

Return to: (enclose self-addressed stamped envelope)

Name:

Address:

This Instrument Prepared by: Peter D. Slavis, Esq.

Address: Ruden McClosky Smith Schuster and Russell, PA  
200 East Broward Blvd., 15<sup>th</sup> Floor  
Fort Lauderdale, FL 33301

DATA SPACE ABOVE THIS LINE FOR PROCESSING DATA

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**FIRST AMENDMENT TO GROUND LEASE**

THIS FIRST AMENDMENT TO GROUND LEASE ("Amendment") is made this 33<sup>rd</sup> day of December 2005, between THE CITY OF FORT LAUDERDALE, a municipal corporation existing under the laws of the State of Florida ("Lessor"), NEW RIVER TRADING POST DEVELOPMENT, LLC, a Florida limited liability company ("Original Lessee") and NEW RIVER TRADING POST LTD., a Florida limited partnership ("New Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into that certain Ground Lease dated December 24, 2003 (the "Lease"); and

WHEREAS, on January 4, 2005, the City Commission adopted Ordinance No. C-04-65 which approved the rezoning of the Leased Property; and

WHEREAS, on January 4, 2005 the City Commission adopted Resolution No. 05-08 approving the development plan for the Leased Property which development plan is referenced as Planning and Zoning Case No. 74-R-04, as may be amended from time to time (the "Approved Development Plan"); and

WHEREAS, Lessor and Lessee desire to enter into this Amendment to reconcile and clarify any inconsistencies between the Approved Development Plan and the Lease; and

WHEREAS, Lessor and Lessee recognize the necessity and desirability of further amending the Lease to accommodate the "Submission" (as hereinafter defined) of the Leased Property to condominium ownership under Chapter 718 of the Florida Statutes ("Condominium Act") as is contemplated under the Approved Development Plan, if, as and when desired by Lessee; and

WHEREAS, Section 31 of the Lease provides that the Authorized Representatives of the Lessor and Lessee may approve technical amendments to the Lease and may execute any required instruments to make and incorporate such amendments to the Lease.

NOW, THEREFORE, for and in consideration of Ten and no/100 Dollars (\$10.00) and

the promises and covenants herein contained, the Lease is hereby amended to provide as follows:

1. The recitations set forth above are true and correct and are incorporated herein. Initial capitalized terms or other such terms used herein shall have the same meaning given such terms in the Lease, unless otherwise defined herein or unless the context otherwise indicates. Unless the context clearly requires otherwise to avoid ambiguity, references hereto to "Lessee" shall refer to the Lessee at that particular time, be it the Original Lessee or the New Lessee or any other lessee as approved by Lessor, or upon Submission, the leasehold condominium unit owners or the "Association" (as hereinafter defined), as the case may be.
2. In accordance with Section 31 of the Lease, the Approved Development Plan attached hereto as **Exhibit A** and made a part hereof, as it may be later revised from time to time, shall supplement the Lease and control over any inconsistency contained between the Approved Development Plan and the provisions of the Lease.
3. The Project Schedule attached to the Lease as **Exhibit C** shall hereby be deleted and replaced with the "Revised Project Schedule" attached hereto as **Exhibit B** and made a part hereof.
4. The second sentence of Section 9.6.1 is hereby deleted and replaced with: "Lessee will submit documents to Lessor for review and approval at least fifteen (15) days in advance of the scheduled Loan Closing Date (as such date has been extended pursuant to the Revised Project Schedule), except the timing of delivery of the Bond and any documents related thereto shall be as set forth in Section 9.6.3 below." The third sentence of Section 9.6.1 is hereby deleted and replaced with, "The Lessor's scope of review of the Project Financing Documents shall be solely for the purpose of determining that they conform to the terms of this Lease Agreement, as amended, relating to the right of Lessor to cure defaults under the Construction Financing Documents and the Notice requirements to Lessor."
5. Section 9.6.3 of the Lease is hereby deleted and replaced with: "As soon as available after the Loan Closing Date (but in all events prior to commencing construction), Lessee shall cause Payment and Performance Bonds to be issued for the Project as outlined below. Such Payment and Performance Bonds shall remain in full force and effect from the date of their issuance through the construction of the Project and shall expire upon the issuance of a Project Completion Certificate for the Project. Copies of the Payment and Performance Bonds shall be sent to Lessor for review and approval as soon as available after the Loan Closing Date (but in all events prior to commencing construction). Notwithstanding anything to the contrary contained herein, Lessee shall cause the Construction Financing Documents to provide that the Construction Lender shall not fund any vertical improvements constituting the Project until the Payment and Performance Bonds have been approved by the Lessor and posted as required by law. Lessor's scope of review of the Payment and Performance Bonds shall be solely for the purpose of determining that the Payment and Performance Bonds conform to the terms of this Lease Agreement relating to the Payment and Performance Bonds. The Lessor agrees to diligently proceed with and complete its review of the Payment and Performance Bonds as soon as reasonably as possible and advise the Lessee in writing of Lessor's specific objections thereto within ten (10) days after receipt. If the Lessor does not respond within the time period provided, Lessor shall be deemed to have approved the Payment and Performance Bonds."
6. Section 9.6.4 of the Lease is hereby deleted and replaced with: "The Performance Bond shall assure that all contract obligations of Contractor will be performed under that certain construction contract for construction of the Project. The Payment Bond shall be an

