from a Leasehold Mortgagee, City shall deliver to the Leasehold Mortgagee an estoppel certificate signed by City which certifies as to: (a) the nature of any existing defaults by Developer alleged by City; and (b) any other matters reasonably requested by the Leasehold Mortgagee.

15.07 No Liability/Release. Notwithstanding anything in this Agreement to the contrary, the Leasehold Mortgagee shall not be liable or responsible in any respect for any of Developer's obligations under this Agreement unless and until the Leasehold Mortgagee becomes the Developer under this Agreement. If the Leasehold Mortgagee or any Affiliate of the Leasehold Mortgagee shall acquire Developer's interest in this Agreement or shall become Developer under any new Disposition and Development Agreement made pursuant to this Section, then the Leasehold Mortgagee or its Affiliate may assign this Agreement or such new Disposition and Development Agreement and thereupon shall be released from all liability for the performance or observance of the covenants and conditions to be performed or observed on the part of Developer under this Agreement or such new Disposition and Development Agreement from and after the date of such assignment.

15.08 Interest of Leasehold Mortgagee in Leased Premises. The Leasehold Mortgagee shall have no interest in this Agreement other than its interest as Leasehold Mortgagee or as Developer under and pursuant to this Agreement or any new Disposition and Development Agreement.

15.09 Additional Provisions. City agrees and acknowledges that it will enter into any amendments to this Agreement in order to reflect any other commercially reasonable terms that the Leasehold Mortgagee may from time to time reasonably request to confirm and protect the Leasehold Mortgagee's rights and interests as a leasehold mortgagee unless there is good cause not to agree. The provisions of this section in favor of the Leasehold Mortgagee shall inure to the benefit of the Leasehold Mortgagee and its successors and assigns, and also any other Developer under or transferee of this Agreement. Anything herein to the contrary notwithstanding, such amendment shall in no event increase any of City's obligations, or materially diminish any of City's rights, or diminish any of Developer's monetary obligations to City, under this Agreement. The City shall also cause to be delivered, at the expense of Developer, such opinions of counsel as the Developer and/or any Leasehold Mortgagee shall reasonably request.

ARTICLE 16
REQUIREMENTS

16.01 Requirements.

(a) In connection with its performance of each and every one of its obligations hereunder, Developer shall comply promptly with any and all applicable Requirements.

(b) For purposes hereof, the term "Requirement" means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all Governmental Authorities having jurisdiction over Developer or the Premises, or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Premises, or any vault in, or under the Premises (including, without limitation, ADA and any of the foregoing relating to handicapped access or parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) the Temporary CO and/or Final COs issued for the Premises as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations or other indentures, documents or instruments of record.

(c) Developer shall be an equal opportunity employer, and shall not engage in any unlawful discrimination against any Person because of race, creed, national origin, sex, age, disability, martial status, or sexual orientation.

ARTICLE 17
LIABILITY

17.01 Developer's Exculpation.

The Developer shall indemnify, defend and hold harmless the City Indemnified Parties against and from any and all claims, damages, actions, loss, cost and expense (including but not limited to reasonable attorneys' fees) resulting directly or indirectly from the Developer's acts or omissions or the acts or omissions of the Developers' respective employees or agents (acting within the scope of their employment or agency). In addition, the City Indemnified Parties shall not be liable to Developer for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys fees and disbursements), penalty or fine incurred, in connection with or arising from: (i) any injury (whether physical, economic or otherwise) to Developer or to any other person in, about, or concerning the leased premises; (ii) any damage to, or loss (by theft or otherwise) of, any of Developer's property or of the property of any other person in, about, or concerning the leased premises, or the use or occupancy thereof, irrespective of the cause of injury, damage, or loss (including, without limitation, the acts or negligence of any Developer or occupant of the leased premises or of any owners or occupants of adjacent or neighboring property or caused by any construction work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the leased premises; or (iii) any act, omission or negligence of Developer or its Affiliates or of the contractors and their respective subcontractors, agents and employees, agents, servants, employees, guests, invitees or

licensees of Developer or its Affiliates (except to the extent any of the matters described in clauses (i) or (ii) is due to the negligence or willful misconduct of any City Indemnified Party). Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of the City Indemnified Parties (and then only in such City Indemnified Party's proprietary capacity as opposed to its governmental capacity), the City Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of god, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works.

ARTICLE 18
REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEVELOPER.

18.01 Representations and Warranties.

(a) Developer represents and warrants to the City and the Agency that each of the following statements is currently true and accurate and agrees the City and the Agency may rely upon each of the following statements:

(b) Developer is a Delaware limited liability company duly organized and in good standing and has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.

(c) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which OMRD is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Developer, and neither the execution and delivery thereof by Developer, nor compliance by the Developer with the terms and provisions thereof or hereof: (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) to the best of the Developers knowledge contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer, (3) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of Developer under any indenture, mortgage, deed of trust, bank loan or credit agreement, Developer's Articles of Organization, or, any other agreement or instrument to which Developer is a party or by which the Developer may be bound.

(d) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which Developer is or will be a party, constitutes (or when entered into will constitute) a legal, valid and binding obligation of Developer enforceable against Developer in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(e) There are no pending or, to the knowledge of Developer, threatened actions or proceedings before any court or administrative Agency against Developer, or against any controlling shareholder, officer, employee or agent of Developer, which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of Developer.

(f) Developer has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by OMRD, and has paid, or caused to be paid, all taxes shown to be due and payable on such returns or on any assessments levied against Developer.

(g) The principal place of business and principal executive offices of Developer are in Palm Beach County, Florida, and Developer will keep all records concerning the Project (such as construction contracts, financing documents and corporate documents) and all contracts, licenses and similar rights relating thereto at its principal place of business.

(h) Developer has the experience, expertise, and capability to develop, cause the construction, and complete the Project and, oversee and manage the design, planning, construction, completion and opening for business of the Project.

(i) Developer shall indemnify the City and Agency against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the Developer in connection with this Agreement or the transactions contemplated hereby.

18.02 Covenants. Developer covenants with the City and the Agency that until the Expiration Date hereof:

(b) Developer shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of Developer to perform.

(c) During the period this Agreement and the obligations of Developer under this Agreement shall be in effect, Developer shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals and shall cause to occur those events contemplated by this Agreement that are applicable to, and that are the responsibility of, Developer.

(d) Developer shall assist and cooperate with the City and the Agency to accomplish the development of the Project by Developer in accordance with this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

(e) Developer shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.

ARTICLE 19
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY AND AGENCY

19.01 Representations and Warranties.

(a) The City and Agency represent and warrant to Developer that each of the following statements is currently true and accurate and agrees that Developer may rely on each of the following statements:

(b) The City and Agency are validly existing bodies under the laws of the State of Florida, the Agency is a duly created community redevelopment Agency for the City pursuant to the Community Redevelopment Act of 1969, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(c) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which the City and the Agency are or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the City and the Agency, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City and the Agency, (3) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City and the Agency under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City and the Agency are parties, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City and the Agency outstanding on the Effective Date.

(d) This Agreement and, to the extent such documents presently exist in a form accepted by the Parties, each document contemplated or required by this Agreement to which the

City and the Agency are or will be Parties constitute, or when entered into will constitute, legal, valid and binding obligations of the City and the Agency enforceable against the City and the Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(e) There are no pending or threatened actions or proceedings before any court or administrative Agency against the City and the Agency, or against any officer of the City or the Agency, which question the validity of this Agreement, the Phase I Lease or the Phase II Lease or any document contemplated hereby or thereby, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder, thereunder or the financial condition of the City and Agency.

(f) City and Agency represent that they have not dealt with any broker, finder of like entity in connection with this Agreement of the transaction contemplated hereby, and shall indemnify the Developer against any claim for brokerage commissions, fees or other compensation by any Person alleging to have acted for or dealt with the City and Agency in connection with this Agreement or the transactions contemplated hereby.

19.02 Covenants.

(a) The City and the Agency covenant with OMRD that until the Expiration Date hereof:

(b) The City and the Agency shall timely perform, or cause to be performed all of the obligations contained herein which are the responsibility of the City and the Agency to perform.

(c) During the period this Agreement and the obligations of the City and the Agency under this Agreement shall be in effect, the City and the Agency shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the City and the Agency.

(d) The City and the Agency shall assist and cooperate with Developer to accomplish the development of the Project in accordance with this Agreement, the Concept Site Plan, and the Final Site Plan and will carry out their duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the City and the Agency will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders, or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

ARTICLE 20
GOVERNMENT INVESTIGATIONS, ETC.

20.01 Developer shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a Governmental Authority that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. In addition, Developer shall promptly report in writing to the City Attorney any solicitation, of which Developer's officers or directors have knowledge, of money, goods, requests for future employment, or other benefit or thing of value, by or on behalf of any employee of Agency or the City relating to the procurement or obtaining of this Agreement by Developer or affecting the performance of this Agreement.

ARTICLE 21
NOTICES, CONSENTS AND APPROVALS

21.01 Service of Notices and Other Communications.

(a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication (referred to in this Article 21.01 as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by certified or registered U.S. mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or by a recognized national courier service, addressed as follows:

If to Developer: OMRD Holdings, LLC
2295 Corporate Blvd., Suite 222
Boca Raton, Florida 33431
and

OMRD, Inc.
4300 Catalfumo Way
Palm Beach Gardens, FL 33410

with a copy to: Greenberg Traurig, P.A.

5100 Town Center Circle, Suite 400
Boca Raton, Florida 33486
Attn: Marc Sinensky, Esq.

If to Owner: The City of Riviera Beach, Florida
Attention: City Manager
600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

With a copy to: The Riviera Beach Community
Redevelopment Agency
2001 Broadway, Suite 300
Riviera Beach, Florida 33404
Attention: Executive Director

Any such Notice may be given, in the manner provided in this Article, (i) on either Party's behalf by its attorneys designated by such Party by notice hereunder, and (ii) at Developer's request, on its behalf by any Leasehold Mortgagee any other Person designated in such request.

(b) Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof. All references in this Agreement to the "date" of a Notice shall mean the effective date, as provided herein.

21.02 Consents and Approvals.

(a) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

(b) Unless expressly provided or otherwise, all consents and approvals which may be given by a Party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval.

ARTICLE 22
MISCELLANEOUS

22.01 Phase II Hotel Operator.

Marriott shall be designated the initial hotel flag and hotel management company with respect to the Phase II Development.

22.02 Governing Law and Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.

22.03 References.

(a) The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Agreement.

(c) The use herein of the words "successors and assigns" or "successors or assigns" of City and Agency or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual City and Agency or Developer.

(d) Nothing in this Agreement or in the Parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of Agency or the City in the discharge of its police or governmental powers.

(e) All references in this Agreement to the terms "herein," "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

22.04 Entire Agreement, etc.

(a) This Agreement, together with the Phase I Lease, the Phase II Lease, the Option Agreement and the attachments hereto and thereto, contains all of the promises, agreements, conditions, inducements and understandings between City, Agency and Developer concerning the Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein, therein and in such attachments hereto or thereto or as may be

expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

(b) No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City, Agency and Developer. No waiver of any Default or Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect.

22.05 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.06 Remedies Cumulative.

Each right and remedy of either Party provided for in this Agreement, shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a Party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, except as otherwise expressly limited by the terms of this Agreement, shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise except as otherwise expressly limited by the terms of this Agreement.

22.07 Successors and Assigns.

(a) The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of City, Agency, Developer, and Leasehold Mortgagee's and their respective successors and assigns.

(b) The City has required that: (i) the tenant under the Phase I Lease be maintained as a single asset entity, owning no assets other than its interest in the Premises as defined in the Phase I Lease, and (ii) the tenant under the Phase II Lease be maintained as a single asset entity, owning no assets other than its interest in the Premises as defined in the Phase II Lease; consequently, notwithstanding anything contained in this Agreement to the contrary, the

Developer has the absolute right to transfer this Agreement to another Person in connection with the foregoing.

(c) In the event of an assignment of this Agreement, with respect to the Phase I Development and/or the Phase II Development to another Person in connection with any assignment or subletting permitted pursuant to either the Phase I Lease and/or the Phase II Lease, Developer shall automatically be released from all liability hereunder with respect to the portion of the Project, so assigned or subleased, so long as the assignee or subleasee agrees to assume such obligations. In the event of a default by any such assignee or subtenant, the City shall give the Developer notice of such default, shall accept cure of such default by Developer within sixty (60) days after receipt of such notice and shall permit Developer to reassume this Agreement with respect to the portion of the Project that it has been assigned, upon all of the provisions of this Agreement.

22.08 Recording of Agreement.

Promptly after the Effective Date, the Parties shall cause a memorandum of this Agreement, and promptly after the execution of any amendments hereto (including, without limitation, to include or exclude portions of the Premises as provided herein), the Parties shall cause a memorandum of any such amendments, to be recorded in the Public Records of Palm Beach County, Florida; and Developer shall pay and discharge all costs, fees and taxes in connection therewith.

22.09 No liability of Officials and Employees.

(a) No member, official or employee of the Agency, the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its member) shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City and Agency or for any amount or obligation which may become due to Developer or successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the City and the Agency.

(b) No member, shareholder, officer, director, member of management committee, employee, agent or representative of the Developer or any their respective members, shareholders, officers, directors, members of management committee, employees, agents or representatives shall be personally liable to the City, the Agency or any of the City Indemnified Parties, or any successors in interest, in the event of any default or breach by the Developer or successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims

against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the Developer.

22.10 Conflict of Interest.

Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Agency, the City or any other governing body has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City, the Agency or any other governing body has received any payment or other consideration for the making of this Agreement, directly or indirectly from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. Developer acknowledges that City and Agency are relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

22.11 No Partnership.

The Parties hereby acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement or the other documents executed by the Parties with respect to the Project, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this Article shall survive expiration of the Term.

22.12 Time Periods.

Any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

22.13 No Third Party Beneficiaries.

Nothing in this Agreement shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

22.14 Conflict with RFP.

Notwithstanding anything contained herein to the contrary, in the event of a conflict between the RFP and Agreement, this Agreement shall control.

22.15 No General Obligation.

In no event shall any obligation of the City or the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither Developer nor any other Party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, or any other governmental entity to pay the City's or the Agency's obligations or undertakings hereunder.

22.16 Disclaimer As To Governmental Authority.

Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTION

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

ATTEST:

By: _____
Carrie E. Ward, City Clerk

By: _____
Michael D. Brown, Mayor

As to Form and Legal Sufficiency

By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

As to Terms and Conditions

By: _____
Bernard Kinsey,
CRA/City Lead Negotiator

By: _____
William E. Wilkins, City Manager

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Ann Iles, Chairperson

As to Form and Legal Sufficiency

By: _____
J. Michael Haygood,
Interim CRA Attorney

As to Terms and Conditions

By: _____
Floyd Johnson
CRA Executive Director

EXECUTION

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

ATTEST:

By:_____
Carrie E. Ward, City Clerk

By:_____
Michael D. Brown, Mayor

As to Form and Legal Sufficiency

By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

As to Terms and Conditions

By: _____
Bernard Kinsey,
CRA/City Lead Negotiator

By: _____
William E. Wilkins, City Manager

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Ann Iles, Chairperson

As to Form and Legal Sufficiency

By: _____
J. Michael Haygood,
Interim CRA Attorney

As to Terms and Conditions

By: _____
Floyd Johnson
CRA Executive Director

OMRD, LLC,
a Delaware limited liability company

By:_____
Daniel Catalfumo, its President

LIST OF EXHIBITS
DDA

A. OCEAN MALL PROPERTY

B. CITY PROPERTY

C. COMMUNITY BENEFITS PARTNERSHIP PROGRAM

D. CONCEPT SITE PLAN

E. FINAL SITE PLAN

F. HOTEL FLAG CRITERIA

BOC-FS1\408308v20\091925.010100

Existing Ocean Mall Lease

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1 (Estate):

Parcel B, Plat of Riviera Beach Ocean Tract, according to the Plat thereof, as recorded in Plat Book 30, Page 98, of the Public Records of Palm Beach County, Florida.

Parcel 2 (Landscaping Easement Estate):

Exclusive easement rights for purpose of planting and landscaping, as more particularly set forth in that certain Landscaping Easement from The City of Riviera Beach, as recorded in Official Records Book 2514, Page 1547, of the Public Records of Palm Beach County, Florida.

Parcel 3 (Electrical Easement Estate):

Exclusive easement rights for purposes of construction, installation, operation and maintenance of electrical utility facilities (including wires, poles, guys, cables, conduits and transformer enclosures and appurtenant equipment) to be installed from time to time, with the right to reconstruct, improve, add to, change the size of or remove such facilities or any of them and with the right to cut, trim and keep clear all trees, brush and undergrowth or other obstructions that might endanger or interfere with said facilities, on, over, upon, under and across the property, as more particularly set forth in that certain Electrical Easement from The City of Riviera Beach, as recorded in Official Records Book 2514, Page 1555, of the Public Records of Palm Beach County, Florida.

EXHIBIT

B

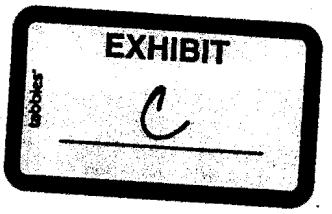
LEGAL DESCRIPTION (MAIN BOUNDARY)

PARCEL B, C, AND D, PLAT OF RIVIERA BEACH OCEAN TRACT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGE 98, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND TOGETHER WITH PORTIONS OF OCEAN AVENUE, NORTH OCEAN BOULEVARD, BEACH AVENUE AND BEACH COURT, ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE ALONG THE WEST LINE OF SAID PARCEL A AND ALONG THE EAST RIGHT OF WAY LINE OF SAID OCEAN AVENUE, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT, SOUTH 00°46'50" WEST, A DISTANCE OF 923.92 FEET; THENCE CONTINUE SOUTH 90°00'00" EAST, A DISTANCE OF 50.46 FEET; THENCE CONTINUE SOUTH 00°00'00" WEST, A DISTANCE OF 75.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE ALONG THE SOUTH LINE OF SAID PLAT OF RIVIERA BEACH OCEAN TRACT AND ITS WESTERLY EXTENSION, NORTH 90°00'00" WEST, A DISTANCE OF 509.93 FEET TO A POINT ON THE EAST LINE OF LOT 415, PALM BEACH SHORES, AS SHOWN ON PLAT BOOK 23, PAGES 29 THROUGH 32, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID EAST LINE OF LOT 415 AND ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 98.18 FEET TO THE NORTHEAST CORNER OF SAID LOT 415; THENCE ALONG THE NORTH LINE OF SAID LOT 415, SOUTH 85°00'00" WEST, A DISTANCE OF 50.44 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY EXTENSION OF THE WEST RIGHT OF WAY LINE FOR BEACH COURT, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG SAID WEST RIGHT OF WAY LINE AND ITS SOUTHERLY EXTENSION, NORTH 02°36'30" EAST, A DISTANCE OF 290.37 FEET TO THE NORTHEAST CORNER OF LOT 425, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG THE SOUTH LINE OF LOT 426, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, SOUTH 87°23'30" EAST, A DISTANCE OF 50.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 426; THENCE ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, NORTH 02°36'30" EAST, A DISTANCE OF 408.75 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 30.00 FEET AND A CHORD BEARING OF NORTH 66°54'51" WEST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID WEST RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 139°02'41", A DISTANCE OF 72.80 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD 703 (A1A), AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, SAID POINT ALSO BEING A POINT OF CUSP OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 623.69 FEET AND A CHORD BEARING OF NORTH 33°13'55" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 20°39'46", A DISTANCE OF 224.92 FEET TO THE NON TANGENT INTERSECTION THEREOF WITH THE NORTH RIGHT OF WAY LINE OF OCEAN AVENUE, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE OF STATE ROAD 703 (A1A) AND RUNNING ALONG SAID NORTH RIGHT OF WAY LINE OF OCEAN AVENUE, SOUTH 89°58'50" EAST, A DISTANCE OF 365.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 457,653 SQUARE FEET OR 10.506 ACRES, MORE OR LESS.

Execution Copy 12-22



COMMUNITY BENEFITS PARTNERSHIP AGREEMENT

THIS AGREEMENT made and entered into this_____ day of _____, 2006, (the "Effective Date") by and between **OMRD, LLC,** a Delaware limited liability company, hereinafter referred to as "Developer," and the **CITY OF RIVIERA BEACH, FLORIDA,** a municipal corporation, hereinafter referred to as "City".

WITNESSETH

WHEREAS, the commitment of the City of Riviera Beach to improve the quality of life of its citizens is expressed through the initiation of this Community Benefits Partnership.

WHEREAS, the purpose of specifying community benefits is to ensure that every citizen is respected and given an opportunity to realize a sustainable and tangible benefit as a result of the Community Redevelopment Plan successful implementation.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the parties hereby agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein as if fully set forth. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Disposition and Development Agreement between the City and the Developer (the "DDA") dated as of the 18th day of December, 2006.

2. Term. This Agreement shall commence on the Effective Date and shall continue until the responsibilities of both parties have been completed.

3. Developer's Performance Obligations. Developer agrees as follows:

A. To employ Persons from the local market area with the emphasis on Riviera Beach citizens to the maximum extent practicable. This will include employing local individuals with a minimum of 25% of African American sales and marketing representatives for the sale of the Resort Units.

B. To require the general contractor of the Phase I Development to award not less than fifty percent (50%) of the contracted out amounts, relating to the construction of the Phase I Development, to Local (defined herein as Palm Beach, Broward, Miami-Dade, Martin, or St. Lucie Counties) Persons as its suppliers and/or sub-contractors and/or professional service providers, and shall use its good faith efforts to award a separate twenty-five percent (25%) of such contracted out amounts to African American owned Persons as its suppliers and/or sub-contractors and/or professional service providers. The general contractor of the Phase II Development will award not less than twenty-five

percent (25%) of the contracted out amounts, relating to the construction of the Phase II Development, to Local Persons and/or African American owned Persons as its suppliers and/or sub-contractors and/or professional service providers.

C. Developer and/or the general contractor will, notify the local community of opportunities associated with the Phase I Development and the Phase II Development through the local media.

D. Developer is responsible for using its best efforts possible to meet the city's expectations of the spirit of the Community Benefits Partnership Program.

E. To hire resource organizations from the community in order to help fulfill these sourcing needs in the above areas.

F. The Developer shall contribute to the Community Benefits Partnership Program an amount equal to 1% of the hard construction costs for the Phase I Development and the Phase II Development, to be paid (except as provided below) at the time of receipt by the Developer of the last of all the building permits for both the Phase I Development and the Phase II Development. The Developer's contribution to the City pursuant to the terms of the Community Benefits Partnership shall be as follows:

(i) Two Hundred Fifty Thousand ($250,000.00) Dollars, to be applied to the amount to be paid pursuant to subparagraph F above, at the time of the non- appealable site plan approval for the Phase I Development or any part thereof; and

(ii) To the extent not already paid pursuant to subparagraph F above, Two Hundred Fifty Thousand ($250,000.00) Dollars at the time of the issuance of all the building permits for the Phase I Development or either sub-phase thereof, to be applied to the amount to be paid pursuant to subparagraph D above.

If the Developer terminates the DDA with respect to the Phase II Development, then the Developer shall not have to make any contribution to the Community Benefits Partnership with respect to the Phase II Development and the balance, if any, of 1% of the hard construction costs for the Phase I Development, required to be contributed to the Community Benefits Partnership pursuant to subparagraph F above, shall be paid by the Developer at later of: (i) time of receipt by the Developer of the last of all the building permits for the Phase I Development, or (ii) the Developer's election to terminate the DDA with respect to the Phase II Development.

G. One-half of the amount contributed into the Community Benefits Partnership Program, as provided for in subparagraph F above, shall be used for neighborhood improvements and amenities. These funds may be used for amenities, neighborhood beautification, construction and/or maintenance of community centers and cultural facilities.

H. One-half of the amount contributed into the Community Benefits Partnership Program, as provided for in subparagraph F above, shall be used toward education, cultural, and civic enhancement programs for the City of Riviera Beach. Such recipients and benefactors may include the Jazz Festival, Barracuda Bay Aquatic Center, City Community Centers and other Community Organizations. The funds may also provide for annual scholarships for college, technical, and continuing education.

4. City's Performance Obligations. City agrees as follows:

A. To assist the Developer in hiring resource organizations from the community to fulfill the sourcing needs for the employment of local and African American Persons.

B. To, unless the City determines otherwise within 90 days, establish a 501 (c)(3) Florida not for profit corporation (the "Not for Profit Corporation") to administer the monetary contributions to Community Benefits Partnership. The Board of Directors of the Not for Profit Corporation shall be appointed by the Mayor and City Council of the City of Riviera Beach. The City shall provide details of the administration of the Community Benefits Program to the Developer within ninety (90) days of the Effective Date of this Agreement.

5. Tenant Leasing Assistance Program.

A. The Developer shall offer to the existing Ocean Mall tenants a one time thirty (30) day right of first offer to lease space in the redeveloped retail mall.

B. The City and the Developer for a period of forty-five (45) days after the expiration of the above-mentioned right of first offer, shall offer qualified local African American Persons the opportunity to lease space, to the extent that space is available after being offered to existing tenants, for the operation of their businesses.

C. During the first five years after completion of construction of the Phase I Development, the City may offer existing and local tenants rent subsidy allowances, with respect to their tenancy within the Phase I Development, to be funded out of the Developer's rental payments to the City pursuant to the Phase I Lease. The granting of said rent subsidies, with a maximum of 20% of the Developer's rental payments to the City pursuant to the Phase I Lease, shall be in the sole discretion of the City consistent with a policy established by the City in cooperation with the Developer.

6. Independent Contractor. The Developer is, and shall be, in the performance of all performance obligations under this Agreement, an independent contractor, and not an employee, agent or servant of the City. The Developer shall exercise control over the means and manner in which he/she performs its obligations, and

in all respects, the Developer's relationship to the City shall be that of an independent contractor and not as an employee or agent of the City.

7. Nonliability.

A. No member, official or employee of the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its members) shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

B. No Person that has an ownership interest, whether directly or indirectly, in Developer and no Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Developer, shall be personally liable to the City or the Agency, or any successor in interest, in the event of any default or breach by Developer for any amount or obligation which may become due to the City or the Agency or any successor in interest under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

8. Venue. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, 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 Agreement will be held in Palm Beach County.

9. Cumulative Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

10. Litigation Expenses. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an

alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

11. Waiver. Failure of the City to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of the City's right to enforce or exercise said right(s) at any time thereafter.

12. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

13. Headings. The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.

14. Notices. All notices to be given or delivered by or to any party hereunder, shall be in writing and shall be hand delivered by messenger, courier service or Federal Express, or sent by U.S. Mail, certified with return receipt requested. The parties hereby designate the following addresses as addresses to which notices may be delivered, and delivery to such address shall constitute binding notice given to such party:

If to Developer: OMRD Holdings, LLC
2295 Corporate Blvd., Suite 222
Boca Raton, Florida 33431
and

OMRD, Inc.
4300 Catalfumo Way
Palm Beach Gardens, FL 33410

with a copy to: Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, Florida 33486
Attn: Marc Sinensky, Esq.

If to City: The City of Riviera Beach, Florida
Attention: City Manager

600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

15. Entire Agreement. This Agreement and the DDA set forth the entire agreement between the parties with respect to the Community Benefits Partnership and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties unto this Agreement have made and executed this Agreement on the day and year first written above.

ATTEST:

By:_____
City Clerk

CITY OF RIVIERA BEACH, FLORIDA

By:_____
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
PAMALA H. RYAN,
CITY ATTORNEY

OMRD, LLC, a Delaware limited liability company

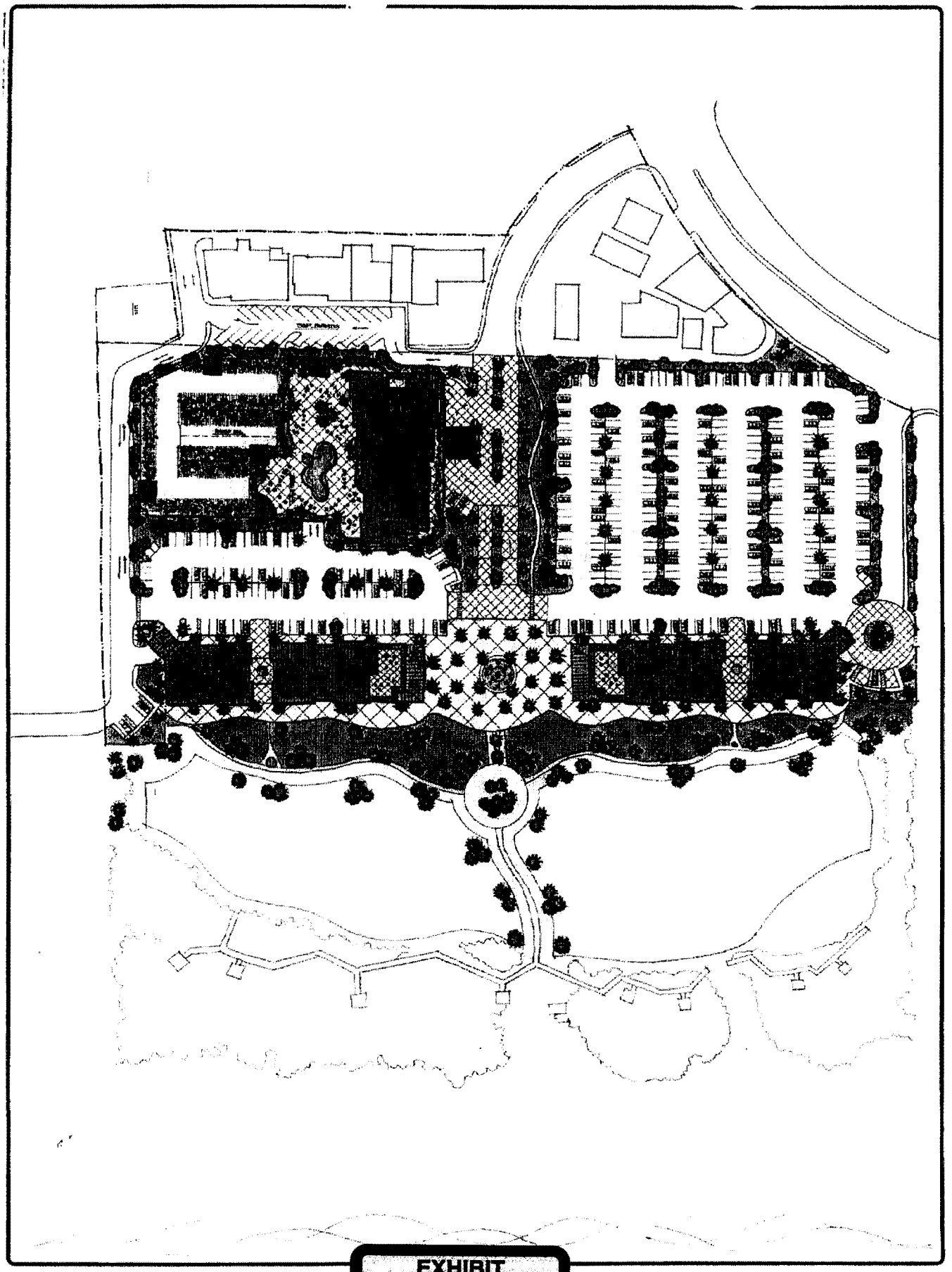
By: _____

_____

_____
Witness

_____
Witness

BOC-FS1\SINENSKYM\409885v07



EXHIBIT

tabbies

D

Exhibit F

Quality Level Hotel Standards

The City and the Developer agree that the Developer can satisfy the quality level hotel requirement by compliance with the following criteria:

I. Exterior.

a. Curb Appeal.

i. A combination of exterior elements which create an impressive well-integrated and excellent level of curb appeal.

ii. Excellent variety of landscaping professionally planned and manicured.

iii. Impressive architectural features well-integrated into the surrounding area.

b. Parking.

ii. Lighting fixtures reflect characteristics of the design of the property.

iii. Physical evidence of added security exists.

iv. Excellent overall illumination.

II. Public Areas.

a. Furnishings and Décor: Upscale, well-appointed, and in the theme of the property; high degree of comfort, featuring professionally fitted coverings; an abundant variety of live plants or unique dried floral arrangements.

b. Floor Coverings: Excellent quality carpet, wood, marble, or granite floors with unique area rugs.

c. Illumination: Light fixtures are well-appointed and of an upscale design that complements the overall theme of the property; multi-placement provides overall excellent illumination.

d. Signage: Design is well-defined in harmony with the theme of the property.

e. Lobby/Registration Area: Spacious registration area; upgraded luggage carts; recognizable guest-service area and bellstand.

f. Miscellaneous: Multiple recessed phones with notepads and pens, located away from traffic areas.

g. Restaurant and Dining Facilities: Full-service restaurant; separate lounge or bar area.

h. Recreational Facilities:

ii. Swimming pool area is well-appointed with upscale design elements and an excellent quality and variety of pool furniture and hot tub. Food and beverage is available poolside.

iii. On-site exercise facility with state of the art equipment; lockers and dressing area provided.

i. Meeting Rooms. Variety of well-appointed meeting rooms with upscale design elements. Audiovisual equipment available.

j. Restrooms. Upscale facilities appropriate for the number of meeting rooms.

k. Additional Recreational Facilities: Excellent variety of additional recreational facilities is available on site or arrangements are made for off-site services.

l. Sundries and Other Shops: Upscale gift shop.

III. Guestroom.

a. Free Floor Space: Obvious degree of spaciousness allowing increased ease of movement for guests.

b. Floor Coverings: Excellent quality carpet, wood, marble, granite or other high-end stone floors with unique area rugs.

c. Clothes Hanging Space: Open-hook wood hangers.

d. Clothes Storage Space: Sufficient space for two pieces of luggage.

e. Illumination: Excellent overall illumination; free standing fixtures in appropriate places.

IV. Guestroom Amenities.

a. Multiple telephone. High-speed internet access.

b. Enhanced guest-service directory in folder.

c. Mirror. Framed or beveled full-length mirror.

d. Ironing board.

VI. Bathrooms:

a. Wall and Floor Coverings. Excellent quality, including ceramic tile, marble, or granite flooring.

b. Free Floor Space. Excellent size bathrooms affording guests increased ease of movement and comfort.

c. Amenities:

i. Excellent quality towels.

ii. Facial tissues of in decorative container.

iii. Bathroom area rug.

iv. Make-up mirror.

