Memorandum

To: Jonathan Evans

CC: Andrew DeGraffenreidt,III;

From: Richard Jarolem

Date: 4/11/2017

Re: Ocean Mall

It is my understanding that the matter before the Council tomorrow night is:

1. Whether or not the City approves the transfer of the Ocean Mall lease from GSF to RH2401 Ocean, LLC; and
2. Whether the City must execute a Lease Amendment correcting the legal description to conform to the parties understanding under the Fourth Lease Amendment.

In addition to the foregoing, I have received and reviewed the e-mail from Ms. White dated April 9, 2017 wherein she asserts (amongst other things) that the City may declare GSF in Breach of the Lease based upon a purported failure to perform under the COMMUNITY BENEFITS PARTNERSHIP AGREEMENT which is incorporated into The Development and Disposition Agreement ("DDA") in Article 7 and as Exhibit "C" to the DDA.

I will address Ms. White's arguments concerning the assertion of the capability of the City to declare GSF in Breach of the DDA and/or the Community Benefits Partnership Agreement.

Can GSF's Lease be terminated based upon a breach of the DDA/Community Benefits Partnership Agreement? – NO- GSF cannot be held to be in breach of the DDA/Community Benefits Partnership Agreement and its Lease may not be terminated based upon any such allegation.

Putting it simply, GSF cannot be in breach of the DDA or the Community Benefits Partnership Agreement. Specifically, in connection with the First Lease Amendment the City and GSF Agreed that the DDA had expired and was terminated. This rendered any potential breach of the DDA null and void. A party cannot be in breach of something that no longer

exists. I have attached a copy of the 1st Page of the First Lease Amendment showing the relevant language in the 8th WHEREAS clause as Exhibit "A".

Further supporting the notion that issue is null and void is the fact that the City issued two estoppel letters to GSF confirming that as of September 2013 and March 25, 2014 the "Tenant is not in default of any of the terms of the Lease". An estoppel letter is a document issued by the Landlord that is intended to be relied upon by the Tenant and/or a potential Lender to the Tenant and/or a potential purchaser of the Tenant's Leasehold interest. Thus, as of September 2013 and reaffirmed as of March 25, 2014 the City stated that the "Tenant was not in default of any of the terms of the Lease". (I have attached a copy of a memo referencing the September estoppel and the actual March 2014 Estoppel as composite Exhibit "B".)

Conclusion on asserting Breach- GSF is not in breach of the DDA and the City has affirmatively so stated no less than two times in subsequent estoppel letters.

Issue- 1 Can the City deny the approval of the Transfer of the Lease to RH 2401- Maybe, however the City's rejection or approval may be a nullity as the transfer may be deemed "approved" under the Language of the Lease.

Section 10(a) of the Lease provides that the Tenant must obtain the City's consent to transfer the Lease. The City shall not unreasonably deny the consent and once the request is made in writing, the City has 30 days to make its determination. If the City does not, per the terms of the Lease, the Lease transfer is deemed accepted.

According to Mr. De Graffenreidt at the last meeting, GSF provided the City Notice in October 2016 and the City did not reject the transfer timely. Therefore as a matter of contract law, the transfer is deemed approved

Notwithstanding the right to deem the transfer accepted, RH 2401 does not wish to go forward with the transaction unless they are actually approved by the Council.

The approval may not be a "legal" requirement, but rather a term requirement between GSF and RH 2401.

It is questionable if this requirement to be approved by RH 2401 renews the Council's option to deny the assignment. Regardless of whether it does or does not; I would state that any such denial of RH 2401 should be predicated ON A REASONABLE BASIS FOR THE SPECIFIC DENIAL OF THIS PROPOSED TENANT. THIS DOES NOT INCLUDE "AN UNHAPPINESS WITH THE LEASE THAT HAS BEEN PREVIOUSLY NEGOTIATED" AS A PROPER BASIS TO DENY RH 2401.

Issue 2- Does the City have the right to reject the request to clarify the legal description in the 4th Lease Amendment. – I do not believe so.

Mr. Degraffenreidt does not believe so and I concur with his opinion. Specifically, in the 3rd and 4th Lease Amendments, the City and GSF negotiated to permit GSF to use the "hotel site" for parking for the duration of the Lease. The area that was to be included was shown on a picture delineating the area. I can find no Lease provision which would permit the withholding of a legal description of the agreed upon property contained in the picture. In fact, the leasehold mortgage provisions of the Lease, Section 25(i) specifically states that "Landlord agrees and acknowledges that it will enter into any amendments to this Lease in order to reflect any other commercially reasonably terms that the Leasehold Mortgagee may from time to time require". The requirement of an accurate legal description would certainly fall under this provision.

Issue 3- As a final issue, although moot for tomorrow night's purposes as GSF is not in default under the Lease, I have prepared a detailed response with relevant documents and references to Ms. White's April 9, 2017 e-mail, delineating the appropriate history of the DDA, the Lease and the Lease Amendments.

Ms. White seems to attribute characteristics to me and staff which we simply do not have. To those who know me, I always refer to myself as the "sword of my master". I do not create policy. That is for the Council. My job is to execute the policy created by the Council. Both I and staff, throughout the negotiation and re-negotiation process with GSF have tried to execute the Council's policy and have presented each Lease Amendment to the Council for its review and approval. We have always understood that the approval and/or rejection of these proposed amendments rest unapologetically with the Council. Nevertheless, and without seeking shelter behind others, I have attempted to answer Ms. White's questions directly and offer the insight as to why the City did what it did (and why it did not do certain things) in each situation presented.

Attached as composite Exhibit "C" is Ms. White's e-mail with my responses in blue; Section 14(a)(iv), Section 14(a)(v), Section 14(a)(vi) of the Lease, and Section 35(d) of the Lease; Article 7 of DDA and Sections 13.01(a) and 13.01(c) of the DDA; and Mr. Skyer's financial projections for the Ocean Mall .

I hope this memo helps to clear things up.

Exhibit B

FIRST AMENDMENT TO GROUND LEASE – RETAIL OCEAN MALL

This First Amendment to Ground Lease – Retail ("Amendment") is made and entered into as of May 15, 2013, 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 (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 in two phases (Phase I and Phase II) and certain surrounding City owned property; and

WHEREAS, the DDA set out certain obligations within Section 5.02, with respect to construction of the Ocean Mall and 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, immediately after the foreclosure sale on the leasehold mortgage, the Tenant paid the City $300,000 to extend the construction completion date of Phase I under the DDA on the Premises to May 31, 2013;

WHEREAS, the parties hereby agree and acknowledge that Phase II of the DDA was terminated on or about May 21, 2013;

WHEREAS, the parties hereby agree to enter into this Amendment to facilitate a further extension to ~~complete the Phase I construction~~ required of the Tenant by the DDA; and

WHEREAS, the parties hereby agree that notwithstanding the extension being given under the Lease to complete the Phase I construction defined under the DDA through May 31, 2014, the DDA itself has expired by its terms on or about May 31, 2013 and is therefore also deemed terminated.

EXHIBIT
A

CITY OF RIVIERA BEACH • P.O. BOX 10682 • RIVIERA BEACH, FLORIDA 33419

CITY ATTORNEY'S OFFICE INTER-DEPARTMENTAL COMMUNICATION

MEMORANDUM

TO: RUTH C. JONES, CITY MANAGER

FROM: PAMALA H. RYAN, B.C.S., CITY ATTORNEY PHR

DATE: MARCH 25, 2014

RE: LANDLORD ESTOPPEL CERTIFICATE: OCEAN MALL

This is the second "Landlord Estoppel Certificate" as presented by Attorney Wayne Richards on behalf of Florida Retail LLC for execution by the City. You executed a similar letter in September 2013. You are attesting to the fact that all matters listed in the estoppel certificate are true.

Thank you for your attention to this matter.