unconditional statutory Payment Bond pursuant to the requirements of Florida Statutes 713.23 and Florida Statutes 255.05 as applicable for work on the above publicly owned property. The Bond shall identify Lessee as an obligee and shall identify Construction Lender and Lessor's interest as additional obligees under the Bond. The interest of Lessor under the Bond shall be subordinate to the Construction Lender only if Construction Lender agrees to undertake or cause the Surety to undertake completion of the Project as provided in Section 9.6.5 below and Construction Lender is an obligee under the Bond."

7. Section 9.6.5 of the Lease is hereby deleted and replaced with: "Lessee agrees to require that the Construction Financing Documents include a provision which compels its Construction Lender either to undertake and fund any unpaid balance of the contract price for construction upon a default of the Lessee in order to compel the Contractor or the Surety upon a default of the Contractor to undertake completion of the Project should a material default of Lessee occur under the Construction Financing Documents beyond any applicable grace or cure period that results in the Construction Lender, through foreclosure or otherwise, taking over the Project pursuant to the terms of the Construction Financing Documents."

8. Section 9.6.6 of the Lease is hereby deleted in its entirety.

9. Subsection (ii) of Section 10.2.4 is hereby deleted and replaced with, "to institute foreclosure proceedings and complete such foreclosure or otherwise acquire Lessee's interest under this Lease Agreement with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured."

10. Pursuant to Section 17.4 of the Lease, the Lessor hereby consents to the assignment of the Leasehold interest under the Lease from the Original Lessee to the New Lessee. By its joinder to this Amendment, New Lessee hereby expressly assumes all obligations of Original Lessee under the Lease, and New Lessee shall abide by and be subject to the all of the terms, conditions, obligations, reservations and restrictions to which the Original Lessee was subject. Original Lessee shall hereby be released from all of its obligations under the Lease. Section 19.1 (Notice) of the Lease is hereby amended to reflect the New Lessee with no change of address for New Lessee.

11.a. Section 17.5.1 is hereby deleted and replaced with, "Lessee represents and warrants that the sole general partner of the New Lessee is New River Trading Post Development, LLC, the Original Lessee. The principals of the general partner of New Lessee are as follows, who own one hundred percent (100%) of the assets and who possesses one hundred percent (100%) control of the general partner of New Lessee, with proportional shares as follows:

37.5%	Allan Hooper
37.5%	Tim Petrillo
25%	Kelly Drum

Lessee represents and warrants that through the Project Completion Date, New River Trading Post Development, LLC, shall remain the sole general partner of New Lessee and each of the three principals stated above will own and control one hundred percent (100%) of the general partner of New Lessee, although the three principals may convey ownership interests among themselves as long as all three remain the owners and in control of the general partner of New Lessee until the Project Completion Date, unless otherwise approved by Lessor. A change

in the ownership or control of the general partner of New Lessee or the principals resulting from death or incapacity shall not constitute a transfer or an event of default under this Lease Agreement.”

