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# Greenberg Traurig

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June 19, 2007

## FOR SETTLEMENT PURPOSES ONLY

### VIA PDF EMAIL

Pamala H. Ryan  
City Attorney  
City of Riviera Beach  
600 W. Blue Heron Blvd.  
Riviera Beach, FL 33404

Re: *City of Riviera Beach, Plaintiff v. Dawn Pardo; Diana Dimeo; Kathy Groover; Draga M. Lindblom; and Gordon Rowse, Defendants*, filed in the Circuit Court of the 15<sup>th</sup> Judicial Circuit, in and for Palm Beach County, Florida, Civil Division Case No.: 502006CA014100XXXXMBAA; and *Dawn Pardo, Petitioner v. Jim Jackson, Norma Duncombe, Vanessa Lee, Elizabeth Wade, Ann Iles, as city council members of the City of Riviera Beach, a municipality of the State of Florida, Carrie Ward, as city clerk of the City of Riviera Beach, a municipality of the State of Florida, and City of Riviera Beach, a municipality of the State of Florida, Respondents*, filed in the Circuit Court of the 15<sup>th</sup> Judicial Circuit, in and for Palm Beach County, Florida, Civil Division Case No.: 602006CA014101XXXXMB AA (collectively the "Lawsuits")

Dear Ms. Ryan:

I understand that at the meeting last night with the City Counsel the issue regarding settling the Lawsuits was discussed and you raised the concern that providing OMRD, LLC a forty-nine (49) year extension on the Phase I Lease (as hereinafter defined) and the Phase II Lease (as hereinafter defined) could be problematic.

We believe that the operation of the Disposition and Development Agreement between the City of Riviera Beach, Florida, and the Riviera Beach Community Redevelopment Agency and OMRD, LLC (the "DDA"), as well as the Option Agreement, also between the City of Riviera Beach, Florida and Riviera Beach Community Redevelopment Agency and OMRD, LLC (the "Option Agreement"), provide the authority, platform and basis to resolve the Lawsuits, by providing OMRD, LLC a forty-nine (49) year extension on the Phase I Lease and the Phase II Lease, while still respecting the results of the elections regarding the charter amendments.

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- \*Strategic Alliances  
Tokyo-Office/Strategic Alliance

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As you know, the charter amendments would only have a prospective application following their passage which occurred after the election in the first quarter of 2007. They could not operate retroactively.

The Option Agreement and the DDA<sup>1</sup> were both executed on December 18, 2006.

Section 3.01(d) of the DDA provides the following:

The City and the Agency agree and acknowledge that the feasibility of the Phase I Development and Phase II Development is predicated on, among other items: (i) the Lease Terms for the Phase I Lease and the Phase II Lease being ninety-nine (99) years, and (ii) the Phase II Development consisting of a building of at least 300 feet in height. Initial drafts of the Phase I Lease, the Phase II Lease and the this Agreement were circulated containing among other items, the provisions referred to in subparagraphs (i) and (ii) above. Subsequent to the circulation of the initial drafts of the Phase I Lease, Phase II Lease and this Agreement, various petitions were circulated challenging the ability of the City to enter into ninety-nine (99) year leases and attempting to limit the height of any buildings constructed on the beach to five (5) stories. As a result of the foregoing challenges: (i) the initial drafts of the Phase I Lease, Phase II Lease and this Agreement were modified to, among other things, limit the terms of the Phase I Lease and Phase II Lease to fifty (50) years so as to permit the Project to continue to be pursued during the period of time that the petitions were reviewed and any required referendums were held, and (ii) the Option Agreement was entered into which provides, among other things, that: (a) if the foregoing petitions were determined not to satisfy Florida law and as a result no referendum is held with respect to such petitions, or (b) referendum(s) are held as a consequence of the petitions and such referendum(s) is/are defeated or if passed deemed not applicable to the Project by a court of competent jurisdiction, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 of the Option Agreement.