RESOLUTION NO. 181-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A GROUND LEASE CONCERNING THE OCEAN MALL BETWEEN THE CITY AND OMRD, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 23, 2003, the City of Riviera Beach Community Redevelopment Agency ("CRA") issued its request for proposals RFP-03-01 ("RFP") soliciting a developer or developers to redevelop certain beachfront property (the "Project") within the City of Riviera Beach, Florida (the "City"); and

WHEREAS, three (3) developers responded to the RFP; and

WHEREAS, the CRA, after a public review process, ranked the developers who responded to the RFP and directed City and CRA staff to negotiate the terms under which the developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP; and

WHEREAS, when the CRA and the first-ranked developer reached an impasse, the CRA commenced negotiations with the second-ranked developer, and the CRA and the second-ranked developer entered into a Letter of Intent on August 31, 2005; and

WHEREAS, OMRD, LLC ("OMRD") was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project; and

WHEREAS, the City Council and the CRA at a duly called public meeting held on August 23, 2006, approved the preliminary terms and conditions (including the conceptual site plan) of an agreement between the City of Riviera Beach, CRA and OMRD and authorized staff to negotiate and finalize such agreement with OMRD; and

WHEREAS, the City and the Developer have negotiated that certain Ground Lease - Retail (the "Retail Lease"), in the form attached hereto as Exhibit A, as a separate definitive agreement for the lease of a portion of the land comprising the Project; and

WHEREAS, the City hereby finds and determines that the proposed Project as contemplated by the Retail Lease will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area.

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

SECTION 1. The Mayor and City Clerk to execute a Ground Lease - Retail in the form set forth in Exhibit A attached hereto.

SECTION 2. The Mayor and Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the City Attorney, City special counsel and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 2006.

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RESOLUTION NO. 181-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT
VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: N. DUNCOMBE

A. ILES	AYE
V. LEE	ABSENT
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	NAY

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/13/06

GROUND LEASE – RETAIL

This Ground Lease (the "Lease"), is made and entered into as of Dec. 18, 2006, by and between OMRD, LLC, a Delaware limited liability company[1] ("Tenant"), and CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation ("Landlord" or "City").

W I T N E S S E T H:

WHEREAS, THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (and referred to as the "Agency"), created by the City of Rivera Beach pursuant to Chapter 163, Part III of the Florida Statutes, THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation (and referred to in this Agreement as the "Landlord"), and OMRD, LLC, a Delaware Limited Liability Company, its successors and assigns, entered into a Disposition and Development Agreement, as of the date hereof (the "DDA"); and

WHEREAS, the DDA contemplates the Landlord and Tenant would enter into a lease with respect to the Phase I Development, as such term is defined in the DDA; and

WHEREAS, this Lease is the lease that is contemplated by and referred to in the DDA as the Phase I Lease.

W I T N E S S E T H:

In consideration of the Rent to be paid by Tenant and the agreements hereinafter provided to be performed by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby accepts and rents from Landlord, the premises hereinafter described, for the period, at the rental and upon the terms and conditions hereinafter set forth:

1. LEASED PREMISES. Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, for the term set forth in Article 3 below, that certain real estate located in the City of Riviera Beach, County of Palm Beach, State of Florida, containing approximately 370,228 square feet of land, which real property is more particularly described in Exhibit "A", together with all improvements, appurtenances, easements and privileges belonging thereto (the "Leased Premises"), subject to such matters of title set forth in Exhibit "B" attached hereto ("Permitted Exceptions"). That certain Lease Agreement, dated December 29, 1972, between the Landlord and Shelter Programs Company, as amended and supplemented, with respect to a portion of the Leased Premises, is referred to herein as the "Existing Lease."

The terms "Buildings" and "Site Improvements", as used herein, shall mean the building(s) and those improvements, respectively, that Tenant may construct from time to time on the Leased Premises, all as hereinafter provided. The term "Existing Improvements" shall

mean the buildings and other improvements existing on the Leased Premises as of the date of this Lease.

2. RENT.

(a) Rent. The Landlord shall receive annual lease payments calculated as a percentage of the Base Subtenant Rent paid by all Subtenants at the Leased Premises in accordance with the following percentage amounts:

(i) Four percent (4%) for lease years one (1) through twenty-five (25); and

(ii) Six percent (6%) for lease years twenty-six (26) through fifty (50).

(Collectively the "Percentage Rent"). Such Percentage Rent shall be paid annually on April 1 of each year following the year to which such Percentage Rent relates. Percentage Rent shall be prorated for partial years.

"Base Subtenant Rent" shall mean the base rental income received by the Tenant from each Subtenant pursuant to such Subtenant's sublease. In addition to Base Subtenant Rent a sublease with a subtenant may also provide that the Subtenant must pay what is customarily termed "Common Area Maintenance" charges, this is the additional amount charged to the Subtenant to cover such Subtenant's share of other costs and expenses commonly allocated to the operation and maintenance of the Leased Premises (i.e., taxes, utilities, insurance, capital improvements (excluding the costs of initially constructing the Buildings and Site Improvements), maintenance, repairs).

Tenant shall not be permitted to designate any portion of its Base Subtenant Rent as Common Area Maintenance charges and Landlord shall not receive any Percentage Rent with respect to any Common Area Maintenance charges.

Rent used in this Lease shall mean Percentage Rent and any Additional Rent (as hereinafter defined).

(b) Net Lease. It is the purpose and intent of Landlord and Tenant that the Percentage Rent herein reserved shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Percentage Rent to be paid during the term of this Lease without any diminution, reduction, deduction, counterclaim, setoff or effect whatsoever, and that all costs and expenses including, but not limited to real estate taxes, special assessments, sales taxes, personal property taxes, licenses and permits, intangible taxes, insurance, utilities, maintenance, repairs and obligations of every kind or nature whatsoever relating to the Leased Premises (including any personal property used in the operation thereof) which may arise or become due during the term of this Lease (collectively, "Additional Rent"), shall be paid by Tenant directly to the parties who are owed such amounts and that Landlord shall be indemnified and saved harmless by Tenant from and against the same. Upon the non-payment of an item of Additional Rent, after expiration of applicable notice and grace periods, Landlord shall have the right and remedies reserved herein for the non-payment of the Percentage Rent. Notwithstanding the foregoing,

Tenant shall pay the real estate taxes directly to the proper taxing authorities as provided herein, and the real estate taxes shall thereafter no longer be Additional Rent, unless Tenant fails to pay or cause said real estate taxes to be paid before delinquency, and Landlord thereafter pays same, in which event Tenant shall reimburse Landlord, as Additional Rent, for such tax payment.

(c) Method and Place of Payment: Late Payment. Until further notice by Landlord to Tenant, Percentage Rent checks shall be payable to and mailed to: City of Riviera Beach, 600 W. Blue Heron Boulevard, Riviera Beach, FL 33404, or payable by wire transfer of funds pursuant to wiring instructions provided by Landlord to Tenant upon Tenant's request. Landlord shall, prior to the Effective Date, provide Tenant with a completed IRS Form W-9. Any successor to Landlord shall likewise provide Tenant with such completed IRS Form W-9.

Except as otherwise specifically provided herein, all Rent shall be paid without notice or demand. Rent also may be paid by wire transfer of immediate funds in accordance with instructions as Landlord may provide by notice to Tenant. If Tenant shall fail to make any payment of Rent within fifteen (15) days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a daily rate (the "Late Charge Rate") equal to the lesser of (a) two percent (2%) per annum in excess of the prime rate (the "Prime Rate") in effect from time to time at Citibank, N.A., or the prime rate of any major banking institution doing business in Florida, as selected by Landlord, if such bank is not in existence or has not established a prime rate, and (b) the maximum interest rate permitted by law. All interest payable under this Section shall be deemed Percentage Rent and shall be due and payable by Tenant immediately upon demand.

3. TERM. The term shall commence on the Effective Date and shall continue for fifty (50) years thereafter (the "Term").

4. USE.

(a) Tenant shall have the right to use and occupy the Leased Premises for, subject to the provisions of paragraph 4(e) and 4(f) below and to the requirement that the Leased Premises be used for retail and (if permitted as provided below) office purposes, all lawful purposes Tenant determines in its sole or absolute discretion, including but not limited to, the purpose of owning, developing, leasing, operating and selling a retail shopping center and all activities related or ancillary thereto. In the event that the Tenant determines in its reasonable discretion that Leased Premises cannot be supported solely with retail space, then the Tenant shall be entitled to have office space within the Leased Premises, not to exceed 20% of the square feet of the Leased Premises, so long as the use of such office space is related to the promotion of tourism or recreation.

(b) Title and ownership to the Buildings and Site Improvements shall be vested in Tenant or its successors or assignees (including any subsequent or further improvements, modifications and additions to the Buildings and/or Site Improvements). Landlord shall have no right to encumber the Leased Premises or any Buildings and Site Improvements (in part or in whole) from time to time located on the Leased Premises. Landlord shall execute upon Tenant's request such easements as Tenant shall reasonably require for the purpose of connection to or use of existing and future drainage and utility facilities (including

without limitation, water, sewer gas, electricity, cable, internet and telephone) to serve the Leased Premises. After delivery of the Leased Premises by Landlord, Tenant is authorized to demolish all Existing Improvements located on the Leased Premises, to remove, raze and destroy such trees, plants, shrubs and top soil as Tenant deems necessary or appropriate, and to excavate and remove earth from the Leased Premises in such quantities necessary or appropriate to complete Tenant's Construction (the "Demolition"). Upon the written request of Tenant, Landlord agrees to execute or join in the execution of any documents or instruments that may be reasonably required by Tenant and/or third parties, including but not limited to governmental authorities for the development, use and enjoyment of the Leased Premises, subject, however, to the City's rights and approvals as a regulatory body which may not be contracted away. Without limitation, such documentation may include (i) zoning applications, (ii) changes or variances required by governmental authority, (iii) changes in existing rights of way bounding the Leased Premises, (iv) dedications of easements for roadways, utilities, ingress, egress and other purposes as Tenant may reasonably require, (v) building Permits, variances, use Permits, licenses, approvals or similar governmental authorizations, (vi) abandonment and/or relocation of any easements and rights-of-way that are located within the Leased Premises as public streets and public sidewalks, including without limitation, those designated on Exhibit C attached hereto, interfering with Tenant's development or use of the Leased Premises, and (vii) other like matters. In no event shall Landlord execute any of the foregoing affecting the Leased Premises during the Term without the prior written consent of Tenant, which consent Tenant may withhold in its sole and absolute discretion.

(c) Tenant shall operate and manage the Leased Premises with that degree of skill, care and diligence normally exercised by operators and managers of first-class retail development projects with a scope, magnitude and location comparable to the Leased Premises, including in all cases the standards by which the Leased Premises is operated when it is initially opened, ordinary wear and tear excepted, and otherwise in compliance with this Lease. The Tenant's responsibilities shall include maintenance of all lighting, landscaping, parking, resurfacing, security, irrigation, common areas and other facilities located on the Leased Premises necessary to the complete functioning of a first-class project and compliance with applicable City standards.

(d) Tenant will at all times provide at least 400 spaces of accessible parking and safe access to the beach for citizens of the City desiring to utilize the City's beachfront park and beach. These parking spaces may also be utilized by Subtenants or others utilizing the Leased Premises. The Tenant may not impose a charge for utilizing this parking. The City may, at any time, by reasonable notice to the Tenant, (i) charge for special event parking utilizing such spaces, and (ii) with the approval of Tenant, such approval not to be unreasonably withheld, place meters or other charges on those utilizing such parking spaces, all revenue from any charges imposed pursuant to subparagraph (ii) hereof to be split equally between Tenant and Landlord.

(e) Tenant shall use and operate the Leased Premises throughout the Term as required by this Lease. In any event, the Leased Premises shall be used only in accordance with the Final CO(s) therefor (or Temporary CO(s), to the extent that Final CO(s) have not been issued therefor).

(f) Without limiting the provisions of subparagraph (e) above, Tenant shall not use or occupy the Leased Premises or any part of the Leased Premises, and neither permit nor suffer the Leased Premises, or any portion thereof, to be used or occupied, for any of the following ("Prohibited Uses"): (i) for any unlawful or illegal business, use or purpose or for any business, use or purpose which violates any Requirements; (ii) for any use which is a public nuisance; (iii) as a flea market; (iv) as a massage parlor, except to the extent that therapeutic massages are given in connection with chiropractic, physical therapy or other similar services; (v) a skating rink; (vi) a mortuary; (vii) a labor camp; (viii) an off-track betting establishment; (ix) a gaming or bingo establishment; (x) a nude or topless adult entertainment facility; or (xi) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises. For purposes hereof, "Requirements" means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all governmental authorities having jurisdiction over Tenant or other persons, or the Leased Premises, or any street, road, avenue or sidewalk comprising a part of, or lying in front of, the Leased Premises, or any vault in, or under the Leased Premises (including, without limitation, ADA and any of the foregoing relating to handicapped access or parking, the building code of the City and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) the Temporary and/or Final COs issued for the Leased Premises as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations or other indentures, documents or instruments of record.

5. EFFECTIVE DATE. The effective date (the "Effective Date") of this Lease shall be the date which is thirty (30) days subsequent to the satisfaction of the last to occur of the following events (collectively, the "Conditions Precedent to Effectiveness"):

(a) Tenant having acquired and/or extinguished all rights of the subleases under the Existing Lease; notwithstanding the foregoing, this condition precedent will be deemed satisfied even if some of such subleases remain in effect so long as the condition precedent referred to in subparagraph (c) below has been satisfied;

(b) Evidence that all liens on the Tenant's interest in the Existing Lease have been extinguished and submittal of the Existing Lease by the Tenant to the Landlord for termination; and

(c) Tenant has received site plan approval for the construction of the Building and Site Improvements, which Landlord agrees (subject to the City's rights of approvals as a regulatory body which may not be contracted away) to cooperate with the Tenant to obtain; provided, however, that satisfaction of this condition shall not require Tenant to obtain permits for the construction of the Building and Site Improvements.

Landlord agrees to work with Tenant to resolve any issues associated with acquiring all rights under any sublease with respect to the Existing Lease. The Existing Lease shall be terminated as of the Effective Date.

6. UTILITIES. Landlord shall execute, upon request therefor by Tenant, such easements and rights of way as Tenant shall reasonably require for the purpose of connection to and use of existing and future drainage and utility facilities (including, but not limited to, water, gas, telephone, electric lines, cable, internet, telephone, storm drainage, sanitary sewer systems and surface drainage) located over, under, and across the Leased Premises. Tenant shall pay, directly to the provider thereof, when due, all bills for water, sewer rents, sewer charges, heat, gas, electricity, stormwater, cable, internet and telephone or any other utility service used in the Leased Premises from the commencement of the Term until the expiration of the Term. The source of supply and vendor of each such commodity shall be the local public utility company or municipality commonly serving the area. If Tenant shall require additional service line capacity of any of such utilities and if same are available on the Leased Premises, Tenant, at Tenant's expense, shall have the right to the use of the same.

7. REPAIRS, CONFORMITY WITH THE LAW.

(a) Repairs. Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make or cause to be made all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe, first class condition, however the necessity or desirability therefor may arise. Tenant shall not commit, waste, damage or injury to the Leased Premises. All repairs made by Tenant shall be substantially equal in quality to the original quality of the Buildings being repaired and shall be made in compliance with the Requirements. Landlord shall not have any duty or obligation to make any alteration, change, improvement, replacement, restoration or repair with respect to the Leased Premises. Tenant shall be responsible for all City or Palm Beach County, Florida ("County") code violations imposed against the Leased Premises, during the Term, as if it was the owner of the Leased Premises. Tenant's obligations under this Article shall be subject to Article 12 concerning Tenant's obligations in the event of damage due to fire or other casualty.

(b) Hazardous Conditions. In the event that any Hazardous Substances are discovered at any time in, under or on the Leased Premises, regardless of whether caused by the Tenant, any subtenant or any transferee, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises, Tenant shall, at Tenant's expense, remove and dispose of the same in accordance with applicable law.

(c) Indemnification. Tenant hereby indemnifies, defends and holds harmless the Landlord Indemnified Parties from and against any claims, liability, obligation, damage, cost, expense, fines and penalties, including, without limitation, reasonable attorneys' fees and costs and reasonable and applicable consultants and contractors' fees and costs, resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Leased Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Landlord), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Landlord Indemnified

Parties resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Leased Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises. Tenant's obligations shall not apply with respect to Hazardous Substances in, under or on the Leased Premises existing prior to the execution hereof. Without limiting the foregoing, if the presence or release of any Hazardous Substance on or from the Leased Premises caused or permitted by Tenant results in any violation of Environmental Laws or material contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary or appropriate to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. The foregoing indemnifications shall survive the termination or expiration of this Lease for any reason.

(d) Notices. If Tenant receives any notice of, or otherwise becomes aware of, a release, threat of release, or written notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Leased Premises (an "Environmental Complaint") independently or by written notice from any governmental authority having jurisdiction over the Leased Premises, including the Environmental Protection Agency (the "EPA"), or with respect to any litigation regarding environmental conditions at or about the Leased Premises, then Tenant shall give prompt oral and written notice of same to the Landlord detailing all relevant facts and circumstances.

(e) Landlord's Remedies. If Tenant does not diligently commence to remediate the environmental conditions it is required to remediate in accordance with the foregoing provisions, promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Landlord shall have the right, but not the obligation, to enter onto the Leased Premises or to take such actions as it deems necessary or advisable and practicable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any such environmental conditions upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person (as defined below), including the EPA. Any amount so expended by Landlord, together with interest thereon at the Late Charge Rate from the date of payment by Landlord through the date of repayment by Tenant, shall become Additional Rent hereunder, payable upon demand.

(f) Definitions.

"Hazardous Substances" shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or by-product thereof), underground storage tanks, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any Environmental Law.

"Environmental Law" shall mean any federal, state, regional, county or local governmental statute, law, regulation, ordinance, order or code or any consent decree, judgment, permit, license, code, covenant, deed restriction, common law, or other requirement presently in effect or hereafter created, issued or adopted, pertaining to protection of the environment, health or safety of Persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. 300(f) et seq., and all amendments as well as any similar state or local statute or code and replacements of any of the same and rules, regulations, guidance documents and publications promulgated thereunder.

"Environmental Damages" shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation, and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of the remediation or mitigation of an Environmental Condition, including, without limitation, fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation and remediation, including the preparation of any feasibility studies or reports and the performance of any remedial, abatement, containment, closure, restoration or monitoring work;

"Landlord Indemnified Party or Parties" means, collectively, the Community Redevelopment Agency of the City of Riviera Beach (the "CRA"), the Landlord and their respective elected and appointed officials (including the CRA's chair and members, the Mayor and the City council members), directors, officers, shareholders, members employees, agents and representatives and the respective heirs, legal representatives, successors, and assigns of any of the foregoing.

(g) Survival. The provisions of this Section 8 (b) through (e) shall survive the termination or expiration of this Lease for any reason.

(h) Conduct of Business. Tenant, its successors, subtenants, and assigns, shall comply with all Requirements regarding the manner of the conduct of such parties' particular business in the Buildings or Site Improvements. Following the Effective Date, Tenant shall make all required changes or installations, and pay the cost, if any, of all inspections required to comply with valid Requirements as they apply to the Leased Premises, Buildings and/or Site Improvements. Tenant, at its option and sole expense, shall have the right to contest in good

faith by appropriate legal proceedings, and delay compliance thereof during the pending of such proceedings, the validity or applicability of any such laws or Requirements.

8. SIGNS, TENANT'S FIXTURES. Tenant may install, change, remove, enlarge and alter, at Tenant's sole cost and in compliance with applicable law, such signs at the Leased Premises, Buildings and/or Site Improvements (including, without limitation, monument, directional and pylon signs), advertising matter, machinery and mechanical equipment as Tenant deems necessary or appropriate. Landlord agrees to cooperate with Tenant in obtaining all necessary Permits including, without limitation, any variances required for same, subject, however, to the city's rights of approvals as a regulatory body which may not be contracted away.

9. ALTERATIONS.

(a) Alterations. At any time, and from time to time, Tenant, at Tenant's cost and expense and in compliance with all Requirements, may undertake any demolition, alteration, addition, enlargement or improvement (any of the foregoing being referred to herein as an "Alteration") of all or any portion of the Building, Site Improvements and Leased Premises as Tenant deems necessary or appropriate. Notwithstanding the foregoing, the Tenant agrees that it will not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed by Landlord, undertake any Alterations, which materially alters the site plan previously approved by Landlord. In addition, Landlord's consent shall not be required under this Lease in connection with (i) any subtenant's interior alterations, (ii) any alteration of any Subtenant's storefront or signage, or (iii) any alteration required to be made in order to comply with applicable Requirements.

(b) Mechanics' Liens. (a)If any mechanics' lien is recorded against the Leased Premises by reason of work, labor, services or materials supplied to or claimed to have been supplied to Tenant, Tenant shall, within ninety (90) days after receipt of notice from Landlord or notice of such lien cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

10. ASSIGNMENT AND SUBLETTING.

(a) Assignment; etc. Tenant shall have the absolute unrestrained right to mortgage, sublet or encumber, without Landlord's prior written consent, all or any part of Tenant's interest in this Lease, the Leased Premises, any Building or portion thereof, any Site Improvement or portion thereof, or any interest in itself, including without limitation, the right to sell, assign, transfer, mortgage, sublet or otherwise transfer or encumber ownership interests by any Person that has an ownership interest, whether directly or indirectly, in Tenant and any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant.

(b) If the Tenant sells, assigns or transfers this Lease (collectively, an "Assignment"), to any non-Affiliated Person, then the Tenant must obtain the City's consent and the City agrees that: (i) such consent shall not be unreasonably withheld or delayed, and (ii) if the City has not responded to the Tenant's request for such consent within thirty (30) days of

receipt of such request, then such consent shall automatically, immediately and irrevocably be deemed given on the thirty-first (31st) day following Tenant's request for such consent.

(c) Notwithstanding the foregoing, Daniel Catalfumo acknowledges and agrees that because one or more of his Affiliates will be engaged to develop the Leased Premises and will be responsible for the construction of the Leased Premises, that: (i) as of the Effective Date of this Lease Daniel Catalfumo will have at least a 51% ownership interest in one or more Persons that has an ownership interest, whether directly or indirectly, in Tenant and/or in one or more Persons that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, in Tenant; and (ii) without the Landlord's prior written consent, which may not be unreasonably withheld or delayed, that he may not, until construction of the Leased Premises has been completed and at least 60% of the commercially leasable space therein has been leased to commercial Subtenants, make Assignments of more than 50% of his ownership interests in any Person that has an ownership interest, whether directly or indirectly, in Tenant or any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, in Tenant; notwithstanding the foregoing, Daniel Catalfumo may: (i) bequeath all or any part of his ownership interest in any Person that has an ownership interest, whether directly or indirectly, in Tenant or in any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant, to any other Person, without Landlord's prior written consent, (ii) sell, gift or transfer all or any part of his ownership interest in any Person that has an ownership interest, whether directly or indirectly, in Tenant or in any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant, to any Affiliate, spouse, sibling, child or grandchild of his, without Landlord's prior written consent, or (iii) make Assignments in connection with any Leasehold Financing to any Leasehold Mortgagee or any Affiliate of a Leasehold Mortgagee or any assignee or successor in interest to a Leasehold Mortgagee, of all or any part of his ownership interests in any Person that has an ownership interest, whether directly or indirectly, in Tenant or in any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant, without Landlord's prior written consent.

Landlord recognizes that Tenant may not operate on its own any or certain elements of any Buildings and/or Site Improvements. Accordingly, Tenant shall be entitled to enter into licenses, subleases, concession agreements, management agreements, employment and other similar agreements and arrangements with third parties for the purpose of implementing any use, operation or activity permitted under this Lease, without the consent of Landlord.

(d) Release. In the event of an Assignment (other than a typical commercial sublease) of this Lease, Tenant shall automatically be released from all liability hereunder with respect to the portion of the Leased Premises, so assigned, so long as the assignee or sublessee agrees to assume such obligations. In the event of a default by any such assignee or subtenant, Landlord shall give Tenant notice of such default, shall accept cure of such default by Tenant within sixty (60) days after receipt of such notice and shall permit Tenant to reenter and repossess the Leased Premises for the then unelapsed portion of the Term of this Lease in accordance with all of the provisions of this Lease.

(e) Recognition of Subtenant. Landlord agrees that, in the enforcement of its rights under this Lease, it shall not disturb the occupancy of subtenants or sub-subtenants (or any Persons properly occupying any portion of the Leased Premises, Buildings or Site Improvements by, through or under the same) pursuant to subleases or sub-subleases made in compliance with this Lease and will recognize such parties, provided that (i) such parties (or any Persons properly occupying any portion of the Leased Premises by, through or under the same), agree to attorn to Landlord or its nominee upon the completion of such enforcement proceedings, (ii) such parties (or any Person properly occupying any portion of the Leased Premises by, through or under the same) comply with their respective obligations under any sublease, or other occupancy agreement, and (iii) Landlord shall not be liable for defaults by Tenant before the termination of this Lease. In this regard, upon the request of Tenant, or any subtenant, Landlord shall enter into a recognition agreement with any such party to the effect that, notwithstanding the termination of this Lease by Landlord, such party shall not be disturbed by Landlord and all of their rights, as derived directly or indirectly from this Lease, shall continue in full force and effect as a direct agreement between Landlord and such party so long as such party shall continue to observe and perform for Landlord's benefit all of the obligations under such sublease or occupancy agreement that relate solely to the portion of the Leased Premises or any Buildings or Site Improvements such sublessee or occupant, occupies, provided that (i) such party covenants, upon any termination of this Lease, to cure any defaults of Tenant that are nonmonetary, that relate solely to the portion of the Leased Premises or any Buildings or Site Improvements such party occupies, and that are otherwise susceptible to cure by such party, (ii) Landlord is not bound by any rent paid by such party more than thirty (30) days in advance, and is not responsible for any security deposit posted by such party that was not received by Landlord, (iii) Landlord is not liable for any default by Tenant under the sublease or occupancy agreement (provided that Landlord shall perform those obligations arising or newly accruing after the date of termination of this Lease), (iv) Landlord shall not be required to perform any covenants undertaken by Tenant under any sublease or occupancy agreement that are not covenants of Landlord under this Lease, (v) Landlord is not responsible to subtenants for any act or omission by Tenant under such sublease or for any money owed by or deposit held by Tenant, except to the extent actually received by Landlord. Each sublease shall be subject to and subordinate to this Lease and, in the event of such attornment and recognition, limit the liability of Landlord (and/or its nominee or designee) to its interest from time to time in the Leased Premises.

During the Lease Term, Tenant shall use commercially reasonable efforts to cause all subtenants to comply with their obligations under their subleases. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a subtenant shall not relieve Tenant of Tenant's obligation to cure such violation or breach.

(f) Separate Leases. The Landlord agrees that if the Tenant assigns all or any part of the Tenant's interest in this Lease or in the Leased Premises, that at the Tenant's request, the Landlord will enter into one or more completely separate and independent lease(s) with respect to the portion of the Tenant's interest in this Lease or the Leased Premises so assigned. In this regard (i) such separate lease(s) will be on all of the same terms and conditions of this Lease, other than with respect to the Leased Premises and the Rent, the provisions for which will be appropriately modified so that the Leased Premises in the new lease(s) will only by the Leased Premises to which the new lease(s) relates and the Rent in the new lease(s) will only be

for the Leased Premises to which the new lease(s) relates, (ii) this Lease will be modified to properly reflect the Leased Premises and the Rent will in the aggregate, be identical to the Leased Premises and Rent as originally provided for in this Lease, (iii) this Lease and all new lease(s) will be independent Leases, and (iv) such creation of separate leases will not, in the Landlord's reasonable judgment, adversely impact the Landlord's economic benefit or rights contained herein.

11. CASUALTY

(a) Casualty. In the event of any damage to the Leased Premises by fire, hurricane, flood or other similar event ("Casualty"), then Tenant, at its sole cost and expense, shall promptly commence and diligently pursue the repair of the Buildings or Site Improvements so damaged to the condition it existed immediately before such damage to completion, regardless of whether or not insurance proceeds shall be sufficient therefor, provided that if Landlord or its Affiliates or invitees caused the Casualty, Landlord, at its sole cost and expense, shall promptly commence and diligently pursue the repair of the Buildings or Site Improvements so damaged to completion. Tenant shall commence such repair within 180 days after the occurrence of such Casualty (subject to Unavoidable Delays, as hereinafter defined) and shall diligently pursue the completion of and restoration (subject to Unavoidable Delays). In the event of any Casualty during the last ten (10) years of the Term, then Tenant shall have the right to terminate this Agreement by delivering written notice of termination to Landlord within one hundred eighty (180) days after the occurrence of such Casualty, in which case this Lease shall terminate and neither party shall have any further rights or obligations hereunder except those which expressly survive termination of this Lease.

(b) Proceeds. All insurance proceeds payable and received at any time, or from time to time as a result of a Casualty, shall be paid to Tenant and applied to the restoration of the Buildings and Site Improvements in accordance with the terms hereof. Tenant shall provide, at Landlord's request, reasonable evidence of the amount of any insurance proceeds received and application of the same.

Tenant shall, prior to the commencement of any restoration, furnish to Landlord an estimate of the total estimated cost of the restoration. If such cost estimate shall show that the cost of completing the restoration is in excess of the amount of the net insurance proceeds then available, Tenant shall promptly deposit with the holder of the net insurance proceeds an amount equal to such excess or provide to Landlord evidence reasonably satisfactory to Landlord that such excess funds are available to Tenant for application to such restoration.

If the amount of any net insurance proceeds shall exceed the entire cost of the restoration, such excess, upon completion of the restoration, shall, if there is no then outstanding Event of Default under this Lease, be disbursed to Tenant; provided that if there is an outstanding Event of Default under this Lease, such net insurance proceeds shall first be applied to cure such outstanding Event of Default. Any amounts deposited by Tenant pursuant to the immediately preceding paragraph shall be returned to Tenant to the extent the same are not necessary to fund the cost of the restoration.

If Tenant shall fail to commence such restoration within the time required by the terms of this Lease other than as a result of Unavoidable Delay, or, having commenced such restoration, shall fail to complete it in accordance with such terms with reasonable diligence, other than as a result of Unavoidable Delay, and such failure shall continue for a period of sixty (60) days after notice by Landlord, Landlord may, at its option and upon serving written notice upon Tenant and the Leasehold Mortgagee (if any) that it elects so to do, make and complete such restoration. In such event, and whether or not this Lease may have theretofore been terminated by reason of any Event of Default by Tenant, Landlord shall have the right, as the restoration progresses, to use and apply to the net insurance proceeds to the cost of such restoration.

(c) No Rent Abatement. Except for Tenant's right to terminate this Lease as provided in Section 12(a) above, this Lease shall not be affected in any manner by reason of a Casualty and Tenant, notwithstanding any law or statute, present or future, waives all rights to quit or surrender the Leased Premises or any part thereof, and Tenant's obligations under this Lease, including the payment of Percentage Rent and Additional Rent, shall continue as though none of those events had occurred and without abatement, suspension, or reduction of any kind, except as otherwise expressly provided herein.

(d) Surrender. In the event Tenant elects to terminate this Lease as aforesaid, then Tenant, at its expense, shall raze any remaining portion of the Buildings or Site Improvements, remove all debris, and grade and landscape (grass) the Land. Subject to the payment of costs pursuant to the preceding sentence, Tenant (or Tenant's leasehold mortgagee) shall be entitled to all insurance proceeds, if any, recovered as a result of such casualty.

12. SURRENDER. At the expiration or termination of this Lease, Tenant shall surrender immediate possession of the Leased Premises in its then current condition. Any holding over by Tenant shall not operate, except by written agreement, to extend or renew this Lease or to imply or create a new lease, but in case of any such holdover, Landlord's remedies shall be limited to either the immediate termination of Tenant's occupancy or the treatment of Tenant's occupancy as a month to month tenancy, any custom or law allowing other remedies or damages or which may be to the contrary notwithstanding. At any time during the Term, Tenant shall have the right to remove all or any part of Tenant's equipment, removable fixtures, and other personal property from the Leased Premises.

Upon the expiration of the Term (or upon a termination of Tenant's right of possession of the Leased Premises), Tenant shall deliver to Landlord the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Leased Premises, true and complete maintenance records for the Leased Premises, all original licenses and permits then pertaining to the Leased Premises and Temporary or Final COs for the Leased Premises, together with a duly executed assignment thereof (without recourse) to Landlord in form suitable for recording, and all financial reports required by Section 31 hereof and such other documents as are reasonably required for the continued operation of the Leased Premises that are in Tenant's possession.

Any personal property of Tenant which remains on the Leased Premises after the termination of this Lease or after the removal of Tenant from the Leased Premises, may, at the

option of Landlord, be deemed to have been abandoned by Tenant, and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant.

The provisions of this paragraph 12 shall survive the expiration of the Term.

13. HOLDOVER. In the event Tenant shall hold over possession of the Leased Premises after the termination or expiration of this Lease, Tenant shall pay Percentage Rent equal to 125% of the Percentage Rent in effect at the time of such termination or expiration of the Lease, in lieu of any other or additional charges or damages.

