

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.

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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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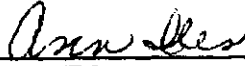
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APPROVED:




MICHAEL D. BROWN
MAYOR



ANN ILES
CHAIRPERSON

ATTEST:



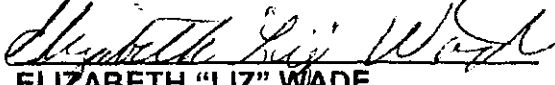
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

ABSENT

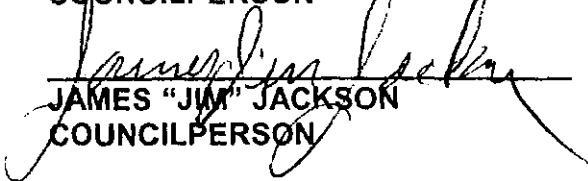
VANESSA LEE
CHAIR PRO TEM



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 company¹ ("Tenant"), and CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation ("Landlord" or "City").

WITNESSETH:

WHEREAS, 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 "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.

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 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 unexpired 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 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 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 complied 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 statute 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 than 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 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.

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.

WITNESS:

CITY OF RIVIERA BEACH, FLORIDA

By: Michael D. Brown
Michael D. Brown, Mayor

ATTEST:

By: Carrie E. Ward
Carrie E. Ward, City Clerk

As to Form and Legal Sufficiency

By: Pamala H. Ryan
Pamala H. Ryan, City Attorney

By: _____
Mark Mustian, Special Counsel

By: William E. Wilkins
William E. Wilkins, City Manager

WITNESSES:

OMRD, LLC,
a Delaware limited liability company

By: Daniel Catalfumo
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

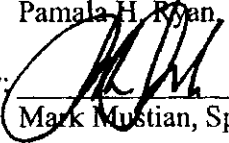
WITNESS:

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: _____
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

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-FS1407733v22091925.010100