

**UNITED STATES BANKRUPTCY COURT
SOUTHER DISTRICT OF FLORIDA
MIAMI DIVISION**

In Re:

Case No. 14-19672-LMI

RIVERWALK JACKSONVILLE
DEVELOPMENT, LLC

Chapter 11

Debtor.

**U.S. CENTRY BANK'S RESPONSE AND LIMITED
OBJECTION TO DEBTOR'S MOTION FOR AN ORDER (1)
AUTHORIZING SALE OF PORTION OF DEBTOR'S REAL ESTATE PROPERTY,
PURSUANT TO BANKRUPTCY CODE SECTION 363 (b) AND (F) AND RULES
6004(c) AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY**

U.S. Century Bank (the "Movant" or "U.S. Century"), is a secured first mortgage creditor and files this Response and Limited Objection to Debtor's Motion for an Order (1) Authorizing Sale of Portion of Debtor's Real Property Pursuant to Bankruptcy Code Section 363 (b) and (f) and Rules 6004(c) and 9014 of the Federal Rules of Bankruptcy Procedure, and (II) Approving Contract for Sale and states as follows.

Movant a secured mortgage creditor of certain real property belonging to the bankruptcy estate identified and referenced in the Debtor's proposed Sale Motion (D.E. 156). Contrary to applicable law, the Sale Motion appears not provide for and may in fact preclude Movant's mortgage lien rights being transferred and attaching to the net sale proceeds Debtor. The Sale Motion appears to ignore or disregard the lien rights and equitable principles attendant with the sale of real property belonging to the bankruptcy estate pursuant to Bankruptcy Code Section 363. Further, the Debtor's justification and explanation for the different treatments being afforded the Sabadell Mortgage and to the detriment of U.S. Century mortgage is a based on an

equity sham argument. Accordingly, Movant opposes the Sale Motion in its present form, and ask this Court among other relief, the right to participate in the proposed sale by transferring and attaching it's present mortgage lien rights to the net sale proceeds and paying the Century Note in full, upon sale of the subject real property.

I. FACTUAL BACKGROUND

A. The Commercial Mortgage Loan

1. U.S. Century Bank (after certain modifications and extensions) is holding the Third Renewal Promissory ("Note") and Third Mortgage Modification Agreement ("Mortgage") dated September 10, 2012, executed by the Debtor, encumbering the commercial real property, identified in the Debtor's Sale Motion as Property 3 and Property 4, located at 0 Prudential Drive, Jacksonville, FL 32207 (the "Property"). The Mortgage, Note, legal description are attached, and shall be collectively referred to as (the "Loan Documents"). A true and correct copy of the Loan Documents is attached hereto as Composite Exhibit "A".

2. Pursuant to the terms of the Note, monthly payments are (\$10,059.49) representing interest only on the principal balance owed.

3. Movant has not received a regular mortgage payment under the Loan Documents in excess of (1) years' time period.

4. On September 10, 2015 "Maturity Date" the entire principal balance of (\$1,525,176.67) matures, due and payable in full, plus all applicable accrued interest.

THE PROPOSED SALE AND U.S. CENTURY LIMITED OBJECTION TO SALE

5. On May 19, 2015, Debtor filed a motion ("Sale Motion") (D.E. 156) to sell real property free and clear of all liens and encumbrances identified by chart as Properties 2 and 4, for a sale price of (\$6,500.000).

6. Property 4 is encumbered by Movant's mortgage, serving as part of the collateral for full indebtedness due under the Loan Documents.

7. Pursuant to the mechanics of how the existing mortgage liens against the real property being sold will be treated, Paragraph 24 of the Debtor's Sale Motion concludes with the text, "... and authorizing the sale of the Sale Parcel property free and clear of all liens, claims and encumbrances, with liens, claims and encumbrances to attach to proceeds of sale". (emphasis added).

8. Standing in contrast to the operative text of paragraph 24, is paragraph 22 which asserts, "... the proposed Sale Parcel includes only the Eastern Portion of the Eastern Parking Lot Parcel, and the US Century lien of \$1.5 million, which is secured by both the Eastern and Western Parking Lot Parcels, is still amply secured by the remaining property". (emphasis added).

9. Contrasting and analyzing paragraphs 22 to 24 of the Sale Motion, the respective text contradict one another, and contemplate different results and outcomes. Paragraph 24 asserts lien rights of the mortgage holders will attach to the net sale cash proceeds. This is accomplished by the mortgage lien rights simply being transferred and attached to the net sales proceeds. After financial disbursement, no monies will be due. All mortgage lien rights are extinguished as the Note debt is fully satisfied.

10. Paragraph 22, however, appears to move to a different destination regarding the sale proceeds. Debtor asserts after occurrence of the proposed sale, Movant remains amply secured by the remaining property (Western Parking Lot).