11.b. Section 17.5.2 is hereby deleted and replaced with, “Lessee shall not substitute any principals of the general partner of New Lessee (i.e., Allan Hooper, Tim Petrillo and Kelly Drum) before the Project Completion Date without the prior approval of Lessor. Lessor agrees not to unreasonably withhold, delay or condition its approval to any substitute, provided the qualifications of the substitute are at least equal to or better than those of the principal being substituted.”

12. The definition of “Riverwalk Studio Space” in Section 2.1 of the Lease is hereby amended to mean those “work” or commercial units located on the first floor and those “live” or residential units located on the second floor (for the avoidance of doubt, the “live” units on the second floor function independently from the “work” units immediately below on the first floor so as to allow for multiple tenant occupancy, the “work” units on the first floor may be owned independently of ownership of the “live” units located immediately above on the second floor, and the “work” units located on the first floor and the “live” units located immediately above on the second floor shall not be designed for nor restricted to single-tenant occupancy).

13. Section 4.2 of the Lease is hereby deleted and replaced with, “The Riverwalk Studio Space shall consist of commercial or retail units on the ground level and residential units on the second level as provided in the Project Description and Approved Development Plan.”

14. Notwithstanding anything to the contrary contained herein, in the event of a casualty loss or condemnation taking of all or any material portion of the Leased Property, as described in Section 15 of the Lease, Lessee shall designate a trustee (“Insurance Trustee”) (who shall be, prior to satisfaction of the Construction Lender’s lien on Lessee’s leasehold interest in the Lease, the Construction Lender) to receive, hold and expend any insurance proceeds and/or any condemnation award (as may be applicable) for the reconstruction of the Project, provided Lessee is not in default under the terms and conditions of the Construction Financing Documents at the time of such casualty loss or condemnation taking. In the event Lessee is in default of the Construction Financing Documents at the time of the casualty loss or condemnation taking, with all applicable cure periods expired, or in the event there is a casualty loss or condemnation taking of fifty percent (50%) or more of the Project, then the Construction Lender is authorized to apply the insurance proceeds and/or condemnation award to the repayment of debt without thereby waiving Lessee’s obligation to rebuild with new construction financing.”

In the event there is a casualty loss or condemnation taking of less than fifty percent (50%) of the Project, then prior to Construction Lender, as Insurance Trustee, being obligated to disburse any insurance proceeds or condemnation award to Lessee, Lessee shall be required to deliver evidence reasonably satisfactory to Construction Lender that the Project can be fully repaired and restored at least three (3) months prior to the maturity of the Construction Finance Documents.

15. Lessor acknowledges that Lessee shall have the right to submit all or any portion of the Leased Property and any improvements constructed thereon to condominium form of ownership pursuant to the Condominium Act, subject to the terms and conditions of the Lease, as amended hereby, by recordation of a Declaration of Condominium (“Declaration”) among the Public Records of Broward County, Florida (“Submission”). In the event all or any portion of the Project shall be submitted by Lessee to condominium form of ownership, then in such event

Florida Statute 718.401, attached hereto as **Exhibit C**, requires that the Lease include certain requirements which are hereby incorporated by reference into the Lease (except for those requirements not applicable in the case of the ground lessor being a political subdivision of the State of Florida). To the extent that the Division of Florida Land Sales, Condominiums and Mobile Homes ("Division") determines that there are any statutory or regulatory provisions applicable to the Project, then in such event the Lease shall be deemed automatically amended to incorporate such required provisions, and, upon written request of Lessee, Lessor shall execute any additional amendments or documents required by the Division. In addition, upon Submission, the following provisions shall automatically be incorporated into the Lease as if originally set forth therein:

a. Lessor shall have the right, prior to Submission, to examine and approve (such approval shall not be unreasonably withheld, delayed or conditioned) the Declaration, the Articles and By-Laws of the condominium association ("Association"), and the form of instrument by which Lessee will transfer individual leasehold condominium units (collectively hereinafter the "Condominium Documents"); provided, however, if Lessor does not provide Lessee with written objections to the Condominium Documents within twenty (20) days of delivery, Lessor shall be deemed to have approved the Condominium Documents.

