

**Agreement Regarding Extension of Planned Development Project PR.05.0017 and
Maintenance of Riviera Southshore Property**

This Agreement is entered into by and between the **CITY OF BRADENTON**, Florida, a municipal corporation organized and existing under the laws of the State of Florida, through its City Council, whose address is 110 Old Main St., Bradenton, Florida 34205 ("City") and **WELLS FARGO BANK, N.A.**, whose address is 333 Market Street, 17th Floor, San Francisco, CA 94105, Attention: Donna Cummings ("Lender"), (City and Lender, collectively, "Parties").

WITNESSETH:

WHEREAS, in May, 2007 the City, acting through its City Council, approved PR.05.0017 ("PDP Site Plan") for certain property located at various addresses, including without limitation 1203 Manatee Avenue East, Bradenton, Florida (collectively "Property") upon the request of Wilson Miller, Inc., as agents for Riviera Southshore Ventures, LLC ("Developer");

WHEREAS, the Property is now known as the "Riviera Southshore Project";

WHEREAS, the PDP Site Plan is effective for one year, and pursuant to Section 202 L of the Bradenton Land Development Code, the City Council can grant extensions to maintain the effectiveness of the PDP Site Plan;

WHEREAS, a foreclosure judgment has been entered against the Developer in favor of Lender for the Property, but the Developer maintains control and possession of the Property;

WHEREAS, the City through its Code Enforcement Division has notified the Lender that the Property is not being adequately maintained because regular mowing of the Property is not occurring and trash is accumulating on the Property;

WHEREAS, the Lender is interested in preserving its collateral and desires, therefore, that the City extend the PDP Site Plan and ensure proper maintenance of the Property to avoid code enforcement action being initiated;

WHEREAS, the Developer has consented to the terms of this Agreement and to cooperate with the Lender in assuring that the Property is properly maintained;

NOW THEREFORE, the Parties agree as follows:

1. **PDP Site Plan Extension**. The City agrees to consider the request for extension of the effectiveness of the PDP Site Plan ("PDP" Site Plan Extension") prior to the PDP Site Plan expiration date of May 8, 2008, such PDP Site Plan Extension to include all facets of the PDP Site Plan approval, including without limitation, concurrency.

2. **Maintenance of the Property.** The Parties agree that if the PDP Site Plan Extension is granted to at least May 9, 2009, then, during the period of the PDP Site Plan Extension, (a) the Property shall be mowed not less frequently than monthly, (b) the Property shall be inspected by the City not less frequently than monthly, and (c) any accumulated trash on the property shall be collected and removed. If construction commences on the Property, mowing shall be required only on those portions of the Property not actively under construction. "Actively under construction" shall be deemed to include the area in which the construction is occurring, together with any material and equipment staging areas, construction entrances, and areas in which construction trailers or worker vehicles are parked.
3. **Letter of Credit.** If the PDP Site Plan Extension is granted, then the Lender shall, as a condition to the effectiveness of the extension, deliver to the City a \$30,000.00 Letter of Credit ("Letter of Credit") in favor of the City to guarantee that the maintenance of the Property will occur regularly during the period of the PDP Site Plan Extension.
- a. The Letter of Credit shall be subject to the following conditions:
- i. Not less than thirty (30) days prior to seeking to draw on the Letter of Credit ("Notice Period"), the City shall provide the Lender with written notice that some or all of the Property needs to be mowed and/or trash has accumulated on the Property (a "Maintenance Default"); and
 - ii. the City shall draw against the Letter of Credit only if neither the Developer nor the Lender has commenced activities to cure the Maintenance Default prior to the expiration of the Notice Period; and
 - iii. the City shall only draw upon the Letter of Credit if (a) the City expends funds to maintain the Property by hiring a third party contractor to perform the work or if there is no third party contractor available to perform the work, by engaging City employees who are paid overtime to perform the work, and (b) the City presents evidence of payment of such expenditure in the form of an affidavit from the City Clerk stating:
 - (A) that a Maintenance Default has occurred under this Agreement, proper notice of the same was provided to the Lender as herein provided, and the Maintenance Default was not cured during the Notice Period;



(B) the amount of money expended by the City to cure the Maintenance Default;

(C) that the City Attorney has confirmed that (1) the PDP Site Plan Extension is still in effect and (2) the City Attorney has not received a Notice of Transfer (as hereinafter defined); and

iv. the City shall only be permitted to draw on the Letter of Credit to the extent of the amount expended by the City to cure the Maintenance Default; and

b. The Letter of Credit shall be substantially in the form of attachment "A" hereto.

