

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

This Third Amendment to Ground Lease – Retail (“Third Amendment”) is made and entered into as of March \_\_\_\_, 2014, by and between the **CITY OF RIVIERA BEACH**, a municipal corporation existing under the laws of the State of Florida (the “City”), and **GSF FLORIDA RETAIL LLC**, a Delaware limited liability company (the “Tenant”).

**WITNESSETH:**

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

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

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

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

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

**WHEREAS**, the City has agreed to grant Tenant the right to use a parcel of real property owned by the City and adjacent to the Premises, for parking spaces for the benefit of the Premises and to enable Tenant to comply with the requirements of Section 4(d) of the Lease, and to amend Section 4(d) with respect to any revenues derived from the use of the parking areas; and

**WHEREAS**, the parties hereby agree to enter into this Third Amendment to: (a) grant certain rights to Tenant in City property for compliance by Tenant with the parking requirements in the Lease; (b) to amend Section 4(d) with respect to any revenues from any parking meters

installed on the Premises and on the additional parking areas; (c) to allow the Tenant sufficient time to obtain additional accessible parking for the benefit of City residents, Subtenants and others using the Premises, their guests and invitees; and (d) to extend the Initial Phase I Completion Date based on the delay in commencement of construction caused by issues arising on parking at the Premises.

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

**Section 1.** That Section 4(d) of the Lease, entitled "USE" is hereby amended as follows:

(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 be unreasonably withheld,~~ place meters or other charges on those utilizing such parking spaces, all revenue from any charges imposed pursuant to this section 4(d) subparagraph (ii) hereof to be split equally between Tenant and Landlord. ~~shall belong to the City.~~ Further, the 24 parking spaces located on and provided by the parcel excluded from the Premises pursuant to the Second Amendment shall be included in the calculation of the number of parking spaces required by the Lease. The inclusion of the 24 parking spaces shall be used in determining the compliance with the minimum 400 spaces referenced herein.

**Section 2.** That Article 36 of the Lease (which was added in the First Amendment and amended in the Second Amendment), entitled "FINAL EXTENSION AND PAYMENT" is hereby amended as follows:

### 36. FINAL EXTENSION AND PAYMENT

By payment of \$150,000.00 to the City simultaneously with the execution and delivery of this Second Amendment to Ground Lease, Tenant will be granted an additional extension to complete the Phase I Development as defined by the DDA ("Phase I") to March 28, 2015 ("Initial Phase I Completion Date"). The parties acknowledge payment of the \$150,000.00. Tenant will be granted a further additional extension to complete the Phase I Development to June 30, 2015. Further, the Tenant shall be granted additional monthly extensions to complete Phase I by payment of \$41,666.66 for each month after ~~March 28~~ June 30, 2015, that Tenant does not complete Phase I, not to exceed twelve (12) months (the "Phase I Completion Date Extensions"). The extension fee payments required for each of the Phase I Completion Date Extensions, if utilized by the Tenant, shall be paid to the City (as Additional Rent) beginning ~~April 1, July 1, 2015,~~ and shall be paid on the 1<sup>st</sup> of every month thereafter, as needed. (The Initial Phase I Completion Date and any applicable Phase I Completion Date Extensions shall be collectively referred to as the "Phase I Completion Date"). Tenant shall complete Phase I on or before the Phase I Completion Date. In the event Phase I is not completed as evidenced by a

certificate of occupancy issued on Phase I, by the Phase I Completion Date, the Lease shall automatically terminate and the City shall promptly give the Leasehold Mortgagee notice of such termination, in accordance with Section 25(d). Leasehold Mortgagee shall have the right to enter into a new lease with the City in accordance with Section 25(d).

Tenant shall be granted a further extension to complete Phase I beyond the Phase I Completion Date, only if the cause of the failure to complete Phase I is based upon an "Unavoidable Delay" as defined in Section 35(o) of the Lease. In the event any delay in the completion of the Phase I Development, as defined by the DDA, beyond the Phase I Completion Date, is caused by an "Unavoidable Delay" as defined in Section 35(o) of the Lease, Tenant shall be given additional time to complete Phase I, provided that Tenant shall diligently pursue completion of Phase I. In the event Tenant shall not diligently pursue completion of Phase I Development, as defined by the DDA, after the Unavoidable Delay has ceased to exist, the extension of time given to complete Phase I as a result of an Unavoidable Delay shall cease, and upon notice by the City, the Lease shall immediately terminate, and the Tenant shall surrender the property to the City without any Notice of Default or cure periods required.

**Section 3.** That a new Section 37 shall be added to the Lease, entitled "PARKING EASEMENT GRANT" as follows:

Section 37. PARKING EASEMENT GRANT.

The City grants Tenant the right to use that certain parcel of property owned by the City and shown on Exhibit "A", attached to this Third Amendment and incorporated herein by reference, for the purpose of ingress, egress and parking (the "Additional Parking Area") for the benefit of the Premises, Tenant, Tenant's Subtenants, their guests and invitees, and the public for a period of six (6) years from the effective date of this Third Amendment (the "Parking Easement Term"). Tenant agrees to improve the Additional Parking Area prior to the certificate of occupancy being issued for completion of Phase I. The Additional Parking Area must be improved in a manner reasonably consistent with the existing parking areas for the Premises, including paving, striping, irrigating and landscaping. Tenant agrees to maintain the Additional Parking Area in accordance with the Lease for the duration of the Parking Easement Term. Prior to the end of the Parking Easement Term, Tenant shall procure and obtain alternative additional parking areas for the benefit of the Premises to enable Tenant to provide the necessary accessible parking spaces required by Section 4(d) of the Lease. At the end of the Parking Easement Term, Tenant shall have to provide an additional 26 parking spaces to be compliant with Section 4(d) of the Lease.