Attachment

PHR:syj

LANDLORD ESTOPPEL CERTIFICATE (REAFFIRMED)

Landlord: City of Riviera Beach, Florida

Tenant: GSF Florida Retail LLC, a Delaware limited liability company

Premises: 2401 – 2643 North Ocean Avenue, Riviera Beach, Florida

Use: Shopping Center known as the Ocean Mall

Landlord states as follows:

1) Tenant leases the Premises under that certain Ground Lease – Retail agreement dated as of December 18, 2006, as modified by a First Amendment to Ground Lease—Retail Ocean Mall dated as of May 15, 2013, by a Second Amendment to Ground Lease—Retail Ocean Mall dated as of January 15, 2014, and by a Third Amendment to Ground Lease—Retail Ocean Mall dated as of March 19, 2014 (collectively, the "Lease").

2) Rental under the Lease is paid annually and has been paid through 2013 with 2014 annual rent not yet due. Rent is calculated annually pursuant to Section 2 of the Lease.

3) Landlord has consented to Tenant's assignment of the Lease to TJAC Singer Island LLC, a Florida limited liability company.

4) Tenant is not in default of any of the terms of the Lease.

5) The Lease is in full force and effect and there have been no modifications or amendments to the Lease, except as noted in paragraph 1 above.

Dated: March 25, 2014.

City of Riviera Beach, Florida, as Landlord

By: _____
Ruth Jones, City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Pamala Hanna Ryan, City Attorney

To: City Council Chair Davis, Vice Chair Anderson, Council Johnson, Council Hubbard and Council Pardo

From: Tina M. White, Homestead Property Taxpayer

Date: April 9, 2017

Subject: Ocean Mall **Give Away** of its most valuable asset-prime ocean front property for the Next 40 Years

Did you know that GSF or assignee's Ocean Mall Ground Lease annual rent of a **mere $63,000,** translates to a **measly ninety-seven cents ($.97)** x **65,000 square feet** for the City's most **valuable asset-prime ocean front property/dirt (Ocean Mall)**?

The Lease entitled the City to 4% of the Gross Revenue. We obtained the $63,000.00 based upon 80% Occupancy @ current market rate. The real value has always been the right to collect the parking revenues, which the City obtained in negotiations with GSF. The original Lease prevented the City from imposing a parking revenue system and under special events would have had to obtain permission from the Tenant and split the revenue.

If you look at Paul Skyer's numbers, there is simply no real room to negotiate higher on the % of rent. As shown in his spreadsheets, the property operates at minimal margins or at a loss based on his numbers.

Why is it **fiscally sound** for the elected officials to **terminate** GSF's Ocean Mall Ground Lease for **contract breaches**?

Every part of the argument on why it is fiscally sound, is based upon the improper predicate that there is a breach of the Lease. This entire predicate is incorrect.

The only alleged potential breach is based upon a purported failure by OMRD to comply with a Community Benefits Participation Agreement Contained in Article 7, of the DDA.

THE CITY HAS NO RIGHT TO TERMINATE THE LEASE BASED ON A PURPORTED BREACH OF THE COMMUNITY BENEFITS PARTNERSHIP AGREEMENT CONTAINED IN SECTION 7 OF THE DDA. I NEED TO BE EXTREMELY CLEAR ON THIS POINT.

I. **The DDA was terminated per agreement on May 31, 2013 per the FIRST LEASE AMENDMENT. As part of the negotiations which were undertaken in order to obtain value and avoid litigation without a clear positive outcome as a result of the mandatory extensions of time which were required to be given to cure any default which could not be cured in 30 days under Section 14(a)(iv) of the Lease.**

As of May 31, 2013 there cannot be a breach of an agreement that no longer exists.

In fact, after the First Lease Amendment the City executed 2 estoppel letters: One in September 2013 and One in March 2014 attesting to the fact that as of that date "Tenant is not in default of any of

the terms of the Lease". An estoppel letter is a letter issued by the Landlord that is intended to be relied upon by the Tenant and/or third parties who may be interested in lending and/or taking over the Lease.

II. For the Sake of Discussion, even if the May 31, 2013 termination of the DDA had not occurred, OMRD's failure to perform under the COMMUNITY BENEFITS PARTNERSHIP AGREEMENT CANNOT CONSTITUTE A BREACH OF THE LEASE AS A MATTER OF LAW.

It is undeniable that the actual terms of the Lease govern the obligations of the parties under the Lease. Section 14 (a) of the Lease defines an "Event of Default" under the Lease. If whatever facts you are seeking to apply does not fall under an "Event of Default", it cannot be "an Event of Default" and cannot form the basis of "Event of Default".

"EVENTS OF DEFAULT" UNDER THE LEASE ARE DELINEATED UNDER SECTION 14(a) OF THE LEASE. THEY ARE AS FOLLOWS (Paraphrased with comments on applicability):

14(a)(i)- Tenant fails to make payment of percentage rent. **GSF has not done this.**

14(a)(ii)- failure to pay the costs, maintenance, taxes (the Triple Net). **GSF has not done this.**

14(a)(iii)- Fails to maintain insurance. **GSF has not done this.**

14(a)(iv)- Breach a **Lease covenant** and fails to cure within 30 days, or longer of cannot be cured within 30 days. **GSF has not done this.**

14(a)(v)- **Tenant fails to perform under Section 13.01(a) of the DDA which results in the Termination of the DDA under Section 14.01 of the DDA.**

Section 13.01(a) of the DDA is the failure to commence construction of PHASE I by the construction commencement date. This is inapplicable to GSF as at the point it took over, construction was commenced and the only remaining piece of PHASE I was to complete the demolition and rebuild of the 7-11 building.

The relevant portion of Section 14.01 of the DDA to 13.01 (a) of the DDA provides that in the event of a breach of 13.01(a), the City could terminate the DDA. As stated above, at the time GSF took over, the City could not terminate the Lease based upon Section 13.01 of the DDA as construction was commenced.

14(a)(vi)- **Tenant fails to perform under section 13.01(c) of the DDA which results in the Termination of the DDA under Section 14.01 of the DDA.**

Section 13.01(c) of the DDA required Substantial Completion of Phase I by "X" date.

This was an actual potential breach condition when GSF took over the property. However, due to the language of the Lease, it was highly likely that GSF would be afforded additional and virtually unlimited time to cure the breach so long as it was moving forward with reasonable diligence.

Specifically, under Section 13.01(c) of the DDA, Substantial Completion was not a well defined term. In addition, if the City issued a Default Notice for this breach, under the Lease and DDA, GSF would have been required to be afforded "the time reasonably necessary to cure the default if it was not capable of being completed in 30 days" *See* Sections 14(a)(iv) of the Lease and Section 13.01 (d) of the DDA. If the City attempted to terminate the Lease and take the property back for its failure to complete the demolition and rebuilding of the 7-11 building, in all likelihood GSF would have gotten additional time to complete and would have not been required to pay the City anything to obtain the additional time.

Furthermore, if the City litigated and lost on this issue, the City would have had to pay its own attorney's fees as well as GSF's pursuant to Section 20 of the Lease which provides for the payment of the prevailing party's attorney's fees resulting in an actual loss to the City if it decided to litigate the failure to complete breach.

The lack of a clear victory in litigation based upon the language of the Lease; GSF's ability to cure without making any payments to the City should the City litigate; and the very real possibility of losing the ligation and having to actually pay GSF's attorney's fees in a losing effort, was the exact reason the City engaged in the negotiations.

The threat of declaring a breach and terminating the Lease served as the City's official position in negotiating with GSF for the First Lease Amendment, discussed below.

It should always be noted that instead of collecting nothing and potentially losing the lawsuit, the City: Acquired over $1.3 million in cash; plus obtained a stabilized and predictable income stream not based on Tenant performance but instead based upon 80% occupancy at current market rates plus CPI adjustments that it can use to borrow and pay for another $3 million loan; plus acquired the strip of land to the CRA; plus acquired the unfettered right to meter parking and collect revenue which is estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE; plus got GSF to pay for the meter system.