11. Being U.S. Century lien rights will attach to the sales proceeds to be used to pay the Note as provided for under paragraph 24 of the Sale Motion, there would be no financial

necessity or reason for Movant to continue with lien rights against the Western Parking Lot¹. The prior existing mortgage lien rights having been transferred and attached to the sale proceeds in an amount sufficient to satisfy the Note owed to U.S. Century.²

12. Further complicating the Sale Motion's substantive and procedural deployment, the Debtor's footnote 1 to paragraph 22 states, "*Even if the Eastern Parking Lot Parcel which Debtor proposes to sell comprised a full half of the property securing the debt to U.S. Century, half of the U.S. Century debt is only \$750,000.*" The implication flowing from this statement appears to reserve Movant's mortgage lien rights to Parcel 4 (Western Parking Lot), by severing in half, the net sale proceeds available to the Movant.

13. The inconsistency and confusion found in the Sale Motion, leaves U. S. Century pondering exactly what the Debtor is proposing to do here. Is the Debtor proposing; (i) attaching U.S. Century mortgage lien to the sale proceeds sufficient to pay the Note in full, as implied in Paragraph 24; or (ii) attempting to divide the Note payout between Properties 3 and 4, by the attaching ½ payment on the Note to the sale cash proceeds associated with Property 4, with the balance owed continuing as a mortgage lien on Property 3 suggested in paragraph 22; or (iii) Debtor proposing to sell Property 3 free and clear of the U.S. Century mortgage lien, in the anticipation of addressing repayments of loan terms at a later date after the sale.

14. U.S. Century objects to any change in form of the secured collateral created by the proposed sale, other than full payment of the Note debt. Allowing the Debtor to sell the real property without attaching the lien interest to the sale proceeds or dividing the sale proceeds

¹ U.S. Century Bank also has a lien interest in easement rights that run contiguous to Western Side of Property 4, which are not part of the sale.

² The Sales Contract contemplates on only properties 2 & 4, identified in paragraph 21 of the Sales Motion. Combining the amount owed on the Sabadell Mortgage Properties 1 & 2 (\$3.8 million) to the amount owed on U.S. Century Mortgage, Properties 3 & 4 (\$1.5 million), the total due approximates \$5.3 million. Stacked against the \$6.5 million sale price, there is abundant monies to pay all secured mortgage creditors with a substantial reserve available to the Debtor's bankruptcy estate.

between a cash payout and a continued mortgage lien on Property 3, could significantly change and potentially diminished U.S. Century equity position presently occupied.

15. U.S. Century is not a fee simple title holder to the real property. It stand as a mortgage lien holder having no control of Property 4 management and use. Going forward in time, if the Debtor fails under a plan of reorganization (presently withdrawn and not yet amended) U.S. Century could be exposed to unnecessary future financial burdens. Granting the Sale Motion as presently proposed will leave U.S. Century with ien rights to a parcel of land (estimated to be less than 50% in area size) to prior to any authorized sale. Being the principal balance of the Note matures in full in three months, and there is more than ample money to pay the note in full, the Debtor will then be free to utilize the West Parking Lot to its best and highest market value potential. The Debtor should therefore be made to attach a portion of the sale proceeds to satisfy U.S. Century Note in full.³

16. The Debtor offers no current market value appraisal for either the East or West Parking Lots. Yet the Debtor asserts there is sufficient equity in the West Parking Lot to protect Movant's interest. Debtor tenders no credible evidence to support such a claim. U.S. Century is left to speculation and guesswork, as to what financial consequences would result, if the Sale Motion is approved in a form that allows the Debtor to pay the Note only in part.

17. Presently, as the Sale Motion is structured, the Debtor has positioned itself to bypass the rigorous safeguards and protection afforded secured creditors in the Chapter 11 confirmation process. By seeking court authorization to move forward under the sale contract without attaching U.S. Bank's mortgage lien rights to the sale proceeds (in whole or part), and

³ It should be referenced the Debtor's (2) prior plans of reorganization filed provided for payment in full of the Note before being withdrawn. Under the amended plan-U.S. Century Claim as a Class 4 unimpaired secured claim paying the Note in full on the effective date of the Plan in exchange for a Satisfaction of Mortgage. (DE 97)

considering no amended reorganization plan has been filed, the Debtor is proposing the use and benefits of the monies obtained by liquidating the collateral, without attaching the secured creditor claim to the net sale proceeds.

18. Such a result cannot be rendered under 11 U.S.C. 506. The accompanying market valuation requirements needed to determine the extent and value of lien rights associated with secured property are well established. Upon submission of credible substantive evidence, it is the Court that makes the market value determination associated with mortgage lien rights attached to any proposed sale of real property belonging to the bankruptcy estate. The Sale Motion avoids that process by not clearly providing for the extent and amount of the lien rights to be afforded and paid in favor of U.S. Century.

