

**FOURTH AMENDMENT TO GROUND LEASE – RETAIL
OCEAN MALL**

This Fourth Amendment to Ground Lease – Retail (“Fourth Amendment”) is made and entered into this ____ of _____, 2016, by and between the **CITY OF RIVIERA BEACH**, a municipal corporation existing under the laws of the State of Florida (the “Landlord” or “City”), whose mailing address is 600 West Blue Heron Blvd., Riviera Beach, FL 33404, and **GSF FLORIDA RETAIL LLC**, a Delaware limited liability company (the “Tenant”), whose mailing address is 1290 Avenue of the Americas, Suite 914, New York, NY 10104.

WITNESSETH:

WHEREAS, on or about December 18, 2006, the City, as Landlord, entered into a retail ground lease (as amended, the “Lease”) for certain premises known as the Ocean Mall (the “Premises”) with OMRD, LLC, a Delaware limited liability company, as Tenant (“OMRD”); and

WHEREAS, the City, OMRD, and the Riviera Beach Community Redevelopment Agency also entered into a Disposition and Development Agreement dated December 18, 2006 (“DDA”), setting out the responsibilities for the development of the Premises and certain surrounding City owned property; and

WHEREAS, on or about April 24, 2013, GSF Florida Retail LLC became the Tenant under the Lease by virtue of being the winning bidder at the foreclosure sale held in the foreclosure action on the lien of the leasehold mortgage originally held by Branch Banking and Trust Company and subsequently assigned to GSF Trust 2011-1; and

WHEREAS, on or about May 15, 2013, the City and GSF Florida Retail LLC (collectively “the parties”) entered into the First Amendment to Ground Lease – Retail (the “First Amendment”) to facilitate further extension to complete the Phase I construction required of the Tenant by the DDA to May 31, 2014; and

WHEREAS, on or about January 15, 2014, the parties entered into a Second Amendment to Ground Lease – Retail (the “Second Amendment”): (a) to release to the City a portion of the land previously included in the Leased Premises and to revise the legal description of the Premises; (b) to extend certain deadlines for completion of certain improvements at the Premises pursuant to the DDA; and (c) to provide certain rights to a lender under any leasehold mortgage given by Tenant on the Premises; and

WHEREAS, on or about March 19, 2014, the parties entered into a Third Amendment to the Ground Lease – Retail (the “Third Amendment”) which: (a) amended Section 4(d) of the Lease by granting to the City all rights to parking revenue; (b) in Article 36, extended the Initial Phase I Completion Date to June 30, 2015, with the final extension being June 30, 2016, after payment of \$41,666.66 per month for the twelve (12) month delay; and (c) granted, in a new

Article 37, a six (6) year parking easement which allowed Tenant to be in compliance with the parking requirements of the Lease; and

WHEREAS, the parties desire to enter into this Fourth Amendment to the Ground Lease – Retail (the “Fourth Amendment”), to further amend the Lease by providing for a set annual lease payment, by placing restrictions on assignments, by granting a permanent parking easement on the Premises, and by establishing a parking revenue system on the Premises.

NOW, THEREFORE, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration receipt of which is hereby acknowledged, the City and Tenant agree as follows:

Section 1. That Article 2 entitled “RENT” is hereby amended as follows:

Section 2 (a) entitled “Rent” is **DELETED** in its entirety and replaced with a new section 2(a) entitled “Rent.”

2. RENT.

(a) Rent. The Landlord shall receive annual lease payments in the amount of \$63,000.00 payable on a monthly basis on the first day of each month in the amount of \$5,250.00 (“Base Rent”), commencing on April 1, 2016. The Base Rent shall be adjusted each January 1, during the term of the Lease by the annual Percentage Increase in the “Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average-All Items” published by the Bureau of Labor Statistics of the United States Department of Labor. If the index shall cease to be published, there shall be substituted therefore a price index (or combination of indices, which such adjustments as may be required to afford compatibility), published by the Bureau of Labor Statistics or its successor agency, which is intended to be representative of substantially similar changes in the cost of living. “Percentage Increase” shall mean the percentage equal to a fraction, the numerator of which shall be the change in the Index from the third month preceding the Lease Commencement Date to the third month preceding the current anniversary of the Lease Commencement Date. The fraction’s denominator shall be the Index for the third month preceding the Lease Commencement Date. The Base Rent will not be reduced, even in the event of a decline in the CPI-U.