14. DEFAULT AND REMEDIES.

(a) Each of the following events shall be an "Event of Default" hereunder:

(i) if Tenant fails to make any payment of Percentage Rent in full as and when such payment is due, and such failure continues for a period of fifteen (15) days after notice is given by Landlord to Tenant (any notice of Default given by Landlord to Tenant under this Lease being referred to herein as a "Default Notice") that the same is past due; or

(ii) if Tenant fails to pay any amounts required by Section 2(b) hereof or any other monetary payment hereunder when due, and such failure continues for a period of thirty (30) days after delivery to Tenant by Landlord of a Default Notice; or

(iii) if Tenant shall fail to maintain the insurance coverages required hereunder, and such failure continues for a period of thirty (30) days after delivery to Tenant by Landlord of a Default Notice; or

(iv) if Tenant fails to observe or perform in any material respect any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Rent or as otherwise expressly set forth herein) and Tenant shall fail to remedy such default within thirty (30) days after a Default Notice is given by Landlord with respect to such default or, if such a default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure, it being understood that Tenant shall have no further grace or cure period with respect to any matter(s) not so susceptible to cure), Tenant shall fail (1) within thirty (30) days after the giving of such Default Notice, to commence steps reasonably necessary to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such default in a professional manner), and (ii) diligently prosecute to completion the remedy of such default, provided however that if such default has not been cured within one (1) year then the Landlord and Tenant shall meet to discuss how best to complete the cure of such default and to set a timeframe in which such default will be attempted to be fully cured; or

(v) if Tenant fails to observe or perform in any material respect the provisions of Section 13.01(a) of the Disposition and Development Agreement, dated as of

December 18, 2006, among the Landlord, the Riviera Beach Community Redevelopment Agency and the Tenant, which results in a termination of the Disposition and Development Agreement in accordance with Section 14.01 thereof with respect to the Phase I Development (as such term is defined in the Disposition and Development Agreement); or

(vi) if Tenant fails to observe or perform in any material respect the provisions of Section 13.01(c) of the Disposition and Development Agreement, dated as of December 18, 2006, among the Landlord, the Riviera Beach Community Redevelopment Agency and the Tenant, which results in a termination of the Disposition and Development Agreement in accordance with Section 14.01 thereof with respect to the Phase I Development (as such term is defined in the Disposition and Development Agreement); or

(vii) if Tenant admits, in writing, that it is generally unable to pay its debts as such become due (if as a result thereof Tenant's performance or ability to perform any of Tenant's obligations under this Lease is materially adversely affected); or

(viii) if Tenant makes an assignment for the benefit of creditors (if as a result thereof Tenant's performance or ability to perform any of Tenant's obligations under this Lease is materially adversely affected); or

(ix) if Tenant and if as a result thereof Tenant's performance or ability to perform any of Tenant's obligations under this Lease is materially adversely affected: (a) files a voluntary petition under Title 11 of the United States Code, (b) files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or (c) seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Tenant's interest in the Leased Premises, and any of the foregoing are not stayed or dismissed within ninety (90) days after such filing or other action; or

(x) if: (a) within ninety (90) days after the commencement of a proceeding against Tenant (if as a result thereof Tenant's performance or ability to perform any of Tenant's obligations under this Lease is materially adversely affected) which seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state, or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, vacated or stayed on appeal, or (b) within ninety (90) days after the appointment, without the consent or acquiescence of Tenant (if as a result thereof Tenant's performance or ability to perform any of Tenant's obligations under this Lease is materially adversely affected), of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official, of all or any substantial part of its properties, or of all or any part of Tenant's interest in the Leased Premises, such appointment has not been dismissed, vacated or stayed on appeal; or

(xi) if a levy under execution or attachment in an aggregate amount in excess of $2,000,000, adjusted for inflation, at any one time, is made against the Leased

Premises or any part thereof or rights appertaining thereto (except for a levy made in connection with actions taken by Landlord (other than solely as holder of Landlord's interest in the Leased Premises)), the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment is not dismissed, vacated or removed by court order, bonding or otherwise within a period of ninety (90) days after such levy or attachment; or

(xii) if Tenant abandons the Leased Premises or any material portion thereof, and such abandonment continues for sixty (60) days after notice thereof from Landlord; or

(xiii) if Tenant does any act, or other circumstance occurs, which this Lease expressly provides is an Event of Default hereunder.

(b) If an Event of Default occurs, Landlord may elect to do any or all of the following: (i) enforce performance or observance by Tenant of the applicable provisions of this Lease; (ii) recover from Tenant Actual Damages (as defined hereinbelow), plus interest thereon at the Late Charge Rate; (iii) be entitled to accelerate and recover an amount equal to the Percentage Rent otherwise becoming due and payable under this Agreement during the one (1) year period after the occurrence of an Event of Default (in which event such accelerated Percentage Rent shall be deemed to constitute additional Actual Damages hereunder); (iv) terminate this Lease pursuant to paragraph (c) below; (v) take, re-enter, and repossess Tenant's interest in the Leased Premises without terminating the Lease and dispossess Tenant; provided, however, that in such event Landlord will use reasonable efforts to mitigate its damages by re-letting the Leased Premises; or (vi) enforce any other remedy at law or in equity. Landlord's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect Landlord's right to elect any of the other remedies available to Landlord hereunder.

"Actual Damages" means an amount equal to the sum of (i) all accrued and unpaid Rent due and owing by Tenant under the Lease, (ii) any Rent due by virtue of acceleration pursuant to this paragraph (b) or any Rent coming due if Tenant is dispossessed but the Lease is not terminated pursuant to this paragraph (b), as applicable; and (iii) any and all costs, fees and expenses incurred by Landlord, whether through direct personnel cost or through engaging third-party consultants, to pursue the rights and remedies of Landlord, as a result of or in connection with an Event of Default under this Lease.

(c) If an Event of Default occurs, Landlord shall give Tenant (and any Leasehold Mortgagee) notice stating that this Lease shall terminate on the date specified in such notice and this Lease and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the stated Expiration Date, and Tenant shall quit and surrender Tenant's interest in the Leased Premises and possession thereof forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Sections 15(a)(ix) or (x) or by Federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within ninety (90) days after entry of the order for relief or as may be allowed by the court, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease, in which event Tenant as debtor-in-possession and/or the

trustee immediately shall quit and surrender Tenant's interest in the Leased Premises and possession thereof forthwith.

(d) In the event this Lease is terminated whether pursuant to the foregoing, by operation of law, at the end of the Term of the Lease, or otherwise, all of the right, title, estate and interest of the Tenant (i) in and to the Leased Premises, (ii) in and to the Buildings and Site Improvements, (iii) in and to all options, rights, benefits, privileges and interests in favor of and all payment due the Landlord of the Buildings and Site Improvements, (iv) in and to all rents, issues and profits thereof whether then accrued or to accrue, (v) in and to all insurance policies and all insurance moneys paid or payable thereunder, and (vi) in the then entire undisbursed balance of any insurance or condemnation proceeds with respect to the Leased Premises, shall automatically pass to, vest in and belong to the Landlord, without further action on the part of either Party and without cost or charge to Landlord, free of any claim thereto by Tenant and all Persons taking by, through or under Tenant. If this Lease is so terminated, Landlord may, without notice, re-enter and repossess Tenant's interest in the Leased Premises and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court, or otherwise, subject to applicable Requirements. In no event shall Tenant be entitled to receive any payment with respect to the value of Tenant's interest in the Leased Premises, the Buildings, the Site Improvements or any personal property located therein.

(e) No failure by Landlord to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to such party by reason of Tenant's Default or an Event of Default, and no payment or acceptance of partial Rent during the continuance (or with Landlord's knowledge of the occurrence) of any Event of Default, shall constitute a waiver of any such Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or compiled with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Event of Default. Payment by Tenant to Landlord of any Rent shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Landlord provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Landlord shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

(f) Each right and remedy of Landlord provided for in this Lease, except as expressly provided otherwise in paragraph (b), shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

(g) Landlord and its representatives shall have the right, at any time during the Term of this Lease, upon forty-eight (48) hours prior' notice to Tenant, to enter upon the Leased

Premises to (i) inspect the operation, sanitation, safety, maintenance and use of the same (but Landlord shall not thereby assume any responsibility or liability for the performance of Tenant's obligations hereunder, nor any liability arising from the improper performance thereof) and (ii) to conduct inspections for the purpose of determining whether an Event of Default has occurred, provided that Landlord shall be accompanied by a representative of Tenant (in areas of the Leased Premises other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Leased Premises. Tenant agrees to make a representative of Tenant available to accompany Landlord on any such inspection. Landlord shall have no obligation to inspect pursuant hereto, nor any liability to any Person for any matter which might be disclosed by such inspection.

15. TITLE AND POSSESSION.

(a) Fee Title. Landlord covenants, represents and warrants that Landlord has fee simple title to the Leased Premises and, upon the termination of the Existing Lease, the right to make this Lease for the entire Term, that said entire Leased Premises is now and shall be as of the date of Tenant's recording of a Memorandum of Lease, free and clear of all liens, encumbrances and restrictions, except for Permitted Exceptions, and that upon paying the Percentage Rent and keeping the agreements of this Lease on its part to be kept and performed, Tenant shall have peaceful and uninterrupted possession of the Leased Premises during the continuance of this Lease.

Landlord warrants and represents that, except for any Permitted Exceptions, no encumbrance or restriction affects the Leased Premises which would impair and/or restrict any right granted to Tenant or derived by Tenant under this Lease.

(b) Priority. The estate of Tenant created hereby shall have priority over any lien, encumbrance or other interest now existing or hereafter created or imposed, upon or against Landlord's interest in the Leased Premises.

16. REAL ESTATE TAXES.

(a) Tax Bills. Landlord, prior to the delivery of possession of the Leased Premises to Tenant, shall make a mailing address change on the property tax records so that the tax bill and tax notices for the Leased Premises will be mailed to Tenant as of the Effective Date at the following address: 4300 Catalfumo Way, Palm Beach Gardens, FL 33410. Prior to the date that the tax bill is mailed directly to Tenant pursuant hereto, Landlord, prior to delinquency, shall send to Tenant a copy of the tax bill for the Leased Premises.

(b) Tax Payments. Following receipt of the aforesaid tax bills, Tenant shall pay, when due and before delinquency, the ad valorem real estate taxes (including all special benefit taxes and special assessments) levied and assessed against the Leased Premises for the period commencing with the Effective Date and continuing for the remainder of the Term. The ad valorem taxes levied or assessed for the year in which Tenant commences paying Rent shall be prorated between Landlord and Tenant so that Tenant shall pay only such part thereof as pertains to the period commencing on the Effective Date, and the ad valorem taxes levied or assessed for the year during which this Lease expires or is terminated shall be prorated between

Landlord and Tenant so that Tenant shall pay only such part thereof as pertains to the period commencing on January 1st and ending on the date this Lease expires or is terminated. In no event shall Tenant be required to pay real estate taxes pertaining to any period prior to the Effective Date or subsequent to the expiration or earlier termination of the Lease. Within thirty (30) days of Tenant's request, Landlord shall reimburse Tenant that portion of the tax bill pertaining to any period prior to the Effective Date or subsequent to the expiration of the Term.

(c) Assessments. All special benefit taxes and special assessments shall be spread over the longest time permitted and Tenant's liability for installments of such special benefit taxes and special assessments not yet due shall cease upon the expiration or termination of this Lease.

(d) Contest.

(i) Tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the Leased Premises or any improvements thereon, provided that Tenant shall not take any action which will cause or allow the institution of foreclosure proceedings against the Leased Premises. Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Leased Premises. Landlord shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any law, ordinance or regulation in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith. In the event that for any reason Tenant's leasehold interest in the Leased Premises is deemed not subject to ad valorem taxation, Tenant agrees to make an annual payment to the City equal to the ad valorem taxes that would have otherwise accrued to the City and the CRA (including County taxes) if such leasehold interest was subject to ad valorem taxation (the "Substitute Ad Valorem Tax Payment"). The foregoing shall be paid regardless of whether the CRA is then in existence.

(ii) Landlord covenants and agrees that if there shall be any refunds or rebates on account of any tax, governmental imposition or levy paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant; provided, that in the event the Leased Premises, the Buildings or the Site Improvements are determined to be not subject to ad valorem taxation, the provisions of Section 2(b) shall apply. Any such refunds or rebates received by Landlord shall be held in trust for the benefit of Tenant and shall be forthwith paid to Tenant. Landlord shall, on request of Tenant, sign any receipt which may be necessary to secure the payment of any such refund or rebate, and shall pay over to Tenant such refund or rebate as received by Landlord.

17. INSURANCE. Commencing with the Effective Date, Tenant shall procure and continue in effect public liability and property damage insurance with respect to the operation of the Leased Premises and name Landlord as an additional insured. Such public liability insurance shall cover liability for death or bodily injury in any one accident, mishap or casualty in a sum of not less than $2,000,000.00, and shall cover liability for property damage in one accident,

mishap or casualty in the amount of not less than $500,000.00. At any time that there is Leasehold Financing on the Leased Premises, then the casualty insurance required to be obtained in accordance with such Leasehold Financing shall satisfy the casualty insurance requirements of this Lease.

In the event there is not any Leasehold Financing on the Leased Premises, then the Tenant shall provide such coverages as are typically required at that point in time by commercial lenders for projects of similar size, nature, character and location as the Leased Premises as approved by the Landlord, such approval not to be unreasonably withheld.

The Tenant shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all of Tenant's employees as required by Florida Statutes. In the event that the Tenant does not carry such Workers' Compensation Insurance and chooses not to obtain same, then Tenant shall in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the Landlord.

The proceeds from Tenant's casualty insurance hereunder shall be paid and applied as provided in Article 12 hereof. Any insurance carried by Tenant hereunder, at Tenant's option, may be carried under an insurance policy(ies), self-insurance or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other locations of Tenant or its Affiliates, or any combination thereof; provided that any self insurance or proposed insurer having less than a Best's Key Rating of A-VII or less shall be subject to the prior written consent of the Landlord, such consent not to be unreasonably withheld. Tenant shall, at the request of Landlord, provide reasonable proof of the foregoing coverages.

18. INDEMNITY; LANDLORD'S EXCULPATION

(a) The Tenant shall indemnify, defend and hold harmless the Landlord Indemnified Parties against and from any and all claims, damages, actions, loss, cost and expense (including but not limited to reasonable attorneys' fees) resulting directly or indirectly from the Tenant's acts or omissions or the acts or omissions of the Tenants' respective employees or agents (acting within the scope of their employment or agency). In addition, the Landlord Indemnified Parties shall not be liable to Tenant for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys fees and disbursements), penalty or fine incurred, in connection with or arising from: (i) any injury (whether physical, economic or otherwise) to Tenant or to any other person in, about, or concerning the Leased Premises; (ii) any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other person in, about, or concerning the Leased Premises, or the use or occupancy thereof, irrespective of the cause of injury, damage, or loss (including, without limitation, the acts or negligence of any Tenant or occupant of the Leased Premises or of any owners or occupants of adjacent or neighboring property or caused by any construction work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the Leased Premises; or (iii) any act, omission or negligence of Tenant or its Affiliates or of the contractors and their respective subcontractors, agents and employees, agents, servants, employees, guests, invitees or licensees of Tenant or its Affiliates (except to the extent any of the matters described in clauses (i) or (ii) is due to the negligence or willful misconduct of any

Landlord Indemnified Party). Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of the Landlord Indemnified Parties (and then only in such Landlord Indemnified Party's proprietary capacity as opposed to its governmental capacity), the Landlord Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of god, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works.

Notwithstanding anything to the contrary in this Lease, Landlord's liability under the Lease shall be limited to Landlord's Interest in the Leased Premises. Nothing contained in this Section or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Landlord's liability as set forth in §768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

Tenant shall notify Landlord within thirty (30) days after Tenant has notice of any occurrence at the Leased Premises which Tenant believes could give rise to a claim of $1,000,000 (adjusted for inflation) or more, whether or not any claim has been made, complaint filed or suit commenced.

Tenant agrees to pay such Landlord Indemnified Party, as Rent hereunder, all amounts due under this Article 19 within sixty (60) days after receipt of notice thereof from the Landlord Indemnified Party.

19. BROKERS. Landlord and Tenant represent that they have dealt with no broker or agent with respect to this Lease. Landlord and Tenant hereby indemnify and save and hold the other harmless against any claims for brokerage commissions or compensation or other claims of any kind (including reasonable attorney's fees and costs) arising out of the negotiation and execution of this Lease or their respective interest or involvement with respect to the Leased Premises.

20. PREVAILING PARTY. In the event of litigation between Landlord and Tenant in connection with this Lease, the reasonable attorneys' fees and court costs incurred by the prevailing party in such litigation shall be borne by the non-prevailing party.

21. NOTICES. All notices hereunder shall be in writing and sent by United States certified or registered mail, postage prepaid, or by overnight delivery service providing proof of receipt, addressed if to Landlord, to the place where Percentage Rent checks are to be mailed, and if to Tenant, to OMRD, Inc., 4300 Catalfumo Way, Palm Beach Gardens, FL 33410, and OMRD Holdings, LLC, 2295 Corporate Blvd., Suite 222, Boca Raton, FL 33431, with a duplicate to Greenberg Traurig, P.A., 5100 Town Center Circle, Suite 400, Boca Raton, FL 33486, Attn: Marc Sinensky, Esq., provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery. Notice by Landlord hereunder shall simultaneously be delivered to any leasehold mortgagee, trustee or lender of Tenant (of which Landlord has been notified prior to the date of the giving of such notice by Landlord).

22. TRANSFER OF TITLE.

(a) Future Landlord. In the event that Landlord conveys its interest in the Leased Premises to any other Person or entity, Tenant shall have no obligation to pay Percentage Rent or any other charges under this Lease to any such transferee until Tenant has been so notified and has received satisfactory evidence of such conveyance together with a written direction from such transferee as to the name and address of the new payee of Percentage Rent and other charges. It is understood and agreed that Tenant's withholding of Percentage Rent and other charges until its receipt of such satisfactory evidence shall not be deemed a default under this Lease and such Percentage Rent and other charges shall accrue during the period which Tenant is waiting for the proper direction and evidence of conveyance.

(b) Release. In the event of any transfer, assignment or conveyance of Landlord's interest in this Lease, Landlord shall be relieved of all covenants and obligations of Landlord hereunder arising from and after the date of such transfer, assignment or conveyance provided that such purchaser or successor in interest has assumed all such covenants and obligations of Landlord hereunder.

(c) Tax Bills. In the event that Landlord conveys its interest in the Leased Premises, Landlord shall take all measures necessary to cause real estate tax bills and notices to continue to be mailed to Tenant as required under Article 17.

23. ESTOPPEL CERTIFICATE. Landlord and Tenant agree to execute and deliver to the other within thirty (30) days after receipt of such request, an estoppel certificate, in commercially reasonable form, which certificate may include (a) information as to any modification of this Lease, (b) dates of commencement of Term and the termination date of this Lease, (c) to the best of Landlord's or Tenant's knowledge, whether or not Landlord or Tenant is in default of this Lease, and (d) such other information reasonably requested by the requesting party.

24. CONDEMNATION.

(a) Eminent Domain. If all or substantially all of the Leased Premises or access thereto or therefrom shall be taken for any public or quasi-public use under any statue or by right of eminent domain, or by private purchase in lieu thereof (a "Taking"), then this Lease shall automatically terminate as of the date that possession has been so taken (the "Vesting Date").

(i) In the event of a Taking of less than all or substantially all of the Leased Premises or access thereto or therefrom, Tenant, within ninety (90) days of such Taking, may elect to terminate this Lease and not restore if, by reason of the Taking, Tenant determines that the Leased Premises is unsuitable for continued operation of the Leased Premises as contemplated herein, as determined by Tenant in its reasonable discretion.

(ii) In the event Tenant elects by reason of the foregoing events to terminate the Lease, Tenant shall give written notice of such election to Landlord within ninety (90) days of such Taking, and the term of this Lease shall expire and come to an end thirty (30) days after such notice is given. Upon such termination, the Percentage Rent and all Additional

Rent shall be adjusted to the date of termination and neither party shall have any further rights or liabilities hereunder. With respect to any items of Additional Rent which are payable to Landlord in the event of such termination but which are not then capable of ascertainment, Tenant shall pay to Landlord an amount equal to such Additional Rent as and when same become determined. The covenants and agreements with respect to the adjustment and payment of these items of Additional Rent and refunds, if any, shall survive the termination of this Lease.

(iii) In the event Tenant does not elect by reason of the foregoing events to terminate the Lease, then the Tenant shall restore the remaining portion of the Leased Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking, provided, however, that the Tenant shall not be required to expend any amount in excess of the net condemnation award for such purposes.

(b) The Award. In the event of a Taking resulting in the termination of this Lease pursuant to the provisions of this Section 25, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such Taking and further agree that the aggregate net award, after deducting the reasonable expenses of Landlord and Tenant, including attorneys' fees, incurred in connection therewith, shall be distributed as follows, and in the following order of priority:

(i) Tenant shall be entitled to an amount equal to the value, on the Vesting Date, of the Buildings and Site Improvements taken, as if improved and available for their highest and best use, giving effect to the existence of this Lease. If the Landlord is the condemning party, it shall not be entitled to claim any payment hereunder. In this regard, Tenant shall be entitled to: (A) an amount equal to the value of the Buildings and Site Improvements taken, including the loss of income associated with the Buildings and Site Improvements taken, (B) be compensated for the loss of its business and goodwill occasioned by any Taking, (C) make all claims allowed by the laws of the State of Florida and the United States of America against the condemning authority with respect to all or any portion of the award Tenant may be entitled to hereunder. Without limiting the foregoing, if the amount that the Tenant may otherwise be entitled to pursuant to this provision is less than all amounts due, including without limitation, principal, interest, prepayment premiums or penalties, to all Leasehold Mortgagees in connection with all Leasehold Financings, then the Tenant shall be entitled to an amount of the award that is equal to all amounts due, including without limitation, principal, interest, prepayment premiums or penalties, to all Leasehold Mortgagees in connection with all Leasehold Financings; and

(ii) Landlord shall be entitled to the balance of the award.

(c) Reconstruction.

(i) In case of a Taking of less than substantially all of the Leased Premises and if this Lease is not terminated, Tenant, at its expense, shall, to the extent of the award (but this limitation shall not be construed as imposing any obligation on Landlord to contribute to such restoration work), proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and Unavoidable Delays) to repair or reconstruct the Buildings (all such repair, reconstruction and work being referred to in this Article as

"Reconstruction Work") and the award in the condemnation proceedings, after deduction of the reasonable expenses of Landlord and Tenant incurred in connection with the Taking, shall be made available to Tenant for purposes of paying the cost and expense of the Reconstruction Work. During the period in which the Reconstruction Work has not been completed, Tenant shall be entitled to an equitable abatement of Percentage Rent; and, if it is impracticable for Tenant to remain open for business and Tenant elects to close until restoration has been completed, then there shall be a full abatement of Percentage Rent until Tenant's completion of the restoration work, such abatement not to exceed a period of two (2) years from the date of payment of the condemnation proceeds.

If Tenant shall fail to commence such Reconstruction Work within one hundred eighty (180) days after the Vesting Date (adjusted for Unavoidable Delays) or, if having commenced such Reconstruction Work, shall, other than as a result of Unavoidable Delays, fail to complete in accordance with such terms with reasonable diligence, and such failure shall continue for a period of sixty (60) days after notice by Landlord, subject to Unavoidable Delays, Landlord may, at its option and upon serving written notice upon Tenant and any Leasehold Mortgagee (if any) that it elects to do so, may complete such Reconstruction Work. In such event, and whether or not this Lease may have theretofore been terminated by reason of any Event of Default by Tenant, Landlord shall have the right as the Reconstruction Work progresses to use and apply the net condemnation award to the cost of such Reconstruction Work.

(ii) In case of a Taking of less than all or substantially all of the Leased Premises, the Percentage Rent payable hereunder shall, from and after the Vesting Date, be equitably reduced based upon the portion of the Leased Premises taken.

(iii) Any compensation for a temporary Taking of the Leased Premises, shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary Taking extends beyond the end of the Lease Term and Tenant shall remain fully responsible for Percentage Rent and Additional Rent.

25. LEASEHOLD MORTGAGE.

(a) Notices. Tenant shall have the right at any time and from time to time during the term to encumber its interest in the Leased Premises with one or more leasehold mortgages (the "Leasehold Financing"). Upon receipt of written notice from Tenant of the existence of any Person providing a leasehold mortgage to Tenant (each, a Leasehold Mortgagee), Landlord agrees to provide such Leasehold Mortgagee with copies of any notices of default delivered to Tenant. Any such notice of default shall state the nature of the alleged default and shall specify the amounts of Rent or other payments herein provided for that are claimed to be in default. Each Leasehold Mortgagee shall also be given notice of any arbitration or other dispute proceedings between Landlord and Tenant, if any. Further, each Leasehold Mortgagee shall receive notice, and a copy, of any award or decision made in said arbitration or other proceeding.

(b) Monetary Defaults and Cure Rights. In the event of a monetary default by Tenant hereunder, Landlord shall accept payment by or at the instigation of any Leasehold Mortgagee in accordance with the terms hereof as if the same had been undertaken by Tenant. If

Landlord shall elect to terminate this Lease by reason of any monetary default of Tenant, any Leasehold Mortgagee shall have the right to nullify any notice of termination by curing such monetary default prior to the effective date of termination.

(c) Non-Monetary Defaults and Cure Rights. In the event of a non-monetary default by Tenant hereunder, Landlord shall accept any curative acts undertaken by or at the instigation of any Leasehold Mortgagee in accordance with the terms of this Section as if the same had been undertaken by Tenant. If Landlord shall elect to terminate this Lease by reason of any non-monetary default of Tenant, each Leasehold Mortgagee shall have the following rights:

(i) to nullify any notice of termination by curing such non-monetary default prior to the effective date of termination;

(ii) to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than ninety (90) days, provided that such Leasehold Mortgagee shall agree with Landlord (by giving a notice to that effect to Landlord) prior to the effective date of termination, to accomplish the following within the times hereinafter provided and shall, in fact, accomplish the following in a timely manner:

(A) cure or cause to be cured within sixty (60) days of Landlord's notice any existing monetary defaults;

(B) pay or cause to be paid during such ninety (90) day period all Rent and other monetary obligations of Tenant hereunder, as and when the same become due;

(C) promptly cure or cause to be cured any non-monetary defaults that such Leasehold Mortgagee can cure using diligent and commercially reasonable efforts; and

(D) take all steps necessary to ensure Tenant is in compliance with the covenants set forth in this Lease; and

If, at the end of said ninety (90) day period, the Leasehold Mortgagee is in compliance with the conditions set forth in Sections A-D immediately set forth above, but the Event of Default is of such a nature that it cannot be reasonably remedied within such ninety (90) day period, the time for completion of said steps shall be further extended upon the same conditions for such period as shall be reasonably necessary to complete such steps with reasonable diligence.

(d) New Lease. In the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, if requested by any Leasehold Mortgagee in writing within thirty (30) days of such rejection or disaffirmance, Landlord shall enter into a new lease of the Leased Premises with the Leasehold Mortgagee or its designee. Such new lease shall be for the remainder of the term of the Lease, effective as of the date of such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. Such written request by any Leasehold Mortgagee shall be accompanied by a copy of such proposed new lease, duly executed, and acknowledged by the proposed new assignee, and

the Leasehold Mortgagee shall have cured (or caused to be cured) all defaults under this Lease which are susceptible to being cured by the Leasehold Mortgagee and paid to Landlord all expenses and reasonable attorneys' fees incurred by Landlord in connection with the Events of Default upon which the termination was premised and the preparation, execution and delivery of the replacement lease. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Leased Premises as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by Landlord, Tenant and the Leasehold Mortgagee. The new lease shall be on the same terms and conditions as this Lease and shall have the same priority as this Lease. Landlord's obligation to enter into the new lease shall be conditioned upon the following: (i) the Leasehold Mortgagee shall have cured all monetary defaults and commenced, and diligently prosecuted, the cure of all reasonably curable non-monetary defaults; and (ii) the Leasehold Mortgagee shall reimburse Landlord for all reasonable costs and expenses incurred in reviewing the new lease.

(e) Amendment. The cancellation, surrender or amendment of this Lease by Tenant shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee.

(f) Estoppel Certificates. Within thirty (30) days after written request therefor from a Leasehold Mortgagee, Landlord shall deliver to the Leasehold Mortgagee an estoppel certificate signed by Landlord which certifies as to: (a) the Rent payable under this Lease; (b) the term of this Lease and the rights of Tenant, if any, to extend the term of this Lease; (c) the nature of any existing defaults by Tenant alleged by Landlord; and (d) any other matters reasonably requested by the Leasehold Mortgagee.

(g) No Liability/Release. Notwithstanding anything in this Lease to the contrary, the Leasehold Mortgagee shall not be liable or responsible in any respect for any of Tenant's obligations under this Lease unless and until the Leasehold Mortgagee becomes the Landlord and holder of this Lease through foreclosure proceedings, exercise of the power of sale, or deed or assignment in lieu thereof. If the Leasehold Mortgagee or any affiliate of the Leasehold Mortgagee shall acquire Tenant's interest in the Lease or shall become Tenant under any new lease made pursuant to this Section, then the Leasehold Mortgagee or its affiliate may assign this Lease or such new lease and thereupon shall be released from all liability for the performance or observance of the covenants and conditions to be performed or observed on the part of Tenant under this Lease or such new lease from and after the date of such assignment.

(h) Interest of Leasehold Mortgagee in Leased Premises. The Leasehold Mortgagee shall have no interest in the Leased Premises other than its interest as Leasehold Mortgagee or as Tenant under and pursuant to this Lease or any new Lease.

(i) Additional Provisions. Landlord agrees and acknowledges that it will enter into any amendments to this Lease in order to reflect any other commercially reasonable terms that the Leasehold Mortgagee may from time to time reasonably request to confirm and protect the Leasehold Mortgagee's rights and interests as a leasehold mortgagee unless there is good cause not to agree. The provisions of this section in favor of the Leasehold Mortgagee shall

inure to the benefit of the Leasehold Mortgagee and its successors and assigns, and also any other tenant under or transferee of this Lease pursuant to any foreclosure proceedings, exercise of the power of sale or deed or assignment in lieu thereof. Anything herein to the contrary notwithstanding, such amendment shall in no event increase any of Landlord's obligations, or materially diminish any of Landlord's rights, or diminish any of Tenant's monetary obligations to Landlord, under this Lease. The Landlord shall also cause to be delivered, at the expense of Tenant, such opinions of counsel as the Tenant and/or any Leasehold Mortgagee shall reasonably request.

26. NO LEASEHOLD MORTGAGE. Landlord acknowledges, as of the date hereof, that neither its interest in the land nor its interest in the Leased Premises is encumbered, other than the Permitted Exceptions and the rights under the Existing Lease. From and after the date hereof, Landlord shall have no right to encumber Landlord's interest in the land or the Leased Premises or any portion thereof.

27. TAX TREATMENT. Tenant or its assign shall have the benefit of all depreciation, depletion, amortization, deductions or allowances related to the Buildings and the Site Improvements now or hereafter located on the Leased Premises under the Internal Revenue Code, as amended, and under any income or similar or other tax statute enacted by any applicable local, state, county, federal or other governmental or taxing authority.

28. LANDLORD'S OPTION TO PURCHASE. The Landlord is granted a one time option to acquire the Tenant's rights under this Lease and any Buildings and/or Site Improvements as may then exist on the Leased Premises, in accordance with the following provisions:

(a) Exercise. The one time opportunity that the Landlord has exists at the end of the thirtieth (30th) year of the Lease Term. If the Landlord desires to exercise this option, it must provide to the Tenant written notice of its election to exercise this Option by no later than six (6) months earlier than the end of the thirtieth (30th) year of the Lease Term.

(b) Price. The price will be determined using the following formula. The net operating income, determined in accordance with generally accepted accounting principles and subject to review and audit by Landlord as provided in paragraph 31 hereof, that the Tenant has realized from the Leased Premises for the twenty-seventh (27th), twenty-eighth (28th) and twenty-ninth (29th) years of the Lease Term shall be averaged and such amount will be capitalized using an eight (8%) percent capitalization rate. As an example of the foregoing, if the net operating income the Tenant has realized from the Leased Premises for the 27th year was $3,000,000 and the net operating income the Tenant has realized from the Leased Premises for the 28th year was $4,000,000 and the net operating income the Tenant has realized from the Leased Premises for the 29th year was $5,000,000 (the average amount of such three years being $4,000,000), then the price would be $50,000,000 ($4,000,000 divided by .08). Any right of Leasehold Mortgagees and all Leasehold Mortgages or other Tenant encumbrances on the Leased Premises shall be subject and subordinate in all respects to this purchase option, and the right of the City to purchase pursuant to this paragraph shall be "free and clear" of any liens on Tenant's interest in the Lease, all of which liens shall be extinguished as of the date of purchase.

(c) Terms of Sale. The Lease, Buildings and Site Improvements will be transferred "as-is" to the Landlord with the Tenant making no representation or warranty of any kind, including without limitation, any representation or warranty with respect to the condition of any Buildings or Site Improvements; subject, however, to the provisions of this Lease regarding the repair and maintenance of the Leased Premises. In addition, the Tenant will not make any representation or warranties regarding the status of any subleases or the financial condition of any subtenants, but will provide the Landlord copies of all existing subleases and such financial data with respect thereto as Landlord may reasonably request. Tenant shall also transfer to Landlord all rights to any unpaid proceeds of any casualty claim or eminent domain award to be used to repair or restore the Leased Premises. The Landlord will bear all expenses of such sale, including without limitation, any transfer taxes, intangible taxes, documentary stamps or taxes, title insurance, surveys, environmental reports or any other inspection reports.

(d) Closing Date. The closing shall occur on the first (1st) business day following the end of the thirtieth (30th) year of the Lease Term.

(e) Maintenance of the Leased Premises. In the event the Landlord exercises its purchase option as provided for in this section, then as a condition precedent to the closing in connection therewith: (i) the Landlord and the Tenant shall, at or prior to such closing, enter into an agreement with respect to the Leased Premises, the Buildings and the Site Improvements, for the next 30 years of the Lease Term, which ensure that the Leased Premises the Buildings and the Site Improvements, will continue to be operated in a fashion consistent with the adjacent hotel/hotel condominium property and in a fashion that will maintain the quality and value of the adjacent hotel/hotel condominium property, and (ii) the Landlord and the Tenant shall, at or prior to such closing, enter into an agreement with respect to the Buildings and the Site Improvements on the Leased Premises, that will ensure that the Buildings and the Site Improvements on the Leased Premises, during the balance of the Lease term, including all extensions thereof, will not be reconfigured and/or reconstructed to a height greater then the height they were originally constructed. Neither the Landlord nor the Tenant will unreasonably withhold or delay its approval or execution of any such agreements.

29. NO AUTHORITY TO CONTRACT IN NAME OF LANDLORD. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Landlord's interest in the Leased Premises or any part thereof or against assets of Landlord, or Landlord's interest in any Rent. NOTICE IS HEREBY GIVEN, AND TENANT SHALL CAUSE ALL CONSTRUCTION AGREEMENTS TO PROVIDE, THAT TO THE EXTENT ENFORCEABLE UNDER FLORIDA LAW, LANDLORD SHALL NOT BE LIABLE FOR ANY WORK PERFORMED OR TO BE PERFORMED AT THE LEASED PREMISES OR ANY PART THEREOF FOR TENANT OR ANY SUBTENANT OR FOR ANY MATERIALS FURNISHED OR TO BE FURNISHED TO THE PREMISES OR ANY PART THEREOF FOR ANY OF THE FOREGOING, AND NO MECHANIC'S, LABORER'S, VENDOR'S, MATERIALMAN'S, OR OTHER SIMILAR STATUI'ORY LIEN

FOR SUCH WORK OR MATERIALS SHALL ATTACH TO OR AFFECT LANDLORD'S INTEREST IN THE LEASED PREMISES OR ANY ASSETS OF LANDLORD, OR LANDLORD'S INTEREST IN ANY RENT. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

30. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS AND OBLIGATIONS.