14(a)(vii) Tenant admits in writing, that it is generally unable to pay its debts. **This has never been applicable to GSF.**

14(a)(viii) Tenant makes an assignment for the benefit of creditors. This is a statutory state-level bankruptcy. **GSF has not done this.**

14(a)(ix)- Files for Chapter 11 bankruptcy. **GSF has not done this**.

14(a)(x)- Files for bankruptcy liquidation. **GSF has not done this**.

14(a)(xi) A judgment and levy is entered against GSF in excess of $2 million. GSF has not done this. **GSF has not done this**.

14(a)(xii)- GSF abandons the Leased Premises. **GSF has not done this.**

14(a)(xiii) if Tenant does any act, or other circumstance occurs, which this Lease expressly provides is an Event of Default hereunder. **GSF has not done this.**

Furthermore, Section 35(c) of the Lease expressly provides that "This instrument shall constitute the entire Lease unless otherwise hereafter modified by both the 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 the Lease).

The Exhibits to the Lease were:

a. Legal description of the Leased Premises – Exhibit "A".
b. Permitted exceptions to title- Exhibit "B"
c. Streets and sidewalks to be abandoned- Exhibit "C"

THE DDA WAS NOT AN EXHIBIT TO THE LEASE AND AS WILL BE SHOWN, SECTION 7 CANNOT FORM THE BASIS OF A DEFAULT EVEN IF THE DDA WAS NEVER TERMINATED.

THE DDA REFERENCES IN THE LEASE:

The DDA is referenced in the **Whereas clauses of the Lease**, but it is not referenced as "an exhibit" to the Lease and the language "incorporated herein by reference" was not used in those clauses. **Therefore by the clear and unambiguous language of the lease, the entire DDA is not "part of the lease" under section 35(c) of the lease.**

As noted above, part of the DDA is, in fact, included in the Lease. Specifically, Sections 14(a)(v) and Section 14(a)(vi) of the Lease include Sections 13. 01(a) and 13.01(c) of the DDA. However, as explained above, GSF was not in breach of Sections 14(a)(v) of the Lease and the City negotiated as opposed to litigating section (14)(a)(vi).

Restated, as clearly evidenced by the Lease terms, a defined "Event of Default" could not occur under the Lease for any breach of the Community Benefits Partnership Agreement between OMRD and the City as that was contained in Article 7 of the DDA and not included or referenced in Sections 13.01(a) or 13.01(c) of the DDA and was not a delineated "Event of Default" under Section 14(a)(xiii) of the L Lease.

SO, DESPITE THE FACT THAT THE DDA WAS TERMINATED ON MAY 31, 2013 - IF WE GO TO THE ACTUAL LANGUAGE OF THE LEASE; IT IS CLEAR BY THE EVERY TERMS OF THE LEASE THAT OMRD'S FAILURE TO PERFORM UNDER THE COMMUNITY BENEFITS PARTNERSHIP AGREEMENT CANNOT FORM THE BASIS OF AN "EVENT OF DEFAULT" OR "BREACH" OF THE LEASE.

1. It gives the City the legal leverage to **negotiate** a Ground Lease based on **commercial market rate** at a minimum of **$6** x 65,000 square feet x 40 years=**$15,600.00** for the City's most **valuable**

asset-prime ocean front property/dirt (Ocean Mall); which **recoups** the taxpayers' investment of **$10.4 M.**

The $10.4 million is **owed to the City by the CRA (NOT OMRD OR GSF)** and will be recouped from CRA revenue. This was and remains the "deal" since its inception. This loan is not part of the Lease monies that OMRD or GSF was ever required to pay back.

2. The elected officials have a **fiduciary duty** to **terminate breached contracts**, especially ones that contain language to make **1% of hard construction cost contributions** to the City, and to contract and hire locally-African Americans; as contained in the City and OMRD's Community Benefits Partnership Agreements executed December 18, 2006, which **legally required GSF** to **strictly comply** in the construction of **Building B** and **Parking Lot** in **Phase I** left uncompleted by OMRD in 2013.

OMRD's failure to abide by the Community Benefits Partnership Agreement cannot constitute a breach of the Lease as a matter of law as per the 1st Lease Amendment and the Language of the actual Lease.

As far as a fiduciary duty, it should not go unnoticed that had the City brought such litigation and did not prevail, it would have received nothing from GSF and would have had to pay GSF the costs of litigation. Instead the City received over $1.3 million in cash; got a strip of land back from GSF for the CRA; obtained the completion of the project; and obtained the rights to meter parking and receive all revenues which is estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.

As to the parking issues and shortage of spots, there was a requirement for 400 spaces. The plans submitted showed 400 spaces. The City signed off on the parking and never conducted a hard count. Thus, if litigation were to ensue over that issue, there was a real possibility of waiver of the condition by the City and or estoppel by the City as they accepted the completed parking lot without verifying the actual number of spots. Thus once again, the City successfully negotiated the 3rd Lease Amendment as opposed to litigating with a real possibility of losing and having to pay for GSF's legal fees.

3. Did you know on March 2, 2016 **(Amendment 4) Atty. Richard Jarolem**, who the taxpayers pay at **$350** per hour, could have advised the elected officials there were **legal grounds** to **terminate** GSF's Ground Lease for failing **(BREACHING)** to comply the **Community Benefits Partnership Agreement**, which required GSF to demonstrate good faith efforts of awarding **25%** of construction contracts to **African Americans** for the construction of **Building B** and **Parking Lot**?

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
b. As discussed above, in March 2, 2016 there were no legal grounds to declare a breach of the Lease by any purported failure to comply with the DDA (which included the Community Benefits Partnership Agreement) as the DDA was terminated by the parties on May 31, 2013 and as further discussed above, Article 7 of the DDA (the Community Benefits Partnership Agreement) was not incorporated into the Lease and could not form the basis of an "Event of Default" under the Lease.
c. As to the 4th Lease Amendment, the City obtained a stabilization of the Rent it was to receive based upon 80% occupancy with a CPI adjustment. This resulted in a payment of $63,000.00/year which was planned to be used to obtain an additional $3 million to be used by the City for additional and/or ongoing projects.

Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14+ years.

The statement above also ignores the fact that the City also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **which is estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE. In addition, the actual number paid by GSF for the parking system to the City was an additional $81,231.00 in cash.**

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 9 months totaling $333,333.28.00 under the 3rd Lease Amendment.

4. Did you know after April 24, 2013 GSF Florida Retail, LLC by virtue of OMRD's foreclosure, were **legally** required to **strictly comply** with all of the **tenets** of OMRD's Ocean Mall Ground Lease, Developer Disposition Agreement **(DDA)** and Community Benefits Partnership Agreements executed with the City on December 18, 2006, because **Building B** and the **Parking Lot** was not completed by OMRD in **Phase I** and the Hotel in **Phase II**?

This is not correct. GSF was required to comply with the Lease, as its rights were derived from the foreclosure of the Leasehold Mortgage. GSF's obligations were limited to the Lease and its Exhibits and inclusions by reference. This has been discussed in detail, above. In addition, the

Hotel Site and/or obligation to complete the Hotel was never part of the Lease and was separated out in the DDA from Phase I.

Did you know on March 2, 2016 **(Amendment 4) Atty. Richard Jarolem**, who the taxpayers pay at **$350** per hour, **failed** to advise the elected officials there were grounds to **terminate** GSF's Ground Lease, for failing **(BREACHING)** to comply with the **Community Benefits Partnership Agreement**, which required GSF to contribute to the City- **1% of Hard Cost for Construction** for **Building B** and **Parking Lot**?

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
b. As discussed above, in March 2, 2016 there were no legal grounds to declare a breach of the Lease by any purported failure to comply with the DDA (which included the Community Benefits Partnership Agreement) as the DDA was terminated by the parties on May 31, 2013 and as further discussed above, Article 7 of the DDA (the Community Benefits Partnership Agreement) was not incorporated into the Lease and could not form the basis of an "Event of Default".
c. As to the 4th Lease Amendment, the City obtained a stabilization of the Rent it was to receive based upon 80% occupancy with a CPI adjustment. This resulted in a payment of $63,000.00/year which was planned to be used to obtain an additional $3 million to be used by the City for additional and/or ongoing projects.

   Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14+ years.

   The statement above also ignores the fact that the City also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **which is estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE. In addition, the actual number paid by GSF for the parking system to the City was an additional $81,231.00 in cash.**

   In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 9 months totaling $333,333.28.00 under the 3rd Lease Amendment.

Did you know after April 24, 2013 when GSF Florida Retail, LLC by virtue of OMRD's foreclosure, **Atty. Richard Jarolem**, who the taxpayers pay at **$350** per hour, had a **legal fiduciary duty** to advise the elected officials to legally **terminate** OMRD's Ocean Mall Ground Lease, Developer Disposition Agreement **(DDA)** and Community Benefits Partnership Agreements executed with the City on December 18, 2006?

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
b. As discussed above, at no time was there legal grounds to declare a breach of the Lease by any purported failure to comply with Article 7 of the DDA (the Community Benefits Partnership Agreement) as discussed above, Article 7 of the DDA (the Community Benefits Partnership Agreement) was not incorporated into the Lease and could not form the basis of an "Event of Default" under the Lease.
c. The potential litigation and outcomes regarding the potential to terminate the Lease as it related to the failure to complete the demolition and rebuilding of the 7-11 building were discussed with the City Attorney and Council in meetings held with the City Attorney, Richard Jarolem and individual Councilpersons.
d. In fact, the position taken by the City in negotiations with GSF was that unless an amicable resolution was reached, the City would serve the default on GSF and sue to terminate the Lease and take the property back. (The perils of actually litigating this issue are described above). **These negotiations resulted in the payments by GSF to the City in excess of $550,000.00 on or before May 2013**.
e. **It should not go unnoticed that had the City brought such litigation and did not prevail; it would have received nothing from GSF and would have had to pay GSF the costs of litigation. Instead the City has received over $1.3 million in cash; gotten a strip of land back from GSF for the CRA; obtained the completion of the project; and obtained the rights to meter parking and received all revenues which is estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.**

Did you know after April 24, 2013 when GSF Florida Retail, LLC by virtue of OMRD's foreclosure, Atty. Richard Jarolem, who the taxpayers pay at **$350** per hour, had a **legal fiduciary duty** to advise the elected officials to execute with GSF the **identical language** contained in OMRD's Ocean Mall Ground Lease, Developer Disposition Agreement **(DDA)** and Community Benefits Partnership Agreements executed with the City on December 18, 2006; because **Building B** and the **Parking Lot** were not completed by OMRD in **Phase I** and the **Hotel** in **Phase II**?

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)

b. The "duty to advise the Council to execute with GSF identical language" is absolutely and flatly incorrect. Identical language is not required and in this case was not advisable as the

Lease's language had significant room for improvement. As a result, the City engaged in negotiations with GSF at arm's length per the directives received. The goal of the City in the negotiations was to get money and a completed project as well as eliminating some, if not all, of the "loopholes" which formed the weakness of the City's position in litigating the failure to complete the building under the original Lease. Had identical language been used, the City would not have collected **the payment of the $550,000.00 in cash the City received** ($300,000.00 before the First Lease Amendment and $250,000.00 as part of the First Lease Amendment), nor would it have been able to revise the Default Language of the Lease in its favor.

In the First Lease Amendment, the City negotiated a significant revision to the ability of GSF to obtain additional time to cure any breach under the Lease. As evidenced by the First Lease Amendment, GSF had to complete construction by May 31, 2014 unless delayed by an "Unavoidable Delay" as provided under Section 35(o) of the Lease. These "Unavoidable Delays" include "strike, inability to obtain materials, war, terrorist attack, acts of God, etc. . . " This eliminated GSF's rights to be granted additional time "if the cure could not be completed in 30 days" under the Original Lease.

These changes resulted in the payment of $550,000.00 to the City ($300,000.00 before the First Lease Amendment and $250,000.00 as part of the First Lease Amendment) and the Lease revisions were a complete strengthening of the City's position and ability to leverage further monies and concessions in the Future.

It should not go unnoticed that had the City brought such litigation and did not prevail; it would have received nothing from GSF and would have had to pay GSF the costs of litigation. Instead over the course of the negotiations, the City has received over $1.3 million in cash; got a strip of land back from GSF for the CRA; obtained the completion of the project; and obtained the rights to meter parking and received all revenues which is estimated at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.

Did you know after April 24, 2013 when GSF Florida Retail, LLC by virtue of OMRD's foreclosure, **Atty. Richard Jarolem**, who the taxpayers pay at **$350** per hour, had a **legal fiduciary duty** to advise the elected officials that OMRD breached the Ocean Mall Ground Lease, Developer Disposition Agreement **(DDA)** and Community Benefits Partnership Agreements executed with the City on December 18, 2006; and that OMRD's **breaches attached** to GSF on **April 24, 2013**?

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)

b. As discussed above, at no time was there legal grounds to declare a breach of the Lease by any purported failure to comply with Article 7 of the DDA (the Community Benefits Partnership Agreement) as discussed above, Article 7 of the DDA (the Community Benefits Partnership Agreement) was not incorporated into the Lease and could not form the basis of an "Event of Default" under the Lease.

c. The potential litigation and outcomes regarding the potential to terminate the Lease as it related to the failure to complete the demolition and rebuilding of the 7-11 building were discussed with the City Attorney and Council in meetings held with the City Attorney, Richard Jarolem and individual Councilpersons.

d. In fact, the position taken by the City in negotiations with GSF was that unless an amicable resolution was reached, the City would serve the default on GSF and sue to terminate the Lease and take the property back. (The perils of actually litigating this issue are described above).

e. The City engaged in negotiations with GSF at arm's length per the directives received. The goal of the City in the negotiations was to get money and a completed project as well as eliminating some, if not all, of the "loopholes" which formed the weakness of the City's position in litigating the failure to complete the building under the original Lease.

   Furthermore, the City negotiated a significant revision to the ability of GSF to obtain additional time to cure any breach under the Lease. As evidenced by the First Lease Amendment, GSF had to complete construction by May 31, 2014 unless delayed by an "Unavoidable Delay" as provided under Section 35(o) of the Lease. These "Unavoidable Delays" include "strike, inability to obtain materials, war, terrorist attack, acts of God, etc. . ."

   These changes in the First Lease Amendment resulted in the payment of $550,000.00 to the City ($300,000.00 before the Lease Amendment and $250,000.00 as part of the Lease Amendment) and the Lease revisions that eliminated GSF's ability to obtain an automatic extension to cure a non-monetary breach. This was a complete strengthening of the City's position and enabled the City to leverage further monies and concessions in the Future.

f. **It should not go unnoticed that had the City brought such litigation and did not prevail; it would have received nothing from GSF and would have had to pay GSF the costs of litigation. Instead over the course of the negotiations, the City has received over $1.3 million in cash; got a strip of land back from GSF for the CRA; obtained the completion of the project; and obtained the rights to meter parking and received all revenues which is estimated at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.**

In the April 5, 2017 City Council meeting consultant **Paul Skyer** was asked by **City Manager Evans** to tell the elected officials the **commercial market rate** for the Maritime Academy **DIRT** (Ground Lease), which is **33,376** square feet.

Maritime has rented **33,376** square feet from landlord City/Taxpayers from 2006-2017- eleven **(11)** years for a mere **$500** per month rent x 11 years=**$66,000**.