19. Most important, the Debtor is garnering \$6,500,000.00 as a sales price from selling just 3 acres of more than 10 acres it owns. Properties 2 & 4 comprised those 3.0 acres. Property 4 lien by U.S. Century Mortgage, makes up at least 50% of land area being sold. Property 2 being lien by the Sabadell Mortgage, makes up the other 50% of the land area being sold. **Yet the Debtor is proposing to pay Sabadell Mortgage Note in full (3.8 million dollars), while leaving U.S. Century holding something less than the 1.5 million owed under it under the Note.** According to paragraph 22 and footnote 1 of the Sale Motion, the reason and justification for the U.S. Century Mortgage Note, not being fully satisfied, is due to sufficient equity remaining in the Western Parking Lot (Property 3) to cover the amounts still owed.

20. The Debtor's reasoning and justification is totally meritless and highly inequitable. It exposes an unfair and inequitable secured creditor scheme treatment against U.S. Bank that should never be permitted under the circumstances of this sale. **Debtor is proposing to use part of the equity belonging to U.S. Bank securing its mortgage lien, to assist in paying off the**

Sabadell Mortgage Note, by drawing the equity away from the real property belonging to U.S. Century Bank, so that it is not paid in full. In effect, the Debtor is proposing to wrongly transfer part of U.S. Century full equity position, to a secured mortgage holder who has absolutely no lien rights, priority or interest in the real property and it's not entitled to share in any equity from that property. .

21. Further, the Debtor's justification and reasoning is mired in contradiction and inequity. The equity treatment is spun as a sham which is revealed under analysis. Debtor claims that paying U.S. Century Bank less than what is fully owed under the Note is justified amounting fair treatment as there is sufficient equity in the Western Parking Lot (Property 3) to cover any remaining Note balance. *What about the huge equity cushion Sabadell Mortgage is presently riding in Parcel 1, which is not part of the Sale Motion?* Debtor conveniently chooses to totally ignore Debtor's huge equity cushion in Parcel 1. After the Debtor uses the sale proceeds to pay off the Sabadell mortgage from Properties 2 and 4, Property 1 (composed of 5 acres of prime real estate bordering the St. John's River) will sit free and clear of all mortgage liens. According to the Debtor's Sale Motion, Parcels 1 & 2 have a combined market value of \$5,575,000.00.

22. The Debtor should be made to make a fair and equal choice regarding treatment of the Sabadell Mortgage and U.S. Century Mortgages. It can pay off both mortgages in full from the sale proceeds derived from Property 2 and 4, or it can reduce the amount of the Sabadell Mortgage, leaving the Sabadell Mortgage intact against Parcel 1 for any paid balance remaining on the Sabadell Note. Sabadell can then comfortably ride a huge equity cushion equity cushion until the Debtor pays it off. It can do the same for U.S. Century Bank. However, being that the sale price as proportioned against the amount of the mortgage lien of the Parcel 4, the sale price far exceeds the amount owed in liens to U.S. Century Bank. This will be proven and

demonstrated at any evidentiary valuation scheduled before the court. **What the Debtor cannot do, is take equity belonging to U.S. Century and transfer it to Sabadell Mortgage, affording better treatment to a secured creditor that has no legal and factual claim against the real property serving as equity to unrelated secured mortgage creditor.**

23. Debtor has abundant monies that will be derived from the proposed sale to pay off the U.S. Century Note and Sabadell Mortgage Note. Debtor should not be permitted to spin an equity argument that is a total sham, to afford wrongful and inequitable financial treatment afforded upon one secured creditor at the financial expense of the other.

WHEREFORE Movant, **U.S. Century Bank**, respectfully requests the Court for the reasons stated herein, to deny the Sale Motion as presented, and condition any sale of the subject property be conducted so as to pay the U.S. Century Note in full from the sale proceeds and further grant Movant all other relief deemed just and proper.

Dated: June 8, 2015

Respectfully Submitted,

JAMES S CARIS P.A.

By: /s/James S. Caris

James S. Caris, Esq.

Florida Bar No. 382213

401 E. Las Olas Blvd.

#130-117

Fort Lauderdale, FL 33301

Telephone: (954) 522-0206

Facsimile: (954) 522-0198

E-mail: jamescaris@yahoo.com

Attorneys for U.S. Century Bank

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served on this 8th day of June, 2015 upon all counsel of record or parties as identified on the attached Service List/Creditor's Mailing Matrix in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or by U.S. Mail on the attached service mailing list.

/s/James S. Caris
James S. Caris, Esq.
Florida Bar No. 382213

Electronic Mail Notice List

- Geoffrey S. Aaronson gaaronson@aspalaw.com, jevans@aspalaw.com
- Paul J. Keenan, Jr. keenanp@gtlaw.com, mialitdock@gtlaw.com; miaecfbky@gtlaw.com
- Keith L Maynard kmaynard@sdlitigation.com
- Tamara D McKeown tdmckeown@mckeownpa.com
- Niall T McLachlan nmclachlan@carltonfields.com, cguzman@carltonfields.com
- Office of the US Trustee USTPRegion21.MM.ECF@usdoj.gov
- Kelly H Papa kpapa@coj.net

Instrument Prepared by:
Adrienne F. Torres, Esq.
U.S. CENTURY BANK
2301 NW 87 Avenue
Miami, Florida 33172