If an Event of Default shall occur and be continuing beyond any applicable cure period, Landlord may, but shall be under no obligation to, perform the obligation of Tenant the breach of which gave rise to such default, without waiving or releasing Tenant from any of its obligations contained herein, provided that Landlord shall exercise such right only in the event of a bona fide emergency or after five (5) business days' notice to Tenant and any Leasehold Mortgagee, Tenant hereby grants Landlord access to the Leased Premises in order to perform any such obligation. Any amount paid by Landlord in performing Tenant's obligations as provided in this paragraph, including all costs and expenses incurred by Landlord in connection therewith, shall constitute additional Rent hereunder and shall be reimbursed to Landlord within thirty (30) days following Landlord's demand therefor, together with a late charge on amounts actually paid by Landlord, calculated at the Late Charge Rate from the date of notice of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Landlord's payment or performance pursuant to the provisions of this paragraph shall not be, nor be deemed to constitute, Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

31. FINANCIAL REPORTS AND RECORDS.

(a) Tenant shall at all times during the Term of this Lease keep and maintain at a location within the City (separate from any of Tenant's other books, records and accounts) accurate and complete records pertaining to the Leased Premises including, without limitation, books of account reflecting net operating income, the operations of the Leased Premises, and such other matters required to demonstrate Tenant's compliance with its obligations under the Lease, all in accordance with the generally accepted accounting principles. Landlord and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the records required by the preceding sentence.

(b) The Landlord shall have the right to cause an audit by any recognized accounting firm (in accordance with the generally accepted accounting principles) of (i) Tenant's net operating income and/or (ii) Tenant's subtenant rent information to be made at any time (but not more frequently than one (1) time in any twelve (12) month period), at Landlord's expense, except as provided below. Such right of inspection and audit may be exercised at any time within three (3) years after the end of the year to which such Tenant's net operating income or subtenant rent information is related, and Tenant shall maintain all such books and records for at least such period of time and, if any dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such dispute. If any such audit by Landlord reveals that Tenant has understated the Rent audited by five percent (5%) or greater, the costs of such audit shall be paid by Tenant and the amounts of

any such underpayment disclosed by such audit, together with any applicable interest accrued thereon, shall be promptly paid to the Landlord.

(c) The obligations of Tenant and Landlord under this Article shall survive the Expiration of the Term of the Lease.

32. NONLIABILITY.

(a) No member, official or employee of the CRA, the Landlord or any other governing body (including, without limitation, the Mayor or Members of the City Council, the CRA or its members) shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount or obligation which may become due to Tenant or successor under the terms of this Lease; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Lease, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

(b) No Person that has an ownership interest, whether directly or indirectly, in Tenant and no Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant, shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount or obligation which may become due to Landlord or successor under the terms of this Lease; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Lease, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

33. CONFLICT OF INTEREST. Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the CRA, the Landlord or any other governing body has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Landlord, the CRA or any other governing body has received any payment or other consideration for the making of this Lease, directly or indirectly from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. Tenant acknowledges that Landlord is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

34. NO PARTNERSHIP. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Leased Premises, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the parties

with respect to the Leased Premises, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this paragraph shall survive Expiration of the Term.

35. MISCELLANEOUS.

(a) Captions. Captions of the Sections and Articles contained in this Lease are for convenience only and do not constitute a part of this Lease and do not limit, affect or construe the contents of such Sections or Articles.

(b) Severability. If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

(c) Interpretation. All provisions of this Lease have been negotiated by both Landlord and Tenant, at arm's length, and neither Landlord or Tenant shall be deemed the scrivener of this Lease. This Lease shall not be construed for or against either Landlord or Tenant by reason of the authorship or alleged authorship of any provision hereof. As used herein, "business day" means any day other than a Saturday, Sunday or federal or Florida state holiday.

(d) Incorporation. This instrument shall constitute the entire Lease unless otherwise hereafter modified by both Landlord and Tenant in writing. All exhibits attached and referenced in this Lease are hereby incorporated herein as fully set forth in (and shall be deemed to be a part of) this Lease.

(e) Successors and Assigns. This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon Landlord and Tenant until it shall have been executed and delivered by both Landlord and Tenant.

(f) Legal Representation. Landlord and Tenant have each been afforded a full and fair opportunity to seek advice from legal counsel.

(g) No Recordation. This Lease shall not be recorded. However, a memorandum of lease (the "Memorandum of Lease"), in form reasonably acceptable to Landlord and Tenant, shall be recorded by Tenant, provided that Landlord shall cooperate in the execution of any documents reasonably requested by Tenant in connection with such recording.

(h) Governing Law. This Lease and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida (without regard to conflicts of laws).

(i) Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to Persons who are

exposed to it over time. Levels of radon gas that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

(j) Interest of Tenant. Tenant shall have no interest in the Leased Premises other than its interest as Tenant under and pursuant to this Lease. No action of Tenant may deprive City of its fee simple title to the Leased Premises.

(k) No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate or any part thereof by reason of the fact that the same Person may acquire or hold, directly or indirectly, this Lease or the leasehold estate hereby created or any interest in this Lease or in such leasehold estate as well as the fee estate or any interest in such fee estate.

(l) Person. As used herein, the term "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(m) Affiliate. As used herein, the term Affiliate means with respect to a Person, any other Person that directly or indirectly Controls, is controlled by, or is under common Control with, the specified Person.

(n) Control. As used herein, the term Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Ownership of more than 50% of the: (a) beneficial interests of a Person shall be conclusive evidence that control exists, or (b) voting interests of a Person shall be conclusive evidence that control exists.

(o) Unavoidable Delays. As used herein, the term "Unavoidable Delay(s)" shall mean any delay which arises, directly or indirectly, from any strike, lockout, labor dispute, inability to obtain materials or labor (in each case outside the reasonable control of the Tenant), governmental restrictions, acts of war, act of public enemy, riot, insurrection, terrorist attack, governmental regulation, fire or other acts of God, abnormal weather conditions, litigation which causes a delay (other than litigation among and between the Tenant and its Affiliates) or other cause, similar or dissimilar to those enumerated above, beyond the control of Tenant (all of the causes set forth above being herein called "Unavoidable Delays").

(p) Single-Asset Entity. Tenant shall be maintained as a single-asset entity, owning no assets other than its interest in the Leased Premises. Notwithstanding anything contained in this Lease to the contrary the Tenant will have the absolute right to transfer this Lease to another Person in order to comply with this provision.

(q) Joint and Several. If after the execution hereof Tenant subsequently assigns all of Tenant's interest in the Lease or Leased Premises pursuant to Section 10(e) hereof to a new Tenant comprised of more than one Person, then the obligations imposed hereby on such assignee shall be joint and several between the Persons comprising such assignee.

EXECUTION

IN WITNESS WHEREOF, City and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

WITNESS:

By: _____
Michael D. Brown, Mayor

ATTEST:

By: _____
Carrie E. Ward, City Clerk

As to Form and Legal Sufficiency
By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

By: _____
William E. Wilkins, City Manager

WITNESSES:

OMRD, LLC,
a Delaware limited liability company

By: _____
Daniel Catalfumo, its President

EXECUTION

IN WITNESS WHEREOF, City and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

WITNESS:

_____

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By: _____
Michael D. Brown, Mayor

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As to Form and Legal Sufficiency
By: _____
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By: _____
Mark Mustian, Special Counsel

By: _____
William E. Wilkins, City Manager

WITNESSES:

_____

_____

OMRD, LLC,
a Delaware limited liability company

By:_____
Name:_____

LIST OF EXHIBITS
Ground Lease/Retail

A. LEASED PREMISES

B. PERMITTED EXCEPTIONS

C. STREETS AND SIDEWALKS TO BE ABANDONED

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

GROUND LEASE – RETAIL

LEGAL DESCRIPTION

PARCEL B, C, AND D, PLAT OF RIVIERA BEACH OCEAN TRACT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGE 98, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND TOGETHER WITH PORTIONS OF OCEAN AVENUE, NORTH OCEAN BOULEVARD, BEACH AVENUE AND BEACH COURT, ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL A, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE ALONG THE WEST LINE OF SAID PARCEL A AND ALONG THE EAST RIGHT OF WAY LINE OF SAID OCEAN AVENUE, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT, SOUTH 00°46'50" WEST, A DISTANCE OF 923.92 FEET; THENCE CONTINUE SOUTH 90°00'00" EAST, A DISTANCE OF 50.46 FEET; THENCE CONTINUE SOUTH 00°00'00" WEST, A DISTANCE OF 75.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE ALONG THE SOUTH LINE OF SAID PLAT OF RIVIERA BEACH OCEAN TRACT AND ITS WESTERLY EXTENSION, NORTH 90°00'00" WEST, A DISTANCE OF 509.93 FEET TO A POINT ON THE EAST LINE OF LOT 415, PALM BEACH SHORES, AS SHOWN ON PLAT BOOK 23, PAGES 29 THROUGH 32, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID EAST LINE OF LOT 415 AND ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 98.18 FEET TO THE NORTHEAST CORNER OF SAID LOT 415; THENCE ALONG THE NORTH LINE OF SAID LOT 415, SOUTH 85°00'00" WEST, A DISTANCE OF 50.44 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHERLY EXTENSION OF THE WEST RIGHT OF WAY LINE FOR BEACH COURT, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG SAID WEST RIGHT OF WAY LINE AND ITS SOUTHERLY EXTENSION, NORTH 02°36'30" EAST, A DISTANCE OF 290.37 FEET TO THE NORTHEAST CORNER OF LOT 425, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG THE SOUTH LINE OF LOT 426, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, SOUTH 87°23'30" EAST, A DISTANCE OF 50.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 426; THENCE ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, NORTH 02°36'30" EAST, A DISTANCE OF 408.75 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 30.00 FEET AND A CHORD BEARING OF NORTH 66°54'51" WEST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID WEST RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 139°02'41", A DISTANCE OF 72.80 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD 703 (A1A), AS SHOWN ON SAID PLAT OF PALM BEACH SHORES, SAID POINT ALSO BEING A POINT OF CUSP OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 623.69 FEET AND A CHORD BEARING OF NORTH 33°13'55" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 20°39'46", A DISTANCE OF 224.92 FEET TO THE NON TANGENT INTERSECTION THEREOF WITH THE NORTH RIGHT OF WAY LINE OF OCEAN AVENUE, AS SHOWN ON SAID PLAT OF RIVIERA BEACH OCEAN TRACT; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE OF STATE ROAD 703 (A1A) AND RUNNING ALONG SAID NORTH RIGHT OF WAY LINE OF OCEAN AVENUE, SOUTH 89°58'50" EAST, A DISTANCE OF 365.18 FEET TO THE POINT OF BEGINNING.

CONTAINING 457,653 SQUARE FEET OR 10.506 ACRES, MORE OR LESS.

LESS AND EXCEPTING THEREFROM:

A PARCEL OF LAND BEING A PORTION OF PARCEL "C" AND A PORTION OF PARCEL "D", PLAT OF RIVIERA BEACH OCEAN TRACT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGE 98, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND TOGETHER WITH PORTIONS OF NORTH OCEAN BOULEVARD, BEACH AVENUE AND BEACH COURT, ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID PARCEL "D"; THENCE ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID PARCEL "D", NORTH 90°00'00" WEST, A DISTANCE OF 100.10 FEET TO A POINT ON THE EAST LINE OF LOT 415, PALM BEACH SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 23, PAGES 29 THROUGH 32, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID EAST LINE OF LOT 415 AND ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL;

THENCE CONTINUE ALONG SAID EAST LINE OF LOT 415 AND ALONG SAID WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD NORTH 02°36'30" EAST, A DISTANCE OF 48.13 FEET TO THE NORTHEAST CORNER OF SAID LOT 415; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, NORTH 00°46'50" EAST, A DISTANCE OF 283.83 FEET TO A POINT ON THE SOUTH LINE OF LOT 426, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG SAID SOUTH LINE, SOUTH 87°23'30" EAST, A DISTANCE OF 9.05 FEET TO THE SOUTHEAST CORNER OF SAID LOT 426; THENCE ALONG THE WEST RIGHT OF WAY LINE OF SAID NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 33.56 FEET; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, SOUTH 90°00'00" EAST, A DISTANCE OF 230.17 FEET; THENCE SOUTH 00°46'50" WEST, A DISTANCE OF 365.03 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 241.83 FEET TO THE POINT OF BEGINNING.

CONTAINING 87,425 SQUARE FEET OR 2.007 ACRES, MORE OR LESS.

CONTAINING A TOTAL OF 370,228 SQUARE FEET OR 8.499 ACRES, MORE OR LESS.

EXHIBIT "B"

PERMITTED EXCEPTIONS

EXHIBIT B

TO

THE GROUND LEASE-RETAIL

(Permitted Exceptions)

1. Taxes for the year 2007, which are not yet due and payable.

2. Subject to rights of tenants under unrecorded leases, if any.

3. All matters contained on the Plat of Riviera Beach Ocean Tract, as recorded in Plat Book 30, page 98, Public Records of Palm Beach County, Florida.

4. Landscaping Easement recorded in O.R. Book 2514, Page 1547, Public Records of Palm Beach County, Florida.

5. Electrical Easement recorded in O.R. Book 2514, Page 1555, Public Records of Palm Beach, County, Florida.

6. Easement to Florida Power and Light Company recorded in O.R. Book 2514, Page 884, Public Records of palm Beach County, Florida.

7. Notice that Lessor's Interest Not Subject to Liens For Improvements Made by Any Lessee recorded in O.R. Book 9347, Page 482, Public Records of palm Beach County, Florida.

8. Private easement rights of other owners of the subdivision known as Riviera Beach Ocean Tract, recorded in Plat Book 30, Page 98, Public Records of Palm Beach County, Florida, to the use of vacated streets.[1]

9. Private easement rights of other owners of the subdivision known as South Shore Estates, recorded in Plat Book 23, Page 29, Public Records of palm Beach County, Florida, to the use of the vacated street.[2]

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[1] Such exceptions will be deleted if and when said easements rights are abandoned in accordance with the Lease.

[2] Such exceptions will be deleted if and when said easements rights are abandoned in accordance with the Lease.

EXHIBIT "C"

STREETS AND SIDEWALKS TO BE ABANDONED

This exhibit will be attached on or prior to the date that Tenant has received site plan approval for the construction of the Buildings and Site Improvements.

BOC-FS1\407733v22\091925.010100

RESOLUTION NO. 182-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A HOTEL/RESORT GROUND LEASE CONCERNING THE OCEAN MALL BETWEEN THE CITY AND OMRD, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 23, 2003, the City of Riviera Beach Community Redevelopment Agency ("CRA") issued its request for proposals RFP-03-01 ("RFP") soliciting a developer or developers to redevelop certain beachfront property (the "Project") within the City of Riviera Beach, Florida (the "City"); and

WHEREAS, three (3) developers responded to the RFP; and

WHEREAS, the CRA, after a public review process, ranked the developers who responded to the RFP and directed City and CRA staff to negotiate the terms under which the developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP; and

WHEREAS, when the CRA and the first-ranked developer reached an impasse, the CRA commenced negotiations with the second-ranked developer, and the CRA and the second-ranked developer entered into a Letter of Intent on August 31, 2005; and

WHEREAS, OMRD, LLC ("OMRD") was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project; and

WHEREAS, the City Council and the CRA at a duly called public meeting held on August 23, 2006, approved the preliminary terms and conditions (including the conceptual site plan) of an agreement between the City of Riviera Beach, CRA and OMRD and authorized staff to negotiate and finalize such agreement with OMRD; and

WHEREAS, the City and OMRD have negotiated that certain Ground Lease --Hotel/Resort (the "Hotel Lease"), in the form attached hereto as Exhibit A, as a separate definitive agreement for the lease of a portion of the Land comprising the Project; and

WHEREAS, the City hereby finds and determines that the proposed Project as contemplated by the Hotel Lease will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area.

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

SECTION 1. The Mayor and Clerk are authorized to execute the Hotel Resort Lease, in the form set forth in Exhibit A attached hereto.

SECTION 2. The Mayor and Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the City Attorney, City special counsel and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 2006.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

RESOLUTION NO. 182-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

absent
VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. Wade

SECONDED BY: N. Duncombe

A. ILES	aye
V. LEE	absent
N. DUNCOMBE	aye
E. WADE	aye
J. JACKSON	nay

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/13/06

Execution Copy

GROUND LEASE – HOTEL/RESORT

This Ground Lease (the "Lease"), is made and entered into as of Dec. 18, 2006, by and between OMRD, LLC, a Delaware limited liability company[1] ("Tenant"), and CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation ("Landlord" or "City").

RECITALS:

WHEREAS, THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (and referred to as the "Agency"), created by the City of Rivera Beach pursuant to Chapter 163, Part III of the Florida Statutes, THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation (and referred to in this Agreement as the "Landlord"), and OMRD, LLC, a Delaware Limited Liability Company, its successors and assigns, entered into a Disposition and Development Agreement, as of the date hereof (the "DDA"); and

WHEREAS, the DDA contemplates the Landlord and Tenant would enter into a lease with respect to the Phase II Development, as such term is defined in the DDA; and

WHEREAS, this Lease is the lease that is contemplated by and referred to in the DDA as the Phase II Lease.

WITNESSETH:

In consideration of the Rent to be paid by Tenant and the agreements hereinafter provided to be performed by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby accepts and rents from Landlord, the premises hereinafter described, for the period, at the rental and upon the terms and conditions hereinafter set forth:

1. LEASED PREMISES. Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, for the term set forth in Article 3 below, that certain real estate located in the City of Riviera Beach, County of Palm Beach, State of Florida, containing approximately 87,425 square feet of land, which real property is more particularly described in Exhibit "A", together with all improvements, appurtenances, easements and privileges belonging thereto (the "Leased Premises") subject to such matters of title set forth in Exhibit "B" attached hereto ("Permitted Exceptions").

The terms "Buildings" and "Site Improvements", as used herein, shall mean the building(s) and those improvements, respectively, that Tenant may construct from time to time on the Leased Premises, all as hereinafter provided. The term "Existing Improvements" shall mean the buildings and other improvements, if any, existing on the Leased Premises as of the date of this Lease.

2. RENT.

(a) Unit Rent. The Tenant shall make an initial one time payment of Twenty Thousand Dollars ($20,000.00) (the "Unit Rent"), payable upon issuance of all required

Permits[2], which are not being contested and are no longer subject to any rights of appeal, for each unit, comprised of any combination, as determined by the Developer in its sole and absolute discretion, of hotel suites, condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units (collectively "Resort Unit(s)") to be constructed on the Leased Premises up to a maximum of 325 Resort Units.

(b) Percentage Rent. The Landlord shall receive 2.5% of the Net Cash Flow[3] from the operation of the Hotel (the "Hotel" is that portion of the Leased Premises that consists of hotel suites and between 7,000 and 10,000 of associated square feet of banquet and meeting space to be constructed on the Leased Premises); if and to the extent that any Resort Units are leased out by the Hotel operator, then the Hotel operator's share of the rental income, from the Resort Units that are leased out by the Hotel operator, shall be included in the revenues from operation of the Hotel). Such Percentage Rent shall be paid annually on April 1 of each year following the year to which such Percentage Rent relates. Percentage Rent shall be prorated for partial years. Percentage Rent shall be paid to the City for use in the City's Community Benefits Partnership Program.[4]

(c) Net Lease. It is the purpose and intent of Landlord and Tenant that the Unit Rent and Percentage Rent (hereinafter collectively referred to as "Rent") shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Rent to be paid during the term of this Lease without any diminution, reduction, deduction, counterclaim or setoff whatsoever and that all costs and expenses including, but not limited to real estate taxes, special assessments, sales taxes, personal property taxes, licenses and permits, intangible taxes, insurance, utilities, maintenance, repairs and obligations of every kind or nature whatsoever relating to the Leased

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[2] "Permits" means all zoning, variance approvals, building permits, and other consents or approvals required to be granted, awarded, issued, or given by any governmental authority: (i) in order for the construction of the Buildings and Site Improvements, or any part thereof, to commence, continue or be completed, and (ii) in connection with the operation of the Buildings and Site Improvements and the businesses therein.

[3] Net Cash Flow from the operation of the Hotel is defined as follows: The gross revenues from the operation of the Hotel (including the Hotel operator's share of the rental income, if and to the extent that any Resort Unit is leased out by the Hotel operator), less the amounts paid or reserved for the following: (a) all expenses of operating the Hotel, (including the Hotel operator's share of the expense related to any Resort Unit leased out by the Hotel operator), including but not limited to, payroll, utilities, insurance, taxes of all types, repairs, maintenance, replacements, advertising, cost of inventory and merchandise, cost of all outside services, including without limitation, accounting, financial, advertising, legal, marketing and public relations; (b) all debt service associated with any financing placed on the Hotel, including without limitation, all interest, principal, reserves, inspection fees, legal costs and expenses and any other costs and expenses associated with the origination, servicing and/or payment of any financing placed on the Hotel by the Tenant; (c) reserves in the following amounts: (i) year one – two (2%) percent of gross revenues with respect to the Hotel, (ii) year two – three (3%) percent of gross revenues with respect to the Hotel; and (iii) for each year thereafter – four (4%) percent of the gross revenues of the Hotel; (d) all management fees associated with the operation of the Hotel, including without limitation, management fees and incentive fees payable to the operator of the Hotel; (e) a cumulative return to the Tenant on all of its invested capital (including without limitation all equity or debt) of fifteen (15%) percent per annum; to the extent such return has not been paid to the Tenant annually, it shall compound at the rate of fifteen (15%) percent and it shall be cumulative such that the Landlord's participation in any of the Net Cash Flow from the operation of the Hotel will be subordinate to the payment of such return to the Tenant.

[4] The Community Benefits Partnership Program is the program established by the City for improving the quality of life for its populace by working with companies and businesses affecting the area, as established by Resolution of the City adopted Decmber 18, 2006, as amended.

Premises (including any personal property used in the operation thereof) which may arise or become due during the term of this Lease (collectively, "Additional Rent"), shall be paid by Tenant directly to the parties who are owed such amounts and that Landlord shall be indemnified and saved harmless by Tenant from and against the same. Upon the non-payment of an item of Additional Rent, after expiration of applicable notice and grace periods, Landlord shall have the right and remedies reserved herein for the non-payment of the Rent. Notwithstanding the foregoing, Tenant shall pay the real estate taxes directly to the proper taxing authorities as provided herein, and the real estate taxes shall thereafter no longer be Additional Rent, unless Tenant fails to pay or cause said real estate taxes to be paid before delinquency, and Landlord thereafter pays same, in which event Tenant shall reimburse Landlord, as Additional Rent, for such tax payment.

(d) Method and Place of Payment: Late Payment. Until further notice by Landlord to Tenant, Rent checks shall be payable to and mailed to: City of Riviera Beach, 600 W. Blue Heron Boulevard, Riviera Beach, Florida, or payable by wire transfer of funds pursuant to wiring instructions provided by Landlord to Tenant upon Tenant's request. Landlord shall, prior to the Effective Date, provide Tenant with a completed IRS Form W-9. Any successor to Landlord shall likewise provide Tenant with such completed IRS Form W-9.

Except as otherwise specifically provided herein, all Rent shall be paid without notice or demand. Rent also may be paid by wire transfer of immediate funds in accordance with instructions as Landlord may provide by notice to Tenant. If Tenant shall fail to make any payment of Rent within fifteen *(15)* days after the same shall be due, the late payment shall bear interest from the date due until the date paid at a daily rate (the "Late Charge Rate") equal to the lesser of (a) two percent (2%) per annum in excess of the prime rate (the "Prime Rate") in effect from time to time at Citibank, N.A., or the prime rate of any major banking institution doing business in Florida, as selected by Landlord, if such bank is not in existence or has not established a prime rate, and (b) the maximum interest rate permitted by law. All interest payable under this Section shall be deemed Rent and shall be due and payable by Tenant immediately upon demand.

3. TERM. The term shall commence on the Effective Date and shall continue for fifty (50) years thereafter (the "Term").

4. USE.

(a) Tenant shall have the right to use and occupy the Leased Premises for all lawful purposes Tenant determines in its sole or absolute discretion but subject to the provisions of Section 2(a) hereof regarding use as Resort Units[5], including but not limited to, the purpose of owning, developing, operating and selling the Hotel and owning, developing, leasing, operating and selling Resort Units and all activities related or ancillary thereto.

(b) Title and ownership to the Buildings and Site Improvements shall be vested in Tenant or its successors or assignees (including any subsequent or further improvements, modifications and additions to the Buildings and/or Site Improvements).

[5] The Tenant agrees that there will be at least 100 hotel suites as part of the composition of the Resort Units.

Landlord shall have no right to encumber the Leased Premises or any Buildings and Site Improvements (in part or in whole) from time to time located on the Leased Premises. Landlord shall execute upon Tenant's request such easements as Tenant shall reasonably require for the purpose of connection to or use of existing and future drainage and utility facilities (including without limitation, water, sewer gas, electricity, cable, internet and telephone) to serve the Leased Premises. After delivery of the Leased Premises by Landlord, Tenant is authorized to demolish all Existing Improvements located on the Leased Premises, to remove, raze and destroy such trees, plants, shrubs and top soil as Tenant deems necessary or appropriate, and to excavate and remove earth from the Leased Premises in such quantities necessary or appropriate to complete Tenant's Construction (the "Demolition"). Upon the written request of Tenant, Landlord agrees to execute or join in the execution of any documents or instruments that may be reasonably required by Tenant and/or third parties, including but not limited to governmental authorities for the development, use and enjoyment of the Leased Premises, subject, however, to the City's rights and approvals as a regulatory body which may not be contracted away. Without limitation, such documentation may include (i) zoning applications, (ii) changes or variances required by governmental authority, (iii) changes in existing rights of way bounding the Leased Premises, (iv) dedications of easements for roadways, utilities, ingress, egress and other purposes as Tenant may reasonably require, (v) building Permits, variances, use Permits, licenses, approvals or similar governmental authorizations, (vi) abandonment and/or relocation of any easements and rights-of-way that are located within the Leased Premises as public streets and public sidewalks, including without limitation, those designated on Exhibit C attached hereto, interfering with Tenant's development or use of the Leased Premises, and (vii) other like matters. In no event shall Landlord execute any of the foregoing affecting the Leased Premises during the Term without the prior written consent of Tenant, which consent Tenant may withhold in its sole and absolute discretion.

(c) Tenant shall operate and manage the Leased Premises with that degree of skill, care and diligence normally exercised by operators and managers of first-class hotel/condominium hotel projects with a scope, magnitude and location comparable to the Leased Premises, including in all cases the standards by which the Leased Premises is operated when it is initially opened, ordinary wear and tear excepted, and otherwise in compliance with this Lease. The Tenant shall cause the manager/operator of the hotel suites to meet the standards for the hotel set forth on Exhibit D attached hereto. Tenant shall use and operate the Leased Premises throughout the Term as required by this Lease. In any event, the Leased Premises shall be used only in accordance with the Final CO(s) therefor (or Temporary CO(s), to the extent that Final CO(s) have not been issued therefor).

(d) Without limiting the provisions of subparagraph (c) above, Tenant shall not use or occupy the Leased Premises or any part of the Leased Premises, and neither permit nor suffer the Leased Premises to be used or occupied, for any of the following ("Prohibited Uses"): (i) for any unlawful or illegal business, use or purpose or for any business, use or purpose which violates any Requirements (as hereinafter defined); (ii) for any use which is a public nuisance; or (iii) in such manner as may make void or voidable any insurance then in force with respect to the Leased Premises. For purposes hereof, "Requirements" means (i) any and all laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders and requirements (now existing or hereafter applicable) of all governmental authorities having jurisdiction over Tenant or other persons, or the Leased Premises, or any street, road, avenue or

sidewalk comprising a part of, or lying in front of, the Leased Premises (including, without limitation, ADA and any of the foregoing relating to handicapped access or parking, the building code of the Landlord and the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable fire rating bureau or other body exercising similar functions); (ii) the Temporary and/or Final COs issued for the Leased Premises as then in force; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease; and (iv) any and all terms, conditions or covenants of any and all easements, covenants, conditions or restrictions of record, declarations or other indentures, documents or instruments of record.

5. EFFECTIVE DATE. The effective date (the "Effective Date") of this Lease shall be the date that Tenant has received site plan approval for the construction of the Buildings and Site Improvements, which Landlord agrees to (subject to the Landlord's rights and approvals as a regulatory body which may not be contracted away) cooperate with the Tenant to obtain; provided, however, that satisfaction of this condition shall not require Tenant to obtain permits for the construction of the Buildings and Site Improvements.

6. UTILITIES. Landlord shall execute, upon request therefor by Tenant, such easements and rights of way as Tenant shall reasonably require for the purpose of connection to and use of existing and future drainage and utility facilities (including, but not limited to, water, gas, telephone, electric lines, cable, internet, telephone, storm drainage, sanitary sewer systems and surface drainage) located over, under, and across the Leased Premises. Tenant shall pay, directly to the provider thereof, when due, all bills for water, sewer rents, sewer charges, heat, gas, electricity, stormwater, cable, internet and telephone or other utility service used in the Leased Premises from the commencement of the Term until the expiration of the Term. The source of supply and vendor of each such commodity shall be the local public utility company or municipality commonly serving the area. If Tenant shall require additional service line capacity of any of such utilities and if same are available on the Leased Premises, Tenant, at Tenant's expense, shall have the right to the use of the same.

7. REPAIRS, CONFORMITY WITH THE LAW.

(a) Repairs. Tenant shall take good care of, and keep and maintain, the Leased Premises in good and safe order and condition, and shall make or cause to be made all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Leased Premises in good and safe, condition, however the necessity or desirability therefor may arise. Tenant shall not commit, waste, damage or injury to the Leased Premises. All repairs made by Tenant shall be substantially equal in quality to the original quality of the Buildings being repaired and shall be made in compliance with the Requirements. Landlord shall not have any duty or obligation to make any alteration, change, improvement, replacement, restoration or repair with respect to the Leased Premises. Tenant shall be responsible for all City or Palm Beach County code violations imposed against the Leased Premises during the Term, as if it was the owner of the Leased Premises. Tenant's obligations under this Article shall be subject to Article 11 concerning Tenant's obligations in the event of damage due to fire or other casualty.

(b) Hazardous Conditions. In the event that any Hazardous Substances are discovered at any time in, under or on the Leased Premises, regardless of whether caused by the Tenant, any subtenant or any transferee, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises, Tenant shall, at Tenant's expense, remove and dispose of the same in accordance with applicable law.

(c) Indemnification. Tenant hereby indemnifies, defends and holds harmless the Landlord Indemnified Parties from and against any claims, liability, obligation, damage, cost, expense, fines and penalties, including, without limitation, reasonable attorneys' fees and costs and reasonable and applicable consultants and contractors' fees and costs, resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Leased Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises. Such obligation of Tenant shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to Landlord), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against any of the Landlord Indemnified Parties resulting directly or indirectly from the presence, removal or disposal of any Hazardous Substances in, under or on the Leased Premises, the presence of which was not the result of migration of such Hazardous Substances from off of the Leased Premises into, under or on the Leased Premises. Tenant's obligations shall not apply with respect to Hazardous Substances in, under or on the Leased Premises existing prior to the execution hereof. Without limiting the foregoing, if the presence or release of any Hazardous Substance on or from the Leased Premises caused or permitted by Tenant results in any violation of Environmental Laws or material contamination of the Leased Premises, Tenant shall promptly take all actions at its sole cost and expense as are necessary or appropriate to return the Leased Premises to the condition existing prior to the introduction of such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. The foregoing indemnifications shall survive the termination or expiration of this Lease for any reason.

(d) Notices. If Tenant receives any notice of, or otherwise becomes aware of, a release, threat of release, or written notice with regard to air emissions, water discharges, noise emissions, recycling, violation of any Environmental Law or any other environmental, health or safety matter affecting Tenant or the Leased Premises (an "Environmental Complaint") independently or by written notice from any governmental authority having jurisdiction over the Leased Premises, including the Environmental Protection Agency (the "EPA"), or with respect to any litigation regarding environmental conditions at or about the Leased Premises, then Tenant shall give prompt oral and written notice of same to the Landlord detailing all relevant facts and circumstances.

(e) Landlord's Remedies. If Tenant does not diligently commence to remediate the environmental conditions it is required to remediate in accordance with the foregoing provisions, promptly after becoming aware of the same and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Requirements), Landlord shall have the right, but not the obligation, to enter onto the Leased

Premises or to take such actions as it deems necessary or advisable and practicable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any such environmental conditions upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person (as defined below), including the EPA. Any amount so expended by Landlord, together with interest thereon at the Late Charge Rate from the date of payment by Landlord through the date of repayment by Tenant, shall become Additional Rent hereunder, payable upon demand.

(f) Definitions.

"Hazardous Substances" shall mean any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including, without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or by-product thereof), underground storage tanks, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any Environmental Law.

"Environmental Law" shall mean any federal, state, regional, county or local governmental statute, law, regulation, ordinance, order or code or any consent decree, judgment, permit, license, code, covenant, deed restriction, common law, or other requirement presently in effect or hereafter created, issued or adopted, pertaining to protection of the environment, health or safety of Persons, natural resources, conservation, wildlife, waste management, and pollution (including, without limitation, regulation of releases and disposals to air, land, water and ground water), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. 300(f) et seq., and all amendments as well as any similar state or local statute or code and replacements of any of the same and rules, regulations, guidance documents and publications promulgated thereunder.

"Landlord Indemnified Party or Parties" means, collectively, the Community Redevelopment Agency of the City of Riviera Beach (the "CRA"), the Landlord, and their respective elected and appointed officials (including the CRA's Chair and members, the Mayor of the City of Riviera Beach (the "City") and the City council members), directors, officers, shareholders, members, employees, agents and representatives and the respective heirs, legal representatives, successors, and assigns of any of the foregoing.

(g) Conduct of Business. Tenant, its successors, subtenants, and assigns, shall comply with the applicable requirements of public authorities regarding the manner of the conduct of such parties' particular business in the Buildings or Site Improvements. Following

the Effective Date, Tenant shall make all required changes or installations, and pay the cost, if any, of all inspections required to comply with valid requirements of public authorities as they apply to the Leased Premises, Buildings and/or Site Improvements. Tenant, at its option and sole expense, shall have the right to contest in good faith by appropriate legal proceedings, and delay compliance thereof during the pending of such proceedings, the validity or applicability of any such laws or governmental requirements.

8. SIGNS, TENANT'S FIXTURES. Tenant may install, change, remove, enlarge and alter, at Tenant's sole cost and in compliance with applicable law, such signs at the Leased Premises, Buildings and/or Site Improvements (including, without limitation, monument, directional and pylon signs), advertising matter, machinery and mechanical equipment as Tenant deems necessary or appropriate. Landlord agrees to cooperate with Tenant in obtaining all necessary Permits including, without limitation, any variances required for same, subject, however, to the City's rights and approvals as a regulatory body which may not be contracted away.