In the April 5, 2017 City Council meeting consultant **Paul Skyer** stated that the City could rent the **DIRT** (Ground Lease) housing the Maritime Academy at the **commercial market rate** of **$6** a square foot x 33,376 square feet=**$200,256** annual rent x 11 years (years of lease 2006-2017)=**$2,202,816.**

COMMON SENSE and **INTELLECT:** The elected officials without receiving the unreliable, untrustworthy and convoluted legal opinions of **Atty. DeGraffenreidt** and **Atty. Richard Jarolem,** should know that if according to consultant **Paul Skyler** the **DIRT** (Ground Lease) Maritime Academy-33,376 square feet **commercial market rate** is **$6 per square foot;** at a **minimum** the **City's** most **valuable asset-prime ocean front property/dirt (Ocean Mall)** should be **renting** to GSF or assignee at a minimum of **$6** a square foot, and not a **mere ninety-seven cents ($.97)** x 65,000 square feet= **$63,000** annual rent x 40 years=**$2.2 M.**

Did know on March 2, 2016 the elected officials were advised by **Atty. Richard Jarolem**, who the taxpayers pay at **$350** per hour, to amend GSF's Ocean Mall Ground Lease-the City's most **valuable asset-prime ocean front property/dirt**, to an annual rent payment in the fiscally unsound amount of a **mere ninety-seven cents $.97** x 65,000 square feet = **$63,000 annual rent** x **40** years**=$2.2 M GROSS PROFITS. (See Amendment 4)**

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
b. The Lease was already signed. The City was entitled to its percentage of the Gross Rent. There was no agreement for a substantive re-negotiation of the Lease. The City negotiated a stabilization of the rents it could expect to receive at 80% occupancy with CPI price index adjustments upward. That resulted in a total of $63,000.00/yr. That money was intended to be used to leverage and borrow $3 million to be used for additional City purposes.

   Furthermore, as evidenced by Mr. Skyer's numbers for the Ocean Mall, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14 + years.

   The statement above also ignores the fact that the City in the 4th Lease Amendment also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID**

FOR BY GSF UNDER THE LEASE. The actual number paid by GSF for the parking to the City was an additional $81,231.00 in cash.

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 9 months totaling $333,333.28.00 under the 3rd Lease Amendment.

It is extremely misleading to omit the other portions and consideration received by the City in the 4th Lease Amendment, when the truth is that the City has continually extracted significant monies (over $1.3 million in cash), property (the strip of land for the CRA), the actual completion of the project on GSF's dime, and the rights to extremely large income streams estimated to be between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) for the parking revenue alone.

Did you know that on March 24, 2016 GSF's average tenant rent is **$24** x 65,000 total square feet x 40 years**=$62,400,000 GROSS PROFITS.**

As to the Gross Profits; this statement is not true. The math listed assumes market rate at 100% occupancy, with no debt load, no expenses, no capital improvements and no fees whatsoever. Mr. Skyer has gone through the numbers, and shown them to the public and the Council. This is not a profitable venture and is most likely a money loser for the Tenant.

In fact, if these numbers were even remotely close to true, then why would GSF want to "sell" the Lease? Why would they have been marketing the Lease since 2013 with no buyers until now? Why is no one lining up behind the buyer to step-in if the deal falls through?

The answer is simple. Mr. Skyer's numbers don't lie.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (at $63,000.00 with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

Did you know that the City/Taxpayers are only receiving a mere **ninety cents ($.97)** out of GSF's tenant average rent of **$24** per square foot? Providing a per square foot **gross profit** for GSF of **$23.03** per tenant.

Not true. Not Even close to true. The math listed for Gross Profit assumes no expenses, no capital improvements and no fees whatsoever. It is not Gross Profit. Mr. Skyer has gone through the numbers, and shown them to the public and Council. This is not a profitable venture and is most likely a money loser for the Tenant.

In fact, if these numbers were even remotely close to true, then why would GSF want to "sell" the Lease? Why would they have been marketing the Lease since 2013 with no buyers until now? Why is no one lining up behind the buyer to step-in if the deal falls through?

The answer is simple. Mr. Skyer's numbers don't lie.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (at $63,000.00 with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

Did you know that GFS or assignee's tenants annually rents automatically **increases** by **3%** per square foot for the life of their leases.

I don't know this to be true. I do not know this to be false. Each Lease gets negotiated with GSF and GSF can make whatever deals it can. However, I would point out that GSF has only been able to Lease 48% of the Ocean Mall, thus there is a 52% vacancy which prohibits any "profitable" scenario for an Ocean Mall Tenant according to Mr. Skyer's numbers.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (at $63,000.00 with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

Did you know additionally, GSF' tenants are charged **$9.65 per square foot** for **NNN (insurance, property taxes and common area maintenance)**, which also annually automatically **increases 3%** per square foot for the life of their leases?

I don't know this to be true. I do not know this to be false. Each Lease gets negotiated with GSF and GSF can make whatever deals it can. However, I would point out that GSF has only been able to Lease 48% of

the Ocean Mall, thus there is a 52% vacancy which is paid for by the Landlord as the "Common Area Maintenance Charges" are apportioned to the space the Tenant occupies.

Thus 52% of these charges have been paid by GSF and will continue to be paid by the new Tenant until the spaces are leased. Also, this number does not account for monies that the Landlord will need to spend, at their own expense, for Tenant Improvements or buildouts for tenants to occupy vacant spaces.

Regardless of my opinion, according to Mr. Skyer's numbers, this is not a likely profitable situation for the Tenant for a considerable amount of time.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (at $63,000.00 with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

Did you know that GSF or assignee's earns from tenants' **NNN (insurance, property taxes and common area maintenance)** is **$9.65** x 65,000 square feet x 40 years**=$25,090,000 GROSS PROFITS?**

Not true. Not Even close to true. The math listed for Gross Profit assumes market rate at 100% occupancy, with no debt load, no expenses, no capital improvements and no fees whatsoever. Mr. Skyer has gone through the numbers, and shown them to the public and Council. This is not a profitable venture and is most likely a money loser for the Tenant.

In fact, if these numbers were even remotely close to true, then why would GSF want to "sell" the Lease. Why would they have been marketing the Lease since 2013 with no buyers until now? Why is there no one lining up behind the Buyer to step-in if the deal falls through?

The answer is simple. Mr. Skyer's numbers don't lie.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

Did you know that GSF or assignee will earn at a minimum **$60,200,000** more in rent from their tenants, than the taxpayers in **40 years** will earn from its tenant (GSF or assignee) leasing the City's most

valuable asset-ocean front property; before GSF or assignee applies their annual rents automatic **3% increases** and NNN per square foot annual automatic **increases** for the life of their tenants leases?

Not true. Not Even close to true. The math listed assumes market rate at 100% occupancy, with no debt load, no expenses, no capital improvements and no fees whatsoever. Mr. Skyer has gone through the numbers, and shown them to the public and Council. This is not a profitable venture and is most likely a money loser for the Tenant.

In fact, if these numbers were even remotely close to true, then why would GSF want to "sell" the Lease. Why would they have been marketing the Lease since 2013 with no buyers until now? Why is there no one lining up behind the Buyer to step-in if the deal falls through?

The answer is simple. Mr. Skyer's numbers don't lie.

If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

On these numbers the City will actually profit between $7.2 million and $18 million more than the Tenant.

1. Why didn't **Atty. Richard Jarolem** who the taxpayers pay at **$350 per hour,** negotiate with GSF an annual **3% automatic increase** against the annual rent of **$63,000,** instead of a **non-guaranteed CPI annual increase** for the amendment approved on **March 2, 2016**? **See Amendment 4.**

    a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
    b. Simple Answer. The City wanted to "unhinge" the payment from GSF from their actual performance under the Lease. The City also wanted to focus on engaging the parking revenue by forcing GSF to pay for a turn-key system.

    The Lease was already signed. The City was entitled to its percentage of the Gross Rent. There was no agreement for a substantive re-negotiation of the Lease. The City negotiated a stabilization of the rents it could expect to receive at 80% occupancy with CPI price index adjustments upward. That resulted in a total of $63,000.00/yr. That money was intended to be used to leverage and borrow $3 million to be used for additional City purposes.

    Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14 + years.

The statement above also ignores the fact that the City in the 4th Lease Amendment also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.** The actual number paid by GSF for the parking to the City was an additional $81,231.00 in cash.

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 8 months totaling $333,333.28.00 under the 3rd Lease Amendment.