b. Each leasehold condominium unit owner shall acquire by partial assignment from Lessee a leasehold interest hereunder, subject to the terms, provisions, and covenants of the Lease and the Condominium Documents (alternatively, at Lessee's option, the Association may acquire an assignment of the Lease on behalf of each leasehold condominium unit, or, both the Association and each unit owner shall acquire such assignment). The partial assignments of the Lease (and/or the assignment of the Lease to the Association, as the case may be) to accomplish the sale of leasehold condominium units shall not require the approval of Lessor pursuant to Section 17.4 of the Lease.

c. Lessee shall establish the Association to operate and administer the daily operations of the Project as subjected to condominium form of ownership. Upon Submission and the turnover of control of the Association from Lessee to the owners of all leasehold condominium units, the Association shall be responsible for undertaking and performing all obligations of Lessee pursuant to this Lease owed to the Lessor, including the payment of Rent, and Lessee shall be released from all of its obligations under the Lease. Upon Submission, all expenses of Lessee incurred under the Lease shall become Common Expenses to be shared amongst all leasehold condominium unit owners in the manner set forth in the Declaration. Upon Submission, Lessor shall not have a right of possession or control as to any portion of the Project subject to the Submission except after default, the expiration of applicable grace period and the exercise of Lessor's remedies pursuant to the Lease.

d. The following provision shall be added to the Lease as Section 10.1.1:  
"Notwithstanding anything to contrary contained herein, the purchasers of leasehold condominium units may freely mortgage, pledge or otherwise encumber their leasehold condominium units subject to the Lease and the Condominium Documents and no consent of Lessor shall be required."

e. The following provision shall be added to the Lease as Section 13.6.1:  
"Notwithstanding anything to the contrary contained herein, in the event of any default under the Lease, Lessor shall not disturb the occupancy of condominium unit owners, including any rental tenants or other occupants, provided such parties attorn to Lessor as Lessor under the terms of the Lease and the Condominium Documents."

f. Lessor and Lessee agree to amend this Lease from time to time to the extent required by Florida Law or the Division or to the extent requested by Lessee to accommodate the sale of leasehold condominium units, provided said amendments do not materially and adversely affect the rights of Lessor and provided any expenses incurred in connection with any such amendments shall be paid by Lessee.

16. Section 8.4.2. is hereby deleted and replaced with, "The remainder of the leased Property may be changed to another use permitted by the ULDR without the consent of the Lessor, subject to the restrictions provided in the Lease Agreement."

16. This Amendment shall be construed and interpreted in accordance with the laws of the State of Florida. The Lease (as modified herein) contains the entire agreement of the parties hereto with respect to the subject matter thereof, and may not be changed or terminated orally or by course of conduct, or by any other means except by a written instrument, duly executed by the party to be bound thereby. This Amendment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

17. Except as modified hereby, the Lease shall remain in full force and effect in accordance with the terms and provisions thereof and both Lessor and Lessee ratify and reaffirm the Lease as modified herein.

IN WITNESS WHEREOF, the Lessor, Original Lessee and New Lessee have executed this First Amendment to Ground Lease on the day first above written.

Signed, sealed and delivered  
in the presence of:

Safceea B. Ali  
Witness

Safceea B. Ali  
Printed Name

H. Skourndridaki  
Witness

Katerina Skourndridaki  
Printed Name

**LESSOR:**

CITY OF FORT LAUDERDALE, a  
municipal corporation

By: [Signature]  
Printed Name: Jim Naugle  
Title: Mayor

By: [Signature]  
City Manager

Attest:  
[Signature]  
City Clerk

Approved as to form:  
[Signature]  
City Attorney

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, the \_\_\_\_\_ of CITY OF FORT LAUDERDALE, a municipal corporation, freely and voluntarily under authority duly vested in him/her. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public