**Section 4.** In all other respects, the remainder of the Lease, as amended by the First Amendment, the Second Amendment and this Third Amendment, shall remain in full force and effect, and the parties agree to perform all duties and obligations as set forth therein. In the event there is a conflict between the Lease, the First Amendment, Second Amendment and this Third Amendment, the provisions of this Third Amendment shall control.

[Signatures appear on the following page(s)]

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OCEAN MALL**

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

**LANDLORD**

**TENANT**

CITY OF RIVIERA BEACH

GSF FLORIDA RETAIL LLC, a  
Delaware limited liability company

BY: \_\_\_\_\_  
Thomas A. Masters  
Mayor

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Carrie E. Ward, MMC  
City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

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

DATE: \_\_\_\_\_

WITNESSES FOR LANDLORD

WITNESSES FOR TENANT

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

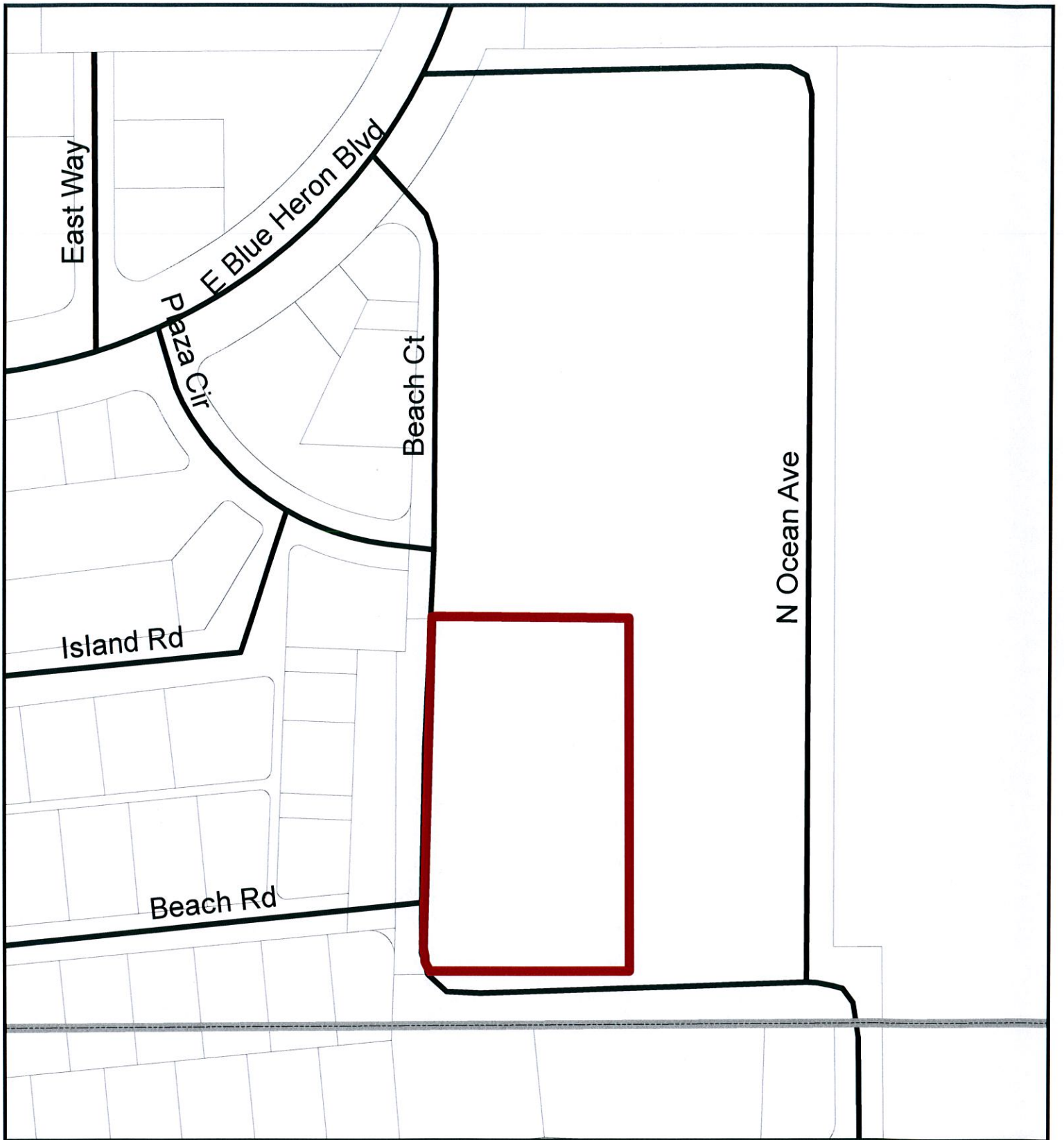
\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**EXHIBIT A**

Additional Parking Area

[attached]



# Exhibit A

Ocean Mall Additional  
Parking Area  
(aka Phase II)



## Legend

-  Additional Parking Area
-  Parcels
-  Roads
-  City Boundary