Doc # 2013009822, OR BK 16213 Page 1389,
Number Pages 5
Recorded 01/17/2013 at 09:54 AM
Ronna Fussell CLERK CIRCUIT COURT DUVAL
COUNTY
RECORDING \$44.00 MORTGAGE DOC ST \$5303.20

NOTE: DOCUMENTARY STAMPS IN THE AMOUNT OF \$5,303.20 ARE BEING PAID HERETO. DOCUMENTARY STAMPS IN THE AMOUNT OF \$5,337.50 HAVE PREVIOUSLY BEEN PAID AND AFFIXED TO THAT CERTAIN MORTGAGE DATED AUGUST 11, 2004, AND RECORDED AUGUST 18, 2004, IN OFFICIAL RECORDS BOOK 11994, AT PAGE 893, OF THE PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA. NO NEW MONIES ARE BEING ADVANCED; THEREFORE, NO ADDITIONAL INTANGIBLE TAX ARE DUE HEREUNDER.

THIRD MORTGAGE MODIFICATION AGREEMENT

THIS THIRD MORTGAGE MODIFICATION AGREEMENT is made and entered into as of the 10th day of September, 2012, by and between RIVERWALK JACKSONVILLE DEVELOPMENT, LLC, a Florida limited liability company ("Original Borrower/Mortgagor") and CYBER ONE CAFÉ, LLC, a Florida limited liability company ("Additional Borrower") (Original Borrower and Additional Borrower are sometimes referred as the "Borrower"), and U.S. CENTURY BANK, a Florida banking corporation ("Lender").

RECITALS:

WHEREAS, Lender is the owner and holder of that certain Second Renewal Promissory Note executed by Original Borrower in favor of Lender dated as of September 11, 2009, in the principal amount of ONE MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED FIFTY-SEVEN AND 98/100 DOLLARS (\$1,517,557.98) (the "Note"), which is secured by that certain Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement dated August 11, 2004, and recorded on August 18, 2004, in Official Records Book 11994, Page 893, as amended by that certain Mortgage Modification and Spreader Agreement dated as of November 11, 2006, and recorded on January 10, 2007, in Official Records Book 13747, Page 2378, and further amended by that certain Second Mortgage Modification Agreement dated as of September 11, 2009, and recorded on January 7, 2010, in Official Records Book 15119, at Page 2254, all of the Public Records of Duval County, Florida (as modified, the "Mortgage"), upon which all documentary stamp tax and intangible tax have been paid and affixed thereto and encumbering the following described property:

See Exhibit "A" attached hereto and by this reference made a part hereof.

WHEREAS, Borrower has requested that Lender renew the existing loan in the amount of ONE MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED FIFTY-SEVEN AND 98/100 DOLLARS (\$1,517,557.98) evidenced by the Note, which has been partially paid down leaving a remaining balance of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND ONE HUNDRED SEVENTY-SIX AND 67/100 DOLLARS (\$1,515,176.67) (the "Loan"), which Loan shall be evidenced by the Third Renewal Promissory Note (defined below).

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby agree to and acknowledge the following:

TERMS

1. The above recitals are true and correct.
2. Original Borrower acknowledges and agrees that as of the date hereof, Original Borrower is indebted to Lender under the Note for the principal amount of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND ONE HUNDRED SEVENTY-SIX AND 67/100 DOLLARS (\$1,515,176.67). Original Borrower acknowledges and agrees that it has no claims, defenses or set-offs against said indebtedness, nor does it have any claims of any nature whatsoever against Lender.