c. Notwithstanding the expiration date set forth on the Letter of Credit, the Parties agree that the Letter of Credit shall expire upon the sooner to occur of the transfer of title to the Property to a third party other than the Lender or the expiration of the PDP Site Plan Extension. If the Property is transferred to a third party prior to the expiration of the PDP Site Plan Extension, then Lender shall deliver notice of such transfer to the City Attorney ("Notice of Transfer"), and thereafter the City shall not seek to draw upon the Letter of Credit for any expenditures incurred after the date of such Notice of Transfer. If the City draws against the Letter of Credit after (i) the receipt of such Notice of Transfer for expenditures incurred after the date of receipt of such Notice of Transfer, or (ii) the expiration of the PDP Site Plan Extension ("Plan Expiration"), such draw shall be a default hereunder and the Lender shall be entitled to prompt reimbursement of any such draws. At any time after the receipt by the City of Notice of Transfer or Plan Expiration, upon the request of the Lender, the City agrees to deliver to the Issuer of the Letter of Credit, (x) a certificate acknowledging termination and release of the Letter of Credit, and (y) the original Letter of Credit.

4. **Developer Consent.** By joining in this Agreement, the Developer hereby consents to the Lender and/or the City entering the Property at any time after the commencement of the Notice Period for the purpose of curing any Maintenance Default. If the PDP Site Plan Extension is granted, the Developer agrees to enter into a maintenance contract with a



reputable maintenance provider to ensure that maintenance of the Property is performed as set forth herein, and to provide copies of such contract to Lender; provided, however, that any such maintenance contract shall not be binding on the Lender.

5. **Code Enforcement.** For so long as this Agreement is in effect, the City shall forebear from initiating formal code enforcement proceedings with regard to the maintenance of the Property as described in Paragraph 2, and upon the request of any party hereto shall provide written confirmation that the Property is not subject to code enforcement proceedings and is in compliance with requirements of the Code.
6. **Waiver.** Nothing in this Agreement shall be deemed to waive any right of any party which may exist pursuant to that certain Settlement Agreement in the matters of Riviera Southshore Ventures, LLC versus City of Bradenton pending in the Twelfth Judicial Circuit in and for Manatee County Florida (Case Numbers 2006CA005343 and 2006CA005512).
7. **Time is of the Essence.** Time is of the essence in the exercise and performance of the rights and obligations described in this Agreement.
8. **Default.** In the event of any default under this Agreement, the non-defaulting party shall provide the defaulting party with written notice of such default and the defaulting party shall have thirty (30) days to cure such default after receipt of written notice of default. If such default is not cured within the aforesaid thirty (30) day period, and the cure period has not been extended by written agreement between the Parties as set forth herein, the non-defaulting party shall be entitled to pursue all remedies for such default provided for herein or as otherwise provided at law or in equity. It is the intent of the Parties to allow for this cure period to be extended upon written mutual agreement of the Parties, which agreement shall not be unreasonably withheld, if the cure cannot occur within such thirty (30) day period, and the defaulting party is diligently and continuously pursuing the cure.
9. **Miscellaneous.**
 - a. **Successors and Assigns.** The terms contained in this Agreement shall bind and inure to the benefit of each party, and its respective successors and assigns. No



party may assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, if a third party other than the Lender takes title to the Property, and the City Attorney receives a Notice of Transfer, then the third party acquirer of the Property shall not be deemed to be a successor or assignee of the Lender's obligations with regard to the obligation of the Lender set forth herein to maintain a Letter of Credit in favor of the City.

b. Notices.

- i. All notices, demands, requests for approvals or other communications given by a party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by courier service, or by hand delivery to the office of each party indicated below and addressed as follows:

The City: City of Bradenton
101 Old Main St.
Bradenton, FL 34205

The Lender: Wells Fargo Bank, N.A.
333 Market Street, 17th Floor
San Francisco, CA 94105
Attention: Donna Cummings

With a Copy to: Stearns Weaver Miller
Weissler Alhadeff & Sitterson, PA
401 E. Jackson St. Suite 2200
Tampa, Florida 33602
Attention: Leigh Fletcher, Esq.
Facsimile (813) 222-5089

The Developer: Riviera Southshore Ventures, LLC
724 2nd Ave. S.
St. Petersburg, FL 33701
Attention: Frank S. Maggio
Facsimile (727) 545-2610



With a Copy to: Stichter, Riedel, Blain & Prosser, P.A.
110 E. Madison St., Ste. 200
Tampa, Florida 33602
Attention: Harley E. Riedel, Esq.
Facsimile (813) 229-181