Furthermore, If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

It is extremely misleading to omit the other portions and consideration received by the City in the 4th Lease Amendment, when the truth is that the City has continually extracted significant monies (over $1.3 million in cash), property (the strip of land for the CRA), the actual completion of the project on GSF's dime, and the rights to extremely large income streams estimated to be between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) for the parking revenue alone.

2. Why didn't **Atty. Richard Jarolem** who the taxpayers pay at **$350 per hour**, negotiate a minimum annual rent of **$6** per square foot x 65,000=**$390,000** for the elected officials to approve amending GFS' Ground Lease on **March 2, 2016**? **See Amendment 4.**

   a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
   b. Simple Answer. The City wanted to "unhinge" the payment from GSF from their actual performance under the Lease.

   The Lease was already signed. The City was entitled to its percentage of the Gross Rent. There was no agreement for a substantive re-negotiation of the Lease. The City negotiated a stabilization of the rents it could expect to receive at 80% occupancy with CPI price index

adjustments upward. That resulted in a total of $63,000.00/yr. That money was intended to be used to leverage and borrow $3 million to be used for additional City purposes.

Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14+ years. The $6/sq. ft. could not be sustained by the Tenant on the rent side of the equation.

The statement above also ignores the fact that the City in the 4th Lease Amendment also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.** The actual number paid by GSF for the parking to the City was an additional $81,231 in cash in lieu of providing the system.

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 8 months totaling $333,333.28.00 under the 3rd Lease Amendment.

Furthermore, If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

It is extremely misleading to omit the other portions and consideration received by the City in the 4th Lease Amendment, when the truth is that the City has continually extracted significant monies (over $1.3 million in cash), property (the strip of land for the CRA), the actual completion of the project on GSF's dime, and the rights to extremely large income streams estimated to be between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) for the parking revenue alone.

3. How can **Atty. Richard Jarolem** who the taxpayers pay at **$350 per hour**, justify advising the elected officials to approve on March 2, 2016 an amendment to GSF's Ground Lease for a mere **ninety seven cents** ($.97) x 65,000 square feet for an annual rent of **$63,000** x **40 years=2.2 M?**

   a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
   b. Simple Answer. The City wanted to "unhinge" the payment from GSF from their actual performance under the Lease.

The Lease was already signed. The City was entitled to its percentage of the Gross Rent. There was no agreement for a substantive re-negotiation of the Lease. The City negotiated a stabilization of the rents it could expect to receive at 80% occupancy with CPI price index adjustments upward. That resulted in a total of $63,000.00/yr. That money was intended to be used to leverage and borrow $3 million to be used for additional City purposes.

Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14+ years.

The statement above also ignores the fact that the City in the 4th Lease Amendment also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.** The actual number paid by GSF for the parking to the City was an additional $81,231.00 in cash.

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $ 58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41,666.66/month for 8 months totaling $333,333.28.00 under the 3rd Lease Amendment.

Furthermore, If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

It is extremely misleading to omit the other portions and consideration received by the City in the 4th Lease Amendment, when the truth is that the City has continually extracted significant monies (over $1.3 million in cash), property (the strip of land for the CRA), the actual completion of the project on GSF's dime, and the rights to extremely large income streams estimated to be between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) for the parking revenue alone.

4. Why didn't **Atty. Richard Jarolem** who the taxpayers pay at **$350 per hour**, research the commercial market rate for **prime oceanfront property/dirt (Ocean Mall)**, which at a minimum would have

indicated a rent of **$6** x **65,000 square feet=$390,000** annually x **40 years=$15,600,000** paid to the **taxpayers,** which **recoups** their **$10.4 M investment** given to OMRD for infrastructure.

a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
b. As to the remainder: First and foremost, the CRA was, is and remains obligated to repay the City the $10.4 million. This has been mentioned above.

As to researching the market rates, Mr. Jarolem is an attorney, not a real estate appraiser. The City did have an appraisal done of the Property, which established the market rates for renting space. These numbers were used to compare to the numbers that GSF was charging and receiving for its rented spaces.

With regard to seeking a higher number in negotiations with GSF in the 4th Lease Amendment, it must be remembered that the Lease was already signed. The City was entitled to its percentage of the Gross Rent. There was no agreement for a substantive re-negotiation of the Lease. The City negotiated a stabilization of the rents it could expect to receive at 80% occupancy with CPI price index adjustments upward. That resulted in a total of $63,000.00/yr. That money was intended to be used to leverage and borrow $3 million to be used for additional City purposes.

Furthermore, as evidenced by Mr. Skyer's numbers, there is simply not a lot of profit (or none) in the Ocean Mall for the Tenant. His projections show that unless the Ocean Mall is 90% Leased, the Tenant can expect to lose money for the next 14+ years.

The City in the 4th Lease Amendment also got GSF to agree to pay for and provide the parking system as "turn key" so that the City could engage the parking revenue which is **estimated for the next 40 years at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.** The actual number paid by GSF for the parking to the City was an additional $81,231.00 in cash.

In addition to the foregoing, the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of $58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 8 months totaling $333,333.28.00 under the 3rd Lease Amendment.

Furthermore, If we look at the numbers provided by Mr. Skyer, the Tenant will stand to lose approximately $5 million (on the worst case scenario) to profit $1.6 million total (in a "Shangri-La" scenario) over the next 14 years. If the City engages its parking revenues, it stands to profit between $9.8 million - $19.6 million on the parking alone + another $882,000.00 from the rent (with no CPI adjustments) for a total between $10.6 million - $20.4 million in NET revenue to the City; with the only expense being the installation of the parking system which has already been paid for by GSF in advance.

5. Why didn't **Atty. Richard Jarolem** who the taxpayers pay at **$350 per hour**, advised the elected officials there were **OMRD and GFS' contract breaches** that sanctions the elected officials **terminating** the Ground Lease, DDA and Community Benefits Partnership Agreements; and that the elected officials are still **legally empowered** to **terminate** GSF or assignee's Ground Lease?

    a. My rate is $300/hr and has not been raised in approximately 10 years. (I doubt this is material to Ms. White's point.)
    b. As discussed above, at no time were there legal grounds to declare a breach of GSF's Lease by any purported failure to comply with Article 7 of the DDA (the Community Benefits Partnership Agreement) as discussed above, the DDA was terminated by the parties in May, 2013. In addition, as discussed above, Article 7 of the DDA (the Community Benefits Partnership Agreement) was not incorporated into the Lease and could not form the basis of an "Event of Default" under the Lease.
    c. The potential litigation and outcomes regarding the potential to terminate the Lease as it related to the failure to complete the demolition and rebuilding of the 7-11 building were discussed with the City Attorney and Council in meetings held with the City Attorney, Richard Jarolem and individual Councilpersons before each Lease Amendment.
    d. In fact, the position taken by the City in negotiations with GSF for the 1st Lease Amendment was that unless an amicable resolution was reached, the City would serve the default on GSF and sue to terminate the Lease and take the property back. **This resulted in the payments of over $550,000.00 plus a lease revision that eliminated GSF's rights to automatic extensions of time to cure a non monetary default.**
    e. As to 2nd Lease Amendment, GSF came to City in advance of any breach and negotiated the amounts of the extension fee in advance along with the return of the strip of land to the CRA. The Council was free to reject the money and land and force compliance; however the Council decided to take the money, take the land and require completion of the project using GSF's funds.
    f. As to the 3rd Lease Amendment, this dealt with the parking issues and the shortfall below the 400 spaces. The perils of litigating this issue are outlined above and were discussed with the Council members individually. The City obtained the parking revenue rights and the right to collect revenue without any split. As discussed above, the parking revenue **is estimated at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate** The 3rd Lease amendment also provided for the payment of $41,666.66/month if completion was delayed. This yielded the City $333,333.28 in extra payments from GSF.
    g. As to the 4th Lease Amendment, the City engaged in negotiations with GSF at arm's length per the directives received and discussed above. In the 4th Lease Amendment the City was able to stabilize the rent it was entitled to at $63,000.00/yr plus CPI, which allows the City to borrow $3 million from this revenue alone. The City also got GSF to commit to installing the parking revenue system as a "turn-key" to the City ($81,231); plus the City also was able to negotiate additional payments for failing to complete the 7-11 building rebuild at the rate of