Signed, sealed and delivered  
in the presence of:

**ORIGINAL LESSEE:**  
NEW RIVER TRADING POST  
DEVELOPMENT, LLC, a Florida  
limited liability company

Chris Bellissimo  
Witness

Chris Bellissimo  
Printed Name

Steven Smith  
Witness


STEVEN SMITH  
Printed Name

Alan C. Hooper  
By:  
Printed Name: ALAN C. HOOPER  
Title: MANAGER

STATE OF Florida )  
COUNTY OF Broward ) SS:

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Alan Hooper, the Manager of NEW RIVER TRADING POST DEVELOPMENT, LLC, a Florida limited liability company, freely and voluntarily under authority duly vested in him/her. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 9<sup>th</sup> day of December, 2005.

NOTARY PUBLIC-STATE OF FLORIDA  
 Mariagabriela Collazos  
Commission # DD362768  
Expires: OCT. 14, 2008  
Bonded Thru Atlantic Bonding Co., Inc.

Mariagabriela Collazos  
Notary Public  
Mariagabriela Collazos  
Typed, printed or stamped name of Notary Public





**EXHIBIT A**

**Approved Development Plan**

**LEGAL DESCRIPTION**

PARCEL "A" OF "THE BAREFOOT MAILMAN" ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 152, PAGE 32 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

**DEVELOPMENT DATA:**

JURISDICTION: CITY OF FORT LAUDERDALE, FL.  
LAND USE: RETAIL/RESIDENTIAL/COMMERCIAL  
ZONING DISTRICT: ARTS AND SCIENCES (RAC-AS)  
WATER/WASTEWATER PROVIDER: CITY OF FORT LAUDERDALE, FL.

**SITE DATA:**

		% OF SITE:
GROSS SITE AREA:	53,150 SF (122 ACRES)	100%
PERVIOUS AREA:	8,204 SF (19 ACRES)	15.5%
IMPERVIOUS AREA:	44,946 SF (103 ACRES)	84.5%
BUILDING AREA:	22,219 SF (51 ACRES)	41.8%
MULTI-USE:	17,097 SF (39 ACRES)	
MUSEUM:	5,122 SF (12 ACRES)	
VEHICULAR AREA:	7,954 SF (18 ACRES)	15%
SDUK/LOADING:	14,712 SF (34 ACRES)	27.7%

**SEC. 47-620: DIMENSIONAL REQUIREMENTS**

BUILDING FOOTPRINT: 29,582 SF  
FLOOR AREA RATIO: 53,150 SF / 29,582 SF = 225  
BUILDING HEIGHT:  $\triangle$  27'-9.5" ABOVE GRADE (38'-6" max.)  
NUMBER OF STORIES: 2

**SEC. 47-13K(1a) & 47-13J(1): BUILDING SETBACK REQUIREMENTS**

**BUILDING SETBACK REQ.**  
FRONT YARD REQ.: 10'      PROV.: 10'-2' TO S.W. 2nd AVE.  
E. CORNER YD. REQ.: 5'      PROV.: 5' TO ALLEY  
W. CORNER YD. REQ.: 5'      PROV.: 7'-6" TO S.W. 4th AVE.  
REAR YARD REQ.: 45'      PROV.: 63'-2" TO NEW RIVER

PARKING REQ.: N/A IN RAC-AS DISTRICT  
PARKING PROV.: 23  
OPEN SPACE REQ.: 18 UNITS x 200 SF. EA. = 3,600 SF.  
OPEN SPACE PROV.: 3,864 SF.

