

**FIRST AMENDMENT
TO THE MARINA UPLANDS GROUND LEASE
BETWEEN THE CITY OF RIVIERA BEACH AND
THE COMMUNITY REDVELOPMENT AGENCY**

This First Amendment is made and entered into as of _____, 2016, by and between the City of Riviera Beach, a municipal corporation existing under the laws of the State of Florida, and the Riviera Beach Community Redevelopment Agency, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, the City of Riviera Beach (hereinafter "City" or "Landlord") and the Riviera Beach Community Redevelopment (hereinafter "CRA" or "Tenant") entered into the Marina Uplands Ground Lease (hereinafter "Ground Lease") on July 29, 2014, for the purpose of making substantial infrastructure improvements and facilitating the construction of a new marina upland area for a mixed-use development, parking and park improvements; and

WHEREAS, the parties desire to amend the Ground Lease to make a provision for the payment of Common Area Expenses by Landlord for an unspecified amount of time.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and Tenant agree as follows:

Section 1. That section 2, entitled "Rent" is hereby amended as follows (underlined is added; ~~stricken through~~ is deleted):

1. RENT.

(a) Rent and Place of Payment. The initial rent for the New Marina Uplands shall be One Million Fifty Five Thousand Six Hundred Twenty Eight Dollars (\$1,055,628.00) per year ("New Marina Uplands Rent") to be paid as follows: the New Marina Uplands Rent shall be abated until September 30, 2015. The initial rent payment shall be made on or before October 1, 2015 ("Anniversary Date"). Thereafter, Tenant shall pay to Landlord the New Uplands Rent, quarterly in advance on the first day of January, April, July, and October of each year of the term beginning October 1, 2015 and of each Renewal Term, as applicable. On or before January 1, 2016, Tenant shall pay to Landlord as rent for the Bicentennial Park Premises, Ninety Five Thousand Dollars (\$95,000) per year ("Bicentennial Park Rent") (New Uplands Rent and Bicentennial Park Rent will collectively be referred to as "Rent"). Rent must be payable to Landlord at 600 West Blue Heron Blvd., Riviera Beach, Florida, 33404, Attention: Finance Director. The Landlord may designate a different payment address at any time and such different payment address shall be where the payments must be paid under this Lease.

(b) The New Uplands Marina Rent shall be subject to an upward adjustment by Landlord on January 1, 2017, based on an appraisal of the fair and reasonable market rental value of the New Uplands Marina Premises as of March 1, 2016, taking into account the fair and reasonable market rental value of comparable property in Palm Beach County, Florida, at that time and for such a term, and taking into account the terms and conditions of this Lease ("Adjusted Rent"). The method of determination of the fair and reasonable market rental value of the New Uplands Marina Premises shall be determined by a Certified Florida Appraiser selected by Landlord. The cost of the appraisal shall be paid by Landlord. In the event the fair and reasonable market rent value of the New Uplands Marina Premises is less than the rent set forth in Section 2(a) above, Tenant shall not be entitled to any reduction and the Adjusted Rent shall be deemed to be in the amount as set forth in Section 2(a) above.

~~(b)~~ (c) The Adjusted Rent shall thereafter be adjusted upward annually on the Anniversary Date by Landlord during the Lease term to reflect any changes in the cost of living. The adjustment shall be calculated upon the basis of the United States Department of Labor, Bureau of Labor Statics Consumer Price Index of All Urban Consumers (CPI-U), "All Items," U.S. Cities Average, (1982-1984= 100) (the "Index"). The Index published for the sixth month prior to the second Anniversary Date shall be considered the initial "base," and each comparison Index used pursuant to the next sentence shall thereafter be the new "base" for the next succeeding adjustment. The then current quarterly Base Rent under section 2(a) for each Lease year or partial Lease year shall be adjusted by the percentage increase, if any, in the Index published for the last calendar month of the preceding Lease year or partial Lease year over the "base" provided, however, that in no event shall any such annual percentage increase adjustment be less than two percent (2%) nor more than six percent (6%). When the new quarterly Base Rent for a Lease year or partial Lease year under section 2(a) is determined, Landlord shall give Tenant written notice to that effect indicating how the new quarterly Base Rent under section 2(a) figure was computed.

