



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2012-0027

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) received a complaint indicating that since September 3, 2003, the City of Riviera Beach (the City) has failed to exercise its fiduciary responsibilities relating to the lease agreements with the R.G. Group, Inc., d/b/a Tiki Waterfront Sea Grill (the Tiki Bar), which manages a restaurant and bar at the City-owned and operated City Marina. The complaint identified the following Issues:

1. During the City's 2008 lease renewal negotiations with the Tiki Bar, the City's own contracted Special Appraiser estimated the monthly rental value at \$19,075.00. The City also received an offer of \$22,500.00 per month from a private party; however, the City renewed the Tiki Bar's lease for \$6,500.00 per month, resulting in potential lost revenue to the City.
2. The City failed to enforce the terms of its lease agreements with the Tiki Bar regarding escalator clauses, resulting in lost revenue to the City.
3. The City failed to enforce the terms of its lease agreements with the Tiki Bar regarding rent and utility payments, resulting in lost revenue to the City.
4. The City failed to enforce the terms of its lease agreements with the Tiki Bar regarding boat slips, resulting in lost revenue to the City.
5. The City allowed the Tiki Bar to use Newcomb Hall as its office space without receiving and/or arranging for compensation of rent and/or utilities, resulting in lost revenue to the City.
6. A City staff member gave unauthorized approval to the Tiki Bar to make improvements to City property without obtaining the proper permits or inspections. Furthermore, the same City staff member failed to notify the Palm Beach County Property Appraiser of such improvements for proper tax assessments.

The OIG's review of lease agreements between the City and the Tiki Bar are as follows:

- **September 3, 2003 – December 31, 2004:** Lease 1
- **January 1, 2005 – December 31, 2007:** Lease 2
- **January 1, 2008 – August 31, 2008:** Lease 2 was continued on a month-to-month basis

- **September 1, 2008 – August 31, 2011:** Lease 3
- **September 1, 2011 – Present:** Lease 3 was continued on a month-to-month basis

FINDINGS

The OIG Review disclosed the following:

Issue 1:

The OIG review found that during the City of Riviera Beach's 2008 lease renewal negotiations (for Lease 3) with the Tiki Bar, the City's own contracted Special Appraiser estimated the monthly rental value at \$19,075.00. The City also received a verbal offer of \$22,500.00 per month from a private party; however, the City renewed the Tiki Bar's lease for \$6,500.00 per month, resulting in potential lost revenue to the City totaling **\$653,900.00**.

Issues 2, 3, and 4:

The OIG review found that the City failed to enforce the terms of its lease agreements with the Tiki Bar regarding the following:

- Escalators (Issue 2): The City did not enforce the escalator provisions in Leases 2 and 3, resulting in lost revenue totaling **\$6,887.04**.
- Rent and Utilities (Issue 3): The City did not enforce the rent and utility provisions in Leases 1, 2, and 3, resulting in estimated lost revenue totaling **\$230,929.69**.
- Boat Slips (Issue 4): The City did not enforce the boat slip provisions in Lease 3, resulting in lost revenue estimated at **\$16,641.60**.

Issue 5:

The OIG review found that the Tiki Bar has been using a space, approximately 12' x 10', located within Newcomb Hall as its office since at least April 2004. The use of this City property was not provided for in any of the lease agreements, and since at least April 2004, the Tiki Bar has been using this space without any compensation to the City for rent and/or utilities. The OIG is unable to determine the City's estimated loss in rent (including utilities), for the use of an office space this size.

Issue 6:

The OIG's review found that there were at least two expansion projects at the Tiki Bar between 2003 (Lease 1) and 2009 (Lease 3). During the Tiki Bar's initial expansion in 2003, from approximately 900 square feet of air conditioned and outdoor decking space

(combined) to 10,636 square feet of combined space (1,500 air conditioned and 9,136 outdoor decking), portions of the expansion (tiki huts, wooden decking, and stage area) had not been properly permitted, inspected, and/or reported to the Palm Beach County Property Appraiser for proper assessment. The OIG's review also found that a City staff member authorized the Tiki Bar to complete the expansion although he had no authority to do so.

It is noted that at this time, the OIG's Review did not disclose any evidence to support a criminal referral to the State Attorney's Office.

ISSUES REVIEWED AND FINDINGS

The OIG's review of lease agreements between the City and the Tiki Bar disclosed the following leases:

- **September 3, 2003 – December 31, 2004:** Lease 1
- **January 1, 2005 – December 31, 2007:** Lease 2
- **January 1, 2008 – August 31, 2008:** Lease 2 was continued on a month-to-month basis
- **September 1, 2008 – August 31, 2011:** Lease 3
- **September 1, 2011 – Present:** Lease 3 was continued on a month-to-month basis

Issue (1):

During the City of Riviera Beach's 2008 lease renewal negotiations with the Tiki Bar, the City's own contracted Special Appraiser estimated the monthly rental value at \$19,075.00. The City also received an offer of \$22,500.00 per month from a private party; however, the City renewed the Tiki Bar's lease for \$6,500.00 per month, resulting in potential lost revenue to the City.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2; and Section 2-211 of Chapter 2, Article IV, Division 4 of the Riviera Beach Code of Ordinances

Finding:

According to information reviewed by the OIG, on January 17, 2008, the City hired Callaway & Price, Inc. (C&P) to perform a lease appraisal to be used in the City's valuation for renewal of Lease 2 that had previously expired (December 31, 2007), yet continued on a month-to-month basis. Sometime prior to August 6, 2008, C&P provided the City with an appraisal valuing the Tiki Bar's annual lease at \$228,900.00, or \$19,075.00 per month.

On August 6, 2008, the City Council disregarded the appraisal, as well as an offer from a private party in the amount of \$22,500.00¹ per month, and instead chose to renew the Tiki Bar's lease (Lease 3) with a rate increase from \$2,550.00 to \$6,500.00 per month. As a result, the City entered into Lease 3 with the Tiki Bar resulting in possible lost revenue to the City as follows:

Year	Yearly Rent Charged by City	Yearly Rent Recommended by Special Appraisal	Loss of Rental Revenue by City
2008 ²	\$ 26,000.00	\$76,300.00	\$ 50,300.00
2009	\$ 78,000.00	\$ 228,900.00	\$ 150,900.00
2010	\$ 78,000.00	\$ 228,900.00	\$ 150,900.00
2011	\$ 78,000.00	\$ 228,900.00	\$ 150,900.00
2012	\$ 78,000.00	\$ 228,900.00	\$ 150,900.00
Totals	\$ 338,000.00	\$ 915,600.00	\$ 653,900.00

Statement of Jeffrey Williams, former Riviera Beach Finance Director

Mr. Williams acknowledged that he engaged the services of C&P to conduct an appraisal of the area being used by the Tiki Bar in relation to their upcoming lease renewal. Mr. Williams indicated that he advised C&P of what the City wanted from the appraisal (rent valuation) and when they wanted the appraisal completed by. Upon completion of the appraisal, C&P estimated the annual market rent value as \$228,900.00, or \$19,075.00 per month. Mr. Williams stated that because he believed that C&P's valuation was very subjective, he submitted his own valuation to the City (based on his own admittedly subjective data) valuing the Tiki Bar's monthly rent at \$8,000.00. According to Mr. Williams, during the negotiations for the lease renewal, there were discussions with City staff (unknown) about C&P's valuation and his own valuation, but the monthly rental rate was ultimately renewed at \$6,500.00.

Statement of Gloria Shuttlesworth, former Riviera Beach Assistant City Manager

Ms. Shuttlesworth confirmed that the City hired C&P to conduct a study on the Tiki Bar and provide an estimate as to what the rental rate should be for the upcoming lease renewal (Lease 3). According to Ms. Shuttlesworth, there were discussions amongst City Officials (unidentified) when C&P returned an estimated monthly rental value of \$19,075.00 per month. Ms. Shuttlesworth opined that C&P's assumptions "were not what was there." Ms. Shuttlesworth believed that the City was not going to get anyone to pay \$19,000.00 a month. When asked about the private party's offer of \$22,500.00, Ms. Shuttlesworth stated that the City conducted background research on the private

¹ Although the lease of the Tiki Bar had not been put out for competitive bid, Michael Goelz, a private business owner, made this offer to the City Council during their August 6, 2008 meeting. Mr. Goelz also made a previous written offer of \$18,000.00 per month to the City on July 8, 2008.