$58,333.33/month. This same type of provision resulted in the City obtaining 8 payments of $41, 666.66/month for 8 months totaling $333,333.28 under the 3rd Lease Amendment.

h. **It should not go unnoticed that had the City brought such litigation for GSF's breach in 2013 and did not prevail; it would have received nothing from GSF and would have had to pay GSF the costs of litigation. Instead over the course of the negotiations, the City has received over $1.3 million in cash; gotten a strip of land back from GSF for the CRA; obtained the completion of the project; and obtained the rights to meter parking and receive all revenues which is estimated at between $28,000,000.00 IN PROFIT (conservative estimate) all the way to $56,000,000.00 IN PROFIT (high-end estimate) TO THE CITY AS THE COSTS OF MAINTAINING THE PARKING LOT IS PAID FOR BY GSF UNDER THE LEASE.**

Execution Copy

Exhibit A

Lease

GROUND LEASE – RETAIL

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

W I T N E S S E T H:

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

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

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

W I T N E S S E T H:

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

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

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

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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

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

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

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

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

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

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

7.01 Community Benefits Partnership Program.

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

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

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

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

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

ARTICLE 8

8.01 Non-Discrimination.

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

ARTICLE 9
PROJECT REPRESENTATIVES; KEY PERSONNEL; PROJECT ADMINISTRATION

9.01 Project Representatives.

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

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

9.02 Project Administration.

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

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

ARTICLE 13
EVENTS OF DEFAULT

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

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

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

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

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

OCEAN MALL
RIVIERA BEACH, FL

Summary Operating Budget - 70% Occupancy Option with $7 Million in Debt

Operating Proforma					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Rent Structure:	Units	Sq Foot	Rate	Actual	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Market Rate - Affordable																			
Building "A"	6	30,733	$24.87	$764,330	$764,330	$787,260	$810,877	$835,204	$860,260	$886,068	$912,650	$940,029	$968,230	$997,277	$1,027,195	$1,058,011	$1,089,751	$1,122,444	$1,156,117
Building "B"	3	13,969	$24.87	$347,409	$347,409	$357,831	$368,566	$379,623	$391,012	$402,742	$414,825	$427,269	$440,087	$453,290	$466,889	$480,895	$495,322	$510,182	$525,487
Building "C"	5	9,125	$24.87	$226,939	$226,939	$233,747	$240,759	$247,982	$255,422	$263,084	$270,977	$279,106	$287,479	$296,104	$304,987	$314,136	$323,560	$333,267	$343,265
Building "D"	5	18,202	$24.87	$452,684	$452,684	$466,264	$480,252	$494,660	$509,500	$524,785	$540,528	$556,744	$573,446	$590,650	$608,369	$626,620	$645,419	$664,781	$684,725
Totals	19				$1,791,361	$1,845,102	$1,900,455	$1,957,469	$2,016,193	$2,076,679	$2,138,979	$2,203,148	$2,269,243	$2,337,320	$2,407,440	$2,479,663	$2,554,053	$2,630,674	$2,709,595
Other Income					12,552	$12,929	$13,316	$13,716	$14,127	$14,551	$14,988	$15,437	$15,900	$16,378	$16,869	$17,375	$17,896	$18,433	18,986
Total Revenues					1,803,913	1,858,031	1,913,772	1,971,185	2,030,320	2,091,230	2,153,967	2,218,586	2,285,143	2,353,698	2,424,309	2,497,038	2,571,949	2,649,107	2,728,581
Less: General Vacancy					(537,408)	(553,531)	(570,137)	(587,241)	(604,858)	(623,004)	(641,694)	(660,945)	(680,773)	(701,196)	(722,232)	(743,899)	(766,216)	(789,202)	(812,878)
					-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%	-30.00%
Net Revenues					1,266,505	1,304,500	1,343,635	1,383,944	1,425,462	1,468,226	1,512,273	1,557,641	1,604,370	1,652,502	1,702,077	1,753,139	1,805,733	1,859,905	1,915,702
Expenses		Monthly / Unit	Annual / Unit																
Operating Expenses		$2,357	$28,285		537,408	553,531	570,137	587,241	604,858	623,004	641,694	660,945	680,773	701,196	722,232	743,899	766,216	789,202	812,878
Insurance		$553	$6,632		126,000	129,780	133,673	137,684	141,814	146,069	150,451	154,964	159,613	164,401	169,333	174,413	179,646	185,035	190,586
Taxes (Non Ad Valorem)		$1,228	$14,737		280,000	285,600	291,312	300,051	309,053	318,324	327,874	337,710	347,842	358,277	369,025	380,096	391,499	403,244	415,341
Replacement reserve		$921	$11,053		210,000	216,300	222,789	229,473	236,357	243,448	250,751	258,274	266,022	274,002	282,222	290,689	299,410	308,392	317,644
Total Operating Expense		$5,059	$60,706		1,153,408	1,185,211	1,217,911	1,254,448	1,292,082	1,330,844	1,370,769	1,411,893	1,454,249	1,497,877	1,542,813	1,589,098	1,636,770	1,685,874	1,736,450
				per unit	$60,706	$62,380	$64,101	$66,024	$68,004	$70,044	$72,146	$74,310	$76,539	$78,836	$81,201	$83,637	$86,146	$88,730	$91,392
Net Operating Income					**113,096**	**119,289**	**125,724**	**129,496**	**133,381**	**137,382**	**141,504**	**145,749**	**150,121**	**154,625**	**159,263**	**164,041**	**168,963**	**174,032**	**179,252**
Debt Service 1st mortgage	$7,000,000		35	6.00%	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**
DSC					0.24	0.25	0.26	0.27	0.28	0.29	0.30	0.30	0.31	0.32	0.33	0.34	0.35	0.36	0.37
Net cash flow					**(365,863)**	**(359,670)**	**(353,235)**	**(349,464)**	**(345,579)**	**(341,577)**	**(337,456)**	**(333,211)**	**(328,838)**	**(324,335)**	**(319,696)**	**(314,918)**	**(309,997)**	**(304,928)**	**(299,707)**

Forecast Assumptions

Annual Rent increase	3.00%
Annual Operating Expense Growth	3.00%
Vacancy Loss Rate	30.00%
Annual Reserve increase	3.00%

Cash flow (4,988,472)