(i) If at any rental adjustment date the Index no longer exists in the same format as recited in this Article, Landlord shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence and shall in Landlord's discretion be most nearly equivalent to the Index.

(ii) If any adjustment provided for in this Article shall not have been made as of the commencement of the Lease year for which applicable, Tenant shall continue to pay quarterly Base Rent under section 2(a) at that last rate applicable until Tenant receives Landlord's written notice as to such adjustment. Within 10 days after Tenant's receipt of Landlord's notice, Tenant shall pay to Landlord an amount equal to the new quarterly Base Rent under section 2(a) times the number of months from the commencement of the then current Lease year to the date of receipt of Landlord's notice, less the aggregate amount paid by Tenant on account of quarterly Base Rent under section 2(a) for the same period.

Thereafter, Tenant shall pay quarterly Base Rent at the new rate set forth in Landlord's notice.

(e) (d) Net Lease. This Lease is what is commonly referred to as a "Net, Net, Net" or "triple net lease." It is the purpose and intent of Landlord and Tenant that the Rent herein reserved shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Rent to be paid during the term of this Lease without any diminution, reduction, deduction, counterclaim, setoff or effect whatsoever, and that all costs and expenses including, but not limited to, Common Area Expenses (as defined below), real estate taxes, special assessments, sales taxes, personal property taxes, licenses and permits, intangible taxes, insurance, utilities, maintenance, repairs and obligations of every kind or nature whatsoever relating to the Leased Premises (including any personal property used in the operation thereof) which may arise or become due during the term of this Lease (collectively, "Additional Rent"), shall be paid by Tenant directly to the parties who are owed such amounts and that Landlord shall be indemnified and saved harmless by Tenant from and against the same. Notwithstanding the foregoing, Tenant shall pay the real estate taxes, directly to the proper taxing authorities as provided herein.

(e) Payment of Common Area Expenses. It is agreed between Landlord and Tenant that notwithstanding the foregoing, that the Common Area Expenses will eventually be a "pass through" expense which will ultimately be borne by Tenant's sub-tenants for the Leased Premises as part of the Rent that Tenant will receive under its Leases with sub-tenants. However, it is also contemplated that there will be a period of time during construction and development of the New Marina Uplands Premises where Tenant will not be able to "pass-through" the Common Area Expenses to the sub-tenants. Until such time as the New Marina Uplands are completed or Tenant has sufficient "pass through" revenues to cover the Common Area Expenses, whichever comes first, Landlord agrees to pay the Common Area Expenses for the Leased Premises. Notwithstanding the foregoing, Landlord's obligation to pay the Common Area Expenses shall not exceed \$723,172.87 ("CAM Rate") for the year 2016 and shall not increase by more than 3% annually on the CAM Rate Amount. Any Common Area Expenses in excess of these amounts shall be the responsibility of Tenant.

(f) In addition to and in consideration of Landlord's agreement to pay the Common Area Expenses during construction as set forth in Section 2(d), above, Landlord and Tenant agree that there is a possibility that Tenant might realize income greater than its expenses in connection with the Leased Premises. In the event Tenant receives income greater than its expenses in any calendar year, and its capital account has accrued a positive balance, Landlord and Tenant agree that Landlord shall be entitled to receive twenty-five percent (25%) of any revenue greater than Tenant's expenses. The calculation of any monies owed to Landlord and audit rights shall be further delineated in Section 26 of this Lease.