² Lease 3 was initiated on September 1, 2008.

party and decided that they did not want to pursue his offer.³ Ms. Shuttlesworth stated that following C&P's appraisal, the City Council⁴ instructed staff to return and negotiate a monthly rate, which resulted in the \$6,500.00 rate for Lease 3, an increase of \$3,950.00 from Lease 2.

Statement of Ruth Jones, Riviera Beach City Manager

Ms. Jones explained that she was not familiar with the appraisal conducted by C&P in 2008 as she did not become City Manager until June 2009. Ms. Jones stated that the current process they have in place is to obtain two appraisals when it involves the sale of City-owned property; however, when it involves the leasing of City property, there is only one appraisal involved. Ms. Jones stated that if there was a disagreement with the appraisal, the City would ask questions to make a better determination; however, the City does not have a current policy or procedure in place that addresses how staff should handle disagreements when hiring a firm to conduct a lease appraisal.

Issue (2):

The City of Riviera Beach failed to enforce the terms of its lease agreements with the Tiki Bar regarding escalator clauses, resulting in lost revenue to the City.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2 and Section 2-211 of Chapter 2, Article IV, Division 4 of the Riviera Beach Code of Ordinances; and Section 1(a) and (b) of Lease 2 and Lease 3

Finding:

Leases 2 and 3,⁵ respectively, contain the following escalator provisions:

1. RENT

(a) **[Lease 2]** *Base Rent: Tenant shall pay the Landlord base rent in the amount of \$2,550.00 per month.*

[Lease 3] *Tenant shall pay the Landlord base rent in the amount of six thousand five hundred dollars (\$6,500) pef [sic] month.*

(b) **[Lease 2 and Lease 3]** *Beginning the second year after the Commencement Date of this Lease and each year thereafter, the base rent shall be increased to reflect an adjustment based on the greater of two (2%) percent or the Consumer Price Index ("CPI") whichever is greater.*

³ According to OIG interviews with City Council members Judy Davis, Dawn Pardo, Cedrick Thomas, Shelby Lowe, and then Lynne Hubbard, because the negotiations were for a lease renewal, Mr. Goelz offer was not considered. Furthermore, Ms. Davis, Ms. Hubbard, and Mr. Thomas all indicated to the OIG that they did not consider his offer because of the type of business Mr. Goelz was involved in.

⁴ Reference the City Council's August 6, 2008 meeting.

⁵ Lease 1 did not contain an escalator clause.

However, the base rent for any new year shall at no time exceed a five (5%) percent increase over the base rent for the prior year.

The OIG's review of all lease agreements between the City and the Tiki Bar disclosed that the escalator clauses in Leases 2 and 3 were never enforced, resulting in the following lost rental revenue between January 1, 2005 and December 31, 2012:

Year	Monthly Rent With Escalated Rate	Escalated Rate Increase ⁶	Actual Monthly Rent Charged by City	Yearly Loss in Escalated Rate Increases
2005	\$ 2,550.00	N/A – Initial Lease	\$ 2,550.00	\$ 0.00
2006	\$ 2,601.00	\$ 51.00	\$ 2,550.00	\$ 612.00
2007	\$ 2,653.54	\$ 52.54	\$ 2,550.00	\$ 630.48
2008 ⁷	\$ 2,708.47	\$ 54.93	\$ 2,550.00	\$ 439.44
2008 ⁸	\$ 6,500.00	N/A – Initial Lease	\$ 6,500.00	\$ 0.00
2009	\$ 6,500.00	N/A – Initial Lease	\$ 6,500.00	\$ 0.00
2010	\$ 6,639.10	\$ 139.10	\$ 6,500.00	\$ 1,669.20
2011	\$ 6,783.17	\$ 144.07	\$ 6,500.00	\$ 1,728.84
2012	\$ 6,933.76	\$ 150.59	\$ 6,500.00	\$ 1,807.08
TOTAL LOSS (in escalated rate increases)				\$ 6,887.04

Statement of Jeffrey Williams, former Riviera Beach Finance Director

Mr. Williams was not familiar with the escalator clauses in the Tiki Bar's last two lease agreements. According to Mr. Williams, it was the responsibility of each Department Director to monitor the lease agreements within their own Departments. Mr. Williams stated that at no time did the City Marina Director or the Assistant City Manager contact him, or vice versa, to advise that an escalator clause was to be enacted for the Tiki Bar.

Statement of Karen Hoskins, Riviera Beach Assistant Finance Director (Acting Director)

Ms. Hoskins stated that she was unsure as to why the escalator clause in Leases 2 and 3 had not been enacted. According to Ms. Hoskins, the City Marina Director is in charge of administrating the leases at the City Marina (George Carter – Lease 2 and Ed Legue – Lease 3). Ms. Hoskins explained that prior to the rent increase (escalation), the City Marina Director should have had a discussion with the Assistant City Manager

⁶ Based on the Consumer Price Index (CPI) U.S. Inflation Calculator. (2006 – 2%; 2007 – 2.02%; 2008 – 2.07%; 2010 – 2.14%; 2011 – 2.17%; 2012 – 2.22%). It is noted that because Lease 3 was initiated and/or renewed in September of each year, the OIG used a CPI calculation based on the previous 12 months, instead of the CPI for the actual calendar year.

⁷ Calculations based on January 1, 2008 through August 31, 2008 (end of Lease 2).

⁸ Lease 3 was initiated on September 1, 2008

about the increase in rent and then coordinate with the Finance Department to have the new rent calculated and rent increased.

Statement of George Carter, former Riviera Beach Marina Director

Mr. Carter stated that he did not know about the escalator clause in Lease 2, which should have been enforced in 2006. According to Mr. Carter, “this fell through the cracks.” Mr. Carter also added that he did not receive any notices from the Finance Department about the escalator clauses, nor did the Assistant City Manager bring this to his attention. Mr. Carter was unable to recall whether it was his or the Finance Director’s responsibility to monitor the lease agreement(s) at the City Marina.

Statement of Ed Legue, Riviera Beach Marina Director

Mr. Legue explained that he was hired as the City Marina Director in June 2008, just prior to Lease 3 being signed. Mr. Legue stated that he was unaware that it was his responsibility to monitor the lease agreements that were in affect at the City Marina. Mr. Legue indicated that prior to the OIG’s involvement, he was not aware of the details of the Tiki Bar’s lease agreement(s) with the City. Although Mr. Legue stated that he read Lease 3 “a dozen times,” he never saw the escalator clause that should have been enforced in 2009. Mr. Legue acknowledged that did he did not contact the Assistant City Manager, Gloria Shuttlesworth, or Ms. Hoskins about the escalator clause, but was certain that the Finance Department would have “figured out the rent issues.”

Statement of Pamala Ryan, Riviera Beach City Attorney

Ms. Ryan stated that she did not know why the escalator clause in the lease agreement(s) was not enforced, but indicated that she does not manage the contracts [lease agreements] for the City. According to Ms. Ryan, the Tiki Bar’s lease agreement(s) should have been monitored by the City Marina Director and that it was also the City Marina Director’s responsibility to notify the Finance Director of the date that the escalator clause was to be enforced.

Statement of Gloria Shuttlesworth, former Riviera Beach Assistant City Manager

Ms. Shuttlesworth was shown a copy of Lease 2 and Lease 3, which stipulated that the Tiki Bar’s rental rates would be increased after the first year of commencement, and each year thereafter. Ms. Shuttlesworth opined that this was not accurate, but stated that if it was, that the responsibility to do so was that of the Finance Director. Ms. Shuttlesworth acknowledged that her responsibilities as the Assistant City Manager included the oversight of the City Marina, but admitted that she did not monitor the provisions in Lease 2 and Lease 3 pertaining to the escalator clause.