OCEAN MALL
RIVIERA BEACH, FL

Summary Operating Budget - 80% Occupancy Option with $7 Million in Debt

Operating Proforma					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Rent Structure:	Units	Sq Foot	Rate	Actual	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Market Rate - Affordable																			
Building "A"	6	30,733	$24.87	$764,330	$764,330	$787,260	$810,877	$835,204	$860,260	$886,068	$912,650	$940,029	$968,230	$997,277	$1,027,195	$1,058,011	$1,089,751	$1,122,444	$1,156,117
Building "B"	3	13,969	$24.87	$347,409	$347,409	$357,831	$368,566	$379,623	$391,012	$402,742	$414,825	$427,269	$440,087	$453,290	$466,889	$480,895	$495,322	$510,182	$525,487
Building "C"	5	9,125	$24.87	$226,939	$226,939	$233,747	$240,759	$247,982	$255,422	$263,084	$270,977	$279,106	$287,479	$296,104	$304,987	$314,136	$323,560	$333,267	$343,265
Building "D"	5	18,202	$24.87	$452,684	$452,684	$466,264	$480,252	$494,660	$509,500	$524,785	$540,528	$556,744	$573,446	$590,650	$608,369	$626,620	$645,419	$664,781	$684,725
Totals	19				$1,791,361	$1,845,102	$1,900,455	$1,957,469	$2,016,193	$2,076,679	$2,138,979	$2,203,148	$2,269,243	$2,337,320	$2,407,440	$2,479,663	$2,554,053	$2,630,674	$2,709,595
Other Income					12,552	$12,929	$13,316	$13,716	$14,127	$14,551	$14,988	$15,437	$15,900	$16,378	$16,869	$17,375	$17,896	$18,433	18,986
Total Revenues					1,803,913	1,858,031	1,913,772	1,971,185	2,030,320	2,091,230	2,153,967	2,218,586	2,285,143	2,353,698	2,424,309	2,497,038	2,571,949	2,649,107	2,728,581
Less: General Vacancy					(358,272)	(369,020)	(380,091)	(391,494)	(403,239)	(415,336)	(427,796)	(440,630)	(453,849)	(467,464)	(481,488)	(495,933)	(510,811)	(526,135)	(541,919)
					-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%	-20.00%
Net Revenues					1,445,641	1,489,010	1,533,681	1,579,691	1,627,082	1,675,894	1,726,171	1,777,956	1,831,295	1,886,234	1,942,821	2,001,105	2,061,138	2,122,973	2,186,662
Expenses		Monthly / Unit	Annual / Unit																
Operating Expenses		$2,357	$28,285		537,408	553,531	570,137	587,241	604,858	623,004	641,694	660,945	680,773	701,196	722,232	743,899	766,216	789,202	812,878
Insurance		$553	$6,632		126,000	129,780	133,673	137,684	141,814	146,069	150,451	154,964	159,613	164,401	169,333	174,413	179,646	185,035	190,586
Taxes (Non Ad Valorem)		$1,228	$14,737		280,000	285,600	291,312	300,051	309,053	318,324	327,874	337,710	347,842	358,277	369,025	380,096	391,499	403,244	415,341
Replacement reserve		$921	$11,053		210,000	216,300	222,789	229,473	236,357	243,448	250,751	258,274	266,022	274,002	282,222	290,689	299,410	308,392	317,644
Total Operating Expense		$5,059	$60,706		1,153,408	1,185,211	1,217,911	1,254,448	1,292,082	1,330,844	1,370,769	1,411,893	1,454,249	1,497,877	1,542,813	1,589,098	1,636,770	1,685,874	1,736,450
				per unit	$60,706	$62,380	$64,101	$66,024	$68,004	$70,044	$72,146	$74,310	$76,539	$78,836	$81,201	$83,637	$86,146	$88,730	$91,392
Net Operating Income					**292,233**	**303,800**	**315,770**	**325,243**	**335,000**	**345,050**	**355,401**	**366,063**	**377,045**	**388,357**	**400,007**	**412,008**	**424,368**	**437,099**	**450,212**
Debt Service 1st mortgage	$7,000,000		35	6.00%	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**	**478,959**
DSC					0.61	0.63	0.66	0.68	0.70	0.72	0.74	0.76	0.79	0.81	0.84	0.86	0.89	0.91	0.94
Net cash flow					**(186,727)**	**(175,160)**	**(163,190)**	**(153,717)**	**(143,959)**	**(133,909)**	**(123,558)**	**(112,896)**	**(101,914)**	**(90,603)**	**(78,952)**	**(66,952)**	**(54,591)**	**(41,860)**	**(28,747)**

Forecast Assumptions

Annual Rent increase	3.00%
Annual Operating Expense Growth	3.00%
Vacancy Loss Rate	20.00%
Annual Reserve increase	3.00%

Cash flow (1,656,735)

OCEAN MALL
RIVIERA BEACH, FL

Summary Operating Budget - 90% Occupancy Option with $7 Million in Debt

Operating Proforma					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Rent Structure:	Units	Sq Foot	Rate	Actual	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Market Rate - Affordable																			
Building "A"	6	30,733	$24.87	$764,330	$764,330	$787,260	$810,877	$835,204	$860,260	$886,068	$912,650	$940,029	$968,230	$997,277	$1,027,195	$1,058,011	$1,089,751	$1,122,444	$1,156,117
Building "B"	3	13,969	$24.87	$347,409	$347,409	$357,831	$368,566	$379,623	$391,012	$402,742	$414,825	$427,269	$440,087	$453,290	$466,889	$480,895	$495,322	$510,182	$525,487
Building "C"	5	9,125	$24.87	$226,939	$226,939	$233,747	$240,759	$247,982	$255,422	$263,084	$270,977	$279,106	$287,479	$296,104	$304,987	$314,136	$323,560	$333,267	$343,265
Building "D"	5	18,202	$24.87	$452,684	$452,684	$466,264	$480,252	$494,660	$509,500	$524,785	$540,528	$556,744	$573,446	$590,650	$608,369	$626,620	$645,419	$664,781	$684,725
Totals	19				$1,791,361	$1,845,102	$1,900,455	$1,957,469	$2,016,193	$2,076,679	$2,138,979	$2,203,148	$2,269,243	$2,337,320	$2,407,440	$2,479,683	$2,554,053	$2,630,674	$2,709,595
Other Income					12,552	$12,929	$13,316	$13,716	$14,127	$14,551	$14,988	$15,437	$15,900	$16,378	$16,869	$17,375	$17,896	$18,433	18,986
Total Revenues					1,803,913	1,858,031	1,913,772	1,971,185	2,030,320	2,091,230	2,153,967	2,218,586	2,285,143	2,353,698	2,424,309	2,497,038	2,571,949	2,649,107	2,728,581
Less: General Vacancy					(179,136)	(184,510)	(190,046)	(195,747)	(201,619)	(207,668)	(213,898)	(220,315)	(226,924)	(233,732)	(240,744)	(247,966)	(255,405)	(263,067)	(270,959)
					-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%	-10.00%
Net Revenues					1,624,777	1,673,520	1,723,726	1,775,438	1,828,701	1,883,562	1,940,069	1,998,271	2,058,219	2,119,966	2,183,565	2,249,072	2,316,544	2,386,040	2,457,621
Expenses		Monthly / Unit	Annual / Unit																
Operating Expenses		$2,357	$28,285		537,408	553,531	570,137	587,241	604,858	623,004	641,694	660,945	680,773	701,196	722,232	743,899	766,216	789,202	812,878
Insurance		$553	$6,632		126,000	129,780	133,673	137,684	141,814	146,069	150,451	154,964	159,613	164,401	169,333	174,413	179,646	185,035	190,586
Taxes (Non Ad Valorem)		$1,228	$14,737		280,000	285,600	291,312	300,051	309,053	318,324	327,874	337,710	347,842	358,277	369,025	380,096	391,499	403,244	415,341
Replacement reserve		$921	$11,053		210,000	216,300	222,789	229,473	236,357	243,448	250,751	258,274	266,022	274,002	282,222	290,689	299,410	308,392	317,644
Total Operating Expense		$5,059	$60,706		1,153,408	1,185,211	1,217,911	1,254,448	1,292,082	1,330,844	1,370,769	1,411,893	1,454,249	1,497,877	1,542,813	1,589,098	1,636,770	1,685,874	1,736,450
				per unit	$60,706	$62,380	$64,101	$66,024	$68,004	$70,044	$72,146	$74,310	$76,539	$78,836	$81,201	$83,637	$86,146	$88,730	$91,392
Net Operating Income					471,369	488,310	505,815	520,990	536,619	552,718	569,299	586,378	603,970	622,089	640,751	659,974	679,773	700,166	721,171
Debt Service 1st mortgage	$7,000,000		35	6.00%	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959	478,959
DSC					0.98	1.02	1.06	1.09	1.12	1.15	1.19	1.22	1.26	1.30	1.34	1.38	1.42	1.46	1.51
Net cash flow					(7,591)	9,350	26,856	42,030	57,660	73,758	90,340	107,419	125,010	143,129	161,792	181,015	200,814	221,207	242,212

Forecast Assumptions

Annual Rent increase	3.00%
Annual Operating Expense Growth	3.00%
Vacancy Loss Rate	10.00%
Annual Reserve increase	3.00%

Cash flow 1,675,002