9. ALTERATIONS.

(a) Alterations. At any time, and from time to time, Tenant, at Tenant's cost and expense and in compliance with all Requirements, may undertake any demolition, alteration, addition, enlargement or improvement (any of the foregoing being referred to herein as an "Alteration") of all or any portion of the Building, Site Improvements and Leased Premises as Tenant deems necessary or appropriate. Notwithstanding the foregoing, the Tenant agrees that it will not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed by Landlord, undertake any Alteration which materially alters the site plan previously approved by Landlord. In addition, Landlord's consent shall not be required under this Lease in connection with (i) any subtenant's interior alterations, (ii) any alteration of any subtenant's storefront or signage, or (iii) any alteration required to be made in order to comply with applicable Requirements.

(b) Mechanics' Liens. (a)If any mechanics' lien is recorded against the Leased Premises by reason of work, labor, services or materials supplied to or claimed to have been supplied to Tenant, Tenant shall, within ninety (90) days after receipt of notice from Landlord or notice of such lien, cause such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

10. ASSIGNMENT AND SUBLETTING.

(a) Assignment; etc. Tenant shall have the absolute unrestrained right to sell, assign, transfer, mortgage, sublet or otherwise transfer or encumber (collectively, an "Assignment"), without Landlord's prior written consent, all or any part of Tenant's interest in this Lease, the Leased Premises, any Building or portion thereof, any Site Improvement or portion thereof, or any interest in itself, including without limitation, Assignments of ownership interests by any Person that has an ownership interest, whether directly or indirectly, in Tenant and any Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant. Landlord recognizes that Tenant may not operate on its own any or certain elements of any Buildings and/or Site

Improvements. Accordingly, Tenant shall be entitled to enter into licenses, subleases, concession agreements, management agreements, employment and other similar agreements and arrangements with third parties for the purpose of implementing any use, operation or activity permitted under this Lease, without the consent of Landlord.[6]

(b) Release. In the event of an Assignment or sublease of this Lease, Tenant shall automatically be released from all liability hereunder with respect to the portion of the Leased Premises, so assigned or subleased, so long as the assignee or subleasee agrees to assume such obligations. In the event of a default by any such assignee or subtenant, Landlord shall give Tenant notice of such default, shall accept cure of such default by Tenant within sixty (60) days after receipt of such notice and shall permit Tenant to reenter and repossess the Leased Premises for the then unelapsed portion of the Term of this Lease upon all of the provisions of this Lease.

(c) Recognition of Subtenant. Landlord agrees that, in the enforcement of its rights under this Lease, it shall not disturb the occupancy of (i) subtenants or sub-subtenants (or any Persons properly occupying any portion of the Leased Premises, Buildings or Site Improvements) pursuant to subleases or sub-subleases made in compliance with this Lease, or (ii) Resort Unit owners, owners or occupants of any portion of the Hotel, retail/commercial condominium owners or sub-tenants, and will recognize such parties, provided that (i) such parties (or any Persons properly occupying any portion of the Leased Premises by, through or under the same), agree to attorn to Landlord or its nominee upon the completion of such enforcement proceedings, (ii) such parties (or any Person properly occupying any portion of the Leased Premises by, through or under the same) comply with their respective obligations under any sublease, or other occupancy agreement, and (iii) Landlord shall not be liable for defaults by Tenant.. In this regard, upon the request of Tenant, any Resort Unit owner, owners or occupants of any portion of the Hotel, any subtenant, or any retail/commercial condominium owner, Landlord shall enter into a recognition agreement with any such party to the effect that such party and any sub-subtenant thereunder shall not be disturbed by Landlord and all of their rights, as derived directly or indirectly from this Lease, shall continue in full force and effect as a direct agreement between Landlord and such party so long as such party shall continue to observe and perform for Landlord's benefit all of the obligations under such sublease or occupancy agreement that relate solely to the portion of the Leased Premises or any Buildings or Site Improvements such party, occupies, provided that (i) such party covenants, to cure any defaults of Tenant that are nonmonetary, that relate solely to the portion of the Leased Premises or any Buildings or Site Improvements such party occupies, and that are otherwise susceptible to cure by such party, (ii) Landlord is not bound by any Rent paid by such party more than thirty (30) days in advance, and is not responsible for any security deposit posted by such party that was not received by Landlord, (iii) Landlord is not liable for any default by Tenant under the sublease or occupancy agreement, and (iv) Landlord shall not be required to perform any covenants undertaken by Tenant under any sublease or occupancy agreement that are not covenants of Landlord under this Lease.

(d) Condominium. Landlord acknowledges and agrees that Tenant shall be permitted to submit all or any designated portions of the Leased Premises or any Buildings or Site Improvements to a condominium form of ownership without the consent of Landlord.

[6] The Tenant agrees that there will be at least 100 hotel suites as part of the composition of the Resort Units.

Landlord shall have no approval rights with respect to the condominium documents, or any amendments or modifications thereto, or any aspect of the condominium regime. Landlord agrees, to the extent required by law, to execute such consents and/or joinders to any declaration of condominium documents. Notwithstanding anything to the contrary in this Lease, Landlord agrees that in the event of any default by a condominium association under any sublease, assignment or other agreement relating to the Leased Premises, Landlord shall not be permitted to terminate this Lease, the sublease, assignment or other agreement relating to the Leased Premises, as applicable. Landlord hereby agrees to make such modifications to this Lease or any sublease as may be required from time to time to obtain approval with respect to mortgages in favor of individual Resort Unit owners or subtenants, provided such modifications do not result in any change in the Rent due hereunder, impair the economic benefits to Landlord or impose any additional material obligations upon Landlord. Notwithstanding anything contained herein to the contrary, the Landlord shall have no right to approve any Assignment by a Resort Unit owner, and the Landlord agrees and acknowledges that this Lease does not restrict in any fashion any individual Resort Unit from selling, assigning, transferring, mortgaging, subletting or otherwise transferring or encumbering its Resort Unit, any of which may be done without Landlord's prior written consent.

(e) Separate Leases. The Landlord agrees that if the Tenant assigns all or any part of the Tenant's interest in this Lease or in the Leased Premises, that at the Tenant's request, the Landlord will enter into one or more completely separate and independent lease(s) with respect to the portion of the Tenant's interest in this Lease or the Leased Premises so assigned. In this regard: (i) such separate lease(s) will be on all of the same terms and conditions of this Lease, other than with respect to the Leased Premises and the Rent, the provisions for which will be appropriately modified so that the Leased Premises in the new lease(s) will only be the Leased Premises to which the new lease(s) relates and the Rent in the new lease(s) will only be for the Leased Premises to which the new lease(s) relates, (ii) this Lease will be modified to properly reflect the Leased Premises and the Rent, as such items have been reduced and incorporated into the new lease(s), such that at all times when this Lease and all new lease(s) are combined the Leased Premises and the Rent will in the aggregate, be identical to the Leased Premises and Rent as originally provided for in this Lease; (iii) this Lease and all new lease(s) will be independent Leases and not cross defaulted; and (iv) such creation of separate leases will not, in the Landlord's reasonable judgment, adversely impact the Landlord's economic benefit or rights contained herein..

11. CASUALTY.

(a) Casualty. In the event of any damage to the Leased Premises by fire, hurricane, flood or other similar event ("Casualty"), then Tenant, at its sole cost and expense, shall promptly commence and diligently pursue the repair of the Buildings or Site Improvements so damaged to the condition it existed immediately before such damage to completion, regardless of whether or not insurance proceeds shall be sufficient therefor, provided that if Landlord or its Affiliates or invitees caused the Casualty, Landlord, at its sole cost and expense, shall promptly commence and diligently pursue the repair of the Buildings or Site Improvements so damaged to completion. Tenant shall commence such repair within one year after the occurrence of such Casualty (subject to Unavoidable Delays, as hereinafter defined) and shall diligently pursue the completion of and restoration (subject to Unavoidable Delays). In the event of any Casualty

during the last ten (10) years of the Term, then Tenant shall have the right to terminate this Agreement by delivering written notice of termination to Landlord within one hundred eighty (180) days after the occurrence of such Casualty, in which case this Lease shall terminate and neither party shall have any further rights or obligations hereunder except those which expressly survive termination of this Lease.

(b) Proceeds. All insurance proceeds payable and received at any time, or from time to time as a result of a Casualty, shall be paid to Tenant and applied to the restoration of the Buildings and Site Improvements in accordance with the terms hereof. Tenant shall provide, at Landlord's request, reasonable evidence of the amount of any insurance proceeds received and application of same.

(c) No Rent Abatement. Except for Tenant's right to terminate this Lease as provided in Section 12(a) above, this Lease shall not be affected in any manner by reason of a Casualty and Tenant, notwithstanding any law or statute, present or future, waives all rights to quit or surrender the Leased Premises or any part thereof, and Tenant's obligations under this Lease, including the payment of Percentage Rent and Additional Rent, shall continue as though none of those events had occurred and without abatement, suspension, or reduction of any kind, except as otherwise expressly provided herein.

(d) Surrender. In the event Tenant elects to terminate this Lease as aforesaid, then Tenant, at its expense, shall raze any remaining portion of the Buildings or Site Improvements, remove all debris, and grade and landscape (grass) the Land. Subject to payment of costs pursuant to the preceding sentence, Tenant (or Tenant's Leasehold Mortgagee) shall be entitled to all insurance proceeds, if any, recovered as a result of such casualty.

12. SURRENDER. At the expiration or termination of this Lease, Tenant shall surrender immediate possession of the Leased Premises in its then current condition. Any holding over by Tenant shall not operate, except by written agreement, to extend or renew this Lease or to imply or create a new lease, but in case of any such holdover, Landlord's remedies shall be limited to either the immediate termination of Tenant's occupancy or the treatment of Tenant's occupancy as a month to month tenancy, any custom or law allowing other remedies or damages or which may be to the contrary notwithstanding. At any time during the Term, Tenant shall have the right to remove all or any part of Tenant's equipment, removable fixtures, and other personal property from the Leased Premises.

Upon the expiration of the Term, Tenant shall deliver to Landlord the following (to the extent then in Tenant's possession or control): Tenant's original executed counterparts, if available (and if not available, true and correct copies thereof), of all subleases then in effect, any service and maintenance contracts then affecting the Leased Premises, true and complete maintenance records for the Leased Premises, all original licenses and permits then pertaining to the Leased Premises and Temporary or Final COs for the Leased Premises, together with a duly executed assignment thereof (without recourse) to Landlord in form suitable for recording, and all financial reports required by Section 30 hereof and such other documents as are reasonably required for the continued operation of the Leased Premises that are in Tenant's possession.

Any personal property of Tenant which remains on the Leased Premises after the

termination of this Lease or after the removal of Tenant from the Leased Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant, and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, in its absolute and sole discretion, but in compliance with applicable Requirements. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant.

The provisions of this paragraph 12 shall survive the expiration of the Term.

13. HOLDOVER. In the event Tenant shall hold over possession of the Leased Premises after the termination or expiration of this Lease, Tenant shall pay Rent equal to 125% of the Percentage Rent in effect at the time of such termination or expiration of the Lease, in lieu of any other or additional charges or damages.

14. DEFAULT AND REMEDIES.

(a) Each of the following events shall be an "Event of Default" hereunder:

(i) if Tenant fails to make any payment of Percentage Rent or Unit Rent in full, and as such when payment is due, and such failure continues for a period of fifteen (15) days after notice is given by Landlord (any notice of default given by Landlord under this Lease being referred to herein as a "Default Notice") that the same is past due; or

(ii) if Tenant fails to observe or perform in any material respect any term, covenant or condition of this Lease on Tenant's part to be observed or performed (other than the covenants for the payment of Percentage Rent or Unit Rent) and Tenant shall fail to remedy such default within thirty (30) days after a Default Notice is given by Landlord with respect to such default or, if such a default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to cure), Tenant shall fail (1) within thirty (30) days after the giving of such Default Notice, to commence steps reasonably necessary to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such default in a professional manner), and (ii) diligently prosecute to completion the remedy of such default provided however that if such default has not been cured within one (1) year then the Landlord and Tenant shall meet to discuss how best to complete the cure of said default and to set a timeframe in which such default will be attempted to be fully cured; or

(iii) if Tenant fails to observe or perform in any material respect the provisions of Section 13.01(a) of the Disposition and Development Agreement, dated as of December 18, 2006, among the Landlord, the Agency and the Tenant, which results in a termination of the Disposition and Development Agreement in accordance with Section 14.01 thereof with respect to the Phase II Development (as such term is defined in the Disposition and Development Agrement) ; or

(iv) if Tenant fails to observe or perform in any material respect the provisions of Section 13.01(b) of the Disposition and Development Agreement, dated as of December 18, 2006, among the Landlord, the Agency and the Tenant, which results in a termination of the Disposition and Development Agreement in accordance with Section 14.01

thereof with respect to the Phase II Development (as such term is defined in the Development and Disposition Agreement).

Notwithstanding anything contained in this Lease to the contrary, Tenant shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of this Lease, if Tenant's failure to perform such terms, covenants or conditions is due to any Unavoidable Delays. All time periods within which Tenant is required to perform under the terms of this Lease shall be extended for such periods of time as such performance is impaired, restricted, delayed or prohibited by reason of Unavoidable Delays.

(b) If an Event of Default occurs with respect to the items referred to in section 14(a)(i), the Landlord, as its sole and exclusive remedies, may: (i) recover from the Tenant the amount of unpaid Percentage Rent and/or Unit Rent together with interest on such amounts at the Late Charge Rate, and/or (ii) the Landlord shall be entitled to the immediate appointment of a receiver with respect to collecting and disbursing all revenues from the operation of the Hotel.

(c) If an Event of Default occurs with respect to the items referred to in section 14(a)(ii), the Landlord, as its sole and exclusive remedies, may: (i) recover from Tenant Actual Damages (as hereinafter defined), plus interest thereon at the Late Charge Rate; or (ii) be entitled to commence an action for specific performance with respect to such items.

"Actual Damages" means an amount equal to the sum of any and all costs, fees and expenses incurred by Landlord, whether through direct personnel cost or through engaging third-parties, to remedy such Event of Default.

(d) If an Event of Default occurs under section 14(a)(iii) or 14(a)(iv), the Landlord, as its sole and exclusive remedy, may terminate this Lease, in which event all of the right, title, estate and interest of the Tenant (i) in and to the Leased Premises, and (ii) in and to the Buildings and Site Improvements shall terminate. If this Lease is so terminated, Landlord may re-enter and repossess Tenant's interest in the Leased Premises and may dispossess Tenant by summary proceedings, writ of possession, proceedings in bankruptcy court, or otherwise, subject to applicable Requirements. If the foregoing occurs, the Tenant shall not be entitled to receive any payment with respect to the value of Tenant's interest in the Leased Premises, the Buildings, the Site Improvements or any personal property located therein.

(e) Notwithstanding anything to the contrary contained in this Lease, but subject to the provisions of paragraph 14 (d) above, Landlord shall not have the right to terminate this Lease or to terminate Tenant's, any Resort Unit owner, any owners or occupants of any portion of the Hotel, any subtenant, or any retail/commercial condominium owner, right of possession to the Leased Premises or any Buildings or Site Improvements, as a result of any Event of Default by Tenant under this Lease.

(f) Landlord and its representatives shall have the right, at any time during the Term of this Lease, upon forty-eight (48) hours prior' notice to Tenant, to enter upon the Leased Premises to (i) inspect the operation, sanitation, safety, maintenance and use of the same (but Landlord shall not thereby assume any responsibility or liability for the performance of Tenant's

obligations hereunder, nor any liability arising from the improper performance thereof) and (ii) to conduct inspections for the purpose of determining whether a default or Event of Default has occurred, provided that Landlord shall be accompanied by a representative of Tenant (in areas of the Leased Premises other than areas readily available to the general public), and provided further that such entry shall not unreasonably interfere with the operation of the Leased Premises. Tenant agrees to make a representative of Tenant available to accompany Landlord on any such inspection. Landlord shall have no obligation to inspect pursuant hereto, nor any liability to any Person for any matter which might be disclosed by such inspection.

(g) No failure by Landlord to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of Tenant's default or an Event of Default, and no payment or acceptance of full or partial Rent during the continuance (or with Landlord's knowledge of the occurrence) of any default or Event of Default, shall constitute a waiver of any such default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or compiled with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any default or Event of Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default. Payment by Tenant to Landlord of any Rent shall be without prejudice to, and shall not constitute a waiver of, any rights of Tenant against Landlord provided for under this Lease or at law or in equity. Tenant's compliance with any request or demand made by Landlord shall not be deemed a waiver of Tenant's right to contest the validity of such request or demand.

15. TITLE AND POSSESSION.

(a) Fee Title. Landlord covenants, represents and warrants that Landlord has fee simple title to the Leased Premises and the right to make this Lease for the entire Term, that said entire Leased Premises is now and shall be as of the date of Tenant's recording of a Memorandum of Lease, free and clear of all liens, encumbrances and restrictions, except for the Permitted Exceptions, none of which limit, interfere with or prohibit Tenant's use and occupancy of the Leased Premises or interfere with any of Tenant's rights under this Lease, and that upon paying the Rent and keeping the agreements of this Lease on its part to be kept and performed, Tenant shall have peaceful and uninterrupted possession of the Leased Premises during the continuance of this Lease.

Landlord warrants and represents that, except for any Permitted Encumbrances, no encumbrance or restriction affects the Leased Premises which would impair and/or restrict any right granted to Tenant or derived by Tenant under this Lease.

(b) Priority. The estate of Tenant created hereby shall have priority over any lien, encumbrance or other interest now existing or hereafter created or imposed, upon or against Landlord's interest in the Leased Premises.

16. REAL ESTATE TAXES.

(a) Tax Bills. Landlord, prior to the delivery of possession of the Leased Premises to Tenant, shall make a mailing address change on the property tax records so that the tax bill and tax notices for the Leased Premises will be mailed to Tenant as of the Effective Date at the following address: 4300 Catalfumo Way, Palm Beach Gardens, FL 33410. Prior to the date that the tax bill is mailed directly to Tenant pursuant hereto, Landlord, prior to delinquency, shall send to Tenant a copy of the tax bill for the Leased Premises.

(b) Tax Payments. Following receipt of the aforesaid tax bills, Tenant shall pay, when due and before delinquency, the ad valorem real estate taxes (including all special benefit taxes and special assessments) levied and assessed against the Leased Premises for the period commencing with the Effective Date and continuing for the remainder of the Term. The ad valorem taxes levied or assessed for the year in which Tenant commences paying Rent shall be prorated between Landlord and Tenant so that Tenant shall pay only such part thereof as pertains to the period commencing on the Effective Date, and the ad valorem taxes levied or assessed for the year during which this Lease expires or is terminated shall be prorated between Landlord and Tenant so that Tenant shall pay only such part thereof as pertains to the period commencing on January 1st and ending on the date this Lease expires or is terminated. In no event shall Tenant be required to pay real estate taxes pertaining to any period prior to the Effective Date or subsequent to the expiration or earlier termination of the Lease. Within thirty (30) days of Tenant's request, Landlord shall reimburse Tenant that portion of the tax bill pertaining to any period prior to the Effective Date or subsequent to the expiration of the Term.

(c) Assessments. All special benefit taxes and special assessments shall be spread over the longest time permitted and Tenant's liability for installments of such special benefit taxes and special assessments not yet due shall cease upon the expiration or termination of this Lease.

(d) Contest.

(i) Tenant shall have the right to contest the validity or the amount of any tax or assessment levied against the Leased Premises or any improvements thereon, provided that Tenant shall not take any action which will cause or allow the institution of foreclosure proceedings against the Leased Premises. Tenant shall be entitled to the benefit of any tax abatements and reductions as are, or may be, available under applicable law as if Tenant were the fee owner of the Leased Premises. Landlord shall not be required to join in any action or proceeding in connection with such abatement or reduction unless the provisions of any law, ordinance or regulation in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith. In the event that for any reason Tenant's leasehold interest in the Leased Premises is deemed not subject to ad valorem taxation, Tenant agrees to make an annual payment to the City equal to the ad valorem taxes that would have otherwise accrued to the City and the CRA (including County taxes) if such leasehold interest was subject to ad valorem taxation (the "Substitute Ad Valorem Tax Payment"). The foregoing shall be paid regardless of whether the CRA is then in existence.

(ii) Landlord covenants and agrees that if there shall be any refunds or rebates on account of any tax, governmental imposition or levy paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Any such refunds or rebates received by Landlord shall be held in trust for the benefit of Tenant and shall be forthwith paid to Tenant. Landlord shall, on request of Tenant, sign any receipt which may be necessary to secure the payment of any such refund or rebate, and shall pay over to Tenant such refund or rebate as received by Landlord.

17. INSURANCE. Commencing with the Effective Date, Tenant shall procure and continue in effect public liability and property damage insurance with respect to the operation of the Leased Premises and name Landlord as an additional insured. Such public liability insurance shall cover liability for death or bodily injury in any one accident, mishap or casualty in a sum of not less than $2,000,000.00, and shall cover liability for property damage in one accident, mishap or casualty in the amount of not less than $500,000.00. At any time that there is Leasehold Financing on the Leased Premises, then the casualty insurance required to be obtained in accordance with such Leasehold Financing shall satisfy the casualty insurance requirements of this Lease.

In the event there is not any Leasehold Financing on the Leased Premises, then the Tenant shall provide such coverages as are typically required at that point in time by commercial lenders for projects of similar size, nature, character and location as the Leased Premises as approved by the Landlord, such approval not to be unreasonably withheld.

The Tenant shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all of Tenant's employees as required by Florida Statutes. In the event that the Tenant does not carry such Workers' Compensation Insurance and chooses not to obtain same, then Tenant shall in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the Landlord.

The proceeds from Tenant's casualty insurance hereunder shall be paid and applied only as determined by Tenant. Any insurance carried by Tenant hereunder, at Tenant's option, may be carried under an insurance policy(ies), self-insurance or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other locations of Tenant or its Affiliates, or any combination thereof; provided that any self insurance or proposed insurer having less than a Best's Key Rating of A-VII or less shall be subject to the prior written consent of the Landlord, such consent not to be unreasonably withheld.

Tenant shall, at the request of Landlord, provide reasonable proof of the foregoing coverages.

18. INDEMNITY; LANDLORD'S EXCULPATION

(a) The Tenant shall indemnify, defend and hold harmless the Landlord Indemnified Parties against and from any and all claims, damages, actions, loss, cost and expense (including but not limited to reasonable attorneys' fees) resulting directly or indirectly from the Tenant's acts or omissions or the acts or omissions of the Tenants' respective employees or

agents (acting within the scope of their employment or agency). In addition, the Landlord Indemnified Parties shall not be liable to Tenant for any loss, cost, liability, claim, damage, expense (including, without limitation, reasonable attorneys fees and disbursements), penalty or fine incurred, in connection with or arising from: (i) any injury (whether physical, economic or otherwise) to Tenant or to any other person in, about, or concerning the leased premises; (ii) any damage to, or loss (by theft or otherwise) of, any of Tenant's property or of the property of any other person in, about, or concerning the leased premises, or the use or occupancy thereof, irrespective of the cause of injury, damage, or loss (including, without limitation, the acts or negligence of any Tenant or occupant of the leased premises or of any owners or occupants of adjacent or neighboring property or caused by any construction work or by operations in construction of any private, public or quasi-public work) or any latent or patent defects in the leased premises; or (iii) any act, omission or negligence of Tenant or its Affiliates or of the contractors and their respective subcontractors, agents and employees, agents, servants, employees, guests, invitees or licensees of Tenant or its Affiliates (except to the extent any of the matters described in clauses (i) or (ii) is due to the negligence or willful misconduct of any Landlord Indemnified Party). Without limiting the generality of the foregoing, except to the extent caused by the gross negligence or willful misconduct of any of the Landlord Indemnified Parties (and then only in such Landlord Indemnified Party's proprietary capacity as opposed to its governmental capacity), the Landlord Indemnified Parties shall not be liable for (i) any failure of water supply, gas or electric current, (ii) any injury or damage to person or property resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, act of god, act of war, enemy action, flood, wind or similar storms or disturbances, water, rain or ice, or (iii) leakage of gasoline or oil from pipes, appliances, sewer or plumbing works.

(b) Notwithstanding anything to the contrary in this Lease, Landlord's liability under the Lease shall be limited to Landlord's Interest in the Leased Premises. Nothing contained in this Section or elsewhere in this Lease is in any way intended to be a waiver of the limitation placed upon Landlord's liability as set forth in §768.28, Fla. Stat., or of any other constitutional, statutory, common law or other protections afforded to public bodies or governments.

(c) Tenant shall notify Landlord within thirty (30) days after Tenant has written notice of any occurrence at the Leased Premises which Tenant believes could give rise to a claim of $5,000,000 (adjusted for inflation) or more, whether or not any claim has been made, complaint filed or suit commenced.

(d) Tenant agrees to pay such Landlord Indemnified Party, as Additional Rent hereunder, all amounts due under this Article 18 within sixty (60) days after receipt of notice thereof from the Landlord Indemnified Party.

19. BROKERS. Landlord and Tenant represent that they have dealt with no broker or agent with respect to this Lease. Landlord and Tenant hereby indemnify and save and hold the other harmless against any claims for brokerage commissions or compensation or other claims of any kind (including reasonable attorney's fees and costs) arising out of the negotiation and execution of this Lease or their respective interest or involvement with respect to the Leased Premises.

20. PREVAILING PARTY. In the event of litigation between Landlord and Tenant in connection with this Lease, the reasonable attorneys' fees and court costs incurred by the prevailing party in such litigation shall be borne by the non-prevailing party.

21. NOTICES. All notices hereunder shall be in writing and sent by United States certified or registered mail, postage prepaid, or by overnight delivery service providing proof of receipt, addressed if to Landlord, to the place where Rent checks are to be mailed, and if to Tenant, to OMRD, Inc., 4300 Catalfumo Way, Palm Beach Gardens, FL 33410, and OMRD Holdings, LLC, 2295 Corporate Blvd., Suite 222, Boca Raton, FL 33431 with a duplicate to Greenberg Traurig, P.A., 5100 Town Center Circle, Suite 400, Boca Raton, FL 33486, Attn: Marc Sinensky, Esq., provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery. Notice by Landlord hereunder shall simultaneously be delivered to any leasehold mortgagee, trustee or lender of Tenant (of which Landlord has been notified prior to the date of the giving of such notice by Landlord).

22. TRANSFER OF TITLE.

(a) Future Landlord. In the event that Landlord conveys its interest in the Leased Premises to any other Person or entity, Tenant shall have no obligation to pay Rent or any other charges under this Lease to any such transferee until Tenant has been so notified and has received satisfactory evidence of such conveyance together with a written direction from such transferee as to the name and address of the new payee of Rent and other charges. It is understood and agreed that Tenant's withholding of Rent and other charges until its receipt of such satisfactory evidence shall not be deemed a default under this Lease and such Rent and other charges shall accrue during the period which Tenant is waiting for the proper direction and evidence of conveyance.

(b) Release. In the event of any transfer, assignment or conveyance of Landlord's interest in this Lease, Landlord shall be relieved of all covenants and obligations of Landlord hereunder arising from and after the date of such transfer, assignment or conveyance provided that such purchaser or successor in interest has assumed all such covenants and obligations of Landlord hereunder.

(c) Tax Bills. In the event that Landlord conveys its interest in the Leased Premises, Landlord shall take all measures necessary to cause real estate tax bills and notices to continue to be mailed to Tenant as required under Article 17.

23. ESTOPPEL CERTIFICATE. Landlord and Tenant agree to execute and deliver to the other within thirty (30) days after receipt of such request, an estoppel certificate, in commercially reasonable form, which certificate may include (a) information as to any modification of this Lease, (b) dates of commencement of Term and the termination date of this Lease, (c) to the best of Landlord's or Tenant's knowledge, whether or not Landlord or Tenant is in default of this Lease, and (d) such other information reasonably requested by the requesting party.

24. CONDEMNATION.

(a) Eminent Domain. If all or substantially all of the Leased Premises or access thereto or therefrom shall be taken for any public or quasi-public use under any statue or by right of eminent domain, or by private purchase in lieu thereof (a "Taking"), then this Lease shall automatically terminate as of the date that possession has been so taken (the "Vesting Date").

(i) In the event of a Taking of less than all or substantially all of the Leased Premises or access thereto or therefrom, Tenant, within ninety (90) days of such Taking, may elect to terminate this Lease and not restore if, by reason of the Taking, Tenant determines that the Leased Premises is unsuitable for continued operation of the Leased Premises as contemplated herein, as determined by Tenant in its reasonable discretion.

(ii) In the event Tenant elects by reason of the foregoing events to terminate the Lease, Tenant shall give written notice of such election to Landlord within ninety (90) days of such Taking, and the term of this Lease shall expire and come to an end thirty (30) days after such notice is given. Upon such termination, the Percentage Rent and all Additional Rent shall be adjusted to the date of termination and neither party shall have any further rights or liabilities hereunder. With respect to any items of Additional Rent which are payable to Landlord in the event of such termination but which are not then capable of ascertainment, Tenant shall pay to Landlord an amount equal to such Additional Rent as and when same become determined. The covenants and agreements with respect to the adjustment and payment of these items of Additional Rent and refunds, if any, shall survive the termination of this Lease.

(iii) In the event Tenant does not elect by reason of the foregoing events to terminate the Lease, then the Tenant shall restore the remaining portion of the Leased Premises, to the extent feasible, to the condition thereof as it existed immediately before such taking, provided, however, that the Tenant shall not be required to expend any amount in excess of the net condemnation award for such purposes.

(b) The Award. In the event of a Taking resulting in the termination of this Lease pursuant to the provisions of this Section 25, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such Taking and further agree that the aggregate net award, after deducting the reasonable expenses of Landlord and Tenant, including attorneys' fees, incurred in connection therewith, shall be distributed as follows, and in the following order of priority:

(i) Tenant shall be entitled to an amount equal to the value, on the Vesting Date, of the land, Buildings and Site Improvements taken, as if improved and available for their highest and best use, giving effect to the existence of this Lease. In this regard, Tenant shall be entitled to: (A) an amount equal to the value of the Buildings and Site Improvements taken, including the loss of income associated with the Buildings and Site Improvements taken, (B) be compensated for the loss of its business and goodwill occasioned by any Taking, (C) make all claims allowed by the laws of the State of Florida and the United States of America against the condemning authority with respect to all or any portion of the award Tenant may be entitled to hereunder. Without limiting the foregoing, if the amount that the Tenant may otherwise be entitled to pursuant to this provision is less than all amounts due, including without limitation, principal, interest, prepayment premiums or penalties, to all Leasehold Mortgagees in

connection with all Leasehold Financings, then the Tenant shall be entitled to an amount of the award that is equal to all amounts due, including without limitation, principal, interest, prepayment premiums or penalties, to all Leasehold Mortgagees in connection with all Leasehold Financings; and

(ii) Landlord shall be entitled to the balance of the award.

(c) Reconstruction.

(i) In case of a Taking of less than substantially all of the Leased Premises and if this Lease is not terminated, Tenant, at its expense, shall, to the extent of the award (but this limitation shall not be construed as imposing any obligation on Landlord to contribute to such restoration work), proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct the Buildings (all such repair, reconstruction and work being referred to in this Article as "Reconstruction Work") and the award in the condemnation proceedings, after deduction of the reasonable expenses of Landlord and Tenant incurred in connection with the Taking, shall be made available to Tenant for purposes of paying the cost and expense of the Reconstruction Work. During the period in which the Reconstruction Work has not been completed, Tenant shall be entitled to an equitable abatement of Rent and Additional Rent; and, if it is impracticable for Tenant to remain open for business and Tenant elects to close until restoration has been completed, then there shall be a full abatement of Rent and Additional Rent until Tenant's completion of the restoration work, such abatement not to exceed a period of two (2) year from the date of payment of the condemnation proceeds.

(ii) In case of a Taking of less than all or substantially all of the Leased Premises and if this Lease is not terminated, the Rent payable hereunder shall, from and after the Vesting Date, be equitably reduced based upon the portion of the Leased Premises taken.

(iii) Any compensation for a temporary Taking of the Leased Premises, shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary Taking extends beyond the end of the Lease Term and Tenant shall remain fully responsible for Rent and Additional Rent.

25. LEASEHOLD MORTGAGE.

(a) Notices. Tenant shall have the right at any time and from time to time during the term to encumber its interest in the Leased Premises with one or more leasehold mortgages (the "Leasehold Financing"). Upon receipt of written notice from Tenant of the existence of any Person providing a leasehold mortgage to Tenant (each, a Leasehold Mortgagee), Landlord agrees to provide such Leasehold Mortgagee with copies of any notices of default delivered to Tenant. Any such notice of default shall state the nature of the alleged default and shall specify the amounts of Rent or other payments herein provided for that are claimed to be in default. Each Leasehold Mortgagee shall also be given notice of any arbitration or other dispute proceedings between Landlord and Tenant, if any. Further, each Leasehold Mortgagee shall receive notice, and a copy, of any award or decision made in said arbitration or other proceeding.

(b) Monetary Defaults and Cure Rights. In the event of a monetary default by Tenant hereunder, Landlord shall accept payment by or at the instigation of any Leasehold Mortgagee in accordance with the terms hereof as if the same had been undertaken by Tenant. If Landlord shall elect to terminate this Lease by reason of any monetary default of Tenant, any Leasehold Mortgagee shall have the right to nullify any notice of termination by curing such monetary default prior to the effective date of termination.

(c) Non-Monetary Defaults and Cure Rights. In the event of a non-monetary default by Tenant hereunder, Landlord shall accept any curative acts undertaken by or at the instigation of any Leasehold Mortgagee in accordance with the terms of this Section as if the same had been undertaken by Tenant. If Landlord shall elect to terminate this Lease by reason of any non-monetary default of Tenant, each Leasehold Mortgagee shall have the following rights:

(i) to nullify any notice of termination by curing such non-monetary default prior to the effective date of termination;

(ii) to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than ninety (90) days, provided that such Leasehold Mortgagee shall agree with Landlord (by giving a notice to that effect to Landlord) prior to the effective date of termination, to accomplish the following within the times hereinafter provided and shall, in fact, accomplish the following in a timely manner:

(A) cure or cause to be cured within sixty (60) days of Landlord's notice any existing monetary defaults;

(B) pay or cause to be paid during such ninety (90) day period all Rent and other monetary obligations of Tenant hereunder, as and when the same become due;

(C) promptly cure or cause to be cured any non-monetary defaults that such Leasehold Mortgagee can cure using diligent and commercially reasonable efforts; and

(D) take all steps necessary to ensure Tenant is in compliance with the covenants set forth in this Lease; and

(d) If, at the end of said ninety (90) day period, the Leasehold Mortgagee is in compliance with the conditions set forth in Sections A-D immediately set forth above, but the Event of Default is of such a nature that it cannot be reasonably remedied within such ninety (90) day period, the time for completion of said steps shall be further extended upon the same conditions for such period as shall be reasonably necessary to complete such steps with reasonable diligence.