Statement of Ruth Jones, Riviera Beach City Manager

Ms. Jones stated that she was unaware of the escalator clause in Lease 3. Ms. Jones explained that she had not read Lease 3. According to Ms. Jones, the City Marina Director was person responsible for monitoring the lease agreement(s), who would have then reported that information to then Assistant City Manager, Ms. Shuttlesworth, whose responsibilities included oversight of the City Marina. Ms. Jones further stated that Ms. Shuttlesworth could have either gone to the Finance Director to advise her of the

automatic increase in rent, or she could have placed it on the Agenda as an item for the City Council. However, Ms. Jones stated that the increase was low enough to be brought directly to the attention of the Finance Director. Ms. Jones stated that in this case, it was not brought to anyone's attention, nor did she know why this clause had not yet been enacted.

Issue (3):

The City of Riviera Beach failed to enforce the terms of its lease agreements with the Tiki Bar regarding rent and utility payments, resulting in lost revenue to the City.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2 and Section 2-211 of Chapter 2, Article IV, Division 4 of the Riviera Beach Code of Ordinances; Section 1(a) of Lease 1, Lease 2, and Lease 3; Section 10 of Lease 1 and Lease 2; and Section 10(a) of Lease 3

Finding:

According to the terms of Lease 1, Lease 2, and Lease 3, the following quoted language references rental payments:

1. RENT

(a) **[Lease 1]** *Base Rent: Tenant shall deposit with Landlord the sum of \$2,500.00, representing the first and second month's rent. Tenant shall, thereafter, pay Landlord base rent in the amount of \$1,250.00 per month for the third and fourth month's rent and thereafter during the term of this Lease the sum of \$2,500.00 per month.*

[Lease 2] *Base Rent: Tenant shall pay the Landlord base rent in the amount of \$2,550.00 per month.*

[Lease 3] *Tenant shall pay the Landlord base rent in the amount of six thousand five hundred dollars (\$6,500) pef [sic] month.*

10. PUBLIC UTILITIES

[Lease 1] *Tenant shall pay to Landlord water and sewer, garbage and electricity at a flat rate annual rate of \$6000.00, due and payable monthly in the amount of \$500.00 per month...*

[Lease 2] *Tenant shall pay to Landlord water and sewer, garbage and electricity at a flat rate annual rate of \$9,600.00, due and payable monthly in the amount of \$800.00 per month...*

[Lease 3] (a) *Landlord shall segregate Tenant's utilities from the Marina operations. Tenant shall pay for all utilities used or consumed in or upon the Premises which shall include, but not be limited to, gas, water and sewer, telephones, garbage pickup, and electricity. Unless otherwise stipulated herein and, if applicable, Tenant shall cause all accounts to be, placed in Tenant's name no later than thirty (30) days after Landlord provides for separate accounting of each of the utilities outlined above.*

Pursuant to the Tiki Bar's lease agreements with the City, the OIG reviewed the following City records regarding rent and utility payments made to the City by the Tiki Bar between September 3, 2003 (initiation of Lease 1) and December 31, 2012⁹:

Lease 1 and Lease 2

Year	Yearly Rental ¹⁰ and Utility ¹¹ Rate Pursuant to Lease	City Records of Payments Made to the City for Tiki Bar	Yearly Rental ¹² and Utility Revenue Loss To The City
2003	\$ 7,000.00	\$ 4,471.70	\$ 2,528.30
2004	\$ 36,000.00	\$ 30,328.31	\$ 5,671.69
2005	\$ 40,200.00	\$ 25,659.72	\$ 14,540.28
2006	\$ 40,200.00	\$ 23,766.97	\$ 16,433.03
2007	\$ 40,200.00	\$ 31,640.40	\$ 8,559.60
Totals	\$ 163,600.00	\$ 115,867.10	\$ 47,732.90

Lease 3

Year	Yearly Rental ¹³ Rate Pursuant to Lease	City Records of Payments Made to the City for Tiki Bar	Yearly Rental Revenue Loss To The City
2008 ¹⁴	\$ 52,800.00	\$ 50,717.21	\$ 2,082.79
2009	\$ 78,000.00	\$ 74,549.88	\$ 3,450.12
2010	\$ 78,000.00	\$ 77,994.28	\$ 5.72
2011	\$ 78,000.00	\$ 37,736.16	\$ 40,263.84
2012	\$ 78,000.00	\$ 69,346.56	\$ 8653.44
Totals	\$ 364,800.00	\$ 310,344.09	\$ 54,455.91

⁹ Although Lease 3 expired on August 31, 2011, the Tiki Bar has been in a month-to-month lease. The OIG obtained records, pertaining to this issue, through December 31, 2012.

¹⁰ The calculations in this table do not include the escalator clauses that should have been enacted in 2006 and 2007, pursuant to Lease 2. The escalator clauses are addressed in Issue 2 of the OIG Review.

¹¹ Pursuant to Lease 1 and Lease 2, the Tiki Bar was responsible, in addition to the monthly rental rate, for a flat utility rate (electricity, garbage, water and sewer) in the amount of \$500.00 and \$800.00, respectively).

¹² Rental calculations were based on records provided to the OIG of the City's accounting of rent payments made by the Tiki Bar. Both Mr. Smith and Ms. Hoskins advised that all rent payments made by the Tiki Bar were coded under "Restaurant" or "Tiki" in the Account Histories provided to the OIG Investigator. The OIG obtained records from the Tiki Bar regarding their payment history for comparison; however, those payment records were unable to be itemized and only records dating back to December 2007 were provided.

¹³ The calculations in this table do not include the escalator clauses that should have been enacted in 2009, 2010, 2011, and 2012, pursuant to Lease 3. The escalator clauses are addressed in Issue 2 of this Report.

¹⁴ This calculation includes the Tiki Bar's responsibility for a monthly flat utility rate of \$800.00 for the remainder of Lease 2 (January 1, 2008 – August 31, 2008). On September 1, 2008, pursuant to Lease 3, the Tiki Bar was responsible for all utilities.

Lease 3 stipulated that the Tiki Bar would be responsible for all utilities “used or consumed...” According to records obtained from Florida Power & Light Company (FPL), as well as the City, between September 1, 2008 (Lease 3) and November 17, 2010, the City was paying for the electricity solely used by the Tiki Bar under FPL Account #11312-29419. On November 17, 2010, FPL established a new account under R.G. Group, Inc. (the Tiki Bar – FPL Account #88796-43065).

Year	Yearly Total Of FPL Bill For Electricity Used By the Tiki Bar	Paid By
2008	\$ 21,271.07	City
2009	\$ 61,452.71	City
2010	\$ 46,017.10	City
Totals	\$ 128,740.88	City

Statement of George Carter, former Riviera Beach Marina Director

Mr. Carter stated that according to his recollection, there were no missed rent payments during his tenure. Mr. Carter stated that he heard that the cost to segregate the utilities at the Tiki Bar from the City Marina was approximately \$60,000.00, to which Mr. Carter advised that “it was an asinine idea to do so [because of the cost].”

Statement of Ed Legue, Riviera Beach Marina Director

Mr. Legue indicated that at no time was he ever aware that the Tiki Bar had not paid their rent and utilities in full. Mr. Legue further stated that as far as he could remember, the Tiki Bar had always paid their rent and utilities in full.¹⁵

Mr. Legue stated that only the electricity at the Tiki Bar has been segregated from the City Marina. Mr. Legue confirmed that he made a verbal agreement¹⁶ with the Tiki Bar where the Tiki Bar would be responsible for the gas at the City Marina, while the City would be responsible for the water and sewer at the City Marina. According to Mr. Legue, he agreed to this arrangement because the cost to separate the water and sewer and gas at the City Marina from the Tiki Bar was too prohibitive, especially for a building (the Tiki Bar) that was to be torn down in the near future with the pending redevelopment. Mr. Legue opined that the bills (water and sewer and gas) were an “even split” between the City Marina and the Tiki Bar.¹⁷

Statement of Jeffrey Williams, former Riviera Beach Finance Director

Mr. Williams explained that each Department Head was responsible for managing the revenues and expenses for their respective departments, to include the non-payment of expenses. According to Williams, the Finance Department had no way of knowing if the

¹⁵ It is noted that City Marina Accounting Specialist Pierre Smith provided the OIG with their documentation of payments made by the Tiki Bar.