3. The maturity date of the loan is hereby amended and the Loan shall be due and payable on September 10, 2015, pursuant to the terms of that certain Third Renewal Promissory Note dated as of September 10, 2012 (the "Renewal Note") executed by Borrower. This modification of maturity date shall in no way affect Lender's right to accelerate the indebtedness under the loan in the event of a default under its terms. The indebtedness under the loan shall be due and payable pursuant to the terms of the Renewal Note in the amount of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND ONE HUNDRED SEVENTY-SIX AND 67/100 DOLLARS (\$1,515,176.67), the final payment of which is due and payable on September 10, 2015.
4. The Mortgage is further modified as follows: (i) all references to the "Mortgage", the "Loan" (or "the loan secured hereby"), and the "Loan Documents" shall mean, respectively, said "Mortgage", "Loan" (or "loan secured hereby"), and "Loan Documents" as amended by this Agreement, and (ii) all references to the "Note" shall include the Renewal Note. The Renewal Note is and shall be secured by the Mortgage, as amended by this Agreement.
5. Borrower warrants that it has full power and authority to execute this Agreement, that there are no other liens or claims against the property encumbered by the Mortgage other than the first lien of the Mortgage, that the Mortgage is binding upon the Borrower, its successors and assigns, that no agreement, oral or otherwise, has been made by any of Lender's employees, agents, officers or directors to further extend or modify the Note, the Mortgage or the Loan Documents.
6. **RELEASE.** AS A MATERIAL INDUCEMENT FOR LENDER TO EXECUTE THIS AGREEMENT, BORROWER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT SATISFY AND FOREVER DISCHARGE LENDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH BORROWER EVER HAD, NOW HAS, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OR BORROWER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST LENDER, ITS OFFICERS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER THROUGH THE DATE HEREOF. BORROWER FURTHER EXPRESSLY AGREES THAT THE FOREGOING RELEASE AND WAIVER AGREEMENT IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA. IN ADDITION TO, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND IN CONSIDERATION OF LENDER'S EXECUTION OF THIS AGREEMENT, BORROWER CONVEYANTS WITH AND WARRANTS UNTO LENDER, AND ITS AFFILIATES AND ASSIGNS, THAT THERE EXIST NO CLAIMS, COUNTERCLAIMS, DEFENSES, OBJECTIONS, OFFSETS OR CLAIMS OF OFFSETS AGAINST LENDER OR THE OBLIGATION OF BORROWER TO PAY THE INDEBTEDNESS TO LENDER WHEN AND AS THE SAME BECOMES DUE AND PAYABLE.
7. It is the intent of the parties hereto that this instrument shall not constitute a novation and shall in no way adversely affect or impair the first lien priority of the Mortgage, and that all sums advanced in connection herewith shall have the priority as the sums originally secured under the Mortgage.
8. The parties agree that except for the documents explicitly referred to herein and all other documents previously executed and delivered at the closing of the subject loan transaction, this Agreement constitutes the entire understanding and agreement among them, and that there are no other agreements or promises among the parties concerning the loan transaction. Except as specifically modified herein, all of the terms and provisions of the Mortgage, the Note, and all other loan documents executed in connection with the loan transaction described herein are ratified, reaffirmed, and shall remain in full force and effect.
9. **THE PARTIES HERETO VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY AND ANY LEGAL ACTION OR PROCEEDINGS ARISING UNDER THIS AGREEMENT OR CONCERNING THE INDEBTEDNESS DESCRIBED HEREIN, ANY COLLATERAL THEREFOR, OR**

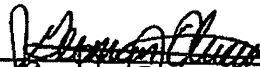
PERTAINING TO ANY TRANSACTION RELATING TO OR CONTEMPLATED
HEREBY, REGARDLESS OF WHETHER SUCH ACTION OR PROCEEDING
INVOLVES ANY CONTRACTUAL OR TORTIOUS OR OTHER CLAIMS

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above
written.

Signed, sealed and delivered
in the presence of:

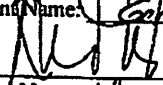
ORIGINAL BORROWER/MORTGAGOR:

RIVERWALK JACKSONVILLE
DEVELOPMENT, LLC, a Florida limited
liability company


Print Name: German OLIVERA

By: 
Steven J. Pardo, Managing Member

Address: c/o Pardo & Gainsburg, LLP
2 South Biscayne Blvd.
Suite 2475
Miami, Florida 33131


Print Name: Maria F. Pardo

ADDITIONAL BORROWER:

CYBER ONE CAFÉ LLC, a Florida limited
liability company

By: RIVERWALK SGB MANAGEMENT,
INC., a Florida corporation, the Manager


Print Name: German OLIVERA

By: 
Steven J. Pardo, President

Address: 200 SE FIRST St.
Suite 700
Miami, Florida 33131

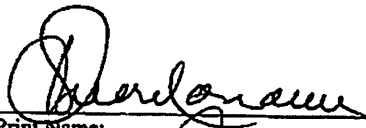

Print Name: Maria F. Pardo

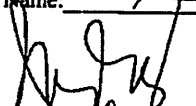
LENDER:

U.S. CENTURY BANK, a Florida banking
corporation

By: 
German Olivera, Senior Vice
President

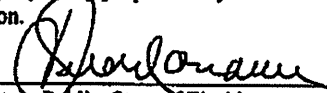
Address: 2301 NW 87th Avenue
Miami, Florida 33172


Print Name: German OLIVERA

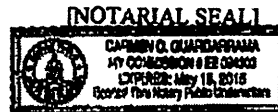

Print Name: Maria F. Pardo

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of October, 2012, by Stevan J. Pardo, as Managing Member of RIVERWALK JACKSONVILLE DEVELOPMENT, LLC, a Florida limited liability company. He [] is personally known to me or [] has produced a Florida Driver's license as identification.

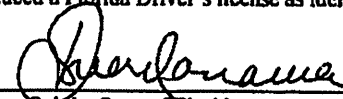

Notary Public, State of Florida

My Commission Expires:



STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

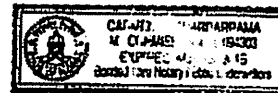
The foregoing instrument was acknowledged before me this 31st day of October, 2012, by Stevan J. Pardo, as President of RIVERWALK SGB MANAGMENTE, INC., a Florida corporation, the Manager of CYBER ONE CAFÉ, LLC, a Florida limited liability company. He [] is personally known to me or [] has produced a Florida Driver's license as identification.