(g) Common Area Expenses. The term "Common Area Expenses" shall mean all costs and expenses paid or incurred (if any) by Tenant or on Tenant's behalf with respect to or by reason of the repair, replacement, remodeling, maintenance and operation of the Premises, including without limitation, the following: (i) salaries, wages, benefits, and pension payments of employees employed by Tenant who work within the Leased Premises (not above the grade of building manager); (ii) payroll taxes, worker's compensation, uniforms, and related expenses for such employees; (iii) the cost of all charges for trash and garbage collection, electricity, water and all other utilities furnished to the Leased Premises (including, without limitation, the Common Areas) not separately metered to and/or paid for by sub-Tenant; (iv) the cost of painting, caulking, waterproofing and weatherproofing the building(s) and parking and/or parking garage structure(s) within the Leased Premises, together with the cost of restriping within the parking and/or parking garage structure(s) and other portions of the Leased Premises; (v) the cost of all premiums for insurance and endorsements thereon including, but not limited to, fire and extended coverage, rents, liability and fidelity with regard to the Leased Premises; (vi) the cost of all supplies, tools, materials and equipment; (vii) the cost for window and other cleaning and janitorial services, as well as any security systems and services and any other services provided by Tenant; (viii) amounts incurred by Tenant and amounts charged to Tenant by contractors for labor, services, materials and supplies furnished in connection with the operation, maintenance, repair and replacement of any part of the Leased Premises, (ix) the cost of service contracts with independent contractors; (x) the costs, amortized based on a schedule prepared by Tenant, of any capital improvements to the Leased Premises and the cost of any machinery or equipment installed within the Leased Premises, which costs are not otherwise included in Common Area Expenses and: (A) which have the effect of reducing the expense which otherwise would be included in the Common Area Expenses, or (B) which are required by law; (xi) costs and expenses of painting, refurbishing, re-carpeting, redecorating and replacing any portion of the Common Areas of the Leased Premises; (xii) costs and expenses of landscape maintenance and replacement of flowers, shrubbery, trees and grass; (xiii) costs and expenses of repairs and replacements to the roof and structural parts of buildings and other improvements within the Leased Premises; (xiv) costs and expenses of repairing and replacing wearing surfaces, paved areas, ramps, streets, sidewalks and courtyards; (xv) costs and expenses of repairing and replacing benches, fountains, sculptures, seating areas, and other amenities; (xvi) reasonable and necessary professional fees except to the extent attributable to leasing of the Leased Premises, enforcement of leases against tenants and financing or sales of the Leased Premises; (xvii) any cost of repairing, or replacing, any damage caused by fire or other casualty which damage is not covered under any of Tenant's insurance policies and which costs for repairing, or replacing, such damage shall also include deductibles (if any) under said insurance policies; (xviii) all other reasonable and necessary costs, expenses and charges properly allocable to the repair, replacement, operation and maintenance of the Leased Premises; (xix) all sales and other taxes, fees and other charges imposed on any item(s) included in Common Area Expenses; (xx) management fees as may be adjusted from time to time in Tenant's commercially reasonable judgment, whether or not such function is performed by an independent

management company, other independent entity, or by Tenant, (xxi) the cost of operating, maintaining, repairing and replacing the central chiller system which furnishes cooled air to the Buildings and other parts of the Leased Premises, which costs shall include, without limitation, the costs and expenses to maintain, repair and replace chillers, air handlers, pipes and all other equipment, facilities and machinery associated with the chilled water air conditioning system, (xxii) the costs of operating the chilled water air conditioning system, including, but not limited to, costs and expenses of electricity and water used therefor, and (xxiii) the fair market rent of any space within the Project used as a management office for the Project. There shall also be included in Common Area Expenses the depreciation of any item which is included in this Section.

~~(d)~~(h) Rent and Additional Rent. All monies due under this Lease shall be considered Rent or Additional Rent.

Section 5. In all other respects, the remainder of the Ground Lease shall remain in full force and effect, and the parties agree to perform all duties and obligations as set forth therein. In the event there is a conflict between the Ground Lease and this Amendment, the Amendment shall control.

[SIGNATURES ON FOLLOWING PAGE]

FIRST AMENDMENT - MARINA UPLANDS GROUND LEASE

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

LANDLORD

CITY OF RIVIERA BEACH

BY: _____
Thomas A. Masters
Mayor

Witness

Print/Type Witness Name

Witness

Print/Type Witness Name

ATTEST:

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Claudene Anthony, CMC
City Clerk

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

STATE OF FLORIDA
COUNTY OF PALM BEACH

On _____, 2016, before me, _____, Notary Public, personally appeared Thomas A. Masters, Mayor, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he signed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, signed the instrument.

WITNESS my hand and official seal.

Notary Public (SEAL)

My commission expires: _____

TENANT

CRA

BY: _____
Dawn S. Pardo
Chairperson

Witness

Print/Type Witness Name

Witness

Print/Type Witness Name

On _____, 2016, before me, _____, Notary Public, personally appeared Dawn S. Pardo, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she signed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, signed the instrument.

WITNESS my hand and official seal.

Notary Public (SEAL)

My commission expires: _____