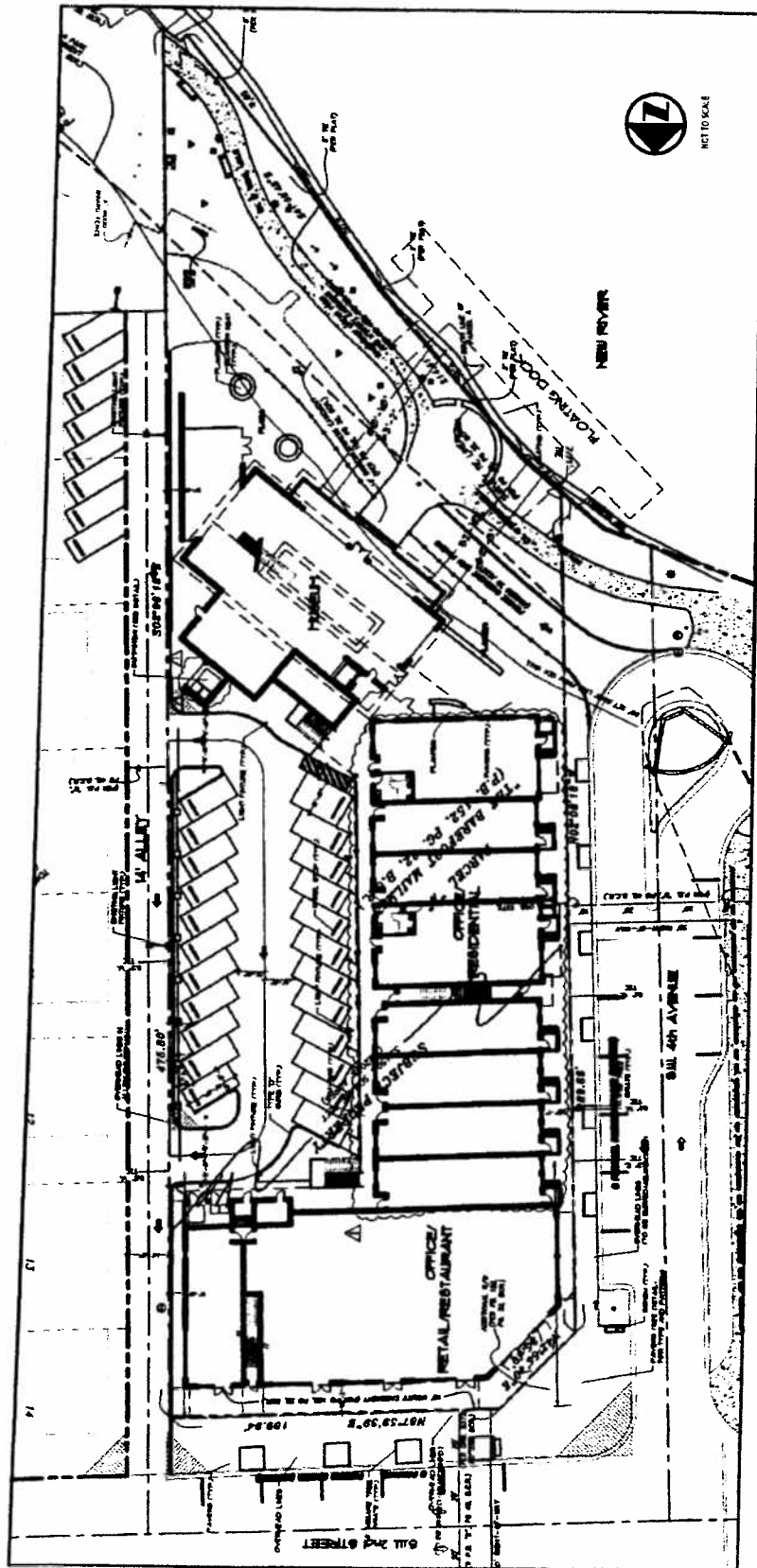


EXHIBIT B TO THE AMENDMENT  
EXHIBIT C TO THE LEASE

REVISED PROJECT DEVELOPMENT SCHEDULE

The Project, including final plan approval, permitting, financing and construction, shall be governed by the following schedule, with timeframes commencing from the Lease Effective Date:

<b>NEW RIVER TRADING POST DEVELOPMENT LLC PERFORMANCE MEASURES AND ACTIVITY</b>		<b>MONTHS FROM LEASE EFFECTIVE DATE</b>	(Dec 24 <sup>th</sup> 2003)
<b>ITEM</b>			
1.	Submission of Application and Preliminary Development Plan for Pre-Application Review By the Development Review Committee (DRC).	4 months	April 03
2.	Submission of Preliminary Development Plan Reflecting DRC Pre-Application Comments for Consent of the City Commission as Lessee.	5 months	May 03
3.	<i>Submission of Application and Preliminary Development Plan for Formal Review and Comment by the Development Review Committee (DRC).</i>	6 months	June 03
4.	<i>Submission of Application for Site Re-zoning.</i>	6 months	June 03
5.	Submission of Application for Development Plan Approval by the Planning and Zoning Board.	8 months	Aug 03
6.	Approvals Obtained for Site Rezoning and the Approved Development Plan.	12 months	Dec 2004
7.	Prepare Detailed Plans and Specifications and Construction Documents and Secure Permits.	23 months	Nov 2005
8.	<i>Undertake all Activities to Complete Project Financing and Close on the Construction Loan.</i>	25 months	Jan 2006..
9.	Take Possession of Leased Property and Complete Construction Mobilization.	26 months	Feb 2006
10.	Commence Project Construction.	27 months	March 2006
11.	Complete Project Construction.	45 months	Sept 2007
12.	Complete Tenant Build-out Construction.	49 months	Jan 2008
13.	Rental Commencement Date.	50 months	Feb 24 <sup>th</sup> 2008

Highlighted Items 3, 4 and 8 of the italicized performance measures above are events of Early Termination as provided by Section 7.2 of the Lease Agreement. All performance measures are subject to extension due to Unavoidable Delay, or by formal approval of the City Commission.

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**EXHIBIT C**

**Florida Statute 718.401**

WEST'S FLORIDA STATUTES ANNOTATED  
TITLE XL. REAL AND PERSONAL PROPERTY (CHAPTERS 689-724)  
CHAPTER 718. CONDOMINIUMS  
PART IV. SPECIAL TYPES OF CONDOMINIUMS  
→ 718.401. Leaseholds

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or she or it may have with respect to the Lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the

association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

Current through Chapter 352 and H.J.R. No. 1723, H.J.R. 1177 and S.J.R. No. 2144 (End) of the 2005 First Regular Session of the Nineteenth Legislature

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END OF DOCUMENT

TO: Vic Volpi, Real Estate Officer II  
FROM: CITY ATTORNEY'S OFFICE  
DATE: January 11, 2006  
RE: New River Trading Post

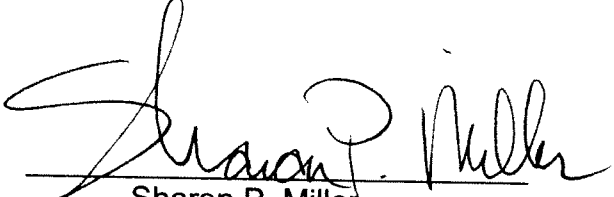
PLEASE:

<input type="checkbox"/> Make recommendations & return	<input type="checkbox"/> For appropriate action
<input type="checkbox"/> Prepare reply for (your/my) sig.	<input checked="" type="checkbox"/> For your information
<input type="checkbox"/> See me	<input type="checkbox"/> For your review & comment

REMARKS:

Attached for your records is a copy of the fully executed First Amendment to Ground Lease among the City and New River Trading Post Development, LLC and New River Trading Post Ltd. as well as the Commission Agenda Report. This was approved by the City Commission at their meeting of November 15, 2005 by Item M-36.

Action desired before: \_\_\_\_\_

  
Sharon P. Miller

SPM/ka/jan11vw

Attachment

L:\SPM\BUCKS\2006\jan11vw.wpd



SM

M-36

# COMMISSION AGENDA REPORT

COMMISSION MEETING DATE:

AGENDA ITEM:

COMMISSION REPORT NO:

PREPARED BY:

DEPT:

DEPARTMENT DIRECTOR'S SIGNATURE

AUTHOR'S NAME, TITLE, AND TELEPHONE NUMBER

CITY MANAGER'S SIGNATURE

TITLE 1:

TITLE 2:

SUBJECT:

A motion authorizing and approving the First Amendment to Ground Lease, New River Trading Post, for modifications to the project's site plan, revision to the project development schedule, and the addition of certain terms required by Florida Statutes and requested by the tenant's lender.