Notary Public, State of Florida

My Commission Expires:

[NOTARIAL SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)



The foregoing instrument was acknowledged before me this 31 day of October, 2012, by German Olivera, Senior Vice President of U.S. CENTURY BANK, a Florida banking corporation, on behalf of the Bank. He is personally known to me.


Notary Public, State of Florida

My Commission Expires:

[NOTARIAL SEAL]



Exhibit "A"
Legal Description

PARCEL I:

A PARCEL OF LAND, COMPRISED OF PORTIONS OF THE ISAAC HENDRICKS GRANT, SECTION 44, TOWNSHIP 2 SOUTH, RANGE 26 EAST; AND WATER LOT 1; AND THE FORMER RIGHT OF WAY OF MONTANA AVENUE, AS SAID LOT AND RIGHT OF WAY ARE SHOWN ON THE PLAT OF REED'S FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, RECORDED IN PLAT BOOK 1, PAGE 46, PUBLIC RECORDS OF JACKSONVILLE, DUVAL COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT THE POINT OF INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF HENDRICKS AVENUE (AN 80-FOOT RIGHT OF WAY, AS NOW ESTABLISHED) WITH THE NORTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (A 60-FOOT RIGHT OF WAY, AS NOW ESTABLISHED) AND RUN S 89°44'57"E., ALONG SAID NORTHERLY RIGHT OF WAY LINE AND ALONG THE EASTERLY PROLONGATION THEREOF, A DISTANCE OF 677.33 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN N 0°15'03"E, A DISTANCE OF 215.00 FEET TO A POINT; RUN THENCE S 89°44'57"E., A DISTANCE OF 120.00 FEET; RUN THENCE N 45°15'03"E., A DISTANCE OF 63.64 FEET TO A POINT; RUN THENCE S 89°44'57"E., A DISTANCE OF 315.98 FEET TO A POINT IN SAID WATER LOT 1, WHICH LIES IN THE NORTHERLY PROLONGATION OF THE EASTERLY RIGHT OF WAY LINE OF SAID MONTANA AVENUE; RUN THENCE S 2°40'10"W., ALONG SAID NORTHERLY PROLONGATION AND ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 260.23 FEET TO A POINT IN THE EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY LINE OF SAID PRUDENTIAL DRIVE; RUN THENCE N 89°44'57"W., ALONG SAID PROLONGATION, A DISTANCE OF 470.00 FEET TO THE POINT OF BEGINNING.

and

PARCEL II:

THAT PART OF THE FOLLOWING DESCRIBED PROPERTY LYING WITHIN THE LEGAL DESCRIPTION IN BOOK 9960 PAGE 1727:

A PART OF BLOCKS 1 AND 2, KING AVENUE AND THE ADJOINING ALLEYS IN BLOCKS 1 AND 2, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, PLAT BOOK 1, PAGE 46, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: A POINT OF REFERENCE COMMENCE AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (A 60 FOOT RIGHT OF WAY AS NOW ESTABLISHED) WITH THE EASTERLY RIGHT OF WAY LINE OF HENDRICKS AVENUE (AN 80 FOOT RIGHT OF WAY AS NOW ESTABLISHED) SAID POINT BEING THE SOUTHWESTERLY CORNER OF SAID BLOCK 1; THENCE NORTH 03°08'33" EAST ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 21.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 03°08'33" EAST ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 276.98 FEET; THENCE SOUTH 53°10'00" EAST ALONG THE NORTHEASTERLY LINE OF THE AERIAL PARCEL 21-AE AS RECORDED IN OFFICIAL RECORDS VOLUME 9668, PAGE 52 OF SAID PUBLIC RECORDS, A DISTANCE OF 498.84 FEET TO THE INTERSECTION WITH SAID NORTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE; THENCE NORTH 89°47'27" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 400.61 FEET; THENCE NORTH 33°19'57" WEST, A DISTANCE OF 25.17 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PORTION OF THE ABOVE CAPTIONED PROPERTY TAKEN BY THE JACKSONVILLE TRANSPORTATION AUTHORITY BY ORDER OF TAKING RECORDED AUGUST 18, 1998, IN OFFICIAL RECORDS BOOK 9043, PAGE 1118 AND AMENDED BY AMENDED ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 9668, PAGE 52, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

THIRD RENEWAL PROMISSORY NOTE

LN # 400036300

\$1,515,176.67

Miami, Florida

Dated as of September 10, 2012

FOR VALUE RECEIVED, RIVERWALK JACKSONVILLE DEVELOPMENT, LLC, a Florida limited liability company and CYBER ONE CAFE, LLC, a Florida limited liability company (jointly and severally, the "Borrower"), whose address is c/o Pardo & Gainsburg, LLP, 2 South Biscayne Blvd., Suite 2475, Miami, Florida 33131, promises to pay to the order of U.S. CENTURY BANK, a Florida banking corporation ("Bank"), at the office of the Bank at 2301 NW 87 Avenue, Miami, Florida 33172, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND ONE HUNDRED SEVENTY-SIX AND 67/100 DOLLARS (\$1,515,176.67), or so much thereof as may be advanced and unpaid, together with interest on the principal amount from time to time outstanding at the rates set forth below. Interest shall be computed on the actual number of days elapsed and an assumed year of 360 days. Borrower and all endorsers, sureties, guarantors and any other persons liable or to become liable with respect to the loan evidenced by this Note ("Loan") are each included in the term "Obligors" as used in this Note. Said principal and interest shall be payable in lawful money of the United States, on the dates and in the amounts specified below, to wit:

Commencing as of September 10, 2012 and continuing until September 10, 2014 (the "Adjustment Date"), the outstanding principal balance shall bear interest at a fixed rate of interest equal to Five Percent (5%) *per annum* (the "First Interest Rate").

Commencing on the Adjustment Date, and continuing until September 10, 2015 (the "Maturity Date"), the outstanding principal balance shall bear interest at a fixed rate of interest equal to One and Three-Quarters of One Percent (1.75%) *per annum* over the "Prime Rate" of interest as published in the *Wall Street Journal*, Money Rates Section on the Adjustment Date (the "Second Interest Rate").

Notwithstanding anything to the contrary contained herein, during the entire term of this loan, the Interest Rate shall never be lower than Five Percent (5%).

Commencing on October 10, 2012 and continuing on the same day of each and every month thereafter until the August 10, 2015, monthly payments of principal and interest shall be due and payable as follows:

Commencing on October 10, 2012 and continuing on the same day of each and every month thereafter until the First Adjustment Date, monthly payments of principal and interest shall be due and payable in the amount of Ten Thousand Fifty-nine and 49/100 Dollars (\$10,059.49), so as to fully amortize the unpaid principal balance of the Loan on September 10, 2012 over a hypothetical twenty year term ending on September 10, 2032. Then, on the Adjustment Date the monthly payment of principal and interest shall be adjusted so as to fully amortize the unpaid principal balance of the Loan on such Adjustment Date over the remaining years of the original hypothetical twenty year term at the applicable interest rate. On the Maturity Date, all principal and all accrued but unpaid interest shall be due and payable. If any monthly payment due under this Note is insufficient to pay the interest that has accrued under this Note, the monthly payment shall be increased to include all interest that has previously accrued under this Note. There shall be no negative amortization under this Note.

Borrower shall pay to Bank a late charge of five percent (5%) of any payment not received by Bank within ten (10) days of its due date; provided, however, if said ten (10) day period ends on a day other than a day on which Bank is open for Business (a "Business Day"), then the aforesaid late charge shall be payable if the payment is not received by the last Business Day within said ten (10) day period.

This Note may be prepaid in whole or in part at any time without penalty.

Borrower shall pay all amounts owing under this Note in full when due without set-off, counterclaim, deduction or withholding for any reason whatsoever. If any payment falls due on a day other than a Business Day, then such payment shall instead be made on the next succeeding Business Day, and interest shall accrue accordingly. Any payment received by Bank after 1:00 P.M. shall not be credited against the indebtedness under this Note until at least the next succeeding Business Day.

This Third Renewal Promissory Note represents the renewal of that certain Second Renewal Promissory Note dated as of September 11, 2009, in the principal amount of ONE MILLION FIVE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED FIFTY-SEVEN AND 98/100 DOLLARS (\$1,517,557.98), executed by Riverwalk Jacksonville Development, LLC, a Florida limited liability company in favor of the Bank, which was extended by those certain Extension Agreements dated November 21, 2011, March 30, 2012 and August 21, 2012, respectively. The loan has been partially paid leaving a current outstanding principal balance of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND ONE HUNDRED SEVENTY-SIX AND 67/100 DOLLARS (\$1,515,176.67).

If default be made in the payment of any sums payable pursuant to the terms of this Note, or if default or other event causing the acceleration of this Note occur under the Florida Real Estate Mortgage, Assignment of Leases and Rents and Security Agreement dated August 11, 2004, and recorded on August 18, 2004, in Official Records Book 11994, Page 893, as amended by that certain Mortgage Modification and Spreader Agreement dated as of November 11, 2006, and recorded on January 10, 2007, in Official Records Book 13747, Page 2378, as further amended by that certain Second Mortgage Modification Agreement dated as of September 11, 2009, and recorded on January 7, 2010, in Official Records Book 15119, at Page 2254, all of the Public Records of Duval County, Florida, and as further amended by that certain Third Mortgage Modification Agreement dated the date hereof and to be recorded in the Public Records of Duval County, Florida (collectively the "Mortgage"), or any other instrument or document executed in connection with the Loan (the instruments enumerated in this sentence and all such instruments and documents, including, without limitation, any agreements, mortgages, security agreements, assignments and other documents securing this Note, are referred to in this Note as the "Loan Documents") (an "Event of Default"), then or at any time thereafter at the option of Bank, the whole of the principal sum then remaining unpaid hereunder, together with all interest accrued thereon and all other sums owing under the Loan Documents, shall immediately become due and payable without notice and Bank shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note or any other Loan Document, all of which shall be cumulative and may be exercised successively or concurrently. Upon the occurrence and during the continuation of any Event of Default, Bank, at its option, may at any time declare any or all other liabilities of any Obligor to Bank immediately due and payable (notwithstanding any contrary provisions thereof) without demand or notice of any kind. In addition, Bank shall have the right to set off any and all sums owed to any Obligor by Bank in any capacity (whether or not then due) against the Loan and/or against any other liabilities of any Obligor to Bank.