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

Section 2(b) entitled “Net Lease” is amended as follows (underlined is added; ~~stricken through~~ is deleted):

(b) Net Lease. It is the purpose and intent of Landlord and Tenant that the ~~Percentage Base~~ Base Rent herein reserved shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the ~~Percentage Base~~ Base 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~~ Base 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.

Section 2(c) entitled "Method and Place of Payment; Late Payment" is amended as follows (underlined is added; ~~stricken through~~ is deleted):

(c) Method and Place of Payment; Late Payment. Until further notice by Landlord to Tenant, ~~Percentage~~ Base 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.

Section 2. That Article 10 entitled "ASSIGNMENT AND SUBLETTING" subsection (b) is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

* * *

(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. Notwithstanding the foregoing and without limitation on other grounds for which the City may reasonably withhold or delay consent, it shall specifically be deemed reasonable by the parties for the City to refuse consent to any sale, assignment or transfer of this Lease on the basis that the assignee, buyer or transferee (either personally or in the case of an entity, either the entity or any of its principals, members or shareholders) has a history of any actually filed litigation in which the assignee, buyer or transferee (either personally or in the case of an entity, either the entity or any of its principals, members or shareholders) has been adverse to the City, 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 (sent by overnight courier company delivery to the City's representative), then such consent shall automatically, immediately and irrevocably be deemed given on the thirty-first (31st) day following the delivery of Tenant's request for such consent.

Section 3. That Article 11 entitled "CASUALTY" subsection (c) is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

* * *

(c) No Rent Abatement. Except for Tenant's right to terminate this Lease as provided in Section 11 2 (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~~ Base 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.

Section 4. That Article 13 entitled "HOLDOVER" is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

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~~ Base Rent equal to 125% of the ~~Percentage~~ Base Rent in effect at the time of such termination or expiration of the Lease, in lieu of any other or additional charges or damages.

Section 5. That Article 14 entitled "DEFAULT AND REMEDIES" subsections (a)(i) and (b) are hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

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

* * *

(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 herein below), 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.

Section 6. That Article 15 entitled "TITLE AND POSSESSION" is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

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.

Section 7. That Article 21 entitled "NOTICES" is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

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 ~~OMRO, Inc., 4300 Catalfumo Way, Palm Beach Gardens, FL 33410, and OMRO 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: Mare Sinensky, Esq., GSF Florida Retail LLC, c/o Garrison Investment Group, 1290 Avenue of the Americas, Suite 914, New York, New York 10104,~~ 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).

Section 8. That Article 37, entitled "PARKING EASEMENT GRANT" (from the 3rd Amendment to Lease) shall be amended as follows (underlined is added; ~~stricken through~~ is deleted).

37. PARKING EASEMENT GRANT.

The City grants Tenant the right to use that certain parcel of property owned by the City and shown on Exhibit "A", attached to this ~~Third~~ Fourth Amendment and incorporated herein by reference, for the purpose of ingress, egress and parking (the "Additional Parking Area") for the benefit of the Leased Premises, Tenant, Tenant's Subtenants, their guests and invitees, and the public for a period of six (6) years from the effective date of this Third Amendment (the "Parking Easement Term"). to run concurrently and coterminously with the Term of the Lease. Tenant agrees to improve the existing improved portion of the Additional Parking Area, as shown on Exhibit A, prior to the certificate of occupancy being issued for completion of Phase I. ~~The Additional Parking Area must be improved~~ in a manner reasonably consistent with the existing parking areas for the Leased Premises, including re-paving, re-sealing, re-stripping, numbering spaces, repairing curbing, sidewalk and island areas, replacement of lighting

components and replacement of landscaping elements. Tenant agrees to improve the unimproved portion of the Additional Parking Area also in a manner reasonably consistent with the existing parking areas for the Leased Premises, including paving, striping, numbering spaces, irrigating and landscaping. Tenant agrees to maintain the Additional Parking Area in accordance with the Lease for the duration of the Parking Easement Term. Prior to the end of the Parking Easement Term, Tenant shall procure and obtain alternative additional parking areas for the benefit of the Premises to enable Tenant to provide the necessary accessible parking spaces required by Section 4(d) of the Lease. If GSF remains the Tenant at the end of the Parking Easement Term, it shall have to provide 24 parking spaces to be compliant with Section 4(d) of the Lease. At the end of the Parking Easement Term Tenant shall have to provide an additional 26 parking spaces to be compliant with Section 4(d) of the Lease.