PROPERTY LOCATION/ADDRESS:

REQUESTED ACTION (STAFF RECOMMENDATION - CONTENT OF MOTION):

REGULAR AGENDA

CONFERENCE

COMMISSION MEMO

Motion

Motion for Discussion

Old/New Business

Public Hearing

Ordinance

CRA

Resolution

Presentation

Exec Closed Door

Purchase

Citizen Presentation

Advisory Boards

Guest Speaker

City Commission Reports

City Manager Reports

Public Notice Advertised:

Name of Guest Speaker:

Affiliation of Guest Speaker:

FUNDS APPROPRIATION/TRANSFER (provide index code, subobject, and title of subobject):

### FOR PROCUREMENT ITEMS ONLY

PROCUREMENT REFERENCE NO:  TRANSACTION TYPE:

BIDS SOLICITED/RECEIVED:  WBE:  LATE BID:

Vendor:  MBE:  NO BID:

Amount:  Details:

Procurement Recommendation:

**Description of Exhibits:**

- |                         |                             |    |
|-------------------------|-----------------------------|----|
| 1. SITE PLAN COMPARISON | 2. CONTINUATION OF BACKGROU | 3. |
| 4.                      | 5.                          | 6. |
| 7.                      | 8.                          | 9. |

EXHIBITS: AVAILABLE VIA HARDCOPY: Exhibit #s:

PRIOR COMMISSION/BOARD ACTION: (attach additional file if necessary)

**BACKGROUND/DETAIL: (2000 character limit)**

The City Commission is asked to consider a First Amendment to the Ground Lease for New River Trading Post (continuation of background/detail attached as Exhibit II).

Document Name:   
Type:   
Expiration Date:  Attorney's Initials:

**EXHIBIT I**  
**CAR #05-1305**

**New River Trading Post**

**Site Plan**

**Conceptual Plan**

**Permitted Plan**

**Along Second Street**

Retail Square Footage	7,800	6,729
Office Square Footage	7,000	6,105
Total Length	125'	124'-9 1/2"
Total Width	60'	58'-3 1/2"
Total Height	25'	25'

**Along Fourth Avenue**

Work/Live Square Footage	16,000	18,218
Total Length	285'	169'-6"
Total Width	60'	56' 7"
Total Height	25'	25'

**Maritime Museum**

Square Footage Footprint	5,600	5,025
Total Length	135'	122'-1"
Total Width	42'	60'8"
Total Height **	30'	33' Ridgeline 38' w/ Copula

**On-site & Parallel Parking**

Parking Spaces	24-34	33
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**\*\*Both heights fall within the rezoning of RAC-AS**

**EXHIBIT II**  
**CAR #05-1305**

The Amendment provides for a:

- Site Plan Modifications as outlined in Exhibit I;
- Revised Project Development Schedule that adds a two-month period for Tenant to secure building permits;
- Outlines more specifically the required payment and performance bonds, as requested by the Tenant's lender;
- Assigns interests from the New River Trading Post Development, LLC, a Florida limited liability company, to New River Trading Post, Ltd., a Florida limited partnership; the original LLC entity will become the general partner of the newly-created limited partnership, with no substantial change by the Assignment to the principals involved in the transaction;
- Provides for separate ownership of the "work units" and the "live units";
- Appoints an "Insurance Trustee" in the event of a casualty loss;
- Incorporates specific language required by Florida Statute 718.401, dealing with Florida Condominium Act, necessary to permit tenant to establish condominium ownership of certain units throughout the project.

Staff recommends approval of the First Amendment to the Ground Lease between New River Trading Post, LLC and the City of Fort Lauderdale, for modifications to the project's site plan, a revision to the Project Development Schedule, and the addition of certain terms required by Florida statutes and requested by the Tenant's lender.