¹⁶ Mr. Legue’s direct supervisor, Ms. Shuttlesworth, was aware of this arrangement and concurred with the agreement. There was no end date to this agreement.

¹⁷ According to the OIG’s review of a 12 month period (October 1, 2011 through September 30, 2012), the Tiki Bar paid \$42,659.66 for gas while the City paid \$16,981.16 for water and sewer.

proper payments were being received by the City Marina as the City Marina was in charge of making sure that all payments were accurate and accounted for. Mr. Williams stated that at no time did Mr. Carter or Mr. Legue advise him that the Tiki Bar was not paying their required obligations.

Mr. Williams stated that during his tenure, the City had issues with their ability to have one central computer system and/or person to monitor all City contracts/lease agreements and therefore have the ability to account for all required payments.

Statement of Karen Hoskins, Riviera Beach Assistant Finance Director (Acting Director)

Ms. Hoskins stated that during the course of the City's lease agreements with the Tiki Bar, the City Marina Director, or their designated staff member, had the responsibility to oversee the payment of rent and utilities. Ms. Hoskins indicated that all City Departments have the same responsibility. Ms. Hoskins stated that she did not know why the Tiki Bar paid less than what was stipulated in their lease agreements and more so, why it was not noticed. According to Ms. Hoskins, while she was the Acting Finance Director, she attempted to keep things going "operationally." Ms. Hoskins acknowledged that there was difficulty in keeping up with payments being made and their amounts for each Departments, and in her opinion, it was the City Marina Department's responsibility to keep up with the monitoring of the Tiki Bar's contract.

Ms. Hoskins stated that the City is currently working on developing a policy and having a designated staff member with the responsibility to monitor the City's contracts/lease agreements. Additionally, a new software system has also been purchased for the Finance Department that will assist with the monitoring of due dates and dollar amounts owed for the various City contracts and lease agreements.

Statement of Gloria Shuttlesworth, former Riviera Beach Assistant City Manager

Ms. Shuttlesworth explained that her responsibilities as the Assistant City Manager included the oversight of the City Marina. Ms. Shuttlesworth stated that that she was unable to explain as to why the Tiki Bar's rent/utility obligations were not paid in full and acknowledged that she did not monitor this. Ms. Shuttlesworth stated that she believed because of the ongoing discussions regarding the City Marina's re-development, it did not make any sense to spend the money to separate the Tiki Bar's utilities. Ms. Shuttlesworth opined that equal payments were being made by the City Marina and the Tiki Bar for electricity services prior to the FPL electric meter being installed. Ms. Shuttlesworth stated that she did not think that the City suffered a loss on any of the lease agreements with the Tiki Bar, adding that "it depends on how you look at it." Ms. Shuttlesworth believed that the City got their "money's worth."

Statement of William Wilkins, former Riviera Beach City Manager

Mr. Wilkins stated that he was the City Manager from October 1999 through September 2010. Mr. Wilkins was not aware that the Tiki Bar had not been paying their required obligations in full during his tenure; however, no one informed him of this either.

According to Mr. Wilkins, this was the responsibility of the City Marina Director or the Finance Department.

Statement of Pamala Ryan, Riviera Beach City Attorney

Ms. Ryan stated that during Lease 3 negotiations, there were a lot of discussions about the Tiki Bar's utilities being separated from the City Marina. Ms. Ryan believed that there was some direction by the City to not segregate the utilities because of the prohibitive costs and the uncertainty of the date as to when the City Marina's redevelopment would take place. Ms. Ryan confirmed that the electric had been segregated from the Tiki Bar (November 2010). Ms. Ryan also recalled that it was during Lease 3's negotiations that the City learned about a verbal agreement that had been made between the City Marina Director (unknown as to which one) and the Tiki Bar, which essentially allowed the Tiki Bar to pay for gas used by the City Marina (to include the Tiki Bar), and the City to pay for the water and sewer used by the City Marina (to include the Tiki Bar). Ms. Ryan stated that this arrangement had not been presented to her until after it had already been made.

Statement of Ruth Jones, Riviera Beach City Manager

Ms. Jones stated that Department Directors were responsible for the oversight of payments for contracts/lease agreements in their respective Departments. Ms. Jones stated that she could not say why the Tiki Bar was not paying their full obligations during the course of their three lease agreements, nor was she able to explain why they were not noticed. Ms. Jones opined that it was probably an oversight of the Department Director. Ms. Jones advised that she has been the City Manager since June 2010. According to Ms. Jones, once she received instruction from the City Council (sometime after June 2010) to separate the electric meter, Mr. Legue was tasked with having the electric meter separated. This was completed on November 17, 2010. According to Ms. Jones, because of upcoming construction at the City Marina, it was not cost-effective at the time (2008) to separate the water and sewer from the Tiki Bar. According to Ms. Jones, because the City believed that the two bills were comparable to each other, the City paid for the use of the water and sewer at the City Marina, while the Tiki Bar was responsible for the payment of gas used at the City Marina.

Issue (4):

The City of Riviera Beach failed to enforce the terms of its lease agreements with the Tiki Bar regarding boat slips, resulting in lost revenue to the City.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2 and Section 2-211 of Chapter 2, Article IV, Division 4 of the Riviera Beach Code of Ordinances; and Section 6(a) of Lease 3

Finding:

According to the terms of Lease 3, the following quoted language references the responsible parties for the usage of boat slips:

6. PARKING AND MARINA SLIPS

(a) Subject to availability, Tenant shall be given one (1) slip at no charge to Tenant, and shall have the right to rent additional slips, if available, from the Marina, at a rate of \$600 per month per slip.

The OIG's review of invoices associated with the Tiki Bar's use of the City Marina's boat slips disclosed the following pertinent information:

- Between September 1, 2008 and September 30, 2009, the City did not charge the Tiki Bar for the use of any boat slips.

According to the City's own testimony, as well as that of the Tiki Bar, the Tiki Bar had at least two designated boat slips, one of which would have been free of charge pursuant to the lease agreement. Given this estimate, the City's potential loss is at least \$7,800.00.

- Between October 1, 2009 and August 31, 2010, the Tiki Bar paid the City \$566.40 per month for one boat slip.

Because it is impossible for the OIG to speculate as to how many boat slips were actually used by the Tiki Bar's patrons during a particular time period, the City's potential loss is at least \$369.60 in loss boat slip revenue for that period.

- Between September 1, 2010 and June 30, 2011, the Tiki Bar paid the City \$1,132.80 per month for two boat slips (\$566.40 per boat slip).

Because it is impossible for the OIG to speculate as to how many boat slips were actually used by the Tiki Bar's patrons during a particular time period, the City's potential loss is at least \$672.00 in loss boat slip revenue for that period.

- Between July 1, 2011 and May 31, 2012, the City did not charge the Tiki Bar for the use of any boat slips.

According to the City's own testimony, as well as that of the Tiki Bar, the Tiki Bar had at least two designated boat slips, one of which would have been free of charge pursuant to the lease agreement. Given this estimate, the City's potential loss is at least \$7,800.00 for that period.

*In total, the City's potential loss in revenues from boat slip rentals is at least **\$16,641.60**.*

Statement of George Carter, former Riviera Beach Marina Director

Mr. Carter stated that he was the City Marina Director from 1991 until his retirement in 2006. According to Mr. Carter, the Tiki Bar had two dedicated boat slips in front of the establishment; however, on a good night (for example, Fridays), the Tiki Bar could be

using 10 slips. Mr. Carter stated while he was the City Marina Director, the Tiki Bar never paid for the extra boat slips they used because it was impossible to monitor.