Furthermore, Section 3.01 of the Option Agreement provides as follows:

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<sup>1</sup> The Option Agreement and the DDA relate to and refer to the Ground Lease - Retail (the "Phase I Lease") entered into on December 18, 2006 by and between OMRD, LLC ("Tenant") and the City of Riviera Beach, Florida ("Landlord") and the Ground Lease - Hotel/Resort (the "Phase II Lease") entered into on December 18, 2006 by and between OMRD, LLC ("Tenant") and the City of Riviera Beach, Florida ("Landlord").

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3.01 The City and Agency agree and acknowledge that as a result of the Petitions certain provisions of the Phase I Lease, Phase II Lease and the Disposition and Development Agreement were modified so as to permit the continued progress of the Project, with the understanding that:

(a) (i) if the Ordinance Petition relating to the Lease Term was determined not to satisfy Florida law and as a result no referendum needed to be held with respect to such Petition, or (ii) a referendum was held as a consequence of the Ordinance Petition relating to the Lease Term and such referendum was defeated, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 below, regarding each respective agreement;

The operation and interrelationship of the foregoing provisions clearly provides that if the ordinance petition relating to the Lease Term either was determined not to satisfy Florida law or if the referendum was held as a consequence of the ordinance petition and the referendum was defeated, then the Phase I Lease and the Phase II Lease and the Disposition and Development Agreement would be amended to provide for a variety of changes including, without limitation, having the term of the lease be for ninety-nine (99) years. The reason that this is important is that there has not been any determination that the ordinance petition relating to the lease term satisfied Florida law, nor was a referendum held as a consequence of the ordinance petition and since the Option Agreement, Disposition and Development Agreement, Phase I Lease and Phase II Lease were all entered into on December 18, 2006, they all predate the effectiveness of the charter amendments.

In addition to the foregoing, OMRD, LLC continues to maintain claims in the Lawsuits that the charter amendments violate Florida law, because among other things, they violate the "Local Government Comprehensive Planning and Land Development Regulation Act" because the purpose of such act was to create a system of "top-down planning" and the charter amendments violate such act. If OMRD, LLC is successful in pursuing these claims, it could result in OMRD, LLC receiving ninety-nine (99) year lease terms with respect to the Phase I Lease and the Phase II Lease as well as not being limited to height restrictions of five (5) stories. The City of Riviera Beach has the authority and flexibility to settle the Lawsuits on a basis that they feel is desirable.

With this said, OMRD, LLC believes that the Lawsuits (including the issues relating to the lease term and the building height limitations) can be settled if the City of Riviera Beach, Florida agree that the Phase I Lease and the Phase II Lease have added to them an option by the tenant to have a forty-nine (49) year extension above the fifty (50) year term. This would not violate the charter amendments that only operate prospectively since the original agreement to

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provide OMRD, LLC a ninety-nine (99) year lease pursuant to Section 3.01(d) of the DDA and Section 3.01(a) of the Option Agreement were in place in December 2006.

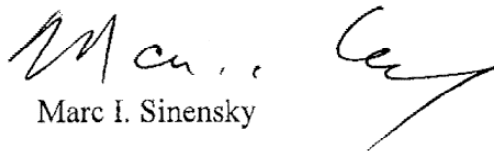
Furthermore, it should be noted that OMRD, LLC's above proposal to settle the Lawsuits, if implemented, would result in: (i) OMRD, LLC receiving a forty-nine (49) year extension term which would only be a one time occurrence, based on the fact that the OMRD, LLC's transaction documents, which were all entered into in December 2006, predated the charter amendments, and (ii) OMRD, LLC would be dropping its claim in the Lawsuits that it could construct a building higher than 5 stories.

We believe that proceeding as described above would: (i) technically be permitted and would not be violative of the charter amendments that were passed in the first quarter of 2007, (ii) be a creative way to end the Lawsuits, which are costly to the City of Riviera Beach and if OMRD, LLC is successful, could result in their receiving not only leases with ninety-nine (99) year lease terms but also the ability to construct buildings three hundred (300) feet in height, and (iii) be politically desirable.

This settlement proposal is without prejudice to OMRD, LLC's claims in the Lawsuits.

If you have any questions, please feel free to contact either me or Gary Dunkel.

Sincerely,

  
Marc I. Sinensky

MIS/jam

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copy by PHR to City Council