- ii. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other Parties. Notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.
- c. **Severability.** If any term, provision or condition contained in this Agreement shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision and condition to this Agreement shall be valid and enforceable.
- d. **Applicable Law, Construction and Venue.** The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement shall not be deemed to have been prepared by the City, the Lender or the Developer, but by all of the Parties. Venue for any action related to this Agreement shall be in Manatee County.
- e. **Captions.** The section headings and captions of this Agreement are for the convenience and reference of the Parties and in no way define, limit or describe the scope or intent of this Agreement or any part hereof.
- f. **Complete Agreement; Amendments; Term.**
 - i. This Agreement, and all the terms and provisions contained herein, and the other agreements and documents referred to herein, constitute the full and complete agreement among the Parties with respect to the subject matter hereof and supersede and control over any and all prior agreements,



understandings, representations, correspondence and statements, whether written or oral.

ii. This Agreement shall not be amended or revised except by the written consent of the Parties.

- g. **Attorneys' Fees and Costs.** In the event of any dispute regarding this Agreement, the prevailing party in any litigation shall be entitled to receive from the non-prevailing party all costs and expenses incurred by the prevailing party, including reasonable attorneys' fees. Each party shall have all remedies available at law and in equity, including the right to seek and obtain injunctive relief.
- h. **Excuse of Performance.** Performance by any party hereunder shall be excused for any period of delay in performance if such delay is due to Force Majeure or if a party is precluded from performance by virtue of an injunction or restraining order issued against such party by a court of competent jurisdiction.
- i. **Public Benefit.** This Agreement contains all conditions, terms, restrictions, or other requirements determined by the City to be necessary for the public health, safety, or welfare of its citizens.

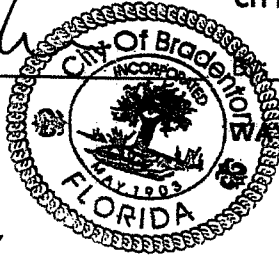


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

ATTEST:

By:

CITY CLERK



CITY OF BRADENTON, FLORIDA

WAYNE POSTON, MAYOR

APPROVED AS TO FORM:

WILLIAM LISCH, CITY ATTORNEY

WITNESSES:

WELLS FARGO BANK, N.A.

Print Name

By:

Print Name:

Its:

Print Name:

WITNESSES:

RIVIERA SOUTHSORE VENTURES, LLC

Print Name

Norcen PARKER

By:

Print Name:

FRANZ S. mabbu

Its:

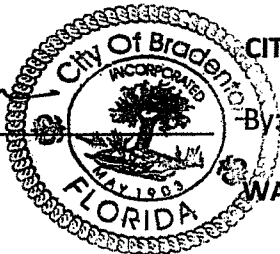
MANAGER

Print Name:

Gary H. Baker

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

ATTEST: [Signature] CITY OF BRADENTON, FLORIDA
By: [Signature]
CITY CLERK [Signature] WAYNE POSTON, MAYOR



APPROVED AS TO FORM:
[Signature]
WILLIAM LISCH, CITY ATTORNEY

WITNESSES:
[Signature]
Print Name: Trank Patel

WELLS FARGO BANK, N.A.
By: [Signature]

[Signature]
Print Name: THOMAS A. FARBER

Print Name: Donna Cummings
Its: Vice President
By: [Signature] (Mary L. Blair)
Its: via president

WITNESSES:

Print Name: _____

Print Name: _____

RIVIERA SOUTHSORE VENTURES, LLC

By: _____
Print Name: _____

Its: _____

STATE OF Florida

COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 18 day of April, 2008, by Frank Maggion, as managing member of **RIVIERA SOUTHSORE VENTURES, LLC**, a Florida limited liability company, on behalf of the company. He/she is personally known to me or has produced _____ as identification.

Cynthia B Duckworth

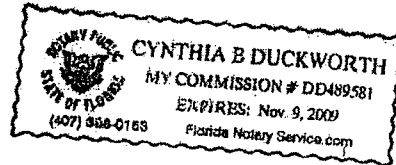
Printed Name: Cynthia B Duckworth

Notary Public

Serial Number (if any): _____

My Commission Expires: 11/9/2009

(NOTARY SEAL)



ACKNOWLEDGMENT

State of California
County of SAN FRANCISCO)

On April 18, 2008 before me, GRACE S. LEE, Notary Public - California
(insert name and title of the officer)

personally appeared DONNA CUMMINGS AND NANCY BLAIR,
who proved to me on the basis of satisfactory evidence to be the pers on(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in
~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the pers on(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Grace S. Lee (Seal)