In addition, Tenant agrees to install a parking revenue system in the Additional Parking Area and in the parking areas of the Leased Premises at its sole expense, including all ancillary costs, for the benefit of the City, in the form of a kiosk parking system of a type selected by the Landlord and approved by Tenant, in their reasonable determination. Landlord shall have a period of sixty (60) days from the effective date of this Fourth Amendment to propose and select a reasonable and practical kiosk parking system with the approval of Tenant. Landlord and Tenant shall work together in good faith to select a mutually agreeable kiosk parking system. In the event Landlord is unable to make a selection that is reasonable and acceptable to Tenant within the sixty (60) day period, Tenant shall select and install a kiosk parking system for the Additional Parking Area and the Leased Premises. The kiosk parking system installed shall have no fewer than six (6) and no more than ten (10) kiosks. On completion Tenant shall turn over the control of the kiosk parking system to the City as a “turn-key” operation upon completion of the installation. Tenant agrees to maintain the Additional Parking Area in accordance with the Lease for the duration of the Term, and Landlord agrees to maintain the kiosk system.

The parties agree and confirm that upon the granting of the Additional Parking Area under this Section, the Tenant shall be in compliance with Section 4(d) of the Lease.

Section 9. That a NEW Article 38, entitled “TIMEFRAME TO COMPLETE ADDITIONAL PARKING AREA” shall be added to the Lease as follows:

As for the Additional Parking Area, Tenant shall have until March 1, 2017, to complete the improvements required in Section 37, above. In the event Tenant fails to complete the improvements required in Section 37, Tenant shall be granted additional monthly extensions to complete the improvements to the Additional Parking Area by payment of \$58,333.33 for each month after March, 2017, that Tenant does not complete the improvements required in Section 37, not to exceed 12 months (the “Additional Parking Area Extensions”). The extension fee payments required for each of the Additional Parking Area Extensions shall be paid on the 1st of every month, as needed. In the event the improvements required in Section 37 are not completed, as evidenced by a Certificate of Completion, by March 1, 2018, the Lease shall automatically terminate and the City shall promptly give the Leasehold Mortgagee, if any, notice of such termination, in accordance with Section 25(d). Leasehold Mortgagee, if any, shall have the right to enter into a new lease with the City in accordance with Section 25(d).

Section 10. That a NEW Article 39, entitled “COMPLETION OF PHASE I DEVELOPMENT” shall be added to the Lease, and Article 36 of the Lease shall be revised accordingly, as follows:

Notwithstanding the requirements and definitions set forth in Article 36 (added by the First Amendment and modified by the Second and Third Amendments), for purposes of this Fourth Amendment, the Phase I Development to be completed by Tenant in accordance with the Lease and the DDA shall be deemed to consist of two parts, the first of which is completion of the retail space in the Leased Premises shown on Exhibit A as “Proposed Building B”, and the second of which is the completion of improvements to the Additional Parking Area set forth in Section 37, above. Upon issuance by the City of a Certificate of Completion for Building B, the first part of the Phase I Development shall be complete and the monthly extension payments in the amount of \$41,666.66 shall no longer be required. Completion of the second part of the Phase I Development shall proceed in accordance with Articles 37 and 38, above. Upon completion of the improvements to the Additional Parking Area and issuance by the City of a Certificate of Completion for the second part of the Phase I Development, the Phase I Development shall be complete in its entirety and the Phase I Completion Date shall have occurred, as required by the Lease and the DDA.

Section 11. In all other respects, the remainder of the Lease, as amended by the First, Second, and Third Amendments, shall remain in full force and effect, and the parties agree to perform all duties and obligations as set forth therein. In the event there is a conflict between the Lease, the First, Second, Third and/or Fourth Amendments, the provisions of this Fourth Amendment shall control.

[Signatures appear on the following page(s).]

**FOURTH AMENDMENT TO GROUND LEASE – RETAIL
OCEAN MALL**

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

LANDLORD

CITY OF RIVIERA BEACH

BY: _____
Thomas A. Masters
Mayor

TENANT

GSF FLORIDA RETAIL LLC, a
Delaware limited liability company

BY: _____
Name: _____
Title: _____

ATTEST:

BY: _____
Claudene Anthony, CMC
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Pamala H. Ryan, B.C.S.
City Attorney

DATE: _____

WITNESSES FOR LANDLORD

Print Name: _____

Print Name: _____

WITNESSES FOR TENANT

Print Name: _____

Print Name: _____

Purchasing Initials _____

EXHIBIT A

Additional Parking Area

[attached]