(e) New Lease. In the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors' rights, if requested by any Leasehold Mortgagee in writing within thirty (30) days of such rejection or disaffirmance, Landlord shall enter into a new lease of the Leased Premises with the Leasehold Mortgagee or its designee. Such new lease shall be for the remainder of the term of the Lease, effective as of the date of

such termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. Such written request by any Leasehold Mortgagee shall be accompanied by a copy of such proposed new lease, duly executed, and acknowledged by the proposed new assignee, and the Leasehold Mortgagee shall have cured (or caused to be cured) all defaults under this Lease which are susceptible to being cured by the Leasehold Mortgagee and paid to Landlord all expenses and reasonable attorneys' fees incurred by Landlord in connection with the Events of Default upon which the termination was premised and the preparation, execution and delivery of the replacement lease. Any new lease made pursuant to this Section shall have the same priority with respect to other interests in the Leased Premises as the Lease. The provisions of this Section shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full effect thereafter to the same extent as if this Section were independent and an independent contract made by Landlord, Tenant and the Leasehold Mortgagee. The new lease shall be on the same terms and conditions as this Lease and shall have the same priority as this Lease. Landlord's obligation to enter into the new lease shall be conditioned upon the following: (i) the Leasehold Mortgagee shall have cured all monetary defaults and commenced, and diligently prosecuted, the cure of all reasonably curable non-monetary defaults; and (ii) the Leasehold Mortgagee shall reimburse Landlord for all reasonable costs and expenses incurred in reviewing the new lease.

(f) Amendment. The cancellation, surrender or amendment of this Lease by Tenant shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee.

(g) Estoppel Certificates. Within thirty (30) days after written request therefor from a Leasehold Mortgagee, Landlord shall deliver to the Leasehold Mortgagee an estoppel certificate signed by Landlord which certifies as to: (a) the Rent payable under this Lease; (b) the term of this Lease and the rights of Tenant, if any, to extend the term of this Lease; (c) the nature of any existing defaults by Tenant alleged by Landlord; and (d) any other matters reasonably requested by the Leasehold Mortgagee.

(h) Interest of Leasehold Mortgagee in Leased Premises. The Leasehold Mortgagee shall have no interest in the Leased Premises other than its interest as Leasehold Mortgagee or as Tenant under and pursuant to this Lease or any new Lease.

(i) No Liability/Release. Notwithstanding anything in this Lease to the contrary, the Leasehold Mortgagee shall not be liable or responsible in any respect for any of Tenant's obligations under this Lease unless and until the Leasehold Mortgagee becomes the owner and holder of this Lease through foreclosure proceedings, exercise of the power of sale, or deed or assignment in lieu thereof. If the Leasehold Mortgagee or any affiliate of the Leasehold Mortgagee shall acquire Tenant's interest in the Lease or shall become Tenant under any new lease made pursuant to this Section, then the Leasehold Mortgagee or its affiliate may assign this Lease or such new lease and thereupon shall be released from all liability for the performance or observance of the covenants and conditions to be performed or observed on the part of Tenant under this Lease or such new lease from and after the date of such assignment.

(j) Additional Provisions. Landlord agrees and acknowledges that it will enter into any amendments to this Lease in order to reflect any other commercially reasonable

terms that the Leasehold Mortgagee may from time to time reasonably request to confirm and protect the Leasehold Mortgagee's rights and interests as a leasehold mortgagee unless there is good cause not to agree. The provisions of this section in favor of the Leasehold Mortgagee shall inure to the benefit of the Leasehold Mortgagee and its successors and assigns, and also any other tenant under or transferee of this Lease pursuant to any foreclosure proceedings, exercise of the power of sale or deed or assignment in lieu thereof. Anything herein to the contrary notwithstanding, such amendment shall in no event increase any of Landlord's obligations, or materially diminish any of Landlord's rights, or diminish any of Tenant's monetary obligations to Landlord, under this Lease. The Landlord shall also cause to be delivered, at the expense of Tenant, such opinions of counsel as the Tenant and/or any Leasehold Mortgagee shall reasonably request.

26. NO LEASEHOLD MORTGAGE. Landlord acknowledges, as of the date hereof, that neither its interest in the land nor its interest in the Leased Premises is encumbered. From and after the date hereof, Landlord shall have no right to encumber Landlord's interest in the land or the Leased Premises or any portion thereof.

27. TAX TREATMENT. Tenant or its assign shall have the benefit of all depreciation, depletion, amortization, deductions or allowances related to the Buildings and the Site Improvements now or hereafter located on the Leased Premises under the Internal Revenue Code, as amended, and under any income or similar or other tax statute enacted by any applicable local, state, county, federal or other governmental or taxing authority.

28. NO AUTHORITY TO CONTRACT IN NAME OF LANDLORD. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against Landlord's interest in the Leased Premises or any part thereof or against assets of Landlord, or Landlord's interest in any Rent. NOTICE IS HEREBY GIVEN, AND TENANT SHALL CAUSE ALL CONSTRUCTION AGREEMENTS TO PROVIDE, THAT TO THE EXTENT ENFORCEABLE UNDER FLORIDA LAW, LANDLORD SHALL NOT BE LIABLE FOR ANY WORK PERFORMED OR TO BE PERFORMED AT THE LEASED PREMISES OR ANY PART THEREOF FOR TENANT OR ANY SUBTENANT OR FOR ANY MATERIALS FURNISHED OR TO BE FURNISHED TO THE PREMISES OR ANY PART THEREOF FOR ANY OF THE FOREGOING, AND NO MECHANIC'S, LABORER'S, VENDOR'S, MATERIALMAN'S, OR OTHER SIMILAR STATUTORY LIEN FOR SUCH WORK OR MATERIALS SHALL ATTACH TO OR AFFECT LANDLORD'S INTEREST IN THE LEASED PREMISES OR ANY ASSETS OF LANDLORD, OR LANDLORD'S INTEREST IN ANY RENT. The foregoing shall not require Tenant to request advance waivers of lien from contractors or subcontractors.

29. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS AND OBLIGATIONS. If a default shall occur and be continuing beyond any applicable cure period, Landlord may, but shall be under no obligation to, perform the obligation of Tenant the breach of

which gave rise to such default, without waiving or releasing Tenant from any of its obligations contained herein, provided that Landlord shall exercise such right only in the event of a bona fide emergency or after five (5) business days' notice to Tenant and any Leasehold Mortgagee, Tenant hereby grants Landlord access to the Leased Premises in order to perform any such obligation. Any amount paid by Landlord in performing Tenant's obligations as provided in this paragraph, including all costs and expenses incurred by Landlord in connection therewith, shall constitute additional Rent hereunder and shall be reimbursed to Landlord within thirty (30) days following Landlord's demand therefor, together with a late charge on amounts actually paid by Landlord, calculated at the Late Charge Rate from the date of notice of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Landlord's payment or performance pursuant to the provisions of this paragraph shall not be, nor be deemed to constitute, Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

30. FINANCIAL REPORTS AND RECORDS.

(a) Tenant shall at all times during the Term of this Lease keep and maintain at a location within the City (separate from any of Tenant's other books, records and accounts) accurate and complete records pertaining to the Leased Premises including, without limitation, books of account reflecting net operating income, the operations of the Leased Premises, and such other matters required to demonstrate Tenant's compliance with its obligations under the Lease, all in accordance with the generally accepted accounting principles. Landlord and its representatives shall have, during normal business hours and upon reasonable advance notice, access to inspect the records required by the preceding sentence.

(b) The Landlord shall have the right to cause an audit by any recognized accounting firm (in accordance with the generally accepted accounting principles) of (i) Tenant's net operating income and/or (ii) Tenant's subtenant rent information to be made at any time (but not more frequently than one (1) time in any twelve (12) month period), at Landlord's expense, except as provided below. Such right of inspection and audit may be exercised at any time within three (3) years after the end of the year to which such Tenant's net operating income or subtenant rent information is related, and Tenant shall maintain all such books and records for at least such period of time and, if any dispute between the Parties has arisen and remains unresolved at the expiration of such period of time, for such further period of time until the resolution of such dispute. If any such audit by Landlord reveals that Tenant has understated the Rent audited by three percent (5%) or greater, the costs of such audit shall be paid by Tenant and the amounts of any such underpayment disclosed by such audit, together with any applicable interest accrued thereon, shall be promptly paid to the Landlord.

(c) The obligations of Tenant and Landlord under this paragraph shall survive the Expiration of the Term of the Lease.

31. NONLIABILITY.

(a) No member, official or employee of the CRA, the Landlord or any other governing body (including, without limitation, the Mayor or Members of the City Council, the

CRA or its members) shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount or obligation which may become due to Tenant or successor under the terms of this Lease; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Lease, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

(b) No Person that has an ownership interest, whether directly or indirectly, in Tenant and no Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Tenant, shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount or obligation which may become due to Landlord or successor under the terms of this Lease; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Lease, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

32. CONFLICT OF INTEREST. Tenant represents and warrants that, to the best of its actual knowledge, no member, official or employee of the CRA, the Landlord or any other governing body has any direct or indirect financial interest in this Lease, nor has participated in any decision relating to this Lease that is prohibited by law. Tenant represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Landlord, the CRA or any other governing body has received any payment or other consideration for the making of this Lease, directly or indirectly from Tenant. Tenant represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. Tenant acknowledges that Landlord is relying upon the foregoing representations and warranties in entering into this Lease and would not enter into this Lease absent the same.

33. NO PARTNERSHIP. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease or the other documents executed by the parties with respect to the project, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the term.

34. MISCELLANEOUS.

(a) Captions. Captions of the Sections and Articles contained in this Lease are for convenience only and do not constitute a part of this Lease and do not limit, affect or construe the contents of such Sections or Articles.

EXECUTION

IN WITNESS WHEREOF, City and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESS:

_____

_____

CITY OF RIVIERA BEACH, FLORIDA

By: _____
Michael D. Brown, Mayor

ATTEST:

By: _____
Carrie E. Ward, City Clerk

As to Form and Legal Sufficiency
By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

By: _____
William E. Wilkins, City Manager

WITNESS:

_____

_____

OMRD, LLC,
a Delaware limited liability company

By: _____
Daniel Catalfumo, Its President

EXECUTION

IN WITNESS WHEREOF, City and Tenant, intending to be legally bound, have executed this Lease as of the day and year first above written.

WITNESS:

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CITY OF RIVIERA BEACH, FLORIDA

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As to Form and Legal Sufficiency
By: _____
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By: _____
Mark Mustian, Special Counsel

By: _____
William E. Wilkins, City Manager

WITNESS:

_____

_____

OMRD, LLC,
a Delaware limited liability company

By:_____
Daniel Catalfumo, Its President

LIST OF EXHIBITS
Ground Lease-Hotel/Resort

A. LEASED PREMISES

B. PERMITTED EXCEPTIONS

C. STREETS AND SIDEWALKS TO BE ABANDONED

D. HOTEL FLAG CRITERIA

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "A"

GROUND LEASE – HOTEL / RESORT

LEGAL DESCRIPTION (HOTEL SITE BOUNDARY)

A PARCEL OF LAND BEING A PORTION OF PARCEL "C" AND A PORTION OF PARCEL "D", PLAT OF RIVIERA BEACH OCEAN TRACT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGE 98, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND TOGETHER WITH PORTIONS OF NORTH OCEAN BOULEVARD, BEACH AVENUE AND BEACH COURT, ALSO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID PARCEL "D"; THENCE ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID PARCEL "D", NORTH 90°00'00" WEST, A DISTANCE OF 100.10 FEET TO A POINT ON THE EAST LINE OF LOT 415, PALM BEACH SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 23, PAGES 29 THROUGH 32, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID EAST LINE OF LOT 415 AND ALONG THE WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:

THENCE CONTINUE ALONG SAID EAST LINE OF LOT 415 AND ALONG SAID WEST RIGHT OF WAY LINE OF NORTH OCEAN BOULEVARD NORTH 02°36'30" EAST, A DISTANCE OF 48.13 FEET TO THE NORTHEAST CORNER OF SAID LOT 415; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, NORTH 00°46'50" EAST, A DISTANCE OF 283.83 FEET TO A POINT ON THE SOUTH LINE OF LOT 426, AS SHOWN ON SAID PLAT OF PALM BEACH SHORES; THENCE ALONG SAID SOUTH LINE, SOUTH 87°23'30" EAST, A DISTANCE OF 9.05 FEET TO THE SOUTHEAST CORNER OF SAID LOT 426; THENCE ALONG THE WEST RIGHT OF WAY LINE OF SAID NORTH OCEAN BOULEVARD, NORTH 02°36'30" EAST, A DISTANCE OF 33.56 FEET; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE, SOUTH 90°00'00" EAST, A DISTANCE OF 230.17 FEET; THENCE SOUTH 00°46'50" WEST, A DISTANCE OF 365.03 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 241.83 FEET TO THE POINT OF BEGINNING.

CONTAINING 87,425 SQUARE FEET OR 2.007 ACRES, MORE OR LESS.

EXHIBIT "B"

PERMITTED EXCEPTIONS

EXHIBIT B

TO

THE GROUND LEASE-HOTEL/RESORT

(Permitted Exceptions)

1. All matters contained on the Plat of Riviera Beach Ocean Tract, as recorded in Plat Book 30, page 98, Public Records of Palm Beach County, Florida

2. Private easement rights of other owners of the subdivision known as Riviera Beach Ocean Tract, recorded in Plat Book 30, Page 98, Public Records of Palm Beach County, Florida, to the use of vacated streets.

3. Private easement rights of other owners of the subdivision known as South Shore Estates, recorded in Plat Book 23, Page 29, Public Records of Palm Beach County, Florida, to the use of the vacated street.

EXHIBIT "C"

STREETS AND SIDEWALKS TO BE ABANDONED

This exhibit will be attached on or prior to the date that Tenant has received site plan approval for the construction of the Buildings and Site Improvements.

EXHIBIT "D"

HOTEL FLAG CRITERIA

BOC-FS1\406955v24\091925.010100

Quality Level Hotel Standards

The City and the Developer agree that the Developer can satisfy the quality level hotel requirement by compliance with the following criteria:

I. Exterior.

a. Curb Appeal.

i. A combination of exterior elements which create an impressive well-integrated and excellent level of curb appeal.

ii. Excellent variety of landscaping professionally planned and manicured.

iii. Impressive architectural features well-integrated into the surrounding area.

b. Parking.

ii. Lighting fixtures reflect characteristics of the design of the property.

iii. Physical evidence of added security exists.

iv. Excellent overall illumination.

II. Public Areas.

a. Furnishings and Décor: Upscale, well-appointed, and in the theme of the property; high degree of comfort, featuring professionally fitted coverings; an abundant variety of live plants or unique dried floral arrangements.

b. Floor Coverings: Excellent quality carpet, wood, marble, or granite floors with unique area rugs.

c. Illumination: Light fixtures are well-appointed and of an upscale design that complements the overall theme of the property; multi-placement provides overall excellent illumination.

d. Signage: Design is well-defined in harmony with the theme of the property.

e. Lobby/Registration Area: Spacious registration area; upgraded luggage carts; recognizable guest-service area and bellstand.

f. Miscellaneous: Multiple recessed phones with notepads and pens, located away from traffic areas.

g. Restaurant and Dining Facilities: Full-service restaurant; separate lounge or bar area.

h. Recreational Facilities:

ii. Swimming pool area is well-appointed with upscale design elements and an excellent quality and variety of pool furniture and hot tub. Food and beverage is available poolside.

iii. On-site exercise facility with state of the art equipment; lockers and dressing area provided.

i. Meeting Rooms. Variety of well-appointed meeting rooms with upscale design elements. Audiovisual equipment available.

j. Restrooms. Upscale facilities appropriate for the number of meeting rooms.

k. Additional Recreational Facilities: Excellent variety of additional recreational facilities is available on site or arrangements are made for off-site services.

l. Sundries and Other Shops: Upscale gift shop.

III. Guestroom.

a. Free Floor Space: Obvious degree of spaciousness allowing increased ease of movement for guests.

b. Floor Coverings: Excellent quality carpet, wood, marble, granite or other high-end stone floors with unique area rugs.

c. Clothes Hanging Space: Open-hook wood hangers.

d. Clothes Storage Space: Sufficient space for two pieces of luggage.

e. Illumination: Excellent overall illumination; free standing fixtures in appropriate places.

IV. Guestroom Amenities.

a. Multiple telephone. High-speed internet access.

b. Enhanced guest-service directory in folder.

c. Mirror. Framed or beveled full-length mirror.

d. Ironing board.

VI. Bathrooms:

a. Wall and Floor Coverings. Excellent quality, including ceramic tile, marble, or granite flooring.

b. Free Floor Space. Excellent size bathrooms affording guests increased ease of movement and comfort.

c. Amenities:

i. Excellent quality towels.

ii. Facial tissues of in decorative container.

iii. Bathroom area rug.

iv. Make-up mirror.

RESOLUTION NO. 183-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN OPTION AGREEMENT CONCERNING THE OCEAN MALL BETWEEN THE CITY, THE COMMUNITY REDEVELOPMENT AGENCY AND OMRD, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 23, 2003, the City of Riviera Beach Community Redevelopment Agency ("CRA") issued its request for proposals RFP-03-01 ("RFP") soliciting a developer or developers to redevelop certain beachfront property (the "Project") within the City of Riviera Beach, Florida (the "City"); and

WHEREAS, three (3) developers responded to the RFP; and

WHEREAS, the CRA, after a public review process, ranked the developers who responded to the RFP and directed City and CRA staff to negotiate the terms under which the developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP; and

WHEREAS, when the CRA and the first-ranked developer reached an impasse, the CRA commenced negotiations with the second-ranked developer, and the CRA and the second-ranked developer entered into a Letter of Intent on August 31, 2005; and

WHEREAS, OMRD, LLC ("OMRD") was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project; and

WHEREAS, the City Council and the CRA at a duly called public meeting held on August 23, 2006, approved the preliminary terms and conditions (including the conceptual site plan) of an agreement between the City of Riviera Beach, CRA and OMRD and authorized staff to negotiate and finalize such agreement with OMRD; and

WHEREAS, the City, the CRA and OMRD have negotiated that certain Option Agreement (the "Option Agreement"), in the form attached hereto as Exhibit A, pursuant to which each party has made certain agreements with respect to the financing, development and construction of the Project; and

WHEREAS, the City hereby finds and determines that the proposed Project as contemplated by the Option Agreement will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area.

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

SECTION 1. The Mayor and City Clerk are authorized to execute an Option Agreement, in the form set forth in Exhibit A attached hereto.

SECTION 2. The Mayor and Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the City Attorney, City special counsel and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 2006.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

RESOLUTION NO. 183-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT
VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: N. DUNCOMBE

SECONDED BY: E. WADE

A. ILES	AYE
V. LEE	ABSENT
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	NAY

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/13/06

Execution copy

OPTION AGREEMENT

between

the

CITY OF RIVIERA BEACH, FLORIDA,
a Florida municipal corporation

and

THE RIVIERA BEACH
COMMUNITY REDEVELOPMENT AGENCY,
a body corporate and politic created pursuant to
Part III, Chapter 163, Florida Statutes

and

OMRD, LLC,
a Delaware limited liability company

OPTION AGREEMENT

This Option Agreement ("Agreement") is made this 18 day of December, 2006, by and between THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY (and referred to as the "Agency"), created by the City of Riviera Beach pursuant to Chapter 163, Part III of the Florida Statutes, THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation (and referred to in this Agreement as the "City"), and OMRD, LLC, a Delaware Limited Liability Company, its successors and assigns (and referred to as either "OMRD" or "Developer").

WITNESSETH:

WHEREAS, the Agency and City seek the redevelopment of certain property on Singer Island as a community redevelopment project ("Project") pursuant to the City's Community Redevelopment Plan ("CRA Plan");

WHEREAS, the Ocean Mall is an 80,000 square foot shopping center that is located on Singer Island, in the beach area of the Riviera Beach Community Redevelopment Area;

WHEREAS, the Ocean Mall is located on City-owned land ("Ocean Mall Property") which is subject to a long-term lease agreement ("Ocean Mall Lease");

WHEREAS, on May 23, 2006 Agency issued Request for Proposals RFP-03-01 ("RFP") soliciting a developer or developers to lease, construct, operate, and manage the Project;

WHEREAS, three (3) developers responded to the RFP;

WHEREAS, the Agency after a public review process, ranked the developers who responded to the RFP and directed City and Agency staff to negotiate the terms under which the Developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP;

WHEREAS, when the Agency and the first-ranked developer reached an impasse, the Agency commenced negotiations with the second-ranked developer, and the Agency and the second-ranked developer entered into a Letter of Intent on August 31, 2005;

WHEREAS, OMRD was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project;

WHEREAS, the City Council and the Agency at a duly called public meeting held on August 23, 2006, approved the preliminary Terms and Conditions (including the conceptual site

plan) of the Agreement between the City of Riviera Beach, Agency and OMRD and authorized staff to negotiate and finalize such Agreement with OMRD;

WHEREAS, the City and the Agency hereby find and determine that the proposed Project will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area of the City;

WHEREAS, the City and Agency have authorized the negotiation of definitive agreements to set forth the respective duties and responsibilities of the Parties pertaining to the development of the Ocean Mall Property and adjacent property (the "City Property");

WHEREAS, the Parties in furtherance of the foregoing commenced negotiations for said definitive agreement, which negotiations have resulted in the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement;

WHEREAS, prior to the completion of the negotiations for the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, residents of the City circulated the following petitions (collectively the "Petitions"): (i) a petition challenging Ordinance No. 3016 relating to the length of the permitted terms of the Phase I Lease and the Phase II Lease (the "Ordinance Petition relating to the Lease Term"), (ii) a petition for a charter amendment establishing height limitations for municipal beach property (the "Charter Petition relating to Height Restrictions"), and (iii) a petition for a charter amendment limiting the number of years that the City may lease municipal beach property (the "Charter Petition relating to the Lease Term") (the "Charter Petition relating Height Restriction" and the "Charter Petition relating to the Lease Term are collectively referred to as the "Charter Petitions")

NOW, THEREFORE, in consideration of the foregoing, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1
RECITALS.

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein as a part of this Agreement.

ARTICLE 2
DEFINITIONS AND MEANING OF TERMS

2.01 For all purposes of this Agreement, the following terms shall have the following meanings, (capitalized terms not otherwise defined herein shall have the meaning se forth in the Disposition and Development Agreement):

(a) "Affiliate" or "Affiliates". As used herein, the term Affiliate means with respect to a Person, any other Person that directly or indirectly Controls, is controlled by, or is under common Control with, the specified Person.

(b) "Agency" means the Riviera Beach Community Redevelopment Agency.

(c) "Agreement" means, collectively, this Option Agreement and all exhibits and attachments hereto, as any of the same may hereinafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with this Agreement or by mutual consent agreement of the Parties.

(d) "Business Day" or "business day" means a day other than Saturday, Sunday, or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

(e) "City" has the meaning provided in the Recitals to this Agreement.

(f) "Council" means the City Council.

(g) "County" means Palm Beach County, Florida.

(h) "Disposition and Development Agreement" means the Disposition and Development Agreement and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, by mutual agreement of the Parties.

(i) "Developer" means Developer (and any assignee or transferee of the Developer that is permitted under this Agreement, from and after the date of such permitted assignment or transfer).

(j) "Governmental Authority or Authorities" means the United States of America, the State, the City, the County, Agency and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or over or under the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises, or airspace over the Premises.

(k) "Mayor" means the Mayor of the City.

(l) "Member" means a member of the City Council of the City.

(m) "Party" means Developer, City, or Agency as indicated by the context. "Parties" means, collectively Developer, City, and Agency.

(n) "Person". As used herein, the term "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(o) "Phase I Development" shall consist of approximately 60,000 square feet of retail space open to the public with approximately 400 surface parking spaces, as set forth in the Concept Site Plan, except as modified by agreement of the Developer, Agency and the City and subject to Final Site Plan approval. In the event that the Developer determines in its reasonable discretion that the Phase I Development cannot be supported solely with retail space, then the Developer shall be entitled to have office space within the Phase I Development.

(p) "Phase II Development" shall consist of a building of up to 270 feet in height (maximum) with an approximately 525 car parking facility, as set forth in the Concept Site Plan, except as modified by agreement of the Developer, Agency, and the City and subject to Final Site Plan approval. The building will include 7,000 to 10,000 square feet of banquet/meeting space, restaurants and associated amenities for public and guest use and a mix of up to 325 units comprised of any combination, as determined by the Developer in its sole and absolute discretion, of hotel suites (provided that there is not less than 100 hotel suites), condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units.

(q) "Phase I Lease" means, collectively, the Ground Lease-Retail and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of such Lease or by mutual agreement of the Parties.

(r) "Phase II Lease" means, collectively, the Ground Lease-Hotel/Resort and all exhibits and attachments thereto, as any of the same may thereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of such lease or by mutual agreement of the Parties.

(s) "Premises" has the same meaning as "Leased Premises" set forth in the Phase I Lease and Phase II Lease, respectively.

(t) "Project" means the Phase I Development and the Phase II Development.

(u) "State" means the State of Florida.

2.02 Use of Words and Phrases.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons.

"Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

2.03 Florida Statutes.

All references herein to Florida Statutes are to Florida Statutes (2006), as amended from time to time.

ARTICLE 3
AGREED TO CHANGES

3.01 The City and Agency agree and acknowledge that as a result of the Petitions certain provisions of the Phase I Lease, Phase II Lease and the Disposition and Development Agreement were modified so as to permit the continued progress of the Project, with the understanding that:

(a) (i) if the Ordinance Petition relating to the Lease Term was determined not to satisfy Florida law and as a result no referendum needed to be held with respect to such Petition, or (ii) a referendum was held as a consequence of the Ordinance Petition relating to the Lease Term and such referendum was defeated, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 below, regarding each respective agreement; or

(b) (i) if the Charter Petitions were determined not to satisfy Florida law and as a result no referendums were held with respect to the Charter Petitions, or (ii) referendum(s) are held as a consequence of the petitions and such referendum(s) is/are defeated or if passed deemed not applicable to the Project by a court of competent jurisdiction, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 below, regarding each respective agreement.

3.02 Ground Lease – Retail.

(a) Paragraph 2(a) would be deleted in its entirety and replaced with the following:

(a) Rent. The Landlord shall receive annual lease payments calculated as a percentage of the Base Subtenant Rent paid by all Subtenants at the Leased Premises in accordance with the following percentage amounts:

(i) Four percent (4%) for lease years one (1) through twenty (20);

(ii) Six percent (6%) for lease years twenty-one (21) through forty (40);

(iii) Eight percent (8%) for lease years forty-one (41) through fifty (50);

(iv) Eight percent (8%) for lease years fifty-one (51) through ninety-nine (99);

(Collectively the "Percentage Rent"). Such Percentage Rent shall be paid annually on April 1 of each year following the year to which such Percentage Rent relates. Percentage Rent shall be prorated for partial years.

"Base Subtenant Rent" shall mean the base rental income received by the Tenant from each Subtenant pursuant to such Subtenant's sublease. In addition to Base Subtenant Rent a sublease with a subtenant may also provide that the Subtenant must pay what is customarily termed "Common Area Maintenance" charges, this is the additional amount charged to the Subtenant to cover such Subtenant's share of other costs and expenses commonly allocated to the operation and maintenance of the Leased Premises (i.e., taxes, utilities, insurance, maintenance, repairs and capital improvements, (excluding the cost of initial construction of the Buildings and the Improvements), maintenance, repairs).

Tenant shall not be permitted to designate any portion of its Base Subtenant Rent as Common Area Maintenance charges and Landlord shall not receive any Percentage Rent with respect to any Common Area Maintenance charges.

Rent used in this Lease shall mean Percentage Rent and any Additional Rent (as hereinafter defined).

(b) Paragraph 3 would be deleted in its entirety and replaced with the following:

3. TERM. The term shall commence on the Effective Date and shall continue for ninety-nine (99) years thereafter (the "Term").

3.03 Ground Lease - Hotel/Resort

(a) Paragraph 2(a) would be deleted in its entirety and replaced with the following:

(1) Unit Rent. Tenant shall make an initial one time payment of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), payable upon issuance of all required Permits[1], which are not being contested and are no longer subject to any rights of appeal (the

[1] "Permits" means all zoning, variance approvals, building permits, and other consents or approvals required to be granted, awarded, issued, or given by any Governmental Authority: (i) in order for the construction of the Buildings

"Initial Rent"). The Buildings to be constructed on the Leased Premises shall be comprised of any combination, as determined by the Developer in its sole and absolute discretion, of condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units (collectively "Residential Unit(s)") and hotel suites[2]. The "Hotel" is that portion of the Leased Premises that consists of hotel suites and between 7,000 and 10,000 of associated square feet of banquet and meeting space. In the event that less then 375 Residential Units and hotel suites are to be constructed on the Leased Premises then for each Residential Unit or hotel suite below 375, the Landlord will receive a $20,000 credit against the Initial Rent. An additional payment of Ten Thousand Dollars ($10,000.00) shall be made for each Residential Unit, payable, thirty (30) days after ninety (90%) percent of the Residential Units have been sold to third parties and the closing with respect to all such Residential Units has occurred (the "Initial Rent together with such additional payment is collectively hereinafter referred to as "Unit Rent").

(b) Paragraph 2(b) would be deleted in its entirety and replaced with the following:

(1) Percentage Rent. The Landlord shall receive 2.5% of the Net Cash Flow[3] from the operation of the Hotel; the Hotel does not include the Residential Units; provided however that if and to the extent that any Residential Unit is leased out by the Hotel operator, then the Hotel operator's share of the rental income shall be included in the revenues from operation of the Hotel. Such Percentage Rent shall be paid annually on April 1 of each year following the year to which such Percentage Rent relates. Percentage Rent shall be prorated for

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and Site Improvements, or any part thereof, to commence, continue or be completed, and (ii) in connection with the operation of the Buildings and Site Improvements and the businesses therein.

[2] The Residential Units and the hotel suites will aggregate not more than 375 and although it is currently anticipated that 235 will be Residential Units and 140 will be hotel suites, the composition may be altered in Tenant's discretion so long as there is not less than 100 hotel suites and not less then 200 Residential Units.

[3] Net Cash Flow from the operation of the Hotel is defined as follows: The gross revenues from the operation of the Hotel (including the Hotel operator's share of the rental income, if and to the extent that any Residential Unit is leased out by the Hotel operator), less the amounts paid or reserved for the following: (a) all expenses of operating the Hotel, (including the Hotel operator's share of the expense related to any Residential Unit leased out by the Hotel operator), including but not limited to, payroll, utilities, insurance, taxes of all types, repairs, maintenance, replacements, advertising, cost of inventory and merchandise, cost of all outside services, including without limitation, accounting, financial, advertising, legal, marketing and public relations; (b) all debt service associated with any financing placed on the Hotel, including without limitation, all interest, principal, reserves, inspection fees, legal costs and expenses and any other costs and expenses associated with the origination, servicing and/or payment of any financing placed on the Hotel by the Tenant; (c) reserves in the following amounts: (i) year one – two (2%) percent of gross revenues with respect to the Hotel, (ii) year two – three (3%) percent of gross revenues with respect to the Hotel; and (iii) for each year thereafter – four (4%) percent of the gross revenues of the Hotel; (d) all management fees associated with the operation of the Hotel, including without limitation, management fees and incentive fees payable to the operator of the Hotel; (e) a cumulative return to the Tenant on all of its invested capital (including without limitation all equity or debt) of fifteen (15%) percent per annum; to the extent such return has not been paid to the Tenant annually, it shall compound at the rate of fifteen (15%) percent and it shall be cumulative such that the Landlord's participation in any of the Net Cash Flow from the operation of the Hotel will be subordinate to the payment of such return to the Tenant.

partial years. Percentage Rent shall be paid to the City for use in the City's Community Benefits Partnership Program.[4]

(c) Paragraph 3 would be deleted in its entirety and replaced with the following:

3. TERM. The term shall commence on the Effective Date and shall continue for ninety-nine (99) years thereafter (the "Term").

(d) Paragraph 4(a) would be deleted in its entirety and replaced with the following:

(a) Tenant shall have the right to use and occupy the Leased Premises for all lawful purposes Tenant determines in its sole or absolute discretion but subject to the provisions of Section 2(a) hereof regarding use as Residential Units and hotel suites, including but not limited to, the purpose of owning, developing, leasing, operating and selling the Residential Units and Hotel and all activities related or ancillary thereto.

(e) The defined term "Resort Unit(s)" shall be replaced by the defined term "Residential Unit(s)".

3.04 Disposition and Development Agreement.

(a) Section 2.01(k) would be deleted in its entirety and replaced with the following:

(k) "Civic Improvements" means the improvements to public areas within 300 feet of the Project, including two hundred (200) surface parking spaces as described on Exhibit "C" hereto, as such Exhibit may, from time to time, be updated and amended in accordance with the provisions of Article 6 of this Agreement.

(b) Section 2.01(l) would be deleted in its entirety and replaced with the following:

(l) "Civic Improvement Funds" means funds used to reimburse the Developer for the cost of construction of Civic Improvements as provided in Article 6.

(c) A new definition "Civic Improvements Budget" shall be added to Section 2.01 as a new subsection (m) and all subsections thereafter will be re-alphabetized:

(m) "Civic Improvements Budget" means the budget for the Civic Improvements attached hereto as Exhibit "D" hereto, as such Exhibit may, from to time, be updated and amended in accordance with the provisions of Article 6 of this Agreement.

(d) Section 2.01(nn) would be deleted in its entirety and replaced with the following:

[4] The Community Benefits Partnership Program is the program established by the City for improving the quality of life for its populace by working with companies and businesses affecting the area, as established by Resolution of the City adopted December 18, 2006, as amended.

(nn) "Phase II Development" shall consist of a mix of not less than 100 hotel suites and not less than 200 nor more than 275 of any combination, as determined by the Developer in its sole and absolute discretion, of condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units (collectively "Residential Unit(s)") contained in one building of 300 feet in height (maximum) with approximately 600 car parking facility, as set forth in the Concept Site Plan, except as modified by agreement of the Developer, Agency, and the City and subject to Final Site Plan approval. The hotel portion will include 7,000 to 10,000 square feet of banquet/meeting space, restaurants and associated amenities for public and guest use.

(e) Section 2.01(aaa) titled "Resort Units" shall be deleted and replaced with the following definition of "Residential Units" and each time the defined term Resort Unit(s) is used it shall be replaced with the defined term Residential Units.

(aaa) "Residential Units" are any combination, as determined by the Developer in its sole and absolute discretion, of condominiums, cooperatives, timeshares, fractional ownership interests and any other forms of ownership interests that are legally recognized residential units.

(f) Section 6.01 will be deleted in its entirety and replaced with the following:

6.01 Financing of the Civic Improvements.

(a) The Parties have agreed that specified Civic Improvements which will enhance the Project will be funded by the Developer and reimbursed by the City and Agency from the proceeds of the Civic Improvements Funds. Specifically in furtherance of this Agreement and the implementation of the Project and the Civic Improvements:

(1) The City and the Agency shall use all reasonable efforts to obtain the Civic Improvement Funds.

(2) The City and Agency shall submit its proposal with respect to the items it would like to see comprising the Civic Improvements, to the Developer, within 180 days of the Effective Date of this Agreement for the Developer's review and approval (it is understood that the Developer's approval will take into account the costs of the proposed Civic Improvements and the Developer will not be required to approve Civic Improvements that cost, in the aggregate more than the Upset Maximum Amount of $5,000,000.00) and after so approved by the Developer and confirmed by the City and the Agency shall be attached hereto as Exhibit D.

(3) City, Agency, and Developer agree that only the Civic Improvements described on Exhibit C will be financed with Civic Improvement Funds. The Developer shall be solely responsible for the construction of any and all other site, parking, and Infrastructure Improvements which are not set forth on Exhibit "C" and are required by

the City to be constructed by the Developer as part of the Final Site Plan approval ("Infrastructure Improvements").

(4) Prior to the Phase I Construction Commencement Date, Developer shall prepare a Civic Improvement Budget and submit such Civic Improvement Budget to the City and Agency. The City and the Agency agree that the Civic Improvement Budget shall include all hard and soft costs of designing, permitting and constructing the Civic Improvements including but not limited to permit fees and carrying costs. The City and the Agency agree that the Civic Improvement Budget may include a fifteen percent (15%) contingency. The proposed Civic Improvement Budget shall be subject to review and approval by the City and Agency (which approval shall not be unreasonably withheld or delayed). To assist in the review and approval process, the City and Agency may hire a construction consultant to review the Civic Improvements Budget prepared by the Developer and confirm the cost estimates included therein. The reasonable fees and expenses of this construction consultant will be paid from the Civic Improvement Funds.

(5) The Civic Improvements Funds to be made available to the Developer will be an amount equal to the costs set forth in the Civic Improvement Budget but will not under any circumstances, be less than $2,500,000 (the "Minimum Amount") nor exceed $5,000,000.00 (the "Upset Maximum Amount). The Minimum Amount shall be dedicated to the construction of the 200 surface parking spaces and thereafter to the construction of the Civic Improvements.

(6) The Civic Improvement Funds will be made available to the Developer as soon as they have been raised by the City but in no event not later than twelve (12) months from the completion in full of the Civic Improvements. If such funds have not been made available to the Developer by such date then, notwithstanding anything contained herein or within the Phase I Lease or the Phase II Lease, to the contrary: (i) the Developer will be entitled to pursue all of its remedies at law or in equity against the City and/or the CRA as a result of such failure to make available to the Developer the Civic Improvement Funds, and (ii) without limiting the foregoing the Developer shall be entitled to set-off against Percentage Rent under the Phase I Lease or Unit Rent or Percentage Rent under the Phase II Lease, the amount of unreimbursed Civic Improvement Funds.

(b) The Developer agrees that the cost of two hundred (200) of the four hundred (400) surface parking spaces which are a part of the Phase I Development shall be constructed at the Developer's cost and are not Civic Improvements.

ARTICLE 4
NOTICES, CONSENTS AND APPROVALS

4.01 Service of Notices and Other Communications.

(a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication (referred to in this Article 4.01 as a "Notice") shall be in writing (whether or not so indicated elsewhere in this Lease) and shall be effective for any purpose only if given or served by certified or registered U.S. mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or by a recognized national courier service, addressed as follows:

If to Developer: OMRD Holdings, LLC
2295 Corporate Blvd., Suite 222
Boca Raton, Florida 33431

and

OMRD, Inc.
4300 Catalfumo Way
Palm Beach Gardens, FL 33410

with a copy to: Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, Florida 33486
Attn: Marc Sinensky, Esq.

If to City: The City of Riviera Beach, Florida
Attention: City Manager
600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

With a copy to: The Riviera Beach Community
Redevelopment Agency
2001 Broadway, Suite 300
Riviera Beach, Florida 33404
Attention: Executive Director

Any such Notice may be given, in the manner provided in this Article, (i) on either Party's behalf by its attorneys designated by such Party by notice hereunder, and (ii) at Developer's request, on its behalf by any Leasehold Mortgagee any other Person designated in such request.

(b) Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof. All references in this Agreement to the "date" of a Notice shall mean the effective date, as provided herein.

4.02 Consents and Approvals.

(a) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

(b) Unless expressly provided or otherwise, all consents and approvals which may be given by a Party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval.

ARTICLE 5
MISCELLANEOUS

5.01 Governing Law and Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.

5.02 References.

(a) The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) The use herein of the words "successors and assigns" or "successors or assigns" of City and Agency or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual City and Agency or Developer.

(c) Nothing in this Agreement or in the Parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of Agency or the City in the discharge of its police or governmental powers.

(d) All references in this Agreement to the terms "herein," "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

5.03 Entire Agreement, etc.

(a) This Agreement, together with the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement and any attachments hereto or therto, contains all of the promises, agreements, conditions, inducements and understandings between City, Agency and Developer concerning the Project and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein, therein and in such attachments hereto or thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the Parties hereto.

(b) No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City, Agency and Developer. No waiver of any Default or Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect.

5.04 Invalidity of Certain Provisions.

If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.05 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of City, Agency, Developer, and Leasehold Mortgagees (as such term is defined in the Phase I Lease and the Phase II Lease) and their respective successors and assigns.

(b) Notwithstanding anything contained in this Agreement to the contrary, the Developer has the absolute right to transfer this Agreement with respect to the Phase I Development and/or the Phase II Development to another Person in connection with any assignment or subletting permitted pursuant to either the Phase I Lease and/or the Phase II Lease.

5.06 No liability of Officials and Employees. No member, official or employee of the Agency, the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its member) shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City and Agency or for any amount or obligation which may

become due to Developer or any successor under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the City and Agency.

(b) No member, shareholder, officer, director, member of management committee, employee, agent or representative of the Developer or any their respective members, shareholders, officers, directors, members of management committee, employees, agents or representatives shall be personally liable to the City, the Agency, any member, official or employee of the Agency or the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its member) or any successors in interest thereto, in the event of any default or breach by the Developer or successor under the terms of this Agreement; and any and all such liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement by the Developer.

5.07 Conflict of Interest. Developer represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Agency, the City or any other governing body has any direct or indirect financial interest in this Agreement, nor has participated in any decision relating to this Agreement that is prohibited by law. Developer represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City, the Agency or any other governing body has received any payment or other consideration for the making of this Agreement, directly or indirectly from Developer. Developer represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. Developer acknowledges that City and Agency are relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

5.08 No Partnership.

The Parties hereby acknowledge that it is not their intention under this Agreement to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship for the purpose of developing the Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement or the other documents executed by the Parties with respect to the Project, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint

tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the Parties hereto. The provisions of this Article shall survive expiration of the Term.

5.09 Time Periods. Any time period which shall end on a day other than a Business Day shall be deemed to extend to the next Business Day.

5.10 No Third Party Beneficiaries.

Nothing in this Agreement shall confer upon any Person, other than the Parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

5.11 No General Obligation.

In no event shall any obligation of the City or the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither Developer nor any other Party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, or any other governmental entity to pay the City's or the Agency's obligations or undertakings hereunder.

5.12 Disclaimer As To Governmental Authority.

Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTION

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

ATTEST:

By: _____
Carrie E. Ward, City Clerk

By: _____
Michael D. Brown, Mayor

As to Form and Legal Sufficiency

By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

As to Terms and Conditions

By: _____
Bernard Kinsey,
CRA/City Lead Negotiator

By: _____
William E. Wilkins, City Manager

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Ann Iles, Chairperson

As to Form and Legal Sufficiency

By: _____
J. Michael Haygood,
Interim CRA Attorney

As to Terms and Conditions

By: _____
Floyd Johnson
CRA Executive Director

OMRD, LLC, a Delaware limited company

By: _____
Daniel Catalfumo, its President

EXECUTION

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

CITY OF RIVIERA BEACH, FLORIDA

ATTEST:

By:_____
Carrie E. Ward, City Clerk

By: Michael D. Brown
Michael D. Brown, Mayor

As to Form and Legal Sufficiency

By: _____
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

As to Terms and Conditions

By: _____
Bernard Kinsey,
CRA/City Lead Negotiator

By: _____
William E. Wilkins, City Manager

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Ann Iles, Chairperson

As to Form and Legal Sufficiency

By: _____
J. Michael Haygood,
Interim CRA Attorney

As to Terms and Conditions

By: _____
Floyd Johnson
CRA Executive Director

OMRD, LLC, a Delaware limited company

By: _____
Daniel Catalfumo, its President

RESOLUTION NO. 184-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A COMMUNITY BENEFITS PARTNERSHIP AGREEMENT BETWEEN THE CITY AND OMRD, LLC; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 23, 2003, the City of Riviera Beach Community Redevelopment Agency ("CRA") issued its request for proposals RFP-03-01 ("RFP") soliciting a developer or developers to redevelop certain beachfront property (the "Project") within the City of Riviera Beach, Florida (the "City"); and

WHEREAS, three (3) developers responded to the RFP; and

WHEREAS, the CRA, after a public review process, ranked the developers who responded to the RFP and directed City and CRA staff to negotiate the terms under which the developer would lease certain land from the City to develop, construct and operate the Project in accordance with the requirements of the RFP; and

WHEREAS, when the CRA and the first-ranked developer reached an impasse, the CRA commenced negotiations with the second-ranked developer, and the CRA and the second-ranked developer entered into a Letter of Intent on August 31, 2005; and

WHEREAS, OMRD, LLC ("OMRD") was formed pursuant to the August 31, 2005 Letter of Intent as the special purpose entity to carry out the development of the Project; and

WHEREAS, the City Council and the CRA at a duly called public meeting held on August 23, 2006, approved the preliminary terms and conditions (including the conceptual site plan) of an agreement between the City of Riviera Beach, CRA and OMRD and authorized staff to negotiate and finalize such agreement with OMRD; and

WHEREAS, the City and OMRD have negotiated that certain Community Benefits Partnership Agreement (the "Community Benefits Agreement"), in the form attached hereto as Exhibit A, pursuant to which each party will undertake certain duties and responsibilities associated with the financing, development and construction of the Project; and

WHEREAS, the City hereby finds and determines that the proposed Project as contemplated by the Community Benefits Agreement will be beneficial to tourism and recreation by providing additional services and retail opportunities in the beachfront area.

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

SECTION 1. The Mayor and Clerk are authorized to execute a Community Benefits Partnership Agreement, in the form set forth in Exhibit A attached hereto.

SECTION 2. The Mayor and Clerk are authorized to execute and deliver such documents, instruments and contracts, whether or not expressly contemplated hereby, and the City Attorney, City special counsel and other employees or agents of the City are hereby authorized and directed to do all acts and things required hereby or thereby as may be necessary for the full, punctual and complete performance of all the terms, covenants, provisions and agreements herein and therein contained, or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution.

SECTION 3. This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER, 2006

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

RESOLUTION NO. 184-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT
VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: N. DUNCOMBE

SECONDED BY: E. WADE

A. ILES	AYE
V. LEE	ABSENT
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	NAY

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/13/06

COMMUNITY BENEFITS PARTNERSHIP AGREEMENT

THIS AGREEMENT made and entered into this 18 day of December, 2006, (the "Effective Date") by and between **OMRD, LLC,** a Delaware limited liability company, hereinafter referred to as "Developer," and the **CITY OF RIVIERA BEACH, FLORIDA,** a municipal corporation, hereinafter referred to as "City".

WITNESSETH

WHEREAS, the commitment of the City of Riviera Beach to improve the quality of life of its citizens is expressed through the initiation of this Community Benefits Partnership.

WHEREAS, the purpose of specifying community benefits is to ensure that every citizen is respected and given an opportunity to realize a sustainable and tangible benefit as a result of the Community Redevelopment Plan successful implementation.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the parties hereby agree as follows:

1. Recitals. The foregoing statements are true and correct and are incorporated herein as if fully set forth. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Disposition and Development Agreement between the City and the Developer (the "DDA") dated as of the 18th day of December, 2006.

2. Term. This Agreement shall commence on the Effective Date and shall continue until the responsibilities of both parties have been completed.

3. Developer's Performance Obligations. Developer agrees as follows:

A. To employ Persons from the local market area with the emphasis on Riviera Beach citizens to the maximum extent practicable. This will include employing local individuals with a minimum of 25% of African American sales and marketing representatives for the sale of the Resort Units.

B. To require the general contractor of the Phase I Development to award not less than fifty percent (50%) of the contracted out amounts, relating to the construction of the Phase I Development, to Local (defined herein as Palm Beach, Broward, Miami-Dade, Martin, or St. Lucie Counties) Persons as its suppliers and/or sub-contractors and/or professional service providers, and shall use its good faith efforts to award a separate twenty-five percent (25%) of such contracted out amounts to African American owned Persons as its suppliers and/or sub-contractors and/or professional service providers. The general contractor of the Phase II Development will award not less than twenty-five

percent (25%) of the contracted out amounts, relating to the construction of the Phase II Development, to Local Persons and/or African American owned Persons as its suppliers and/or sub-contractors and/or professional service providers.

C. Developer and/or the general contractor will, notify the local community of opportunities associated with the Phase I Development and the Phase II Development through the local media.

D. Developer is responsible for using its best efforts possible to meet the city's expectations of the spirit of the Community Benefits Partnership Program.

E. To hire resource organizations from the community in order to help fulfill these sourcing needs in the above areas.

F. The Developer shall contribute to the Community Benefits Partnership Program an amount equal to 1% of the hard construction costs for the Phase I Development and the Phase II Development, to be paid (except as provided below) at the time of receipt by the Developer of the last of all the building permits for both the Phase I Development and the Phase II Development. The Developer's contribution to the City pursuant to the terms of the Community Benefits Partnership shall be as follows:

(i) Two Hundred Fifty Thousand ($250,000.00) Dollars, to be applied to the amount to be paid pursuant to subparagraph F above, at the time of the non- appealable site plan approval for the Phase I Development or any part thereof; and

(ii) To the extent not already paid pursuant to subparagraph F above, Two Hundred Fifty Thousand ($250,000.00) Dollars at the time of the issuance of all the building permits for the Phase I Development or either sub-phase thereof, to be applied to the amount to be paid pursuant to subparagraph D above.

If the Developer terminates the DDA with respect to the Phase II Development, then the Developer shall not have to make any contribution to the Community Benefits Partnership with respect to the Phase II Development and the balance, if any, of 1% of the hard construction costs for the Phase I Development, required to be contributed to the Community Benefits Partnership pursuant to subparagraph F above, shall be paid by the Developer at later of: (i) time of receipt by the Developer of the last of all the building permits for the Phase I Development, or (ii) the Developer's election to terminate the DDA with respect to the Phase II Development.

G. One-half of the amount contributed into the Community Benefits Partnership Program, as provided for in subparagraph F above, shall be used for neighborhood improvements and amenities. These funds may be used for amenities, neighborhood beautification, construction and/or maintenance of community centers and cultural facilities.

H. One-half of the amount contributed into the Community Benefits Partnership Program, as provided for in subparagraph F above, shall be used toward education, cultural, and civic enhancement programs for the City of Riviera Beach. Such recipients and benefactors may include the Jazz Festival, Barracuda Bay Aquatic Center, City Community Centers and other Community Organizations. The funds may also provide for annual scholarships for college, technical, and continuing education.

4. City's Performance Obligations. City agrees as follows:

A. To assist the Developer in hiring resource organizations from the community to fulfill the sourcing needs for the employment of local and African American Persons.

B. To, unless the City determines otherwise within 90 days, establish a 501 (c)(3) Florida not for profit corporation (the "Not for Profit Corporation") to administer the monetary contributions to Community Benefits Partnership. The Board of Directors of the Not for Profit Corporation shall be appointed by the Mayor and City Council of the City of Riviera Beach. The City shall provide details of the administration of the Community Benefits Program to the Developer within ninety (90) days of the Effective Date of this Agreement.

5. Tenant Leasing Assistance Program.

A. The Developer shall offer to the existing Ocean Mall tenants a one time thirty (30) day right of first offer to lease space in the redeveloped retail mall.

B. The City and the Developer for a period of forty-five (45) days after the expiration of the above-mentioned right of first offer, shall offer qualified local African American Persons the opportunity to lease space, to the extent that space is available after being offered to existing tenants, for the operation of their businesses.

C. During the first five years after completion of construction of the Phase I Development, the City may offer existing and local tenants rent subsidy allowances, with respect to their tenancy within the Phase I Development, to be funded out of the Developer's rental payments to the City pursuant to the Phase I Lease. The granting of said rent subsidies, with a maximum of 20% of the Developer's rental payments to the City pursuant to the Phase I Lease, shall be in the sole discretion of the City consistent with a policy established by the City in cooperation with the Developer.

6. Independent Contractor. The Developer is, and shall be, in the performance of all performance obligations under this Agreement, an independent contractor, and not an employee, agent or servant of the City. The Developer shall exercise control over the means and manner in which he/she performs its obligations, and

in all respects, the Developer's relationship to the City shall be that of an independent contractor and not as an employee or agent of the City.

7. Nonliability.

A. No member, official or employee of the City (including, without limitation, the Mayor or Members of the City Council, the Agency or its members) shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

B. No Person that has an ownership interest, whether directly or indirectly, in Developer and no Person that has an ownership interest, whether directly or indirectly, in any Person that has an ownership interest, whether directly or indirectly, in Developer, shall be personally liable to the City or the Agency, or any successor in interest, in the event of any default or breach by Developer for any amount or obligation which may become due to the City or the Agency or any successor in interest under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

8. Venue. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, 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 Agreement will be held in Palm Beach County.

9. Cumulative Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

10. Litigation Expenses. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an

alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

11. Waiver. Failure of the City to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of the City's right to enforce or exercise said right(s) at any time thereafter.

12. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

13. Headings. The paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.

14. Notices. All notices to be given or delivered by or to any party hereunder, shall be in writing and shall be hand delivered by messenger, courier service or Federal Express, or sent by U.S. Mail, certified with return receipt requested. The parties hereby designate the following addresses as addresses to which notices may be delivered, and delivery to such address shall constitute binding notice given to such party:

If to Developer: OMRD Holdings, LLC
2295 Corporate Blvd., Suite 222
Boca Raton, Florida 33431
and

OMRD, Inc.
4300 Catalfumo Way
Palm Beach Gardens, FL 33410

with a copy to: Greenberg Traurig, P.A.
5100 Town Center Circle, Suite 400
Boca Raton, Florida 33486
Attn: Marc Sinensky, Esq.

If to City: The City of Riviera Beach, Florida
Attention: City Manager

600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

15. Entire Agreement. This Agreement and the DDA set forth the entire agreement between the parties with respect to the Community Benefits Partnership and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties unto this Agreement have made and executed this Agreement on the day and year first written above.

ATTEST:

By: _____
City Clerk
Carrie E. Ward, MMC

CITY OF RIVIERA BEACH, FLORIDA

By: _____
Mayor
Michael D. Brown, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
PAMALA H. RYAN,
CITY ATTORNEY

OMRD, LLC, a Delaware limited
liability company

By: _____
Daniel Catalfumo, President

_____
Witness

_____
Witness

BOC-FS1\SINENSKYM\409885v07

RESOLUTION NO. 185-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AND AUTHORIZING THE PURCHASE OF REPLACEMENT PARTS FOR TIMBER PINES PLAYGROUND EQUIPMENT FROM GAMETIME IN THE AMOUNT OF $17,012.56; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE QUOTE ACCEPTANCE AND AUTHORIZING PAYMENT FROM ACCOUNTS 001-1232-572-0-6405 and 303-1232-572-0-6455; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach is in need of replacing the fire damaged outdoor playground equipment at Timber Pines to restore it to its original condition; and

WHEREAS, the City of Riviera Beach Recreation Department requires outdoor playground equipment at all the parks; and

WHEREAS, the City of Riviera Beach Recreation Department purchased the existing Timber Pine Park equipment from GameTime; and

WHEREAS, GameTime is a Palm Beach County School Board Term contract vendor for parks; and

WHEREAS, GameTime has submitted a quote number 261433202, dated November 28, 2006 in the amount of $17,012.56; and

WHEREAS, GameTime is offering a discount on such parts and equipment in accordance with its contract with the Palm Beach County School Board Term Bid #06C-19B.

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 City Council approves the purchase of outdoor playground equipment from GameTime of Longwood, Florida for the replacement of equipment at Timber Pines Park, to restore it to its original design,

SECTION 2. That the Mayor and City Clerk are authorized to execute an Agreement with GameTime.

SECTION 3. That City Council authorizes the Finance Director to budget in General Fund and to appropriate fund balance in the Parks and Recreation Impact Fee fund, to pay the total amount of $17,012.56 from Account No. 001-1232-572-0-6405 and 303-1232-572-0-6455.

SECTION 4. That this resolution shall take effect upon its passage and approval by City Council.

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.

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RESOLUTION NO. 185-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/12/06

RESOLUTION NO. 186-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE MAINTENANCE SERVICE AGREEMENT FOR SERVICE OF TELEPHONE EQUIPMENT AND RADIO SERVICE FOR THE FISCAL YEAR 2006/2007, WITH MOTOROLA COMMUNICATIONS AND ELECTRONICS, INC. (MOTOROLA), AT A TOTAL COST OF $16,033.44, AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN SAID AGREEMENT; AND AUTHORIZING PAYMENT FROM ACCOUNT NUMBER 001-0817-521-0-4601; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has contracted with Motorola to maintain the Radio equipment since 1994; and

WHEREAS, the contract is renewed annually; and

WHEREAS, Motorola has submitted a contract to continue to service and maintain the City's Radio equipment for the total sum of $16,033.44; and

WHEREAS, $16,033.44 of the contract amount will be provided from the Palm Beach County Emergency Management Grant; and

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

SECTION 1. The City Council authorizes the Mayor and City Clerk to sign said agreement on behalf of the City.

SECTION 2. The Finance Director is authorized to make monthly payments in the amount of $1,336.12 for a total of $16,033.44 from account number 001-0817-521-0-4601 to Motorola for maintenance of the 800 MHz trucking Radio system.

SECTION 3. This Resolution shall take effect upon its passage and adoption by City Council.

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

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/12/06

RESOLUTION NO. 187-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING FIRE RESCUE TO PURCHASE ONE TAYLOR MADE AMBULANCE IN THE AMOUNT OF $146,395.00 FROM TAYLOR MADE AMBULANCES OF NEWPORT, AR; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT 310-0920-522-6-6451; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council approved funding for the purchase of one new ambulance in the 2006/2007 Fiscal budget; and

WHEREAS, the City can purchase one ambulance from Taylor Made Ambulances of Newport, AR; and

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

Section 1: The purchase of one Taylor Made Ambulance from Taylor Made Ambulances is hereby approved.

Section 2: The Finance Director to make payment to Taylor Made Ambulances in the amount of $146,395.00 for same from account number 310-0920-522-6-6451.

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

PASSED and APPROVED this 20th day of December, 2006

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

VANESSA LEE
CHAIR PRO TEM

(MUNICIPAL SEAL)

NORMA DUNCOMBE
COUNCIL PERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. Wade

SECONDED BY: V. Lee

A. ILES: aye

V. LEE: aye

N. DUNCOMBE: aye

E.WADE: aye

J. JACKSON: aye

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

Date: 12/7/06

RESOLUTION NO. 188-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE ENGINEERING FIRM OF JORDAN JONES & GOULDING TO PREPARE THE SURVEY, DESIGN AND CONTRACT DOCUMENTS FOR RECONSTRUCTION OF WEST 13th STREET BETWEEN AVENUE U AND AVENUE P IN AN AMOUNT NOT TO EXCEED $39,400; AUTHORIZING FINANCE DIRECTOR TO MAKE PAYMENT FROM ACCOUNT NUMBER 310-0716-5412-6355; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, West 13th Street between Avenue U and Avenue P has been identified for improvements; and

WHEREAS, the City desires to make the necessary improvements to West 13th Street identified in the City's Capital Improvement program; and

WHEREAS, The City of Riviera Beach entered into an agreement with Jordan Jones & Goulding for providing civil engineering services.

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

SECTION 1. The engineering firm of Jordan Jones & Goulding is authorized to prepare survey, design and contract documents for reconstruction of West 13th Street between Avenue U and Avenue P.

SECTION 2. The Finance Director is authorized to make payment from paving and drainage account number 310-0716-5412-6355 in an amount not to exceed $39,400.

SECTION 3. This resolution shall take effect immediately upon its passage.

RESOLUTION NO. 188-06
PAGE -2-

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.
APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES AYE

V. LEE AYE

N. DUNCOMBE AYE

E. WADE AYE

J. JACKSON AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

RESOLUTION NO. 189-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING THE BID FOR LANDSCAPING WEST 22ND STREET AND WEST 22ND COURT BETWEEN AVENUE H EAST AND AVENUE F TO CHRIS WAYNE AND ASSOCIATES, INC. AT A COST OF $132,910; AUTHORIZNG THE MAYOR AND CITY CLERK TO EXECUTE THE CONTRACT; AND FURTHER AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT NO. 147-0716-5410-6355; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bids for landscaping West 22nd Street and West 22nd Court between Avenue H East and Avenue F were opened on November 3, 2006; and

WHEREAS, Chris Wayne and Associates, Inc. was the lowest bidder; and

WHEREAS, Chris Wayne and Associates, Inc. meets all the requirements as the lowest responsible bidder.

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

SECTION 1. The bid submitted by Chris Wayne and Associates, Inc. is hereby accepted for $132,910.00.

SECTION 2. The Mayor and City Clerk are authorized to execute the contract.

SECTION 3. The Finance Director is authorized to make payment of $132,910.00 from account number 147-0716-5410-6355.

SECTION 4. The City Manager is authorized to approve change orders in the amount not to exceed 10% of the contract price.

SECTION 5. This resolution shall take affect upon its approval by the City Council.

RESOLUTION NO. 189-06
PAGE -2-

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.
APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

CITY OF RIVIERA BEACH
CONTRACT FOR CONSTRUCTION

This Contract is made as of this _____ day of _____, 2006 by and between the CITY OF RIVIERA BEACH, a Political Subdivision of the State of Florida, by and through its CITY COUNCIL, hereinafter referred to as the CITY, and Chris Wayne and Associates, Inc. [ ] an individual, [ ] a partnership, [x] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is 20-1399029.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide construction services in the area of installation of landscaping and irrigation on West 22nd Street and West 22nd Court between Avenue H East and Avenue F, as more specifically set forth in the Scope of Work detailed in Exhibit "A", attached hereto and made a part hereof.

The CITY'S representative/liaison during the performance of this Contract shall be L. John Samadi, P.E., City Engineer, and telephone no. 561- 845-4061.

ARTICLE 2 - SCHEDULE

A. Time of Completion - Construction work must begin within ten (10) calendar days from the date of receipt of official notice to proceed; provided the CITY has received proof of insurance as set forth in Article 11 and a Performance and Surety Bond as set forth in Article 31 in a form satisfactory to the CITY. Construction work shall be carried on at a rate to insure its full completion within one hundred twenty (120) calendar days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this Contract.

B. Deduction for not completing on time - If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the CONTRACTOR shall pay the CITY, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars ($100) for each day elapsing between the expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in Article 17, herein.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

A. Generally - The CITY agrees to compensate the CONTRACTOR in accordance with the fee proposal set forth in Exhibit "B". The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. The CITY shall not reimburse the CONTRACTOR for any travel costs incurred as a direct result of the CONTRACTOR providing deliverables to the CITY in pursuance of the scope of work contained in Exhibit A, without specific, prior approval of the City

B. Progress Invoices - No later than the 20th day of every month, the CONTRACTOR shall prepare and submit, on a form approved by the CITY'S representative, a detailed estimate and invoice which has been completed from the start of the job up to and including the last day of the preceding month, together with such supporting evidence of the expenditures as required by this Contract.

C. Progress Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the CITY representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. The CITY will pay to the CONTRACTOR ninety percent (90%) of the value based on the CONTRACTOR'S estimate and invoice, as approved by the CITY representative. Invoices will normally be paid within thirty (30) days following the CITY representative's approval.

D. Payment of Expenses - All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of said receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Contract. Long distance telephone calls shall identify the person(s) called, purpose of call, time and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

E. Final Invoice - In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "Final Invoice" on the CONTRACTOR'S final/last billing to the CITY. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR and the CITY shall have no obligations for any other costs or expenses thereafter.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or non current wage rates or due to inaccurate representations of fees paid to outside contractors. The CITY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

This Contract may be canceled by the CONTRACTOR upon thirty (30) days prior written notice to the CITY'S representative in the event of substantial failure by the CITY to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR; provided the CITY fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the CITY, the CONTRACTOR shall:

A. Stop work on the date and to the extent specified.

B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

C. Transfer all work in process, completed work, and other materials related to the terminated work to the CITY.

D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "A", must be made known to the CITY'S representative and written approval must be granted by the CITY'S representative before said change or substitution can become effective.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in their respective field(s).

The CONTRACTOR agrees that it is fully responsible to the CITY for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the CONTRACTOR. Nothing contained herein shall create any contractual relationship between any subcontractor and the CITY.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on CITY premises will comply with all CITY requirements governing conduct, safety and security.

ARTICLE 7 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities and approve all qualifications of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

If subcontractor(s) are used, the CONTRACTOR shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONTRACTOR shall be responsible for the performance of all subcontractors.

ARTICLE 8 – M/WBE PARTICIPATION

Minority/Women-Owned Business Enterprises ("M/WBE") shall have the opportunity to participate in this project. CONTRACTOR is hereby informed that the CITY has established a goal of a minimum of 15% participation of M/WBE. A good faith effort will be made to hire M/WBE.

In keeping with the CITY'S policy, the CONTRACTOR further agrees to hire minority sub-contractors to work on this project.

In accordance with the CITY'S M/WBE Ordinance #2412, as amended, the CONTRACTOR agrees to the M/WBE participation for this Contract and agrees to abide by all provisions of the M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONTRACTOR agrees to maintain all relevant records and information necessary to document compliance with Ordinance #2412, as amended, and will allow the CITY to inspect such records.

ARTICLE 9 - FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONTRACTOR authorized to use the CITY'S Tax Exemption Number in securing such materials.

The CONTRACTOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 10 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the CITY OF RIVIERA BEACH CITY COUNCIL.

ARTICLE 11 - INSURANCE

A. Prior to execution of this Contract by the CITY, the CONTRACTOR 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 CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY'S representative. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.

B. The CONTRACTOR shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of $1,000,000.00 per occurrence.

C. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability, insurance in the amount of $500,000.00 per occurrence to protect the CONTRACTOR 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 Contract, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by or contracting with the CONTRACTOR.

D. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of $500,000.00 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR 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, but not limited to, leased and rented automobiles, whether such operations be by the CONTRACTOR or by anyone, directly or indirectly, employed by the CONTRACTOR.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall. in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the CITY.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONTRACTOR shall specifically include the CITY as an "Additional Insured."

ARTICLE 12 - INDEMNIFICATION

The CONTRACTOR shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the CONTRACTOR, its agents, servants, or employees in the performance of services under this Contract.

The CONTRACTOR further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONTRACTOR not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable.

CONTRACTOR shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

The CONTRACTOR shall defend all actions in the name of the CITY, when applicable. However, the CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of the CONTRACTOR.

Nothing contained in this Article shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The CITY and the CONTRACTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the CITY nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the CONTRACTOR.

ARTICLE 14 - VENUE

This Contract 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. Venue for any and all actions arising from and/or relating to the Contract will be held in Palm Beach County, Florida.

ARTICLE 15-REMEDIES

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE l6 - CONFLICT OF INTEREST

The CONTRACTOR 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 or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONTRACTOR further represents that no person having any such conflicting interest shall be employed for said performance.

The CONTRACTOR shall promptly notify the CITY'S representative, 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 the CONTRACTOR'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONTRACTOR may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the CONTRACTOR. The CITY agrees to notify the CONTRACTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the CONTRACTOR. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONTRACTOR, the CITY shall so state in the notification and the CONTRACTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the CITY by the CONTRACTOR under the terms of this Contract.

ARTICLE 17 – DELAYS AND EXTENSION OF TIME

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractors' fault or negligence, as determined by the CITY, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time.

If the CONTRACTOR is delayed at any time in the process of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY may decide. No extension shall be

made for a delay occurring more than seven (7) days before a claim therefore is made in writing to the Engineer. In the case of continuing cause of delay, only one (1) claim is necessary.

If no schedule or other agreement sets forth the dates by which the drawing(s) shall be furnished, then no claims for delay shall be allowed because of failure to furnish such drawing(s), until two (2) weeks after demand for the drawings and not then unless said claim is reasonable.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

ARTICLE 18 - INDEBTEDNESS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONTRACTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the CITY under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the CITY'S expense shall be and remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

The CITY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S

relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this Contract.

ARTICLE 21 - CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 22 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal business hours, at the CONTRACTOR'S place of business.

ARTICLE 23 - NONDISCRIMINATION

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONTRACTOR shall 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, ancestry, marital status, sexual orientation or handicap.

ARTICLE 24 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR 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 CITY'S representative upon request.

The CONTRACTOR shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or city agency.

ARTICLE 26 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 27 - PUBLIC ENTITY CRIMES

As provided in Sections 287.132-133, Florida Statutes, by entering into this Contract or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 28 - MODIFICATIONS OF WORK

The CITY reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change; (2) notify the CITY of any estimated change in the completion date; and (3) advise the CITY if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the CITY COUNCIL FOR THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 29 - NOTICE

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

Community Development Department

600 West Blue Heron Boulevard

Riviera Beach, FL. 33404

and if sent to the CONTRACTOR shall be mailed to:

Chris Wayne and Associates, Inc.

15863 97th Drive North

Jupiter, Florida 33478

ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the CONTRACTOR agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, that there are no promises or understandings other than those stated herein, and this Contract supersedes all prior oral and written agreements between the parties hereto with respect to the subject matter hereof. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28 - Modifications of Work.

ARTICLE 31 - SPECIAL CONDITIONS

All materials and supplies provided by CONTRACTOR shall be in accordance with the plans and specifications approved by the CITY.

The CONTRACTOR shall furnish bonds and maintain said bonds throughout the duration of the project as provided for in Florida Statutes section 255.01 Et. Seq., covering the faithful performance of the Contract and payment of all obligations arising thereunder. The bonds shall be secured by the CONTRACTOR from a surety company licensed in the State of Florida with an "A-" rating or better in management and a "10" rating or better in strength as rated by Best's Key Rating Guide published by Alfred M. Best Company, Oldwick, New Jersey 08858.

The CONTRACTOR shall be required to provide Surety Bonds in the amount of one hundred percent (100%) of the Contract amount. The required premiums shall be paid for by the CONTRACTOR.

In addition to the above-minimum qualifications, the surety company must meet at least one of the following additional qualifications:

1. The surety company shall hold a current certificate or authority as an acceptable surety of federal bonds in accordance with the United States Department of Treasury Circular 570, Current Revision. The surety company shall provide the CITY with satisfactory evidence that such excess risk has been protected in an acceptable manner.

2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Key Rating Guide: Best's Policy Holders Ratings –A- (minimum); Best Financial Category – Class 1.
3. For projects that do not exceed $500,000.00, the CITY will accept bonds in accordance with Florida Statute section 287.0935.

4. If the surety is declared bankrupt, becomes insolvent, its right to do business in the State of Florida is terminated or it ceases to meet the requirements set forth above, the CONTRACTOR shall within ten (10) working days after notification by the CITY substitute another bond and surety company, at no cost to the CITY, meeting the above requirements.

ARTICLE 32 – INSPECTION OF WORK

The CITY'S representative or the CITY'S Engineer shall at all times have access to work wherever it is, in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

If the specifications, the Engineer's instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the CONTRACTOR shall give the Engineer timely notice of its readiness for inspection. Inspections by the Engineer shall be made promptly and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination, at the CONTRACTOR'S expense.

ARTICLE 33– WARRANTY/GUARANTY

All materials and equipment to be furnished and/or installed by the CONTRACTOR under this Contract as it relates to the installation of landscaping and irrigation on West 22nd Street and West 22nd Court between Avenue H East and Avenue F, for a period of ten years from the date of final acceptance thereof against defective materials, design and workmanship. The CONTRACTOR shall guarantee all of its work, including but not limited to material and workmanship for a period of one year. Upon receipt of notice from the CITY of failure of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the CONTRACTOR or Manufacturer at no expense to the CITY. In the event the CONTRACTOR fails to make the necessary repairs or replacements within thirty (30) days after notification by the CITY, the CITY may accomplish the work at the expense of the CONTRACTOR.

The CONTRACTOR shall provide the CITY with a written warranty of its work and with a copy of the manufacture's warranty as it relates to the materials and parts used to construct.

ARTICLE 34 – PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all work from damage, and shall protect such work and the CITY'S property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the CITY or employees of the CITY, the CONTRACTOR shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

Until acceptance of the work by the CITY, the CITY'S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever, and the CONTRACTOR shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the CITY.

ARTICLE 35 – TIME

Time is of the essence in all respects under this Contract.

ARTICLE 36 - 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 "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract 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 Contract, nor shall such headings affect the meaning or interpretation of this Contract.

ARTICLE 37 - WAIVER

Failure of the CITY to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of the CITY'S right to enforce or exercise said right(s) at any time thereafter.

ARTICLE 38 - PREPARATION

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

ARTICLE 39 - MATERIALITY

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

ARTICLE 40 - REPRESENTATIONS/BINDING AUTHORITY

CONTRACTOR has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Electrical Consulting Services, Inc. hereby represents to the CITY that he/she has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

ARTICLE 41 - EXHIBITS

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

ARTICLE 42 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS

This Contract consists of construction drawings and this contract. The CONTRACTOR agrees to be bound by all the terms and conditions set forth in this Contract and construction drawings and specifications. To the extent that there exists a conflict between this Contract and the construction drawings, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

ARTICLE 43 - LEGAL EFFECT

This Contract shall not become binding and effective until approved by the CITY COUNCIL OF THE CITY OF RIVIERA BEACH or its designated representative.

ARTICLE 44 - NOTICE OF COMPLAINTS OR SUITS

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

ARTICLE 45 – SURVIVABILITY

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

ARTICLE 46 - DEFAULT

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the CITY which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;

b. The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or

c. The filing of a petition by or against the CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the CONTRACTOR or the CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of the CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for the CONTRACTOR or for the CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONTRACTOR shall provide written notice to the CITY of the occurrence of any event of default within ten (10) days of CONTRACTOR'S receipt of notice of any such default.

ARTICLE 47 - WAIVER OF SUBROGATION

CONTRACTOR hereby waives any and all rights to Subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the CONTRACTOR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the CONTRACTOR enter into such an agreement on a pre-loss basis.

ARTICLE 48 - RIGHT TO REVIEW

The CITY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES OF THE CITY OF RIVIERA BEACH, FLORIDA has made and executed this Contract on behalf of the CITY, and the CONTRACTOR has hereunto set its hand the day and year above written.

CITY OF RIVIERA BEACH

BY: _____
MICHAEL D. BROWN,
MAYOR

CONTRACTOR
CHRIS WAYNE AND ASSOCIATES, INC.

BY: _____
ANN-MARIE C. DELLAGO
TITLE: VICE PRESIDENT

ATTEST:

BY: _____
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND CONDITIONS

BY: _____
MARY MCKINNEY, DIRECTOR
COMMUNITY DEVELOPMENT

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____
PAMALA H. RYAN,
CITY ATTORNEY

Date: 12/7/06

IN WITNESS WHEREOF, the PARTIES OF THE CITY OF RIVIERA BEACH, FLORIDA has made and executed this Contract on behalf of the CITY, and the CONTRACTOR has hereunto set its hand the day and year above written.

CITY OF RIVIERA BEACH

BY: _____
MICHAEL D. BROWN,
MAYOR

CONTRACTOR
CHRIS WAYNE AND ASSOCIATES, INC.

BY: _____
ANN-MARIE C. DELLAGO
TITLE: VICE PRESIDENT

ATTEST:

BY: _____
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND CONDITIONS

BY: _____
MARY MCKINNEY, DIRECTOR
COMMUNITY DEVELOPMENT

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____
PAMALA H. RYAN,
CITY ATTORNEY

Date: _____

EXHIBIT "A"

SCOPE OF WORK

Installation of landscaping and irrigation on West 22nd Street and West 22nd Court between Avenue H East and Avenue F.

EXHIBIT "B"

SCHEDULE OF PAYMENTS

The Scope of Work to be completed by CONTRACTOR as defined in Exhibit "A" is based on 90% completion and compensation for the work tasks stated herein and shall be paid in accordance with Article 3 and the following Schedule of Values, which is attached herein and which forms a part of Exhibit B.

EXHIBIT B

BID PROPOSAL

You are invited
to Bid in the Following: **W. 22nd Street and W. 22nd Court streetscape improvements**

Note: Estimated unit prices include contractor's overhead and profit. Estimated unit price for palms, trees, shrubs and grouncovers includes staking, fertilization and backfill mixture. Estimated unit sod prices includes necessary clearing, grubbing and grading.

The bidder having visited the site of the proposed project and/or familiarized himself with the local conditions, nature and extent of the work, and having carefully examined the set of plans, terms and conditions herein, proposes to furnish:

Item No.	Quantity	Unit	Description	Unit Price	Total
1	73	EA	Coconut Palms (Cocus nucifera)	1,275.00	93,075.00
2	27	EA	Mahogany (Swietenia mahagoni)	425.00	11,475.00
3	525	EA	Bougainvillea Silhouette	11.00	5,775.00
4	9500	SF	Sod (St. Augustine Floritam)	.36	3,420.00
5	49	EA	Irrigation (Each residence) UNIT PRICE BASED ON TYPICAL 60'x10'	225.00	11,025.00
6	28	CY	Mulch	55.00	1,540.00
7	1	LS	Watering	5,000.00	5,000.00
8	11	EA	Removal of existing palms	100.00	1,100.00
9	1	EA	~~Remove~~ Trim existing oak tree	100.00	100.00
10	4	EA	Remove other trees (Cedar/tabebuia)	100.00	400.00

TOTAL BID $ 132,910.00

Alternate 1.
Decorative
street sign
(6) Six $ 6,000.00 BLACK POWDER COAT FINISH
+ 2000.00 FOR COLOR MATCH EXISTING LIGHT FIXTURES.

Submitted by: Chris Wayne and Associates, Inc. 10/23/2000
Contractor Date

Address: 15863 97th Dr. N., Jupiter, FL 33478

Telephone: (561) 746-4225

Fax: (561) 746-8991

E-mail: cwa@chriswayneinc.com

Signature: Ann Marie C. Delley

Bid bond 5% required if bid amount exceeds $50,000.00

RESOLUTION NO. 190-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF RIVIERA BEACH AND PALM BEACH COUNTY FOR RECEIVING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS IN THE AMOUNT OF $238,115; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT AND AUTHORIZING THE FINANCE DIRECTOR TO TRANSFER FUNDS AND SET UP A BUDGET; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 21, 2005, per Resolution Number 271-05, the City Council approved the submittal of an application to Palm Beach County for receiving funds under the Community Development Block Grant program; and

WHEREAS, County staff has recommended to the County Commission approval of the application in the amount of $238,115; and

WHEREAS, The City and Palm Beach County desire to enter into an agreement to implement the Northwest Neighborhood Strategy Area Phase VII Project, reconstruction of West 32nd Street from Avenue R to Avenue O.

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

SECTION 1. The agreement between the City of Riviera Beach and Palm Beach County for receiving Community Development Block Grant Fund is approved.

SECTION 2. The Mayor and City Clerk are authorized to execute the agreement.

SECTION 3. The Finance Director is authorized to transfer $261,885 from Paving & Drainage Contingency as follows:

Transfer from:		
301-0716-519-0-5999	CRB	$261,885
Transfer to:		
301-0716-541-2-6355	Street Improvement	$206,885
301-0716-541-2-3104	Professional Services	$55,000

SECTION 4. The Finance Director is authorized to set up a budget in the CDBG Fund in the amount of $238,115 for West 32nd Street Improvement as follows:

Revenue:		
108-00-337415	CDBG Grant 07	$238,115
Expenditure:		
108-0716-541-2-6355	Street Improvement	$238,115

SECTION 5. This resolution shall become effective upon its passage and approval by the City Council.

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RESOLUTION NO. 190-06
PAGE -3-

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.
APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

RESOLUTION NO. 191-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE ENGINEERING FIRM OF JORDAN JONES & GOULDING TO PREPARE THE SURVEY, DESIGN AND CONTRACT DOCUMENTS FOR RECONSTRUCTION OF WEST 32ND STREET BETWEEN AVENUE R AND AVENUE O IN AN AMOUNT NOT TO EXCEED $34,200; AUTHORIZING FINANCE DIRECTOR TO MAKE PAYMENT FOR SAME FROM ACCOUNT NUMBER 301-0716-5412-3104; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, West 32nd Street between Avenue R and Avenue O has been identified for improvements under the Community Development Block Grant program; and

WHEREAS, the City desires to make the necessary improvements to West 32nd Street identified in the Interlocal Agreement between the City and Palm Beach County for receiving CDBG funds; and

WHEREAS, The City of Riviera Beach entered into an agreement with Jordan Jones & Goulding for providing civil engineering services.

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

SECTION 1. The engineering firm of Jordan Jones & Goulding is authorized to prepare survey, design and contract documents for reconstruction of West 32nd Street between Avenue R and Avenue S.

SECTION 2. The Finance Director is authorized to make payment from paving and drainage account number 301-0716-5412-3104 in an amount not to exceed $34,200.

SECTION 3. This resolution shall take effect immediately upon its passage.

RESOLUTION NO. 191-06
PAGE -2-

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.
APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES AYE

V. LEE AYE

N. DUNCOMBE AYE

E. WADE AYE

J. JACKSON AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

RESOLUTION NO. 192-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE CITY MANAGER TO SUBMIT, ON BEHALF OF THE CITY OF RIVIERA BEACH, AN APPLICATION TO PALM BEACH COUNTY FOR RECEIVING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR ROADWAY RECONSTRUCTION IN THE AMOUNT OF $240,000 FOR FISCAL YEAR 2007-08.

WHEREAS, Palm Beach County receives Community Development Block Grant Funds from the U.S. Department of Housing and Urban Development for the implementation and execution of certain activities and projects; and

WHEREAS, Palm Beach County is soliciting proposals for its Community Development Block Grant Program for fiscal year 2007-08; and

WHEREAS, The City of Riviera Beach has entered into an interlocal agreement with Palm Beach County for implementation of community development projects; and

WHEREAS, The City of Riviera Beach has conducted a public meeting, obtained citizens input on community development projects and ranked those projects.

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 City Council hereby approves the submission of an application to Palm Beach County for receiving Community Development Block Grant Funds for fiscal year 2007-08.

SECTION 2. That these funds be used for improving West 33rd Street between Avenue R and Avenue O in the Northwest Neighborhood Strategy Area.

SECTION 3. That this project shall be priority number one for funding consideration.

SECTION 4. That the City Manager is authorized to execute the application.

SECTION 5. That this resolution shall become effective upon its passage.

(The remainder of this page is intentionally left blank.)

RESOLUTION NO. 192-06
PAGE -3-

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.
APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: V. LEE

SECONDED BY: E. WADE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	NAY
E. WADE	AYE
J. JACKSON	NAY

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

RESOLUTION NO. 193-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE ALICA 1 REPLAT; AUTHORIZING THE MAYOR, CITY CLERK, AND CITY ENGINEER TO SIGN THE SAID REPLAT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Code of Ordinances requires that all property be platted before the issuance of any City building permit; and

WHEREAS, the applicant, Lee S. Vogel with Richard Shepard and Associates, has prepared a Replat entitled Alicia 1 located on the Northwest corner of West 30th Street and Avenue M.

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

SECTION 1. The Replat entitled Alicia 1 is hereby approved.

SECTION 2. The Mayor, City Clerk, and City Engineer are authorized to sign the said Replat.

SECTION 3. The said Replat shall be recorded with the Clerk of Circuit Courts of Palm Beach County.

SECTION 4. This resolution shall take effect upon its passage.

PASSED AND APPROVED 20th **DAY OF** December **2006**

RESOLUTION NO. 193-06
PAGE 2

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
J. JACKSON	AYE
E. WADE	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/12/06

RESOLUTION NO. 194-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE MEDITERRANEA PHASE 1 REPLAT; AUTHORIZING THE MAYOR, CITY CLERK, AND CITY ENGINEER TO SIGN THE SAID REPLAT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Code of Ordinances requires that all property be platted before the issuance of any City building permit; and

WHEREAS, the applicant, Randolph/Cornerstone joint Venture, LLC with SFRN, Inc. Surveying, has prepared a Replat entitled Mediterranea Phase 1 located east of Military Trail.

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

SECTION 1. The Replat entitled Mediterranea Phase 1 is hereby approved.

SECTION 2. The Mayor, City Clerk, and City Engineer are authorized to sign the said Replat.

SECTION 3. The said Replat shall be recorded with the Clerk of Circuit Courts of Palm Beach County.

SECTION 4. This resolution shall take effect upon its passage.

PASSED AND APPROVED 20TH DAY OF DECEMBER 2006

RESOLUTION NO. 194-06
PAGE 2

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
J. JACKSON	AYE
E. WADE	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/12/06

RESOLUTION NO. 195-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY FLORIDA, REQUESTING THE CITY COUNCIL TO APPROVE THE ATTACHED TECHNICAL CORRECTIONS TO THE 2005-2006 BUDGET; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, throughout the fiscal year some transactions that should be taken care of through City Council action due to various reasons. These transactions that impact the budget and adjusting corrections and additions need to be made and approved by the City Council; and

WHEREAS, those items are attached to this resolution and upon approval staff will make said corrections.

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 City of Riviera Beach City Council approves the technical corrections for fiscal year 2005-06 and hereby modifies the budget in various funds as attached.

SECTION 4. That this Resolution shall take effect upon its passage.

PASSED AND APPROVED this 20TH day of DECEMBER, 2006

RESOLUTION NO. 195-06
PAGE 2

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

(MUNICIPAL SEAL)

VANESSA LEE
CHAIR PRO-TEM

NORMA DUNCOMBE
COUNCILPERSON

ATTEST:

JAMES "JIM" JACKSON
COUNCILPERSON

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

ELIZABETH "LIZ" WADE
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES :	AYE
V. LEE:	AYE
N. DUNCOMBE:	AYE
J. JACKSON:	AYE
E. WADE:	AYE

REVIEWED AS TO LEGAL SUFFICENCY

PAMALA H. RYAN, CITY ATTORNEY

Date: 12/12/06

C:\southfloridamaterialscontribution\JET

RESOLUTION NO. 196-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE SERVICE AGREEMENT WITH MOTOROLA, INC. TO PROVIDE A TURNKEY SOLUTION FOR A RADIO TOWER AND MICROWAVE RADIO SYSTEM, AT A COST OF $799,616.00, AUTHORIZING THE MAYOR AND CITY CLERK TO SIGN A SERVICE AGREEMENT FOR THE SAME; AND AUTHORIZING PAYMENT FROM ACCOUNT NO. 602-0203-521-0-6455; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City solicited request for proposals from professional firms for a Communication and Microwave Tower Turnkey Solution; and

WHEREAS, the City established a request for proposal evaluation committee which reviewed all proposals and selected Motorola as the top ranking firm; and

WHEREAS, On June 7, 2006 City of Rivera Beach Council awarded Motorola Corporation the bid to replace the Radio Communications and Microwave Tower System; and

WHEREAS, Staff is recommends that the Riviera Beach City Council approve the service agreement with Motorola Corporation to provide for a turnkey solution Radio Communications and Microwave Tower; and

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

SECTION 1: The City Council authorizes Mayor and City Clerk to enter into a service agreement with Motorola, Inc. to install a Turnkey Radio Communications and Microwave Tower System.

SECTION 2: The Finance Director is authorized to make payment from Account # 602-0203-519-0-6455 in the amount of $ 799,616.

SECTION 3: This Resolution shall take effect upon its passage & approval by the City Council.

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.

RESOLUTION NO. 196-06
PAGE -2-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/14/06

RESOLUTION NO. 197-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE PURCHASE OF NATIONAL FIRE PROTECTION ASSOCIATION SELF-CONTAINED BREATHING APPARATUS (SCBA) EQUIPMENT FROM FISHER SCIENTIFIC IN THE AMOUNT OF $122,396.85; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT IN THE AMOUNT OF $122,396.85 FROM ACCOUNT NUMBER 001-0920-5220-6455; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, During the 2006/07 Budget Session the City Council approved Fire Rescue's request to purchase additional self-contained breathing apparatus equipment and appropriated $123,000.00 for the purchase; and

WHEREAS, Fisher Scientific was awarded the contract by the State of Florida Department of Management Services to provide equipment and supplies based on competitive bid; and

WHEREAS, Fisher Scientific will allow Fire Rescue to piggy/back on the contract with the State of Florida Department of Management Services for the purchase of self-contained breathing apparatus equipment.

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

Section 1: Fire Rescue is authorized to purchase NFPA self-contained breathing apparatus equipment for a cost of $122,396.85.

Section 2: The Finance Director is authorized to make payment for NFPA self-contained breathing apparatus to Fisher Scientific for $122,396.85 from account number 001-0920-5220-6455 for same.

Section 3: The resolution shall take effect upon its passage and adoption by the City Council.

RESOLUTION NO. 197-06
PAGE 2

PASSED and APPROVED this 20th day of December, 2006

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

VANESSA LEE
CHAIR PRO TEM

(MUNICIPAL SEAL)

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. Wade

SECONDED BY: V. Lee

A. ILES: aye

V. LEE: aye

N. DUNCOMBE: aye

E. WADE: aye

J. JACKSON: aye

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

PURCHASE AGREEMENT

THIS AGREEMENT made and entered into this 20 day of December, 2006 by and between **Fisher Scientific Company L.L.C.** hereinafter referred to as **"Independent Contractor,"** whose mailing address is **2000 Park Lane Drive, Pittsburgh, PA 15275** and the **CITY OF RIVIERA BEACH, FLORIDA,** a municipal corporation, hereinafter referred to as **"City,"** whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

WHEREAS, the State of Florida Department of Management Services through competitive Bid No. 2-490-000-Q awarded Fisher Scientific Company L.L.C. the bid for **Laboratory Supplies and Equipment,** by Contract No. 490-03-1-6 to wit, hereinafter referred to as the "Contract", the terms of which are incorporated herein by reference; and

WHEREAS, the Independent Contractor was the successful responsible bidder to sell and implement Labor and Materials to the State of Florida Department of Management Services; and

WHEREAS, the City desires and is authorized to participate in the purchasing and utilization of Labor and Materials for self-contained breathing apparatus (SCBA) equipment from the Independent Contractor as provided in the contract.

In consideration of the mutual covenants and promises set forth herein, the parties to this Agreement do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the State of Florida Department of Management Service Contract No. 490-03-1-6.

2. To the extent that there exist a conflict between the quote and this Agreement, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

3. That the City does hereby retain the services of the Independent Contractor for the purpose of labor and materials self-contained breathing apparatus (SCBA) equipment as set forth more fully in Exhibit "A" attached hereto and incorporated herein by reference.

4. Work must begin upon the date of receipt of official notice from the City to proceed and shall be carried on at a rate to insure its full completion within ninety (90) days from the date of official notice to proceed, the rate of progress and time of completion being essential conditions of this Agreement. All materials and equipment to be purchased under the terms of this Agreement shall be delivered to the City no later than ninety (90) days after receipt of official notice to supply such materials and equipment, the timely deliver of said materials and equipment being essential conditions of this Agreement.

5. If through no fault of the using entity, the self-contained breathing apparatus (SCBA) equipment is delivered which is not acceptable, Independent Contractor shall be responsible for correcting and replacing and shall bear all costs associated with above. In addition, if the equipment is delivered and needs to be altered for a reason outside the control of the using entity Independent Contractor shall have two attempts to remedy. Any misfits or alterations which cannot be adjusted satisfactorily to the user will be rejected and Independent Contractor shall supply new equipment within normal manufacturer's lead times, provided that Independent Contractor will use good faith efforts to work with the manufacturer to accelerate this schedule as much as possible. The City reserves the right to cancel this contract without cause upon thirty (30) days written notice (provided, however that once an order is placed by Independent Contractor to its supplier, the City will be responsible for any cancellation or restocking fees if the order can be cancelled or for the full price of the item if the order cannot be cancelled); or sooner with cause. Nonperformance or unsatisfactory performance shall be considered grounds for immediate termination; provided that the City will provide the Independent Contractor with fifteen (15) days notice of the breach during which time the Independent Contractor may cure the default.

6. The City agrees to compensate the Independent Contractor a $123,396.85 in accordance with the fee proposal set as forth in Exhibit "A. The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. The City shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the City in pursuance of the scope of work contained in Exhibit "A".

7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Agreement from any federal, state, regional, county, or city agency.

8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

9. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

10. The Independent Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

11. All of the Independent Contractor's personnel (and all Subcontractors) while on City premises will comply with all City requirements governing conduct, safety and security.

12. The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall <u>not</u> be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City.

13. Prior to execution of this Agreement by the City, the Independent Contractor 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 Independent Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Agreement.

14. The Independent Contractor shall maintain, during the life of this Agreement, commercial general liability, including contractual liability insurance in the amount of $500,000 per occurrence to protect the Independent Contractor 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 Agreement, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of $500,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor 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-owed automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

16. The Independent Contractor shall maintain, during the life of this Agreement, 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 440.02.

17. Intentionally Left Blank.

18. The Independent Contractor shall indemnify and save harmless and defend the City, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action to the extent they arise from any negligent act or omission of the Independent Contractor, its agents, servants, or employees in the performance of services under this Agreement. Nothing in this provision shall be construed or interpreted as a consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

19. Intentionally Left Blank.

20. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions. Upon the Independent Contractor's request, the City shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, the Agreement Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the City or its employees, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for a reasonable time. In the case of continuing cause of delay, only one (1) claim is necessary.

21. The Independent Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than as specifically provided for in this Agreement.

22. The City reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto up until the time that Independent Contractor places an order for the items to its supplier at which point the ability to make modifications or alterations to the order will be contingent upon the supplier's agreement to such modifications. In such event, the Independent Contractor will cooperate with the City in attempting to effectuate such desired changes. Upon receipt by the Independent Contractor of the City's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Agreement. If the City so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the City's decision to proceed with the change.

23. If the City elects to make the change, the City shall initiate an Agreement Amendment and the Independent Contractor shall not commence work on any such change until such written amendment is signed by the Independent Contractor and approved and executed by the City Manager for the City.

24. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Agreement shall be guaranteed by the Independent Contractor for a period of one year from the date of final acceptance thereof by the City against defects in design, workmanship, or materials. Upon receipt of notice from the City of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the City. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the City, the City may accomplish the work at the expense of the Independent Contractor.

25. The Independent Contractor shall continuously maintain adequate protection of all work from damage, and shall protect such work and the City' property from injury or loss arising during the term of the Agreement. Except for any such damage, injury, or loss which may be directly due to errors caused by the City or

employees of the City, the Independent Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

26. Until acceptance of the work by the City, the City's property shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the City.

27. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, 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 Agreement will be held in Palm Beach County.

28. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

29. If any action, whether in law, equity or otherwise, is brought for any dispute, disagreement, or issue of construction, declaration or interpretation arising hereunder whether relating to the Agreement's execution, validity, the obligations provided therein, or performance of this Agreement, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

30. Time is of the essence in all respects under this Agreement.

31. Failure of the City to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of City's right to enforce or exercise said right(s) at any time thereafter.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

AGREEMENT WITH THE CITY OF RIVIERA BEACH

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

CITY OF RIVIERA BEACH

BY: _____
MICHAEL D. BROWN
MAYOR

INDEPENDENT CONTRACTOR

BY: _____
Name: Krishn Nagar
Title: Vice President, Fisher Scientific Company L.L.C.

APPROVED AS TO F
Fisher Legal Departm

ATTEST:

BY: _____
CARRIE E. WARD, MASTER MUNICPAL CLERK
CITY CLERK

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: _____
PAMALA H. RYAN
CITY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

BY: _____
TROY F. PERRY
FIRE CHIEF

DATE: _____

RESOLUTION NO. 198-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA APPROVING THE ACTIVITIES FOR THE DR. MARTIN LUTHER KING JR. CELEBRATION AND ESTABLISHING A BUDGET IN THE AMOUNT OF $17,000.00; FURTHER AUTHORIZING THE TRANSFER OF $10,000.00 FROM THE GENERAL FUND CONTINGENCY ACCOUNT 001-0203-519-0-5999 TO THE DR. MARTIN LUTHER KING JR. CELEBRATION FUND; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Staff is requesting that the City Council approve the Dr. Martin Luther King Jr. Celebration activities for 2007 and establishing a budget for same; and

WHEREAS, Staff has determined that a budget in the amount of $17,000.00 shall be established with $10,000.00 being transferred from General Fund Contingency.

WHEREAS, the additional funding will be raised through sponsorship, activities, fees from the parade and advertisements for the souvenir journal.

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

Section 1: The activities for the Dr. Martin Luther King Jr. Celebration attached hereto is hereby approved.

Section 2: The Finance Director is hereby authorized to transfer $10,000.00 from General Fund Contingency account number 001-0203-519-0-5999 to the MLK Celebration Fund.

Section 3: The Finance Director is authorized to set up a budget in the MLK Celebration Fund (138) as follows:

REVENUE		
138-00-366907	MLK Donations	$2,000.00
138-00-347216	MLK Activity Fees	$5,000.00
138-00-381001	Transfer from General Fund	$10,000.00
	Total	$17,000.00

EXPENDITURE		
138-1235-572-0-1203	Overtime	$9,000.00
138-1235-572-0-3106	Professional Service Other	$2,000.00
138-1235-572-0-4701	Printing and Binding	$2,000.00
138-1235-572-0-5201	Operating Supplies Other	$4,000.00
	Total	$17,000.00

Section 4: This resolution shall take effect upon its passage and adoption by the City Council.

RESOLUTION NO. 198-06
PAGE 2

PASSED and APPROVED this 20TH day of DECEMBER, 2006

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

VANESSA LEE
CHAIR PRO TEM

(MUNICIPAL SEAL)

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: V. LEE

A. ILES: AYE

V. LEE: AYE

N. DUNCOMBE: AYE

E. WADE: AYE

J. JACKSON: AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN/CITY ATTORNEY

DATE: 12/13/06

RESOLUTION NO. 199-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ACCEPTING THE GRANT FUNDS FROM THE OFFICE OF THE ATTORNEY GENERAL – VICTIMS OF CRIME ACT (VOCA) FOR THE VICTIM ADVOCATE PROGRAM IN THE AMOUNT OF $45,070; TO CONTINUE WITH CRISIS RESPONSE SERVICES FOCUSING IN AREAS OF HOMICIDE, DOMESTIC VIOLENCE, CHILD DEATHS, AND ELDERLY VICTIMIZATION; AUTHORIZING THE MAYOR TO EXECUTE CERTIFICATE OF ACCEPTANCE OF SUB GRANT AWARD; AUTHORIZING THE FINANCE DIRECTOR TO SET-UP THE BUDGET IN FUND 125 AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Office of the Attorney General has established a Victims of Crime Act (VOCA) Grant Program; and

WHEREAS, the City of Riviera Beach has been awarded funds in the amount of $45,070.00 which requires a twenty-five percent (25%) match of $11,268.00 which will be provided through in-kind services from the City for a total of $ 56,338.00; and

WHEREAS, these funds will be used for continuing the department's crisis response services, crisis intervention and assisting investigators.

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 City Council accepts the Grant Funds on behalf of the City, and authorizes the Mayor's execution of the Certificate of Acceptance of Sub-grant Award.

SECTION 2: The Finance Director is authorized to set up the budget as follows:

Fund 125	Account Number	Account Description	Amount
Revenue	125-00-334296		$45,070.00
Expenditure	125-0817-521-0-1201	Reg. Salary & Wages	$34,958.00
Expenditure	125-0817-521-0-1401	FICA	$2,674.00
Expenditure	125-0817-521-0-4001	VOCA-Communications	$522.00
Expenditure	125-0817-521-0-4101	VOCA-Travel & Training	$2,020.00
Expenditure	125-0817-521-0-4201	VOCA-Postage	$468.00
Expenditure	125-0817-521-0-5201	VOCA-General Supplies	$3,628.00
Expenditure	125-0817-521-0-6454	VOCA-Office Equip & Furn	$800.00
		TOTAL	$45,070.00

SECTION 3: This Resolution shall take effect immediately upon its passage and approval by the City Council.

PASSED AND APPROVED this 20TH day of DECEMBER, 2006

RESOLUTION NO. 199-06
PAGE -3-

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

ABSENT
JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. Wade

SECONDED BY: V. Lee

A. ILES	aye
V. LEE	aye
N. DUNCOMBE	aye
E. WADE	aye
J. JACKSON	absent

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/12/06

RESOLUTION NO. 200-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AUTHORIZING FIRE RESCUE TO PURCHASE SEVENTY (70) SCOTT EZ RADIOCOM II INTERFACES FROM FISHER SCIENTIFIC IN THE AMOUNT OF $27,035.40; AND AUTHORIZING THE FINANCE DEPARTMENT TO MAKE PAYMENT FOR SAME FROM ACCOUNT 001-0920-5220-6405; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, During the 2006/07 Budget Session the City Council approved Fire Rescue's request to purchase seventy (70) Scott EZ Radiocom II interfaces and appropriated $28,000.00 for the purchase; and

WHEREAS, Fire Rescue recently purchased Scott EZ Radiocom II interfaces equipment from Fisher Scientific; and

WHEREAS, Fisher Scientific is the sole source vendor for the Scott EZ Radiocom II equipment.

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

Section 1: The City Council of the City of Riviera Beach does hereby authorize Fire Rescue to purchase seventy (70) Scott EZ Radiocom II interfaces from Fisher Scientific in the amount of $27,035.40.

Section 2: The City Council authorizes the Mayor and Finance Director to make payment for the Scott EZ Radiocom II interfaces to Fisher Scientific from account number 001-0920-5220-6405.

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

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PASSED and APPROVED this 20TH day of DECEMBER, 2006

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

VANESSA LEE
CHAIR PRO TEM

(MUNICIPAL SEAL)

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT
JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: V. LEE

SECONDED BY: N. DUNCOMBE

A. ILES: AYE

V. LEE: AYE

N. DUNCOMBE: AYE

E. WADE: AYE

J. JACKSON: ABSENT

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 12/7/06

RESOLUTION NO. 201-06
WAS OMITTED

RESOLUTION NO. 202-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA SUPPORTING THE APPLICATION OF THE SCHOOL DISTRICT OF PALM BEACH COUNTY FOR FUNDING UNDER THE FEDERAL MAGNET SCHOOLS GRANT ASSISTANT PROGRAM SPONSORED BY THE UNITED STATES DEPARTMENT OF EDUCATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the School District of Palm Beach County will be applying for a grant under the Federal Magnet Schools Grant Assistance Program sponsored by the United States Department of Education; and

WHEREAS, the grant will provide much needed resources to enhance professional development, heighten the learning environment and provide the opportunities for students' reading proficiency at five schools-Conniston Middle School, Forest Park Elementary, Pahokee Elementary, Dr. Mary McCloud Bethune Elementary, and Egret Lake Elementary; and

WHEREAS, the City Council of the City of Riviera Beach supports the School District's efforts to assist in improving student learning at Dr. Mary McCloud Bethune Elementary School located in Riviera Beach, as well as the other schools identified for inclusion in the grant.

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

SECTION 1. The City Council supports the School District's application for a grant under the Federal Magnet Schools Grant Assistance Program sponsored by the United States Department of Education.

SECTION 2. This resolution shall take effect upon its passage and approval by the City Council.

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER, 2006.

RESOLUTION NO. 202-06
PAGE 2

APPROVED:

MICHAEL D. BROWN
MAYOR

ANN ILES
CHAIRPERSON

ATTEST:

CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

VANESSA LEE
CHAIR PRO TEM

NORMA DUNCOMBE
COUNCILPERSON

ELIZABETH "LIZ" WADE
COUNCILPERSON

JAMES "JIM" JACKSON
COUNCILPERSON

MOTIONED BY: E. WADE

SECONDED BY: N. DUNCOMBE

A. ILES	AYE
V. LEE	AYE
N. DUNCOMBE	AYE
E. WADE	AYE
J. JACKSON	AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____