Statement of Ed Legue, Riviera Beach Marina Director

Mr. Legue explained that the Tiki Bar has one boat slip included in their current lease agreement (Lease 3). Because of the current construction to the City Marina, the Tiki Bar is now using a floating dock on the City Marina's south side that is over 100' in length. Mr. Legue explained that he "took 50' off" for one slip, and then charged the Tiki Bar approximately \$1,200.00 per month for the remaining portion of the dock. According to Mr. Legue, this remaining section can handle three or four boats.

Statement of David Napier, Riviera Beach Marina Dock Master

Mr. Napier explained that the floating dock now being used by the Tiki Bar is approximately 100' feet long, can accommodate approximately five 21' boats, and is designated for the Tiki Bar's use. According to Mr. Napier, besides the floating dock, the City Marina gives the Tiki Bar empty slips throughout the City Marina when needed and if available, at no charge. Mr. Napier stated that the Tiki Bar was only paying for the 100' floating dock, but he did not know what their monthly rate was. Mr. Napier recalled that prior to the beginning of the City Marina construction, the Tiki Bar had two boat slips in front, but were using as many as "seemed fit." Mr. Napier stated that it was not until he discussed the situation with the Tiki Bar's former Manager, "Debbie," she agreed to pay for three additional boat slips. Mr. Napier added that whether or not the City actually charged the Tiki Bar for these three additional boat slips was unknown.

Statement of Jeffrey Williams, former Riviera Beach Finance Director

Mr. Williams did not know how the City Marina Director calculated the current rates for the Tiki Bar's use of the 150' floating dock after construction started at the City Marina. Mr. Williams further stated that he did not know why the City Marina had reduced the Tiki Bar's boat slip rate (per the lease agreement) from \$600.00 per month to \$566.40. Mr. Williams indicated that it was the job of the City Marina Director to monitor; however, Mr. Williams added that it would have been difficult for anyone to monitor which boats were docked at the City Marina that were patronizing the Tiki Bar.

Statement of Karen Hoskins, Riviera Beach Assistant Finance Director (Acting Director)

Ms. Hoskins reiterated that the City Marina Director and his staff were responsible for appropriately "charging the rates" that applied to the City's leases and contracts and making sure that the Tenants were making the proper payments due to the City. Ms. Hoskins stated that she did not have any idea why the Tiki Bar was paying \$566.40 per month for the additional boat slip instead of the \$600.00 per month per boat slip rate established in the lease agreement. Ms. Hoskins stated that she was unaware as to how the rental rates were calculated for the floating dock now being used by the Tiki Bar during the City Marina's construction. According to Ms. Hoskins, an outside consultant has been working with the Finance Director to determine what the new rental rates should be.¹⁸

¹⁸ This process is still ongoing.

Statement of Ruth Jones, Riviera Beach City Manager

Ms. Jones stated that she did not know how the rates were calculated for the use of the floating dock by the Tiki Bar during the City Marina construction, nor was she aware as to why the City Marina Director was charging the Tiki Bar less than what the lease agreement(s) stipulated for the boat slip rate.

Statement of Deborah Crandell, former Tiki Bar General Manager

Ms. Crandell stated that she was aware that Lease 3 stipulated that the Tiki Bar was entitled to one free boat slip and that any others used by the Tiki Bar would be an additional \$600.00 per month. Ms. Crandell explained that there were three boat slips in front of the Tiki Bar with designated signs, but she could not remember ever paying for these extra boat slips while she was the General Manager.

Statement of Keith Ragon, Co-owner the Tiki Bar

Mr. Ragon was adamant that the Tiki Bar was paying for the extra boat slips they used. Mr. Ragon stated that he did not know what he was being charged per month for the extra boat slips, but indicated that because of the construction to the City Marina, his customers were now forced to use a floating dock at the south end of the City Marina. Mr. Ragon opined that because the floating dock was so far away, none of the Tiki Bar patrons were using it.

Statement of Robert Gregory, Co-owner the Tiki Bar

Mr. Gregory believed the Tiki Bar had been allocated three boat slips; however, Mr. Gregory indicated that he couldn't say positively confirm that because of the dock construction that had been taking place at the City Marina during the past year. Mr. Gregory stated that he assumed the Tiki Bar was paying for the boat slips used by their patrons.

Issue (5):

The City of Riviera Beach allowed the Tiki Bar to use Newcomb Hall as its office space without receiving and/or arranging for compensation of rent and/or utilities, resulting in lost revenue to the City.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2; and Section 2-211 of Chapter 2, Article IV, Division 4 of the Riviera Beach Code of Ordinances

Finding:

The OIG's review of all lease agreements between the City and the Tiki Bar disclosed no provisions for the use of Newcomb Hall;¹⁹ however, the OIG's review found that since approximately April 2004, the Tiki Bar had been using a portion of Newcomb Hall as its main office space without compensation to the City for the use of that space and/or its electricity.

¹⁹ Newcomb Hall is a recreation hall located adjacent to the Tiki Bar with a stage, two bathrooms, kitchen, and small storage area that is approximately 12' x 10'. The storage area is what the Tiki Bar has been using as their office space.

Statements obtained by the OIG, combined with City records show that the Tiki Bar has been using a space, approximately 12' x 10' that is located within Newcomb Hall as its office since at least April 2004. The OIG is unable to determine the City's estimated loss in rent (including utilities), for the use of an office space this size.

Statement of George Carter, former Riviera Beach Marina Director

Mr. Carter confirmed that he allowed the Tiki Bar to begin using Newcomb Hall for their office space "a couple" years after they opened. Mr. Carter believed that this was provided for in the City's lease agreement with the Tiki Bar. According to Mr. Carter, "he was the one paying the bills for the City Marina every month," and that the Tiki Bar was not paying the City for any of the electric they were using associated with Newcomb Hall.

Statement of David Napier, Riviera Beach Marina Dock Master

Mr. Napier confirmed that "since he could remember," the Tiki Bar had been using Newcomb Hall as their office space. Mr. Napier stated that he did not know what the Tiki Bar was paying for use of this space, and speculated that it was included in their rent. Mr. Napier added that the use of electricity at Newcomb Hall was paid for by the City.

Statement of Ed Legue, Riviera Beach Marina Director

Mr. Legue explained that since his employment as the City Marina Director (2008), the Tiki Bar had been using Newcomb Hall as its office space; however, the Tiki Bar did not pay the City anything extra for the office space or for the electricity used by that office. Mr. Legue further stated that he did not know why the City was not charging the Tiki Bar and indicated that he thought "it was just part of the deal." Mr. Legue acknowledged that the City had been paying for the Tiki Bar's use of electricity at Newcomb Hall and did not know if there were any provisions in the lease agreement(s) allowing the use of Newcomb Hall for their office space.

Statement of Pamala Ryan, Riviera Beach City Attorney

Ms. Ryan explained that she did not find out about the Tiki Bar's use of Newcomb Hall as their office space until the negotiations were taking place for the 2011 renewal of their lease agreement. Ms. Ryan believed that it was Mr. Legue who advised her of such. Ms. Ryan was not aware of any payments being made to the City by the Tiki Bar for the use of office space and/or electricity at Newcomb Hall.

Statement of Gloria Shuttlesworth, former Riviera Beach Assistant City Manager

Ms. Shuttlesworth explained that her responsibilities as the Assistant City Manager included the oversight of the City Marina. Ms. Shuttlesworth stated that since there was space available inside Newcomb Hall and that the City Marina was not using it, the Tiki Bar was given the space to use as their office. Ms. Shuttlesworth did not believe that this arrangement was included in the lease agreement(s) and opined that it was Mr. Carter who probably allowed this to happen. Ms. Shuttlesworth indicated that she thought that the Tiki Bar was paying the City for the electricity they used at Newcomb Hall.

Statement of Ruth Jones, Riviera Beach City Manager

Ms. Jones stated that she did not know that the Tiki Bar had been using Newcomb Hall as their office space, nor did she know if this had been allowed in the lease agreement. Ms. Jones further stated that she was unaware that the City was paying for the electricity that was being used by the Tiki Bar.

Statement of Keith Ragon, Co-owner Tiki Bar

Mr. Ragon confirmed that the Tiki Bar had been and is currently using Newcomb Hall as their office space; however, Mr. Ragon was unsure as to how this came about, except for the fact that the space that they have continued to occupy had been vacant. Mr. Ragon assumed that this arrangement had been made with the former City Marina Director, Mr. Carter. Mr. Ragon stated that he did not know if the Tiki Bar was paying the City for the office space and/or electricity that they used at Newcomb Hall.

Statement of Robert Gregory, Co-owner Tiki Bar

Mr. Gregory confirmed that the Tiki Bar had been and is currently using Newcomb Hall as their office space. Mr. Gregory indicated that at the time, there was space available inside Newcomb Hall and believed that it was Mr. Carter who allowed the use of that space by the Tiki Bar. According to Mr. Gregory, the use of Newcomb Hall was included in the Tiki Bar's lease agreement(s). Mr. Gregory stated that the use of electricity at Newcomb Hall was not being paid for by the Tiki Bar, but opined that the Tiki Bar was not using that much electricity at Newcomb Hall.

Statement of Wayne Richards, Attorney for the R.G. Group, Inc.

Mr. Richards did not believe that the lease agreement(s) provided for the use of Newcomb Hall by the Tiki Bar for their office space. Mr. Richards did not know how the Tiki Bar was allowed the use of Newcomb Hall for their office space, nor did he know how much the Tiki Bar was paying to the City for the electricity being used there.

Issue (6):

A City of Riviera Beach staff member gave unauthorized approval to the Tiki Bar to make improvements to City property without obtaining the proper permits or inspections. Furthermore, the same City staff member failed to notify the Palm Beach County Property Appraiser of such improvements for proper tax assessments.

Governing Directives:

Section 2-176 of Chapter 2, Article IV, Division 2; and Section 2-211 of Chapter 2, Article IV, Division 4; and Section 22-34(a) of Chapter 22, Article II of the Riviera Beach Code of Ordinances

Finding:

According to the OIG's review, there were at least two expansion projects at the Tiki Bar between 2003 (Lease 1) and 2009 (Lease 3). During the Tiki Bar's initial expansion from approximately 900 square feet of air conditioned and outdoor decking space (combined) to 10,636 square feet of combined space (1,500 air conditioned and 9,136

outdoor decking), portions of the outdoor decking had not been properly permitted, inspected and or reported to the Palm Beach County Property Appraiser (PBCPA).

Statement of Peter Ringle, Riviera Beach Building Official

Mr. Ringle explained that he has been the City's Building Official for approximately six months. Mr. Ringle provided the City's records to the OIG regarding the following applications, permits, and inspections related to the Tiki Bar:

- Thatch Roof over Wooden Deck (applied on 10-16-03 / passed on 4-19-04)
- Electric for Tiki Bar per plans (applied on 12-23-03 / passed on 4-19-04)
- Interior Electric (applied on 12-15-03 / passed on 4-19-04)
- Installation of Gas Line & Cylinders (applied on 2-2-04 / passed on 4-12-04)
- Replace Air Conditioning Unit (applied on 1-7-04 / passed on 2-11-04)
- Roof (applied on 1-26-04 / passed on 4-19-04)
- Interior Remodel (applied 12-2-03 / passed 4-28-04)

According to Mr. Ringle, there were no applications for permits for the tiki huts, wooden decking, and/or the stage area at the Tiki Bar, all of which would have needed permits to build.²⁰ Mr. Ringle was unaware that Mr. Carter, as the City Marina Director, had requested and been denied permission by Ms. McKinney to build the tiki huts, wooden decking, and/or the stage area at the Tiki Bar. Mr. Ringle stated that he did not know whose responsibility it was to notify the PBCPA following the completion of the expansion, nor did he have an explanation as to why they were not notified.

Statement of George Carter, former Riviera Beach Marina Director

Mr. Carter explained that he approved the 2003 expansion to the Tiki Bar. Mr. Carter indicated that City Director of Community Development Mary McKinney "probably did not" give approval for this expansion after he presented the plans to her. Mr. Carter further stated that he asked the Tiki Bar to make the expansion, to which they agreed and paid for the expansion itself. Mr. Carter stated that there was a "hassle" with the need for a permit in building the actual tiki hut portion of the decking. Mr. Carter explained that he presented the tiki hut proposal to Ms. McKinney and was told that it did not meet code; however, he still allowed the expansion to take place. Mr. Carter advised that to the best of his knowledge, no permits were issued for any portion of the expansion project, and no inspections were conducted by the Building Department. Mr. Carter acknowledged that he did not notify the PBCPA about the expansion and stated that he did not know that the PBCPA needed to be notified of such.

Statement of Mary McKinney, Riviera Beach Director of Community Development

Ms. McKinney denied ever giving approval for the Tiki Bar's 2003/2004 expansion project onto City property and indicated that her only awareness of the expansion project related to the permits that were needed for the building itself. Ms. McKinney stated that she had very little to no involvement with the Tiki Bar or the City Marina and was not aware that the expansion was going onto City property. Ms. McKinney was

²⁰ Mr. Ringle advised that the wooden decking and/or stage area would have needed permits; however, the tiki huts, depending on their design and construction, may or may not have needed permits.

unable to recall Mr. Carter approaching her about his plans, meeting with Mr. Carter about his plans, and/or denying Mr. Carter's requests. Ms. McKinney further stated that she was unable to explain how Mr. Carter was able to get the tiki huts, the decking, and the stage area built without permits.

Ms. McKinney explained that she could not remember any citizen approaching her or coming into her office to advise that building permits had not been issued for the completed expansion project at the Tiki Bar, or that no inspections had been conducted on that same project. She seriously doubted that this had ever happened, and she thought she would have recalled if a citizen did come into her office with that information. Ms. McKinney could not tell me if inspections had been conducted for the tiki huts, the wooden decking, or the stage area.

Ms. McKinney advised that she did not know that the PBCPA had not been notified about the expansion, but added that the PBCPA conducts regular inspections of their building records. However, Ms. McKinney stated that if there were no permits issued for a project, there would not be a record on file and the PBCPA may not have known about the expansion during one of their inspections. Ms. McKinney stated that she was unfamiliar with the notification process and was not sure whether or not the PBCPA checked the City's records or if the City notified the PBCPA of completed projects.

Statement of Gloria Shuttlesworth, former Riviera Beach Assistant City Manager

Ms. Shuttlesworth stated that the Department of Community Development, which includes the Planning, Zoning, and Building Departments, gave approval for part of the Tiki Bar's expansion onto City property. Ms. Shuttlesworth recalled a conversation with Ms. McKinney in which she (Ms. McKinney) was complaining that the Tiki Bar did not have complete approval for their expansion because of a controversy with Mr. Gregory. Ms. Shuttlesworth indicated that the controversy between Ms. McKinney and Mr. Gregory dealt with what he had indicated was an expansion and what Ms. McKinney said he had not done. Ms. Shuttlesworth was not aware if building permits had been issued for the tiki huts, wooden decking, or the stage area; however, Ms. Shuttlesworth recalled an unknown individual advising her of such. According to Ms. Shuttlesworth, following the receipt of this information, a meeting was held and eventually City inspectors were sent to the Tiki Bar "after the fact." Ms. Shuttlesworth was unable to recall when these inspections took place, whether it was year or years after the expansion was completed. Ms. Shuttlesworth stated at no time whatsoever did she give Mr. Carter permission to complete the expansion without the proper permits.

Ms. Shuttlesworth stated that she had no idea as to why the PBCPA had not been notified about the completion of the Tiki Bar's expansion project. According to Ms. Shuttlesworth, this was the responsibility of the Department of Community Development.

Statement from Ruth Jones, Riviera Beach City Manager

Ms. Jones explained that when a problem arose concerning termites at the Tiki Bar, it became necessary to review the plans for the expanded area. Once the plans were

reviewed, it was discovered that no permits had been issued for the tiki huts, wooden decking, and/or stage area. According to Ms. Jones, this expansion had taken place prior to her appointment as City Manager. Ms. Jones explained that this type of expansion would have needed prior approval from the Community Development Director because the expansion would have gone onto City property. Ms. Jones indicated that she was unsure as to who should have notified the PBCPA about the improvements.²¹

Statement from Pamala Ryan, Riviera Beach City Attorney

Ms. Ryan advised that any improvements to the Tiki Bar would have needed the approval and permit from the Planning, Zoning, and Building Department. Ms. Ryan stated that prior to this issue being exposed, no other Tiki Bar expansions had been completed without proper permitting. Ms. Ryan recalled a conversation with Ms. McKinney who advised her that there were no permits for portions of the Tiki Bar's expansion. According to Ms. Ryan, Mr. Carter approved portions of the expansion without a permit. Ms. Ryan was not positive, but indicated that if the Finance Department had known about the expansion to the Tiki Bar, it would have been their responsibility to notify the PCPA of the improvements. Ms. Ryan added that the Finance Department has always been her "go between" to the PBCPA.

Statement from Karen Hoskins, Riviera Beach Assistant Finance Director (Acting Director)

Ms. Hoskins believed that it was the Planning, Zoning, and Building Department's responsibility to notify the PBCPA about any improvements to City property, but was adamant that it was not the responsibility of the Finance Department.

Statement of Robert Gregory, Co-owner Tiki Waterfront Sea Grill

Mr. Gregory assumed that the tiki huts, wooden decking, and stage area had been approved by the City. Mr. Gregory was not aware as to why the PBCPA had not been notified about the improvements at the Tiki Bar.

Statement of Keith Ragon, Co-owner Tiki Waterfront Sea Grill

Mr. Ragon explained that the Tiki Bar wanted to expand northward to what is now considered the stage area and it was Mr. Carter who allowed them to go forward with the project. Mr. Ragon was not aware if Mr. Carter had gone through anyone with the City to get this approved or not. Furthermore, Mr. Carter never told them that the expansion plans had been rejected by officials at the Planning, Zoning, and Building Department.

Statement of Steven Eagen, Manager Palm Beach County Property Appraiser's Office

Mr. Eagen explained that the assessment on the Tiki Bar of \$85,000.00 was the same from 2002 through 2007. According to Mr. Eagen, that assessment was an override that the PBCPA placed on the property in 2001 based on the income of the operating

²¹ It is noted that the expansions were not assessed by the PBCPA until 2008, during lease negotiations, when it was reported by the media.

business at that time (Coach's Manatee Lounge). Mr. Eagen explained that their valuation of the property at the time had been consistent for "quite a few years." Mr. Eagen advised that the property was reassessed in 2008 after the PBCPA learned through a newspaper article that the property had been under-valued/assessed. Mr. Eagen stated that once the property was reassessed, the value increased from \$85,000.00 to \$450,000.00.

Mr. Eagen stated that it was the City's job to notify the PBCPA about any improvements made to the Tiki Bar. Mr. Eagen further stated that the City never provided the PBCPA with any information regarding the expansion. The PBCPA further advised the OIG that in 2003 and 2004, following the PBCPA's yearly lease inquiry, the City did not advise them that the Tiki Bar had entered into a lease agreement with the City. According to Mr. Eagen, this reporting would have changed the assessed property value of the Tiki Bar.

RECOMMENDED CORRECTIVE ACTIONS

Based on the OIG's findings, the following corrective actions are recommended:

Issue 1

1. Consider implementing a written policy addressing disagreements with appraisals regarding the leasing of City property.

Issues 2 – 4 (Lease Agreement)

2. Ensure appropriate oversight of all lease agreements in the City and consider utilizing a centralized location for doing such.

During the course of the OIG review, the City notified the OIG that it had made recommendations to create a new position that would be responsible for the management and oversight of all the City's contracts and lease agreements. The City also notified the OIG that they notified the Tiki Bar that effective September 30, 2013, their lease with the City would be terminated.

3. Review this report and recoup all allowable costs pertaining to the following:
 - a. Escalator Clause (Issue 2): The OIG found that the City's lost revenue related to not enforcing the escalator provisions in Leases 2 and 3 resulted in a loss of **\$6,887.04**.

On February 13, 2013, the City received a check from the Tiki Bar in the amount of \$6,734.25 for the escalator clauses.

- b. Rental/Utility Payments (Issue 3): According to City records, between September 3, 2003 and December 31, 2012, the Tiki Bar has an outstanding balance for rent and/or utility payments totaling **\$102,188.81**.²²
- c. Utility Payments (Issue 3): Although Lease 3 stipulated that the Tiki Bar was responsible for all utilities, the electric was not segregated until November 17, 2010, resulting in the City paying for the Tiki Bar's use of electricity between September 1, 2008 and November 16, 2010, totaling **\$128,740.88**. It is noted that the City reported that this particular meter also fed the City Marina's laundry facility and shower cabanas; however, City staff were unable to determine the City's proportionate share.
- d. Boat Slips (Issue 4): Lease 3 stipulated that the Tiki Bar was to be given one boat slip at no charge and any additional slips, if available, would be rented at a rate of \$600.00 per month per slip. The OIG review found that between September 1, 2008 and May 31, 2012, the Tiki Bar was not charged and/or under-charged for the use of additional boat slips totaling **\$16,641.60**.

Issue 5

- 4. Determine whether or not the City should be reimbursed for any and all expenses (rent and utilities) associated with the Tiki Bar's previous and continuous use of a portion of Newcomb Hall as its office space.

Issue 6

- 5. Determine whether additional measures should be taken to address the unpermitted structures at the Tiki Bar and that those measures are in accordance with City Ordinances, as well Florida Building Codes.
- 6. Implement a formal reporting process to ensure that the appropriate parties within the City Departments are notified prior to the initiation of any improvements to City property and that the Palm Beach County Property Appraiser is notified upon the completion of any improvements to City property. Further, the City needs to ensure that all staff are aware of such requirements.

IDENTIFIED, QUESTIONED, AND AVOIDABLE COSTS

Identified Costs:	\$109,075.85	Recovered Costs:	\$ 6,734.25
Questioned Costs:	\$799,282.48		
Avoidable Costs:	\$179,268.47		

²² It is noted that the Tiki Bar provided the OIG with their available records between December 21, 2007 and December 31, 2012; however, because there was no itemization of those records, the OIG was unable to verify the Tiki Bar's payments towards rent and utilities.

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on February 22, 2013, the City of Riviera Beach was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days. On February 28, 2013, the City requested an extension and subsequently received approval from the OIG to submit their response by March 11, 2013.

On March 12, 2013, the OIG received the following quoted response, in pertinent parts (*the City's response, in its entirety, is attached*):

- **Issue 2**

The escalated rate increases used by the OIG differs with the rate provided by the finance department for the escalation back charges under Lease 3 and new rent increases. The calculations presented in the table (page 8) have been calculated incorrectly. The annual rate increase should be an increase over the base, not an increase over the prior year.

OIG Response: Although the City did not previously enforce the escalator clauses in Lease 2 and 3, it has now (after the initiation of the OIG Review) received a reimbursement from the Tiki Bar in the amount of \$6,734.25 for escalators and adjusted base rents from September 1, 2010 to January 1, 2013. The method of calculation used by the OIG was the exact method used in the City's January 24, 2013 letter to the Tiki Bar; however, the City utilized an escalator percentage that does not conform to the actual lease agreement terms.

Escalators are calculated over a contract-year, not a calendar-year or fiscal year. In the table, for example, Year 2009 is really contract-year 2009-2010. Therefore, Year 2012 should be contract-year 2012-2013. Since contract year 2012-2013 is not complete, twelve months should not have been used in the calculation. Escalator charges for Lease 2 and 3 have been paid by Tiki and the new rate plus applicable tax is in effect.

OIG Response: The escalators were calculated by contract year beginning on January 1st of each year for Lease 2 and September 1st of each year for Lease 3. Because the OIG was notified during the review that the Tiki Bar's lease would be terminated effective September 30, 2013, a 12 month calculation was used in the table for the 2012 contract year. The OIG's report notes in the Recommended Corrective Actions section that the City received reimbursement from the Tiki Bar in accordance with the City's calculations of escalator clauses.

- **Issue 3**

Regarding the electrical meter which according to the report was being “solely” used by the Tiki Bar is inaccurate. The meter in question did in fact feed portions of the Tiki but also fed the Marina’s laundry facility and the shower cabanas. The report fails to indicate that the balance of the electrical demand for the Tiki was fed by two additional meters that the Tiki had in separate FPL account(s).

OIG Response: During interviews with current and former City staff, it was not disclosed that the Tiki Bar’s meter (FPL Account #11312-29419) included the Marina’s laundry facility and shower cabanas. The OIG re-reviewed this matter and attempted to obtain additional information from three City staff members (Mr. Legue, Mr. Smith, and Mr. Williams²³) with knowledge of this particular meter, to determine a proportionate share between the City and the Tiki Bar. None of these staff members were able to provide the OIG with the City’s estimated percent of usage of electricity for the laundry facility and shower cabanas.

Lease 3 table does not make sense. Staff is unable to confirm that the amounts in the two tables agree with official City records...The report also fails to mention that the Tiki paid for their SWA assessments. To our knowledge this information was provided but omitted from the report.

OIG Response: The OIG re-reviewed the Lease 3 Table and updated the figures to show that \$54,455.91 remains unaccounted for in rental revenue based on City records provided to the OIG. It is noted that the Tiki Bar was unable to provide a full and accurate accounting of its payments to the City.

The OIG did not include the information concerning the Tiki Bar’s SWA assessments as the review only encompassed non-payment issues.

- **Additional Information**

The City is proposing centralizing contract and lease administration to ensure compliance.

OIG Response: This information was provided to the OIG during the review and is noted in the Recommended Corrective Actions section of our report (Corrective Action #2).

This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

²³ According to Mr. Legue, prior to the lease renewal in 2008, Mr. Smith and Mr. Williams researched the meters at the City Marina to determine the Tiki Bar’s share of utilities. Neither Mr. Smith nor Mr. Williams were able to recall their findings, nor were they able to recall the City’s estimated percent of electricity usage by the laundry facility and shower cabanas.



OFFICE OF
CITY MANAGER

CITY OF RIVIERA BEACH

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March 11, 2013

Office of Inspector General
Investigation Section
P.O. Box 16568
West Palm Beach, FL 33416

OIG Management Review #: 2012-0027

Dear Mr. Balberchak

The City of Riviera Beach has reviewed the DRAFT FINDINGS for the OIG Management Review #2012-0027 concerning the Tiki Lease and the City's alleged failures in the administration of the lease the following is submitted for your consideration.

BACKGROUND

The R.G. Group, Inc. d/b/a Tiki Waterfront Sea Grill came to a marina that was derelict, rat infested and in total disrepair. They have been an excellent private partner and contribute annually to organizations in the city. It was understood that the marina would be redeveloped and redevelopment of marina docks began in June 2012. Once completed lease rates would be at market rate. Future private development will be the responsibility of the Master Developer, thus the lease with Tiki will be terminated September 30, 2013.

RESPONSE

The escalated rate increases used by the OIG differs with the rate provided by the finance department for the escalation back charges under Lease 3 and new rent increases. The calculations presented in the table (pg 8) have been calculated incorrectly. The annual rate increase should be an increase over the base, not an increase over the prior year.

Escalators are calculated over a contract-year, not a calendar-year or fiscal-year. In the table, for example, Year 2009 is really contract-year 2009-2010. Therefore, Year 2012 should be contract-year 2012-2013. Since contract year 2012-2013 is not complete, twelve months should not have been used in the calculation. Escalator charges for Lease 2 and 3 have been paid by Tiki and the new rate plus applicable tax is in effect.

OIG Management Review #: 2012-0027

March 11, 2013

Page 2

Regarding the electrical meter which according to the report was being “solely” used by the Tiki is inaccurate. The meter in question did in fact feed portions of the Tiki but also fed the Marina’s laundry facility and the shower cabanas. The report fails to indicate that the balance of the electrical demand for the Tiki was fed by two additional meters that the Tiki had in separate FPL account(s).

Lease 3 table does not make sense. Staff is unable to confirm that the amounts in the two tables agree with official City records, Please note that staff would be happy to review the financial data with the OIG to ensure the accuracy in the report. The report also fails to mention that the Tiki paid for their SWA assessments. To our knowledge this information was provided but omitted from the report.

The City is proposing centralizing contract and lease administration to ensure compliance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ruth C. Jones".

Ruth C. Jones
City Manager
City of Riviera Beach

Cc: Pamala H. Ryan, City Attorney
City Council



CITY OF RIVIERA BEACH

200 EAST 13TH STREET
(561) 842-7806

RIVIERA BEACH, FLORIDA 33404
FAX (561) 845-8197

OFFICE OF
CITY MARINA

Mr. Robert H. Gregory Jr.
R.G. Group
D/B/A Tiki Waterfront Sea Grill
12970 Shore Drive
Palm Beach Gardens FL 33410

January 24, 2013

Dear Mr, Gregory,

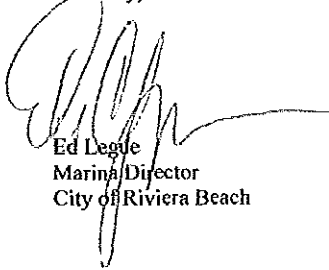
In accordance with the Lease Renewal agreement, beginning the second year after the Commencement Date, the base rent was to be increased to reflect the greater of two (2%) percent or the Consumer Price Index, but in no event should the increase exceed five (5%) percent.

It has been brought to my attention that this increase has never been assessed. The Finance Department has provided the following calculation as to the amount of back rent that is owed.

The cumulative rent owed through January 2013 is \$6,734.25. The corrected monthly rent beginning with your February rent payment will be \$6,904.61. Please remit the total of \$13,638.86 by February 1, 2013 to bring the rental payments to a full-paid status.

If you have any questions relative to the calculation, please do not hesitate to contact me directly.

Sincerely,



Ed Legge
Marina Director
City of Riviera Beach

Cc: Randy M Sherman, Director of Finance and Administrative Services

In accordance with the Lease Renewal agreement, beginning the second year after the Commencement Date, the base rent was to be increased to reflect the greater of two (2%) percent or the Consumer Price Index, but in no event should the increase exceed five (5%) percent. It has been brought to my attention that this increase has never been assessed. The Finance Department has provided the following calculation as to the amount of back rent that is owed.

First escalation date:	September 1, 2010
Escalation amount:	2%
Calculation:	\$6,500 (monthly base rent)
	<u>x 1.02% (minimum increase)</u>
Adjusted Base Rent	6,630
Minus original base	<u>6,500</u>
Monthly increase	130
	<u>x 12 (twelve months)</u>
1st Annual Increase	1,560 (period Sept. 1, 2010-Aug. 31, 2011)
Second escalation date:	September 1, 2011
Escalation amount:	2%
Calculation:	\$6,630 (adjusted base rent)
	<u>x 1.02% (minimum increase)</u>
Adjusted Base Rent	6,762.60
Minus original base	<u>6,500.00</u>
Monthly increase	262.60
	<u>x 12 (twelve months)</u>
2nd Annual Increase	3,151.20 (period Sept. 1, 2011-Aug. 31, 2012)
Third escalation date:	September 1, 2012
Escalation amount:	2.1%
Calculation:	\$6,762.60 (adjusted base rent)
	<u>x 1.021% (minimum increase)</u>
Adjusted Base Rent	6,904.61
Minus original base	<u>6,500.00</u>
Monthly increase	404.61
	<u>x 5 (five months)</u>
3rd Annual Increase	2,023.05 (period Sept. 1, 2012-Jan. 31, 2013)

The cumulative rent owed through January 2013 is \$6,734.25. The corrected monthly rent beginning with your February rent payment will be \$6,904.61. Please remit the total of \$13,638.86 by February 1, 2013 to bring the rental payments to a full-paid status.