From and after an Event of Default, and regardless of whether the Bank also elects to accelerate the maturity of this Note, the entire principal remaining unpaid hereunder shall bear an augmented annual interest rate equal to the lesser of (i) twenty-five percent (25%) *per annum*, or (ii) the highest applicable lawful rate. Failure to exercise any and all rights or remedies Bank may in the event of any such default be entitled to shall not constitute a waiver of the right to exercise such rights or remedies in the event of any subsequent default, whether of the same or

different nature. No waiver of any right or remedy by Bank shall be effective unless made in writing and signed by Bank, nor shall any waiver on one occasion apply to any future occasion. Any post-judgment interest shall be based upon the default rate provided in this paragraph.

all as may be appropriate. The "Prime Rate" is a base reference rate of interest adopted by Bank as a general benchmark from which Bank determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness, and Borrower acknowledges and agrees that Bank has made no representations whatsoever that the "Prime Rate" is the interest rate actually offered by Bank to borrowers of any particular creditworthiness.

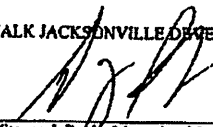
Time shall be of the essence with respect to the terms of this Note. This Note cannot be changed or modified orally. Bank shall have the right unilaterally to correct patent errors or omissions in this Note or any other Loan Document. Except as otherwise required by law or by the provisions of this Note or any other Loan Document, payments received by Bank hereunder shall be applied first against expenses and indemnities, next against interest accrued on the Loan, and next in reduction of the outstanding principal balance of the Loan, except that from and after any default under this Note, Bank may apply such payments in any order of priority determined by Bank in its exclusive judgment. Borrower shall receive immediate credit on payments only if made in the form of either a federal wire transfer of cleared funds or a check drawn on an account maintained with Bank containing sufficient available funds. Otherwise, Borrower shall receive credit on payments after clearance, which shall be no sooner than the first Business Day after receipt of payment by Bank. For purposes of determining interest accruing under this Note, principal shall be deemed outstanding on the date payment is credited by Bank. If any payment required to be made pursuant to this Note is not received on the due date, Bank shall have the right, at its election, to charge any of Borrower's accounts at Bank with the amount of such payment. Except as otherwise required by the provisions of this Note or any other Loan Document, any notice required to be given to any Obligor shall be deemed sufficient if made personally or if mailed, postage prepaid, to such Obligor's address as it appears in this Note (or, if none appears, to any address for such Obligor then registered in Bank's records). Bank may grant participations in all or any portion of, and may assign all or any part of Bank's rights under, this Note. Bank may disclose to any such participant or assignee any and all information held by or known to Bank at any time with respect to any Obligor. If Borrower or any other Obligor is a partnership, then all general partners thereof shall be liable jointly and severally for all obligations under this Note and for all other covenants, agreements, undertakings and obligations of Borrower in connection with the Loan, notwithstanding any contrary provision of the partnership laws of the State of Florida. All of the terms of this Note shall inure to the benefit of Bank and its successors and assigns and shall be binding upon each and every one of the Obligors and their respective heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally.

The Mortgage encumbers real and personal property located in Duval County, Florida, and is recorded amongst the Public Records of said County.

BANK AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BORROWER ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO THE BANK IN EXTENDING CREDIT TO THE BORROWER, THAT THE BANK WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT BORROWER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

WITNESS the due execution hereof as of the date first above written.

RIVERWALK JACKSONVILLE DEVELOPMENT, LLC, a Florida limited liability company

By: 
Steven J. Pardo, Managing Member

CYBER ONE CAFE LLC, a Florida limited liability company

By: RIVERWALK SGB MANAGEMENT, INC.,
a Florida corporation, the Manager

By: 
Steven J. Pardo, President

DOCUMENTARY STAMPS IN THE AMOUNT OF \$5,303.20 HAVE BEEN PAID AND AFFIXED TO THAT CERTAIN THIRD MORTGAGE MODIFICATION AGREEMENT DATED AS OF THE DATE HEREOF AND TO BE RECORDED IN THE PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA. DOCUMENTARY STAMPS IN THE AMOUNT OF \$5,337.50 HAVE PREVIOUSLY BEEN PAID AND AFFIXED TO THAT CERTAIN MORTGAGE DATED AUGUST 11, 2004, AND RECORDED AUGUST 18, 2004, IN OFFICIAL RECORDS BOOK 11994, AT PAGE 893, OF THE PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA