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**DEVELOPMENT AGREEMENT**  
(Community Maritime Park Project)

between

**COMMUNITY MARITIME PARK ASSOCIATES, INC.**

and

**MARITIME PARK DEVELOPMENT PARTNERS, LLC**

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## DEVELOPMENT AGREEMENT

(Community Maritime Park Project)

This Development Agreement (the "Agreement") is made as of the Effective Date described in Section 18.18 below by and between COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida not for profit corporation ("CMPA"), and MARITIME PARK DEVELOPMENT PARTNERS, LLC, a Florida limited liability company ("the Developer").

### RECITALS

CMPA and the City of Pensacola, Florida (the "City"), are parties to two agreements dated March 27, 2006 – the Master Development Agreement (Community Maritime Park Project) and the Master Lease (Community Maritime Park) – which set forth CMPA's and the City's respective duties and responsibilities pertaining to the development of real property for a project known and referred to as the Community Maritime Park or the Project (as hereinafter defined).

To provide for the successful development of the Project, the City also has entered into an interlocal agreement with the Community Redevelopment Agency of the City of Pensacola, Florida, a body politic and corporate created pursuant to Part III, Chapter 163, *Florida Statutes* (the "CRA"), dated March 27, 2006 (the "Interlocal Agreement"), which provides for the payment by the CRA to the City of certain funds on deposit in the CRA's Redevelopment Trust Fund for the purpose of paying debt service on the Bonds (as hereinafter defined).

With the City's approval, CMPA conducted a two-stage competitive procurement (RFQ No. 2007-02 and RFP No. 2007-03) to select a developer to act as CMPA's primary agent in implementing CMPA's vision of the Project, which culminated on August 22, 2008, with the trustees of CMPA voting to negotiate this Agreement with the Developer.

CMPA and the Developer have entered into and concluded negotiations, which have resulted in this Agreement.

At a duly called public meeting on March 23, 2009, the City Council approved this Agreement and authorized and directed its execution by the appropriate officials of CMPA.

The trustees of CMPA have approved this Agreement and have authorized and directed certain individuals to execute this Agreement on behalf of CMPA.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

### ARTICLE I. DEFINITIONS.

**Section 1.01** Definitions. The terms defined in this Article 1 shall have the following meanings, except as herein otherwise expressly provided:

(1) "Act" means the Constitution of the State of Florida; Section 163.01, *Florida Statutes*; Part III, Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*, the Charter of the City; other applicable provisions of law; and ordinances and resolutions of the City implementing them.

(2) "Agency" or "CRA" means the Community Redevelopment Agency of the City of Pensacola, Florida, a body politic and corporate created by the City pursuant to Part III, Chapter 163, *Florida Statutes*.

1 (3) "Agreement" means this Development Agreement, including any Exhibits, and any  
2 amendments hereto or thereto.  
3

4 (4) "Agreement Expiration Certificate" means the instrument executed by the parties hereto  
5 as provided in Section 18.17 hereof certifying that all obligations of the parties hereto have been satisfied  
6 and this Agreement has expired in accordance with its terms, the form of which is attached hereto as  
7 Exhibit "I".  
8

9 (5) "Agreement Termination Certificate" means the instrument executed by the parties hereto  
10 as provided in Section 12.06 hereof, stating that this Agreement has been terminated prior to its  
11 Expiration Date as provided in Section 12.05 hereof, the form of which is attached hereto as Exhibit "H".  
12

13 (6) "Area" means the area located within the corporate limits of the City having conditions of  
14 slum and blight (as those conditions are defined in the Redevelopment Act) and for which the Trust Fund  
15 was created.  
16

17 (7) "Authorized Representative" means the individual or individuals designated and  
18 appointed from time to time as such by CMPA or the Developer, respectively, pursuant to Section 2.03  
19 hereof.  
20

21 (8) "Bonds" means that part of the Public Financing consisting of the revenue bonds or other  
22 Obligations to be issued or committed to by the City to pay the Public Improvements Costs in a net  
23 amount not to exceed \$40 million and secured by payments made by the CRA to the City pursuant to the  
24 Interlocal Agreement.  
25

26 (9) "City" means the City of Pensacola, Florida, a Florida municipal corporation, and any  
27 successors or assigns thereto.  
28

29 (10) "City Council" means the governing body of the City, by whatever name known or  
30 however constituted from time to time.  
31

32 (11) "CMPA" means Community Maritime Park Associates, Inc., a Florida non-profit  
33 corporation, and any successors and assigns thereof.  
34

35 (12) "Commencement Date" means the date on which the Developer commences or causes a  
36 Contractor to commence construction of the Site Preparation Project or the Public Improvements, that is,  
37 to begin meaningful physical development as authorized by Project permits, which is continued and  
38 diligently prosecuted toward and with the objective of completion.  
39

40 (13) "Community Multi-Use Facility" means that component of the Public Improvements  
41 consisting of a structure that can be used for various public events, including professional or amateur  
42 sports, concerts, and other community events.  
43

44 (14) "Conference Center" means that component of the Project consisting of a venue in which  
45 conferences, seminars, meetings and other similar-type events can be held, which may be part of the  
46 Public Improvements or the Private Improvements, as the Developer determines in light of market  
47 conditions and Project economics.  
48

49 (15) "Construction Fund" means the special fund known as the Community Maritime Park  
50 Construction Fund established to facilitate the payment of the costs of the Site Preparation Project Costs  
51 and the Public Improvements Costs as provided in Section 5.04 hereof.  
52

53 (16) "Contractor" means one or more individuals or firms constituting a general contractor or  
54 other type of construction contractor, including subcontractors, properly licensed by the State of Florida or  
55 other appropriate jurisdiction to the extent required by applicable law, authorized to perform construction

1 contractor services in the State of Florida, registered with the City as required by applicable law, and  
2 bonded and insured to the extent required by applicable law and this Agreement.

3  
4 (17) "CRA" means the Community Redevelopment Agency of the City of Pensacola.

5  
6 (18) "Developer" means Maritime Park Development Partners, LLC, a Florida limited liability  
7 company, and any successors and assigns thereof.

8  
9 (19) "Development Fee" means the amount CMPA will pay the Developer as provided in  
10 Subsection 2.06(a) hereof.

11  
12 (20) "Effective Date" means the date specified in Section 18.18 hereof.

13  
14 (21) "Exhibits" means those agreements, diagrams, drawings, specifications, instruments,  
15 forms of instruments, and other documents attached hereto and designated as exhibits to, and  
16 incorporated in and made a part of, this Agreement.

17  
18 (22) "Expiration Date" means the date on which this Agreement expires, as evidenced by the  
19 Agreement Expiration Certificate being recorded in the public records of Escambia County, Florida, as  
20 provided in Section 18.17 hereof.

21  
22 (23) "Financing Documents" means the ordinance, resolution or other documents duly  
23 adopted by the City, the CRA, and/or CMPA, as well as any indenture of trust, trust agreement, interlocal  
24 agreement or other document relating to the issuance or security of the Bonds.

25  
26 (24) "Hotel Project" means that component of the Private Improvements that may consist of  
27 the design, development, construction, completion and operation of those buildings, structures, facilities  
28 and other improvements to be constructed and installed on a Parcel to be used as a hotel and uses  
29 appurtenant thereto.

30  
31 (25) "Interlocal Agreement" means the interlocal agreement between the City and the CRA,  
32 dated March 27, 2006, entered into pursuant to Sections 163.01 and 163.400, *Florida Statutes*, which  
33 establishes certain duties and responsibilities of each party thereto pertaining to the Project and the  
34 implementation of this Agreement, including payment of funds from the Trust Fund to the City for payment  
35 on the Public Financing.

36  
37 (26) "Management Fee" means the amount CMPA will pay the Developer as provided in  
38 Subsection 2.06(b) hereof.

39  
40 (27) "Maritime Museum Lease" means the sub-lease between CMPA and the University of  
41 West Florida for the Maritime Museum Site and the use, operation and management of such site and the  
42 structure(s) thereon as a maritime museum and uses appurtenant and complementary thereto, including  
43 classrooms, offices, associated food service, and a museum store.

44  
45 (28) "Maritime Museum Project" means the design, development, construction, and  
46 completion of those buildings, structures, facilities, and other improvements to be constructed and  
47 installed on the Maritime Museum Site, as provided in the Maritime Museum Lease.

48  
49 (29) "Maritime Museum Project Financing" means the funds provided by the University of  
50 West Florida, including fundraising, to pay the costs of the design, development, equipping and  
51 construction of the Maritime Museum Project.

52  
53 (30) "Maritime Museum Site" means the Parcel(s) on which the Maritime Museum Project will  
54 be constructed and located.

1 (31) "Master Development Agreement (2006)" means the Master Development Agreement  
2 (Community Maritime Park Project) dated March 27, 2006, by and between CMPA and the City.  
3

4 (32) "Master Lease (2006)" means the Master Lease (Community Maritime Park) dated March  
5 27, 2006, by and between CMPA and the City.  
6

7 (33) "Obligations" means a series of bonds, obligations or other evidence of indebtedness,  
8 including, but not limited to, notes, commercial paper, capital leases, interlocal agreements, or any other  
9 lawful obligations of the City, the CRA, or CMPA as the context requires and as contemplated by this  
10 Agreement.  
11

12 (34) "Office Project" means that component of the Private Improvements consisting of the  
13 office building(s) to be constructed on one or more Parcels pursuant to a Sub-Sublease, including office  
14 space to be leased and used by Studer.  
15

16 (35) "Parcel" means each distinct part of the Project Site as identified and depicted on the  
17 Parcel Plan, including any changes in such plan made from time to time as provided herein and in the  
18 Sub-Lease.  
19

20 (36) "Parcel Plan" means the depiction and description of each Parcel, which may be changed  
21 from time to time as provided in Section 6.02(c) hereof, the initial form of which is attached hereto as  
22 Exhibit "B".  
23

24 (37) "Park" means that component of the Public Improvements consisting of an open space,  
25 public park, and walkways.  
26

27 (38) "Payment Request" means the documentation supporting periodic payments for the Site  
28 Preparation Project and the Public Improvements as provided in Section 5.04 hereof.  
29

30 (39) "Pelicans" means the Pensacola Pelicans professional baseball club or such other  
31 professional baseball club owned and operated by Pensacola Professional Baseball LLC, a Florida  
32 limited liability company, or any successor or assign thereof, which will use the Community Multi-Use  
33 Facility for its home baseball games.  
34

35 (40) "Plan" means the community redevelopment plan for the Area, including the Project Site,  
36 as approved by the CRA and adopted by the City Council on March 27, 1984, by adoption of its  
37 Resolution No. 15-84, and including any amendments to the Plan, specifically including, but not limited to,  
38 the amendment adopted by the City Council on June 23, 2005.  
39

40 (41) "Private Improvements" means the improvements constructed on the Project Site other  
41 than the Public Improvements and the Maritime Museum Project, including, but not limited to, the Retail  
42 Project, the Hotel Project, the Residential Project, and the Office Project.  
43

44 (42) "Project" means, collectively, the Site Preparation Project, the Maritime Museum Project,  
45 the Public Improvements and the Private Improvements.  
46

47 (43) "Project Coordinator" means the Developer, or its successor, who shall provide the  
48 project coordination services described in Section 2.04 hereof.  
49

50 (44) "Project Professionals" means any architects, engineers, consultants, planners,  
51 construction managers or any other persons, or combination thereof, retained or employed by the  
52 Developer in connection with the planning, design, construction, and completion of the Site Preparation  
53 Project and Public Improvements, the preliminary list of which is attached hereto as Exhibit "C".  
54

55 (45) "Project Schedule" means those times, dates and time periods set forth herein or as  
56 agreed to by the parties for the commencement, construction and completion of the Site Preparation

1 Project and Public Improvements as provided in this Agreement, including Section 3.01 hereof, the  
2 preliminary version of which is attached hereto as Exhibit "D".  
3

4 (46) "Project Site" means the area described and depicted on Exhibit "A", which includes each  
5 and every Parcel.  
6

7 (47) "Public Financing" means the Bonds or other funds available to the City to pay the Public  
8 Improvements Costs and such other costs as may be required by this Agreement or any other agreement  
9 to be paid by the City.  
10

11 (48) "Public Improvements" means the improvements to be completed on the Project Site for  
12 the use by the public to be designed, constructed, installed and equipped as provided in this Agreement,  
13 collectively consisting of the Community Multi-Use Facility and the Park.  
14

15 (49) "Public Improvements Budget" means the budget setting forth the estimated Site  
16 Preparation Project Costs and Public Improvements Costs, a copy of which is attached hereto as Exhibit  
17 "F".  
18

19 (50) "Public Improvements Costs" means the costs of the Public Improvements paid from the  
20 Public Financing, including costs to plan, design, coordinate, and obtain the permits for the Public  
21 Improvements, and the costs to construct, equip, install and complete the Public Improvements.  
22

23 (51) "Redevelopment Act" means Chapter 163, Part III, *Florida Statutes* (2008), as amended  
24 from time to time.  
25

26 (52) "Residential Project" means that component of the Private Improvements consisting of  
27 the design, development, construction, completion and operation of those buildings, structures, facilities  
28 and other improvements to be constructed and installed on the Project Site, which are to be used for  
29 residential purposes and may also include commercial, retail and other non-residential uses located on  
30 the different levels of the Private Improvements.  
31

32 (53) "Retail Project" means that component of the Private Improvements consisting of the  
33 design, development, construction, completion and operation of those buildings, structures, facilities and  
34 other improvements to be constructed and installed on the Project Site, which are to be used for  
35 commercial retail purposes, which may consist in whole or in part of retail uses located in other parts of  
36 the Private Improvements.  
37

38 (54) "Right to Contest" means the procedure set forth in Section 13.01 hereof for challenging  
39 any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as  
40 described therein.  
41

42 (55) "Site Preparation Project" means that part of the Project consisting of the design,  
43 development, installation, construction, and completion of those improvements that are necessary to  
44 prepare the Project Site for construction thereon of the Public Improvements and the Private  
45 Improvements.  
46

47 (56) "Site Preparation Project Completion Certificate" means the instrument executed by the  
48 Developer and CMPA certifying that design, construction, installation and equipping of the Site  
49 Preparation Project is substantially complete and setting forth the date of such substantial completion, the  
50 form of which is attached hereto as Exhibit "E".  
51

52 (57) "Site Preparation Project Completion Date" means the date on which construction of the  
53 Site Preparation Project is substantially complete as contemplated by this Agreement and as evidenced  
54 by the Site Preparation Project Completion Certificate.  
55

1 (58) "Site Preparation Project Costs" means the costs of the Site Preparation Project paid  
2 from the Public Financing, including costs to plan, design, coordinate, and obtain the Site Preparation  
3 Project Permit, and the costs to construct, equip, install and complete the Site Preparation Project.  
4

5 (59) "Site Preparation Project Permit" means, collectively, any and all permits, approvals,  
6 consents, and licenses required for construction, installation, and equipping of the Site Preparation  
7 Project; provided, however, that the term does not include permits relating to bulkhead work issued by the  
8 U.S. Corps of Engineers or the Florida Department of Environmental Protection.  
9

10 (60) "Studer" means The Studer Group LLC, a Florida limited liability company.  
11

12 (61) "Sub-Lease" means the ground lease between CMPA and the Developer, the form of  
13 which is attached hereto as Exhibit "G".  
14

15 (62) "Sub-Lease Commencement Date" means the date on which the Sub-Lease commences  
16 as provided in the Sub-Lease.  
17

18 (63) "Sub-Sublease" means the sub-sublease for any Parcel or Parcels being leased by the  
19 Developer to another for development, occupancy, use or possession of any part of the Private  
20 Improvements on that Parcel or Parcels.  
21

22 (64) "Termination Date" means the date on which this Agreement is terminated by either party  
23 hereto as provided in Section 12.05 hereof, as evidenced by the Termination Certificate provided in  
24 Section 12.06 hereof.  
25

26 (65) "Trust Fund" means the community redevelopment trust fund in which increment  
27 revenues are deposited created pursuant to Section 163.387, *Florida Statutes*, by Ordinance No. 13-84  
28 enacted by the City Council on March 8, 1984, or its successor in function.  
29

30 (66) "Unavoidable Delay" means those events constituting excuse from timely performance by  
31 a party hereto from any of its obligations hereunder, as such events are defined in and subject to the  
32 conditions described in ARTICLE XV hereof.  
33

34 (67) "UWF" or "University of West Florida" means the University of West Florida, a public  
35 institution of higher education that is part of the State University System of Florida, and also includes,  
36 whenever the context reasonably requires, the University of West Florida Foundation.  
37

38 **Section 1.02** Use of Words and Phrases. Words of the masculine gender shall be deemed and  
39 construed to include correlative words of the feminine and neuter genders. Unless the context shall  
40 otherwise indicate, the singular shall include the plural as well as the singular number, and the word  
41 "person" shall include corporations and associations, including public bodies, as well as natural persons.  
42 "Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to  
43 this Agreement and not solely to the particular portion thereof in which any such word is used.  
44

45 **Section 1.03** Florida Statutes. Unless otherwise noted, all references herein to Florida Statutes are to  
46 Florida Statutes (2008), as amended from time to time.  
47

48 **ARTICLE II.**  
49 **PURPOSE AND INTENT; SCOPE AND COMPENSATION.**  
50

51 **Section 2.01** Purpose and Intent of this Agreement.  
52

53 (a) The purpose of this Agreement is to authorize the Developer to develop the Public  
54 Improvements and the Private Improvements on the Project Site, as depicted and described on Exhibit  
55 "A", subject to CMPA's oversight and approval as specified in this Agreement, and consistent with the  
56 Master Development Agreement (2006). The parties intend to further the implementation of the Plan by

1 providing for the completion of the Site Preparation Project. The design, construction and completion of  
2 the Public Improvements shall be done in accordance with ARTICLES IV and V hereof. The design,  
3 construction and completion of each component of the Private Improvements shall be in accordance with  
4 the terms of the Sub-Lease and each Sub-Sublease.  
5

6 (b) It is the intent of the parties that the Public Improvements and that part of the Project Site  
7 on which the Public Improvements and the Maritime Museum Project are located should be exempt from  
8 ad valorem taxation as such improvements will be owned by the City or a non-profit entity, will be for a public  
9 purpose, will be for public use and not for a predominant private use, and will be an asset of the City or a non-  
10 profit entity for the benefit of the citizens of the City. The parties further intend that the Private Improvements  
11 should be subject to ad valorem taxation and that any other person owning, renting, or using any of the Private  
12 Improvements will not apply for or seek to have such property declared exempt from ad valorem taxation.  
13

14 (c) The Project Site is to be redeveloped according to plans and specifications for a multi-use  
15 Project, with related park, pedestrian walkways, streets, parking and infrastructure improvements. As provided  
16 in this Agreement, the Developer shall carry out the redevelopment of the Project Site by completing the  
17 Site Preparation Project and the Public Improvements pursuant to this Agreement, by entering into the  
18 Sub-Lease, and operating the Project as a unified and integrated multi-use project.  
19

20 (d) The final design of the Project shall be in general conformance with the design criteria  
21 approved by CMPA on November 28, 2007; provided, however, that from time to time the parties may  
22 agree to design changes deemed necessary in light of market and other financial conditions. Fees have  
23 been incurred to date for design of the Public Improvements which have been paid from or will be  
24 reimbursed from net proceeds from the Public Financing, and design fees incurred after entering into this  
25 Agreement for the Private Improvements may be advanced by the Developer or the users or sub-  
26 sublessees of the Private Improvements.  
27

28 (e) The funding for the Site Preparation Project and the Public Improvements shall be as  
29 provided in Article V herein. The Developer and CMPA shall cooperate with one another and with the  
30 City, UWF, and other interested entities to obtain grants and other contributions in excess of the Bonds.  
31 Any such funds in excess of the Bonds shall inure to the benefit of the Project. The funding for the  
32 Private Improvements shall be paid from sources of revenue generated by or allocated to the Private  
33 Improvements.  
34

35 (f) The City shall own the vertical and horizontal improvements constructed as part of the  
36 Public Improvements. The City shall also own that part of the Property on which the Private  
37 Improvements are constructed, subject to the Master Lease (2006) and the Sub-Lease. The vertical and  
38 horizontal improvements constructed by the Developer as part of the Private Improvements will be owned  
39 by the Developer or any sub-sublessees subject to the terms of the Sub-Lease.  
40

41 **Section 2.02** Cooperation of the Parties. The parties hereto recognize that the successful  
42 development of the Project and each component thereof is dependent upon continued cooperation of the  
43 parties hereto, and each agrees that it shall act in a reasonable manner hereunder, provide the other  
44 party with complete and updated information from time to time, with respect to the conditions such party is  
45 responsible for satisfying hereunder and make its good faith reasonable efforts to ensure that such  
46 cooperation is continuous, the purposes of this Agreement are carried out to the full extent contemplated  
47 hereby and the Project is designed, constructed, equipped, completed and operated as provided herein.  
48

49 **Section 2.03** Authorized Representative  
50

51 (a) Each party hereto shall designate an Authorized Representative to act on its behalf to the  
52 extent of the grant of any authority to such representative. Written notice of the designation of such a  
53 representative (and any subsequent change in the Authorized Representative) shall be given by the  
54 designating party to the other party in writing in accordance with the procedure set forth in Section 18.03  
55 hereof.  
56

1 (b) Except as otherwise expressly provided in this Agreement, whenever approval or action  
2 by the Developer or CMPA is required by this Agreement, such action or approval may, in the discretion  
3 of the party considering such approval or action, be taken or given by the Authorized Representative  
4 thereof. A party to this Agreement may rely upon the representation of the other party's Authorized  
5 Representative that such person has the requisite authority to give the approval or take the action being  
6 done by that Authorized Representative. A party may not later deny that its Authorized Representative  
7 had the authority represented to and relied upon by the other party or revoke or deny any action taken by  
8 such Authorized Representative which was relied upon by the other party.  
9

10 **Section 2.04** Project Coordination.  
11

12 (a) It is the intent and desire of the parties hereto that the Site Preparation Project and the  
13 planning and construction of each component of the Project be coordinated with other parts of the Project  
14 so as to minimize conflicts, improve efficiency and avoid delays in completion of the Project and each part  
15 thereof. To further the intent of the parties set forth herein and to provide the coordination necessary for  
16 the successful and timely completion of the construction of the Project, the parties agree and  
17 acknowledge that there is a need for a project construction coordinator who shall be responsible for  
18 coordinating construction of the various parts of the Project.  
19

20 (b) CMPA and the Developer agree that the Developer shall be the Project Coordinator.  
21

22 (c) The Project Coordinator shall provide the following services:  
23

24 (1) Schedule and conduct pre-construction, construction and progress meetings  
25 concerning procedures, progress, problems, and scheduling.  
26

27 (2) Update the construction schedule (and, if necessary, make recommendations for  
28 changes to the Project Schedule) reflecting the work and anticipated schedule of the Contractors on the  
29 Project Site.  
30

31 (3) Make recommendations as necessary to provide that the construction of the  
32 parts of the Project (including the Public Improvements) are coordinated, such that the likelihood of on-  
33 site disputes are minimized and proper coordination are provided for phased or concurrent construction.  
34

35 (4) Monitor and record the progress of the construction of each part of the Project  
36 and have regular, periodic meetings with the Authorized Representative of CMPA concerning such  
37 progress.  
38

39 (5) Coordinate the Site Preparation Project and any construction work on the Project  
40 Site.  
41

42 (d) For the Developer's use in performing its role as Project Coordinator and other Project  
43 duties, and to reduce overall Project development costs, CMPA will encourage the City to rent to the  
44 Developer office space at a rate to be negotiated..  
45

46 **Section 2.05** Operating Responsibility, Funding, and Revenues.  
47

48 (a) The Developer shall manage all Private Improvements (retail, restaurants, office,  
49 residential, hospitality and associated common areas).  
50

51 (b) UWF shall manage its own facilities (Maritime Museum, Maritime Research Facility,  
52 Multi-Cultural Center, and Amphitheater).  
53

54 (c) As construction of the Public Improvements is completed, the Developer shall act as CMPA's  
55 agent in managing the facilities and property controlled by CMPA (multi-use stadium, executive education  
56 center, the public park, and the Conference Center, as applicable). CMPA shall be responsible for all

1 operating costs of the Public Improvements, including payment of the Management Fee. The parties  
2 shall negotiate in good faith a separate agreement governing the Developer's management of the Public  
3 Improvements, which shall be consistent with this Section 2.05(c). The initial term of the management  
4 agreement shall be five (5) years. After the initial term, the Developer shall have the option to exercise in  
5 its sole discretion a single five-year (5-year) renewal period, unless the actual approved expenses for  
6 either of the last two (2) years of the initial term for which full financial information is available exceeded  
7 by twenty percent (20%) or more the budgeted expenses for those years for any reason other than an  
8 extraordinary event or the direct interference of CMPA. The management agreement shall authorize  
9 CMPA to terminate the management agreement with ninety (90) days notice at any time during the initial  
10 or renewal term if CMPA's net operating cash flow is negative for any twelve (12) month period for any  
11 reason other than an extraordinary event or the direct interference of CMPA, unless the Developer  
12 chooses to make up the difference to maintain the management agreement. In addition, the  
13 management agreement shall authorize CMPA to terminate the management agreement for cause if the  
14 Developer materially defaults in the performance of its responsibilities with respect to the development or  
15 management of Public Improvements or, at CMPA's discretion, if the Developer ceases to hold  
16 development rights or ceases to hold a certain percentage of ownership in leased property (such  
17 percentage to be negotiated later and specified in the management agreement). The Developer's  
18 compensation under the management agreement shall be the Management Fee as provided in  
19 Subsection 2.06(b) hereof.  
20

21 (1) The Developer's Public Improvements management responsibilities under the  
22 management agreement will include the preparation of and adherence to annual operating budgets for  
23 the Property; maintaining and repairing interior, exterior and landscaping of the Property; purchasing  
24 supplies; supervising alterations, modernization and redecoration of the Property; evaluating vendors and  
25 entering into contracts, with CMPA approval, customary in the ordinary course of business for the  
26 operation, maintenance and service of the Property; planning and managing property security; developing  
27 and implementing parking policies; and programming, marketing, and coordinating events on the  
28 Property. Excluding UWF and Pelican leases, Developer's responsibilities shall also include negotiating  
29 new leases and renewals of existing leases; collecting, holding and disbursing rents and other amounts  
30 due or to become due to CMPA; handling tenant requests and negotiations; terminating tenancies and  
31 signing and serving appropriate notice on behalf of CMPA; initiating and prosecuting eviction and  
32 damages actions on behalf of CMPA; procuring legal counsel when necessary to protect CMPA's  
33 interests and rights in connection with the Property; and other operational activities. The Developer shall  
34 not be responsible for maintaining public streets and utilities, which shall be dedicated to the City and  
35 other local utility providers; provided, however, that such dedications shall provide for efficient use and  
36 event-type closure of streets within the Project by CMPA and the Developer. The Developer shall  
37 coordinate with the City, the Pelicans and UWF both during the planning and construction phases and  
38 during the ongoing operations of the Public Improvements on behalf of CMPA.  
39

40 (2) The source of funds for the CMPA operating budget shall be (i) One Hundred  
41 Seventy Five Thousand Dollars (\$175,000) per year from the Pelicans' use agreement; (ii) all of the  
42 Pelican's profits (including a guaranteed Two Hundred Fifty Thousand Dollar (\$250,000) per year  
43 commitment for the first five years); (iii) all other net profits from the operations of the Public  
44 Improvements; and (iv) in the event of any shortfall, other revenue which may be derived from (y) a  
45 consensual special assessment or other fees or surcharges imposed upon or charged to Project users or  
46 tenants, and/or (z) a portion of the tax increment actually generated by the Project and made available by  
47 the CRA.  
48

49 (3) All net cash flows from the operations of the Public Improvements shall be the  
50 property of CMPA, but in all events used to advance the Project in accordance with this Agreement and  
51 generally accepted accounting principles. Net cash flows are defined as gross revenues less cost of  
52 goods sold, operating expenses, facilities management expenses, and reserves for capital expenses and  
53 improvements.  
54

55 (4) As soon as practicable, but not later than ninety (90) days after substantial  
56 completion of the first of the Public Improvements, the Developer shall present to CMPA a written annual

1 budget of the upcoming year's planned uses of the Public Improvements. CMPA shall review the  
2 proposed budget and within thirty (30) days respond in writing to the Developer, indicating approval or  
3 recommending changes. If CMPA recommends changes, the parties shall thereafter cooperatively  
4 develop a mutually acceptable budget within thirty (30) days. After the first budget is approved, the  
5 parties shall repeat the process on an annual basis; provided, however, that the parties may mutually  
6 agree to adjust the budget year to align with a calendar year, a fiscal year, or other measure.  
7

8 **Section 2.06 Development and Management Fees.** Subject to the terms, conditions, and  
9 requirements as provided herein, CMPA shall pay or reimburse the Developer for reasonable and  
10 documented costs incurred by the Developer in connection with developing and managing the Project  
11 (exclusive of costs associated with the Private Improvements).  
12

13 (a) The parties recognize and acknowledge that it is standard in the real estate development  
14 industry for a property owner to offer and pay a Development Fee to induce developers to engage in the  
15 bidding/proposal process, which requires substantial investment in time and resources on the part of the  
16 prospective developers to accomplish the owner's objectives. A Development Fee represents a partial  
17 return on developers' significant investment made in research, analysis, preparation and presentation of  
18 the development proposal, and it serves as partial compensation for the equity invested in creating a  
19 development firm capable of delivering the services required by a particular project, including assembling,  
20 managing, and providing the necessary administrative, legal and other expertise. The Development Fee  
21 does not cover the Developer's direct costs associated with the Public Improvements; provided, however,  
22 that it shall be the only source of compensation for the Developer's work in setting up and operating the  
23 equal business opportunity program known as the "contractor's academy." The Development Fee  
24 provided for herein was established through the competitive RFP process, has been reviewed by  
25 independent advisers on behalf of CMPA and the City, and is consistent with industry standards.  
26

27 (1) CMPA shall pay the Developer a Development Fee equal to four percent (4%) of  
28 the costs actually expended in the Public Improvements Budget, attached hereto as Exhibit "F", with the  
29 exception of: (i) Impact Fees; (ii) the Development Fee; (iii) any unused contingencies plus office lease  
30 expense; and (iv) the cost of CMPA's own Project administration, owner's representation, or other  
31 functions reporting directly to CMPA. Installment payments of fees shall be made based upon the above  
32 formula applied to the eligible costs within the Project Budget that can be funded with public or Developer  
33 funding committed at that time, with subsequent adjustments as funding and allocation of funding to  
34 eligible and ineligible cost components are actualized.  
35

36 (2) The Development Fee shall be deemed earned upon the Effective Date of this  
37 Agreement and shall be included as a portion of the Project cost in any Public Financing. CMPA shall  
38 pay the Development Fee according to the following schedule. Between the Effective Date and the  
39 availability of the Public Financing, CMPA shall pay the Developer for actual and verifiable personnel and  
40 general expenses incurred during the period up to a maximum per month of One Hundred Thousand  
41 Dollars (\$100,000), no more than one-third (1/3) of which shall be for non-personnel costs. After the  
42 Public Financing is available, CMPA shall pay the Developer the remainder of the Development Fee in  
43 equal monthly amounts over the anticipated preconstruction period and construction period for initial  
44 construction phase (per the Project Schedule in Exhibit "D") of the Public Improvements identified in  
45 Exhibit "F"; provided, however, that the monthly payment amounts shall be periodically adjusted based  
46 upon adjustments in the estimated allocable costs and schedule as the construction progresses, such  
47 that the total Development Fee finally paid is a percentage of actual costs rather than budgeted costs.  
48

49 (b) Upon substantial completion of the Public Improvements, CMPA shall pay the Developer  
50 the property Management Fee equal to the sum of the following: (1) four percent (4%) of all office or other  
51 income from the Public Improvements (exclusive of the multi-use stadium); (2) Twenty Thousand Dollars  
52 (\$20,000) annually, adjusted for CPI, for the management of the park facilities including, but not limited to  
53 landscaping, capital improvements, security, and parking; (3) ten percent (10%) of gross revenues for  
54 event production, facilities rentals (excluding income derived from the Pelican's lease), and sponsorship  
55 income (excluding stadium naming rights) administered by the Developer, up to One Million Dollars  
56 (\$1,000,000), and thereafter at five percent (5%) of such revenues, rentals, and income; and (4) an

1 annual fee for managing the multi-use stadium which shall be either (i) at a commercially reasonable rate  
2 for such services and subject to audit or (ii) passed through at the cost of a third-party manager, provided  
3 that, in either case, it shall not exceed the lower of either Two Hundred Fifty Thousand Dollars (\$250,000)  
4 or a commercially reasonable rate for such services, and it shall be subject to audit. CMPA shall pay the  
5 Management Fee from its operating budget described in Section 2.05(c)(2) hereof, and not from the  
6 Construction Fund. Management fees may be renegotiated every five (5) years after commencement of  
7 operations of the multi-use stadium.  
8

9 **Section 2.07** Public Records. All records and documents in the possession of the Developer pertaining  
10 to the Site Preparation Project and Public Improvements that the Developer has contracted to operate  
11 and manage shall be public records for purposes of Chapter 119, *Florida Statutes*, to the same extent as  
12 if such records and documents were in the possession of the City. Furthermore, any exemption from  
13 disclosure of a record or document that would have been available to the City if such were in the  
14 possession of the City shall apply to the same extent such records and documents are in the possession  
15 of the Developer.  
16

### 17 **ARTICLE III.** 18 **PROJECT SCHEDULE.**

19  
20 **Section 3.01** Project Schedule.

21  
22 (a) The parties hereto recognize, acknowledge and agree that the design, construction,  
23 equipping, and completion of the Site Preparation Project, the Public Improvements, Private  
24 Improvements, and the Maritime Museum Project require coordination of the schedules for design,  
25 development, construction and completion of those components of the Project. The planning, design,  
26 development, construction, completion and availability for use of each of those shall be undertaken,  
27 diligently continued and completed in accordance with and by or within the dates, times and time periods  
28 set forth in this Agreement and the Project Schedule.  
29

30 (b) The preliminary Project Schedule is attached to this Agreement as Exhibit "D." The  
31 Project Schedule may be changed or revised by the parties hereto from time to time. Such change or  
32 revision shall not be effective until the party proposing such revision shall have given prior written notice  
33 of such revision to the other party hereto and, for all changes or revisions to the Project Schedule, the  
34 other party shall have approved such revision. Within fourteen (14) business days after receipt of a  
35 request from the other party hereto for a revision of the Project Schedule, the party receiving such  
36 request shall notify the party making such request of its approval or disapproval of such proposed  
37 revision, provided that failure of a respondent party to respond within said fourteen (14) day period shall  
38 be deemed an approval of such revision. A revision or change to the Project Schedule shall become  
39 effective upon the earlier of either the approval by the other party or expiration of the fourteen (14) day  
40 review period without such change being rejected by the nonproposing party.  
41

42 (c) (1) In addition to any changes in the Project Schedule made pursuant to subsection  
43 (b), without the necessity of the prior approval of the other party hereto, the Project Schedule may be  
44 revised to provide an extension of time for the Developer to obtain the Site Preparation Project Permit,  
45 provided the failure to obtain the Site Preparation Permit was beyond the Developer's reasonable  
46 expectation or control, the Site Preparation Permit should be issued by the appropriate governmental  
47 authority within a reasonable period of time thereafter, and the extension is not due to any material delay  
48 or failure to act by the Developer.  
49

50 (2) The Project Schedule shall also be revised without necessity of the approval of  
51 the other party pursuant to subsection (b) in the event of the inability of CMPA or the Developer,  
52 respectively, to timely perform any of its obligations hereunder by the dates set forth in the Project  
53 Schedule due to Unavoidable Delay as provided in ARTICLE XV and the procedures set forth therein are  
54 invoked and implemented.  
55

1 (3) In case of the occurrence of any event set forth in paragraphs (1) or (2) above,  
2 any subsequent and/or affected date, time or time period of the Project Schedule shall, to the extent  
3 necessary, be extended by the number of days of delay caused by such event, provided the parties  
4 hereto agree they shall, individually and collectively, exert all reasonable efforts and due diligence to  
5 minimize or avoid such delays.

6  
7 (d) The provisions of this ARTICLE III are not intended and shall not inure to the benefit of  
8 any person not a party to this Agreement.

9  
10 **ARTICLE IV.**  
11 **SITE PREPARATION PROJECT AND PUBLIC IMPROVEMENTS.**

12  
13 **Section 4.01** Site Preparation Project Permit.

14  
15 (a) The Developer or its Contractor shall prepare and submit to the appropriate  
16 governmental authorities, including the City, the applications for the Site Preparation Project Permit.

17  
18 (b) CMPA shall cooperate with the Developer and any Contractor in obtaining the Site  
19 Preparation Project Permit. If requested by the Developer, CMPA will join in any application for the Site  
20 Preparation Project Permit, or, alternatively, recommend to and urge any governmental authority to which  
21 application for the Site Preparation Project Permit has been made that such permit be issued or  
22 approved.

23  
24 (c) The Developer shall be responsible for preparing and filing the application for the Site  
25 Preparation Project Permit and pursuing issuance of the Site Preparation Project Permit, even though  
26 such application may be in the name of the City. The City shall pay for all costs incurred in obtaining the  
27 Site Preparation Project Permit. The Developer agrees to consult with CMPA and the City from time to  
28 time during the preparation and review of the application for the Site Preparation Project Permit and keep  
29 CMPA and the City apprised of the status of the application.

30  
31 (d) (1) This Agreement, specifically including but not limited to this Section 4.01, shall  
32 not affect the City's right, duty, obligation, authority and power to act in its governmental or regulatory  
33 capacity in accordance with applicable laws, ordinances, codes or other building or project regulation.

34  
35 (2) Notwithstanding any other provisions of this Agreement, any required permitting,  
36 licensing or other regulatory approvals by the City shall be subject to the established procedures and  
37 requirements of the City with respect to review and permitting of a project of a similar or comparable  
38 nature, size and scope. In no event shall the City, due to any provision of this Agreement, be obligated to  
39 take any action concerning regulatory approvals except through its established processes and in  
40 accordance with applicable provisions of law.

41  
42 **Section 4.02** Site Preparation Project Construction. The Developer shall be responsible for the Site  
43 Preparation Project so that the Project Site is in a condition ready for development as of the Site  
44 Preparation Project Completion Date. "Ready for development" means the Project Site is ready for  
45 commencement of construction of horizontal or vertical improvements thereon, including both Public  
46 Improvements and Private Improvements.

47  
48 **Section 4.03** Site Preparation Project Plans and Specifications.

49  
50 (a) (1) The Developer will retain the Project Professionals to prepare the Site  
51 Preparation Project plans and specifications, the preliminary list of which is attached hereto as Exhibit  
52 "C". The Developer will notify CMPA of any subsequent changes thereto or additional Project  
53 Professionals retained with respect to the Site Preparation Project; provided, however, that Bruce Cutright  
54 is deemed a "key man" who shall devote a minimum of one (1) day per week to the Site Preparation  
55 Project and who shall visit the site twice per month, unless CMPA later authorizes his replacement or a  
56 different allotment of his time. The fees and expenses of such Project Professionals for the Site

1 Development Project shall be paid or reimbursed from the Public Financing; provided, however, that Mr.  
2 Cutright's compensation for his work on the Site Preparation Project shall be fully charged against the  
3 Development Fee.

4  
5 (2) All contracts between the Developer and the Project Professionals shall provide  
6 that they are assignable by the Developer to CMPA, including being automatically assigned to CMPA  
7 upon the termination of this Agreement.

8  
9 (b) The Site Preparation Project plans and specifications shall be coordinated among the  
10 Project Professionals, the Developer, and CMPA and shall be submitted by the Developer to CMPA for  
11 review and approval before the commencement of any work on the Site Preparation Project on the  
12 Project Site. Such requests shall be promptly considered and approvals shall not be unreasonably  
13 withheld.

14  
15 **Section 4.04** Construction of the Site Preparation Project.

16  
17 (a) (1) The Developer shall select the Contractor to construct the Site Preparation  
18 Project substantially in accordance with the Site Preparation plans and specifications. The Developer  
19 shall establish a guaranteed maximum price, guaranteeing the maximum price for the construction cost of  
20 the Site Preparation Project or designated portions thereof. The guaranteed maximum price shall provide  
21 for reimbursement of actual general conditions and reasonable allowances for overhead, profit, and  
22 construction contingencies, which shall be consistent with the terms outlined in Section 4.08 hereof.

23  
24 (2) The Developer may act as a Contractor, provided it is properly licensed and  
25 otherwise legally authorized to do so. If the Developer acts a Contractor, the terms of Section 4.08 hereof  
26 shall apply.

27  
28 (3) Subject to Unavoidable Delay and the conditions precedent set forth in Section  
29 11.01 hereof, the Developer will ensure that the Commencement Date of the Site Preparation Project is  
30 no later than March 26, 2010. Such time period may be extended if a request from the Developer to  
31 CMPA shows good cause for the extension and CMPA approves it.

32  
33 (b) (1) After the Site Preparation Project Commencement Date, each Contractor shall  
34 be required to continue to pursue and prosecute the construction of the Site Preparation Project with due  
35 diligence to completion by the Site Preparation Project Completion Date, and shall not at any time  
36 actually or effectively have abandoned the Project Site.

37  
38 (2) All construction work on the Site Preparation Project shall be done substantially  
39 in accordance with the Site Preparation Project plans and specifications, and shall be of a quality  
40 generally recognized as standard for projects similar to the Site Preparation Project.

41  
42 (3) All obligations of a Contractor (including deadlines in the Project Schedule) with  
43 respect to commencement, continuation and completion of construction of the Site Preparation Project  
44 shall be subject to delays and extensions from time to time for Unavoidable Delay.

45  
46 (c) (1) Commencing on the fifteenth (15th) day of the calendar month following the  
47 calendar month in which the Commencement Date occurs and continuing until the Site Preparation  
48 Project Completion Date, the Contractor for the Site Preparation Project shall make monthly reports to the  
49 Project Coordinator in such detail and in such form as may reasonably be requested by the CMPA as to  
50 the actual progress of the construction of the Site Preparation Project.

51  
52 (2) If the Developer or CMPA believes adequate progress in the construction of the  
53 Site Preparation Project is not being made, the Developer or CMPA shall give notice to the Contractor for  
54 the Site Preparation Project, with a copy thereof provided to the other party not giving the notice, that  
55 adequate progress is not being made in the construction of the Site Preparation Project and to respond

1 within ten (10) days thereafter as to why adequate progress is or is not being made toward completion of  
2 the Site Preparation Project.

3  
4 (d) (1) Each contract between any Contractor for the Site Preparation Project and the  
5 Developer shall provide, among other things, that: (i) notice shall be given to CMPA of any material  
6 defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract,  
7 the Developer or CMPA shall have the right, but not the obligation, to cure any defaults by the Contractor  
8 under such contract without penalty to the Developer or CMPA or stoppage of the work; and (iii) upon the  
9 Contractor not exercising any right to contest or cure an alleged material default or upon any such contest  
10 being exhausted with a finding of default having been made or sustained or such default having not been  
11 cured in a timely manner, then such contract shall be deemed assigned to and may be relied upon by the  
12 Developer or CMPA, whichever is curing the default.

13  
14 (2) If the Developer or CMPA elects to cure a material default by the Contractor  
15 under a contract between the Developer and a Contractor, upon receipt of a notice to that effect from the  
16 Developer or CMPA, the Contractor shall be required to immediately deliver to the Developer or CMPA  
17 City all plans, specifications, drawings, contracts and addenda thereto pertaining to the construction of  
18 that part of the Site Preparation Project which are in its possession or control and shall instruct the Project  
19 Professionals and any other persons in possession or control of such plans, specifications, drawings and  
20 contracts to deliver them to the Developer or CMPA.

21  
22 (e) The parties recognize and acknowledge that part of the Site Preparation Project may be  
23 constructed by a Contractor hired by the State of Florida for certain remediation work on or near the  
24 Project Site. In such an event, the Project Coordinator shall coordinate the work of any Contractor hired  
25 by the Developer with the Contractor hired by the State.

26  
27 (f) To the extent possible under State law, the Developer agrees to include in any contract  
28 with a Contractor for the Site Preparation Project a provision whereby construction materials may be  
29 purchased on behalf of and for the benefit of the City and be exempt from sales tax.

30  
31 **Section 4.05 Site Preparation Project Completion Certificate.**

32  
33 (a) (1) Upon the substantial completion of the Site Preparation Project, the Developer  
34 shall prepare and execute the Site Preparation Project Completion Certificate (the form of which is  
35 attached as Exhibit "E"), which shall then be delivered to CMPA. Upon receipt of the certificate, CMPA  
36 shall promptly and diligently proceed to determine if construction of the Site Preparation Project has been  
37 completed substantially in accordance with the Site Preparation Project Plans and Specifications and this  
38 Agreement. Upon making such a determination, CMPA shall execute the certificate and return it to the  
39 Developer. The date of the Site Preparation Project Completion Certificate shall be the date when all  
40 parties shall have executed said certificate.

41  
42 (2) The Site Preparation Project Completion Certificate shall constitute a conclusive  
43 determination by the parties hereto of the satisfaction and termination of the obligations hereunder to  
44 construct the Site Preparation Project; provided, however, that nothing in this Section 4.05 shall be a  
45 waiver of the rights, duties, obligations or responsibilities of the City or any other governmental entity  
46 acting in its regulatory or governmental capacity or an approval of said construction for purposes of the  
47 issuance of a certificate of occupancy for that part of the Site Preparation Project.

48  
49 (b) (1) If CMPA shall refuse or fail to execute the Site Preparation Project Completion  
50 Certificate after receipt of a request by the Developer to do so, then CMPA shall, within ten (10) days  
51 after its receipt of such request, provide the Developer with a written statement setting forth in reasonable  
52 detail the reason(s) why CMPA has not executed the Site Preparation Project Completion Certificate and  
53 what must be done by the Developer to satisfy such objections so that CMPA would sign the certificate.  
54 Upon the Developer satisfying CMPA's objections, then the Developer shall submit a new request to  
55 CMPA for execution of the Site Preparation Project Completion Certificate and that request shall be

1 considered and acted upon in accordance with the procedures in this paragraph (1) for the original  
2 request.

3  
4 (2) If CMPA refuses to execute the certificate and the Developer does not agree with  
5 the objections set forth in CMPA's statement, then the Developer shall be permitted to invoke the dispute  
6 resolution procedures set forth in ARTICLE XIV hereof for the purpose of determining if the prerequisites  
7 for execution by all parties of the Site Preparation Project Completion Certificate have been met, and if  
8 not, what actions must be taken to satisfy such prerequisites.

9  
10 (c) At or about the time the Developer and CMPA execute the Site Preparation Project  
11 Completion Certificate, CMPA shall take steps necessary for CMPA and the City to execute a  
12 substantially similar certificate, which CMPA shall thereafter record the certificate in the public records of  
13 Escambia County, Florida, and pay the cost of such recording.

14  
15 **Section 4.06** Public Improvements Plans and Specifications.

16  
17 (a) (1) The Developer will retain the Project Professionals to prepare the Public  
18 Improvements plans and specifications, the preliminary list of which is attached hereto as Exhibit "C".  
19 The Developer will notify CMPA any subsequent changes thereto or additional Project Professionals  
20 retained with respect to the Public Improvements; provided, however, that Bruce Cutright is deemed a  
21 "key man" who shall devote a minimum of one (1) day per week to the Public Improvements and who  
22 shall visit the site twice per month, unless CMPA later authorizes his replacement or a different allotment  
23 of his time. The fees and expenses of such Project Professionals for the Public Improvements shall be  
24 paid or reimbursed from the Public Financing; provided, however, that Mr. Cutright's compensation for his  
25 work on the Public Improvements shall be fully charged against the Development Fee.

26  
27  
28 (2) All contracts between the Developer and the Project Professionals shall provide  
29 that they are assignable by the Developer to CMPA, including being automatically assigned to CMPA  
30 upon the termination of this Agreement.

31  
32 (b) The Public Improvements plans and specifications shall be coordinated among the  
33 Project Professionals, the Developer, and CMPA and shall be submitted by the Developer to CMPA for  
34 review and approval before the commencement of any work on the Public Improvements on the Project  
35 Site. Such requests shall be promptly considered and approvals shall not be unreasonably withheld.

36  
37 **Section 4.07** Construction of the Public Improvements.

38  
39 (a) (1) The Developer shall select the Contractor to construct the Public Improvements  
40 substantially in accordance with the Public Improvements plans and specifications. The Developer shall  
41 establish a guaranteed maximum price, guaranteeing the maximum price for the construction cost of the  
42 Public Improvements or designated portions thereof. The guaranteed maximum price shall provide for  
43 reimbursement of actual general conditions and reasonable allowances for overhead, profit, and  
44 construction contingencies, which shall be consistent with the terms outlined in Section 4.08 hereof.

45  
46 (2) The Developer may act as a Contractor, provided it is properly licensed and  
47 otherwise legally authorized to do so. If the Developer acts a Contractor, the terms of Section 4.08 hereof  
48 shall apply.

49  
50 (b) (1) After the Public Improvements Commencement Date, each Contractor shall be  
51 required to continue to pursue and prosecute the construction of the Public Improvements with due  
52 diligence to completion, and shall not at any time actually or effectively have abandoned the Project Site.

53  
54 (2) All construction work on the Public Improvements shall be done substantially in  
55 accordance with the Public Improvements plans and specifications, and shall be of a quality generally  
56 recognized as standard for projects similar to the Public Improvements.

1  
2 (3) All obligations of a Contractor (including deadlines in the Project Schedule) with  
3 respect to commencement, continuation and completion of construction of the Public Improvements shall  
4 be subject to delays and extensions from time to time for Unavoidable Delay.  
5

6 (c) (1) Commencing on the fifteenth (15th) day of the calendar month following the  
7 calendar month in which the Commencement Date occurs and continuing until completion of the Public  
8 Improvements, the Contractor for the Public Improvements shall make monthly reports to the Project  
9 Coordinator in such detail and in such form as may reasonably be requested by the Project Coordinator  
10 as to the actual progress of the construction of the Public Improvements.  
11

12 (2) If the Developer or CMPA believes adequate progress in the construction of the  
13 Public Improvements is not being made, the Developer or CMPA shall give notice to the Contractor for  
14 the Public Improvements, with a copy thereof provided to the other party not giving the notice, that  
15 adequate progress is not being made in the construction of the Public Improvements and to respond  
16 within ten (10) days thereafter as to why adequate progress is or is not being made toward completion of  
17 the Public Improvements.  
18

19 (d) (1) Each contract between any Contractor for the Public Improvements and the  
20 Developer shall provide, among other things, that: (i) notice shall be given to CMPA of any material  
21 defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract,  
22 the Developer or CMPA shall have the right, but not the obligation, to cure any defaults by the Contractor  
23 under such contract without penalty to the Developer or CMPA or stoppage of the work; and (iii) upon the  
24 Contractor not exercising any right to contest or cure an alleged material default or upon any such contest  
25 being exhausted with a finding of default having been made or sustained or such default having not been  
26 cured in a timely manner, then such contract shall be deemed assigned to and may be relied upon by the  
27 Developer or CMPA, whichever is curing the default.  
28

29 (2) If the Developer or CMPA elects to cure a material default by the Contractor  
30 under a contract between the Developer and a Contractor, upon receipt of a notice to that effect from the  
31 Developer or CMPA, the Contractor shall be required to immediately deliver to the Developer or CMPA  
32 City all plans, specifications, drawings, contracts and addenda thereto pertaining to the construction of  
33 that part of the Public Improvements which are in its possession or control and shall instruct the Project  
34 Professionals and any other persons in possession or control of such plans, specifications, drawings and  
35 contracts to deliver them to the Developer or CMPA.  
36

37 (e) To the extent possible under State law, the Developer agrees to include in any contract  
38 with a Contractor for the Site Preparation Project a provision whereby construction materials may be  
39 purchased on behalf of and for the benefit of the City and be exempt from sales tax.  
40

41 **Section 4.08** Developer Acting as General Contractor.  
42

43 (a) The parties acknowledge that certain efficiencies and cost-savings may be realized by  
44 the Developer acting as general contractor on the Site Improvement Project or the Public Improvements  
45 or both, in which event the parties will in good faith negotiate separate design-build contract(s), including  
46 a guaranteed maximum price contract(s), to govern such aspects of the Project. The Developer's ability  
47 to self-perform any of the work, and the conditions that would apply to such work, will be determined in  
48 the design-build contract. This Section 4.08 outlines the terms that shall govern and apply to any such  
49 separate design-build contract.  
50

51 (b) Mark White shall be a "key man" on the Developer's contract team, with specific  
52 provisions to be negotiated in the design-build contract.  
53

54 (c) Profit and overhead combined shall be three percent (3%) of the construction costs.  
55 Should the Developer contract with another general contractor or sub-contractor to perform all or a  
56 substantial amount of the work that would normally be expected of the general contractor, this three

1 percent (3%) profit and overhead figure would be the total applying to all such parties. Specifics shall be  
2 negotiated in the design-build agreement.

3  
4 (d) The design-build contract will set forth specific items allowable as general conditions,  
5 consistent with this Subsection 4.08(d). Items or allocations that would normally be allocated to overhead  
6 for general contractors with larger firms doing multiple projects shall not be eligible for reimbursement as  
7 general conditions cost of work. Should the Developer contract with another general contractor or sub-  
8 contractor to perform all or a substantial amount of the work that would normally be expected of the  
9 general contractor, the terms of this Subsection 4.08(d) would govern the total general conditions  
10 applying to all such parties.

11  
12 (1) The design-build contract will set forth a total amount (or a percentage of  
13 construction cost) for general conditions.

14  
15 (2) The design-build contract will set forth a total amount (or a percentage of  
16 construction cost) for general contractor's personnel costs allocable to general conditions as a cost of the  
17 work. The preliminary estimate for this maximum, subject to further review is four percent (4%) of hard  
18 costs.

19  
20 (3) The design-build contract will allocate a maximum payment and performance  
21 bond fee of one percent (1%) to general conditions as a cost of the work. Any fee amount over that will  
22 be paid by the general contractor from its fees.

23  
24 (e) Personnel costs for preconstruction services will not be reimbursable with the following  
25 exceptions:

26  
27 (1) construction personnel may be part of the charge for services under the  
28 Development Fee during the period before the availability of the Public Financing (though no adjustment  
29 to the total amount of the Development Fee will ensue from such allocation); and

30  
31 (2) construction personnel costs for preconstruction services reasonably allocable to a  
32 portion of the work for which the Developer receives a guaranteed maximum price contract may be  
33 charged as part of the general conditions for that project within the limits set for such costs.

34  
35 Upon engaging personnel, the Developer shall designate them as either development or construction  
36 personnel, subject to CMPA's review and approval, which shall not be unreasonably withheld. Only  
37 charges for Developer personnel designated as construction personnel shall be allocable as a cost of the  
38 work under general conditions.

39  
40 (f) The design-build contract will provide for a contractor-held contingency of four percent  
41 (4%), under the condition that an owner-held contingency in the same amount shall be allocated to  
42 CMPA. Insufficient budget to support the Site Preparation Project and Public Improvements may require  
43 an adjustment to these contingencies, in light of design/engineering considerations that can be better  
44 assessed as the design process proceeds.

45  
46 (g) The design-build contract will provide that, should the actual cost of construction be less  
47 than the guaranteed maximum price, the Developer shall return one hundred (100%) of such cost savings  
48 to CMPA for use on the Project.

49  
50 (h) Once CMPA and the Developer have executed a design-build contract with a guaranteed  
51 maximum price for any portion of the construction covered by that contract, such contract may not be  
52 terminated except as specifically provided in that contract.

53  
54 (i) The design-build contract will provide for the Developer, or its constituent members, to  
55 guaranty, insure, or otherwise set aside funds completion of the Public Improvements to cover warranty  
56 risk for a period defined in the contract.

1  
2 (j) No later than the latter of three (3) months after the Effective Date of the Development  
3 Agreement or two (2) months after the availability of the Public Financing, the Developer shall provide  
4 CMPA with a letter of intent, with an authorization by an attorney in fact attached, from a surety company  
5 with an A-rated Best rating that the company would provide the Developer with a payment and  
6 performance bond for the type and scale of construction project(s) or contract(s) contemplated in this  
7 Agreement. The payment and performance bond must be issued by a surety company with an A-rated  
8 Best rating.  
9

10 **Section 4.09** City Not in Privity with Contractors. The City shall not be deemed to be in privity of  
11 contract with any Contractor or provider of services with respect to the construction of any part of the Site  
12 Preparation Project or the Public Improvements.  
13

14 **Section 4.10** Payment of Contractors and Suppliers. Agreements between the Developer and a  
15 Contractor for the Site Preparation Project or for the Public Improvements will provide that:  
16

17 (a) A Contractor shall promptly pay, or cause to be paid, all moneys due and legally owing to  
18 all persons doing any work or furnishing any materials, fuel, machinery or supplies to that Contractor in  
19 connection with construction of the Site Preparation Project or the Public Improvements for which that  
20 Contractor is responsible. There shall not be a breach of this Section 4.10 unless and until a lien is filed  
21 arising out of the Site Preparation Project or the Public Improvements and the Contractor fails to comply  
22 with the requirements described herein.  
23

24 (b) The payment by the Contractor of the amount required to satisfy any liens against the  
25 Project Site shall be subject to the Right to Contest as provided in Section 13.01. If however, because of  
26 any act or omission of the Contractor or subcontractor, any mechanics' or materialmen's lien or other lien  
27 for labor, material, fuel, machinery or supplies shall be filed against the Project Site, the Contractor shall  
28 promptly cause the same to be cancelled and discharged of record, bonded off or insured against.  
29

30 (c) During the construction of Site Preparation Project and the Public Improvements, the  
31 Contractor shall comply with all laws, ordinances, codes and regulations then applicable to its work.  
32 Contractor shall have the right, after written notice to the Developer, to contest by appropriate legal  
33 proceedings conducted in good faith, the validity or applicability of any such law, ordinance, code or  
34 regulation, and to delay compliance therewith pending the prosecution of such proceeding, provided that  
35 such contest shall be in accordance with the Right to Contest provisions of Section 13.01.  
36  
37

38 **ARTICLE V.**  
39 **SITE PREPARATION PROJECT AND PUBLIC IMPROVEMENTS BUDGET AND FINANCING.**  
40

41 **Section 5.01** Budget.  
42

43 (a) The parties agree that the City's obligation to pay the costs of designing, constructing and  
44 installing the Site Preparation Project completed under the terms of this Agreement, the Public  
45 Improvements completed under the terms of the Master Lease and to pay other costs (including soft  
46 costs) eligible to be paid from the net proceeds of the Bonds will not exceed Forty Million Dollars  
47 (\$40,000,000) in the aggregate, plus any other funds obtained by the City for the Public Improvements,  
48 including a grant from the Economic Development Administration in the amount of Two Million Dollars  
49 (\$2,000,000).  
50

51 (1) The parties acknowledge that the City and CMPA have incurred certain  
52 expenses that will be paid from the proceeds of the Bonds, resulting in not more than Thirty Eight Million  
53 Dollars (\$38,000,000) of proceeds available for the Public Improvements Budget.  
54

55 (2) The parties acknowledge that the Public Improvements Budget will include an  
56 owner's contingency of four percent (4%) of hard costs.

1  
2 (b) Based on the understandings outlined in Subsection 5.01(a), the Developer has prepared  
3 the Public Improvements Budget, which sets forth the estimated Site Preparation Project Costs and  
4 estimated Public Improvements Costs, a copy of which is attached to this Agreement as Exhibit "F." The  
5 Public Improvements Budget includes the Developer's direct costs, including construction costs. The  
6 Developer may recommend to CMPA changes to the Public Improvements Budget as a result of  
7 preparation of the plans and specifications or actual costs of the design, construction, and installation of  
8 site work and improvements constituting the Site Preparation Project and the Public Improvements. Any  
9 changes proposed by the Developer from time to time to the Public Improvements Budget shall be  
10 reviewed by CMPA and shall be approved by CMPA prior to commencement of any construction on the  
11 Project Site.

12  
13 (c) The Developer covenants and agrees with CMPA that it will monitor the costs of the Site  
14 Preparation Project and the Public Improvements and will not exceed any component of the Public  
15 Improvements Budget without the express approval of CMPA. Any agreements or contracts between the  
16 Developer and any Project Professionals or Contractors shall expressly state that the amount(s) to be  
17 paid to the Project Professionals or Contractors pursuant to such agreement or contract shall be subject  
18 to the Public Improvements Budget.

19  
20 (d) The Developer shall be timely reimbursed upon presentment up to One Hundred and  
21 Fifty Thousand Dollars (\$150,000) for actual and verifiable approved costs incurred by the Developer for  
22 substantive work performed before the Effective Date and necessary for the Site Preparation Project and  
23 the Public Improvements, such as design and engineering efforts and preparation of Project  
24 documentation, including but not limited to this Agreement and associated implementing documents, but  
25 excluding proposal preparation. This subsection shall not be construed as a limitation or condition  
26 precedent to any right of the Developer to payment pursuant to Subsection 12.05(e).

27  
28 **Section 5.02** Public Improvements Financing.

29  
30 (a) The Site Preparation Project Costs and the Public Improvements Costs shall be paid  
31 from the Public Financing. CMPA covenants and agrees with the Developer to exercise its best efforts to  
32 obtain lawfully available funds in sufficient amounts to pay the Public Improvements Costs and to have  
33 such funds available when needed to pay such costs. Notwithstanding any other provision in this  
34 Agreement to the contrary, in the event the Public Financing does not materialize and the Project does  
35 not proceed, the Developer shall be entitled to a termination payment as provided in Subsection 12.05(e)  
36 hereof.

37  
38 (b) Should CMPA not have sufficient funds, or expect to not have sufficient funds, available  
39 to it to pay the Site Preparation Project Costs and Public Improvements Costs when needed, then CMPA  
40 shall promptly so notify the Developer and direct the Developer to revise the Site Preparation Project  
41 Plans and Specifications, the plans and specifications for the Public Improvements, and the Public  
42 Improvements Budget to reduce the costs thereof to the amount of the Public Financing, subject,  
43 however, to the following: Provided there is no default under this Agreement or any other agreement  
44 associated with the development of the Project, if the Developer receives any such notice, it shall have  
45 the right, for a period of one (1) year, to raise public funds and/or private funds to complete the Project in  
46 accordance with the original plans and specifications. The Developer shall have the right to extend the  
47 period for raising such funds for a period of an additional year on written notice to CMPA at any time prior  
48 to the end of the initial one-year term.

49  
50 (c) In no event shall the obligations, either express or implied, of CMPA under the provisions  
51 of this Agreement to pay the Site Preparation Project Costs or the Public Improvements Costs be or  
52 constitute a general obligation or indebtedness of the City, or a pledge of the ad valorem taxing power of  
53 the City, within the meaning of the Constitution of the State of Florida or any other applicable laws, but  
54 shall be payable solely from the Public Financing. No person or entity, including, but not limited to, the  
55 Developer, any construction lender, or any Contractor, subcontractor, materialman, or supplier for any  
56 part of the Project, shall have the right to compel the exercise of the ad valorem taxing power of the City

1 or any other governmental entity on any real or personal property or taxation in any form to pay the City's  
2 obligations or undertakings hereunder.

3  
4 **Section 5.03** Developer-Identified Sources of Financing. The parties recognize that, given the Project  
5 design criteria, the limits on Public Financing, and the economic and market conditions current as of the  
6 Effective Date, additional Project financing might be necessary to support and deliver a Project that  
7 satisfies all stakeholders. As a good faith effort to help ensure Project success, the Developer shall have  
8 the option, but not the obligation, to seek funds for use for the Public Improvements. At its sole option,  
9 the Developer is authorized to and may seek grants or other contributions or advances beneficial to the  
10 Project.

11  
12 **Section 5.04** Payment of Public Improvements Costs.

13  
14 (a) Within thirty (30) days of the Effective Date, CMPA will create, or cause to be created, the  
15 Construction Fund in which CMPA will make, or cause to be made, deposits from time to time so that  
16 there are sufficient funds on deposit in the Construction Fund to pay the Site Preparation Project Costs  
17 and the Public Improvements Costs. The moneys in the Construction Fund shall be applied to the  
18 payment of the Site Preparation Project Costs and Public Improvements Costs. All income earned from  
19 the investment of funds held in the Construction Fund, if any, shall be retained in the Construction Fund  
20 and expended to pay the Site Preparation Project Costs and the Public Improvements Costs.

21  
22 (b) (1) From time to time as the Developer receives invoices or the equivalent from  
23 Project Professionals, Contractors and other vendors for goods or services in connection with the Site  
24 Preparation Project and the Public Improvements, the Developer shall submit to CMPA a Payment  
25 Request. Such request shall be in writing in a form or on a form prescribed by CMPA and submitted to  
26 CMPA for payment from the Construction Fund.

27  
28 (2) CMPA will make payments from the Construction Fund in response to a Payment  
29 Request in accordance with the Florida Prompt Payment Act, ss. 218.70, *Florida Statutes*, et seq.

30  
31 (c) The Payment Request shall be signed by the Authorized Representative of the Developer  
32 and shall state to whom the payment is to be made, the amount of the payment, the purpose in  
33 reasonable detail for which the obligation to pay was incurred, the obligation stated in the Payment  
34 Request has been incurred by the Developer for the benefit of CMPA for completion of the Site  
35 Preparation Project and development of the Public Improvements, each item is a proper charge against  
36 the cost for the completion of the Site Preparation Project and the Public Improvements Costs, and the  
37 obligation has not been the basis for a prior Payment Request that has been paid. The invoice or  
38 equivalent that is the basis for a Payment Request shall accompany the Payment Request submitted to  
39 CMPA.

40  
41 (d) CMPA shall determine if the Payment Request is in proper form, includes required  
42 Information, is for a Site Preparation Project Cost or Public Improvement Cost, is within the Public  
43 Improvements Budget, and is appropriately documented to the satisfaction of CMPA. If CMPA determines  
44 the Payment Request satisfies the conditions in this section, then it shall promptly process the Payment  
45 Request for issuance of a check or other means of payment (e.g., wire transfer, electronic transfer) to pay  
46 the obligation(s) set forth in the Payment Request. If CMPA determines the Payment request does not  
47 satisfy the conditions in this section, then it shall return the Payment Request to the Developer with a  
48 statement of the reason(s) for CMPA declining to approve the request.

49  
50 (e) The procedure outlined in this Section 5.04 for making payments from the Construction  
51 Fund is subject to, and may be superseded and replaced by, procedures and requirements set forth in the  
52 Financing Documents.

53  
54 **Section 5.05** Reporting and Auditing.

1 (a) The Developer shall annually supply anticipated operating budgets to CMPA and offer on  
2 a quarterly basis to supply associated summary financial position documentation related to the  
3 management and operation of the Public Improvements for which the Developer has contracted to  
4 operate and manage.  
5

6 (b) CMPA may, in its discretion, conduct or cause an independent accounting firm to conduct  
7 an audit of the Developer's financial records for any fiscal year relating to the Public Improvements that  
8 the Developer has contracted to operate and manage. The cost of such audit shall be paid by CMPA.  
9 The Developer agrees to cooperate with such audit and to provide all financial and other records to the  
10 auditing entity.  
11

12  
13  
14 **ARTICLE VI.**  
15 **SUB-LEASE OF PROJECT SITE.**  
16

17 **Section 6.01** Sub-Lease.  
18

19 (a) As the lessee under the Master Lease (2006), and at the appropriate time for timely and  
20 effective delivery of the Private Improvements, CMPA shall enter into the Sub-Lease with the Developer,  
21 in the form attached hereto as Exhibit "G". The Sub-Lease will not commence until satisfaction or waiver  
22 of the conditions set forth in Section 11.01 below and Paragraph 7 of the Sub-Lease.  
23

24 (b) The rent for the lands associated with the Private Improvements shall be determined as  
25 set forth in this Subsection 6.01(b).  
26

27 (1) Given the anticipated timing of the Private Improvements, and the currently  
28 depressed real estate market, estimating reasonable land pricing over a long term is problematic.  
29 Accordingly, the parties agree to employ a future land pricing approach to determining a rental rate, as  
30 opposed to setting the rate in advance.  
31

32 (2) The land pricing approach shall be governed by the following principles. First,  
33 the land pricing will be set on a per buildable square foot basis for a matrix of potential uses to be  
34 determined by the Developer (for example, residential, office, retail, restaurant, hotel, other). Second,  
35 land pricing will be set for the different uses at waterfront versus non-waterfront locations, as defined in  
36 the pricing determination. Third, the land pricing would recognize that the land is improved parcels rather  
37 than raw land. Fourth, the land pricing will place primary emphasis on a residual value approach, that is,  
38 an economic analysis of what land pricing could be supported by development of different kinds based on  
39 reasonably anticipated revenues, expenses, development costs, and Developer profit. Fifth, for each  
40 matrix use (waterfront and non-waterfront), the land price setting will provide estimated land pricing per  
41 gross buildable square foot. Finally the land pricing for a particular building will be determined based on  
42 applying the dollar-per-square-foot pricing to the square footages attributed to the use components. All  
43 references to "gross buildable square feet," "buildable square feet," or "gross building area" in this  
44 Subsection 6.01(b) refer to the gross area of enclosed building (excluding balconies or other outdoor  
45 spaces) that is usable for occupancy or common area (but excluding parking area).  
46

47 (3) The land pricing approach shall comply with the following process. First, at the  
48 time(s) of its choosing, the Developer shall initiate the process to price land associated with any Private  
49 Development for which substantial construction commences within thirty (30) months of the pricing  
50 determination. The Developer shall provide CMPA at least forty-five (45) days notice that it anticipates  
51 presenting a land pricing determination proposal. Second, the Developer shall present its land pricing  
52 proposal to CMPA. The land pricing proposal shall distinguish between the matrix of uses (waterfront and  
53 non-waterfront) and it shall provide analyses supporting the proposed land pricing. Third, CMPA shall  
54 review the Developer's land pricing proposal, either on its own or with an advisor chosen by CMPA.  
55 During its period of review, CMPA shall have the opportunity for reasonable question and answer with the  
56 Developer. At the end of the review period, if agreement is reached, CMPA shall approve the land pricing

1 determination, either as proposed or as mutually agreed upon, which shall conclude the process under  
2 this Subsection 6.01(b)(3). Fourth, if agreement is not reached, CMPA shall provide the Developer with  
3 CMPA's own land pricing estimates, including supportive analyses. CMPA shall complete its review of  
4 the land pricing proposal within sixty (60) days following the latter of the Developer's presentation of its  
5 proposal or forty-five (45) days from the Developer's notification of its intent to initiate the price setting  
6 proposal per the third sentence of this Subsection 6.01(b)(3). At the Developer's sole discretion, the  
7 deadline for CMPA to complete its review may be extended. Fifth, the parties shall expeditiously submit  
8 their respective land value analyses to a mutually-agreeable third-party advisor recognized as expert in  
9 developmental land economics, who shall then choose one or the other proposed pricing or develop  
10 another within the range of the competing two, which shall be the applicable land pricing for that period.  
11 Each party shall pay for its own costs in the process and share equally the costs of the third-party advisor,  
12 if required. The parties agree to be bound irrevocably by, and to accept, the land pricing determined by  
13 the process outlined in this Subsection 6.01(b)(3), and they waive and shall not pursue any further  
14 dispute resolution process relating to this issue, either under ARTICLE XIV hereof or otherwise.  
15

16 (4) The land pricing determined by the process outlined in Subsection 6.01(b)(3)  
17 shall then be converted to lease rates per gross buildable square foot in one of two ways: either as  
18 described in Subsection 6.01(b)(5), if substantial construction starts on the relevant parcel within the thirty  
19 (30) month period of the initial land price setting; or, as described in Subsection 6.01(b)(6), if substantial  
20 construction starts on the relevant parcel after the thirty (30) month period of the initial land price setting.  
21 In either case, if the parcel includes structured parking, the lease rate per gross buildable square foot  
22 shall then be subject to adjustment under Subsection 6.01(b)(7).  
23

24 (5) For any parcel upon which substantial construction starts within the thirty (30)  
25 month period of the initial land price setting, the lease rates per gross buildable square foot for the first  
26 year shall be seven percent (7%) of the land price, except that for any parcel developed with a building  
27 including a residential component, the lease payment for the first year shall be a percentage of the land  
28 price, which percentage shall be the weighted average of the gross building area attributable to the non-  
29 residential component multiplied by seven percent (7%) and the gross building area attributable to the  
30 residential component multiplied by six percent (6%). Lease payments shall escalate annually thereafter  
31 at two percent (2%).  
32

33 (6) For any parcel upon which substantial construction starts after the thirty (30)  
34 month period of the initial land price setting, the lease rates per gross buildable square and annual  
35 escalation rate shall be set at the time of the land pricing determination as follows.  
36

37 (i) The lease payment percentage shall be based upon the Overall  
38 Capitalization Rates reported in the most recent edition of the Korpacz Real Estate Investor Survey  
39 published quarterly by Price Waterhouse Coopers. Specifically, the lease payment for the first year shall  
40 be a percentage of the land price, which percentage shall be set at the average of the Average Overall  
41 Capitalization Rates reported for the most recent quarter for national CBD Office and national Apartment  
42 plus one-half percent (0.5%), except that for any parcel developed with a building including a residential  
43 component, the percentage shall be the weighted average of the gross building area attributable to the  
44 non-residential component multiplied by the average of the Average Overall Capitalization Rates reported  
45 for the most recent quarter for national CBD Office and national Apartment plus one-half percent (0.5%)  
46 and the gross building area attributable to the residential component multiplied by the average of the  
47 Average Overall Capitalization Rates reported for the most recent quarter for national CBD Office and  
48 national Apartment less one-half percent (0.5%).  
49

50 (ii) The annual escalation rate shall be set at the rate of increase in  
51 Consumer Price Index – Urban Consumers (CPI-U) for the most recent twelve (12) month period prior to  
52 the land price setting determination (that is, CPI-U for the most recent reported month divided by CPI-U  
53 for the month (that is, twelve (12) months prior to the most recent month) less one percent (1%). Should,  
54 at any time, the Korpacz report cease publication, the parties would agree on a comparable source for  
55 such information, and if they cannot agree on such a source, the determination would be made by  
56 following the third-party expert advisor process outlined in Subsection 6.01(b)(3).

1  
2 (7) The lease rates per gross buildable square foot lease determined under either  
3 Subsection 6.01(b)(5) or Subsection 6.01(b)(6) shall be subject to further adjustment as provided in this  
4 Subsection 6.01(b)(7), if development of such parcel incorporates structured parking. In that case, the  
5 pricing for that parcel shall be adjusted to reflect the additional cost of such parking beyond what was  
6 assumed in the pricing determination (surface or none) after subtracting from that amount the value of  
7 any Public Financing provided to the development project on that parcel. Any such adjustment shall not  
8 reduce land lease payments for other parcels without the authorization of CMPA. To initiate the process  
9 to determine the cost difference attributable to structured parking, the Developer shall present to CMPA  
10 for its review a proposed adjustment with relevant construction and development analyses. To reach  
11 agreement on the cost difference, the parties shall then follow the process outlined in Subsection  
12 6.01(b)(3).  
13

14 (c) CMPA shall cooperatively negotiate with the Pelicans and with UWF separate subleases  
15 or agreements relating to the Project. The separate subleases and agreements shall (i) be consistent  
16 with this Agreement and the Sub-Lease, (ii) contain timelines and conditions for advancing the overall  
17 vision of, and vertical construction within, the Project, and (iii) provide for contingencies in the event such  
18 timelines or conditions are not satisfied. UWF shall be responsible for managing its own facilities, unless  
19 otherwise agreed between UWF and the Developer pursuant to separate agreement. This Agreement  
20 creates no obligation on behalf of the Developer with respect to the management of UWF projects or  
21 facilities (specifically, the Maritime Museum, the Maritime Research Facility, the Multi-Cultural Center, or  
22 the Amphitheater).  
23

24 (d) The parties acknowledge that Studer (or related entities) will have an option for a limited  
25 time to sublease directly from CMPA land upon which to construct an office building. CMPA will use best  
26 efforts to coordinate with the Developer in the selection of the site for Studer and its integration into the  
27 overall Office Project. CMPA, the Developer, and Studer shall cooperate to agree, if possible, on  
28 mutually acceptable locations and/or parameters for siting the Studer office building. The building shall  
29 be designed in conformance with the design criteria approved by CMPA on November 28, 2007. In no  
30 event shall the Studer office building's footprint exceed twenty thousand (20,000) square feet, without the  
31 Developer's prior written agreement.  
32

33 (e) The parties acknowledge that the Project is intended to encourage a vibrant mix of uses  
34 and design compatible with promoting an active pedestrian experience. Toward this end, the following  
35 general use and design principles shall guide the parties.  
36

37 (1) Ground floor space facing streets that are planned to encourage pedestrian  
38 activity shall be designed and constructed in such a manner as to accommodate viable street-oriented  
39 retail or restaurant use by means of shop window frontages, entries directly accessing the street, and  
40 other design features. Sub-subleasing for retail/restaurant or other active uses shall be developed if, in  
41 the Developer's consideration, such use makes economic sense in the context of market, financial, and  
42 development realities.  
43

44 (2) Upper floor residential use and hotel shall be developed if, in the Developer's  
45 consideration, such use makes economic sense in the context of market, financial, and development  
46 realities.  
47

#### 48 **Section 6.02** Parcels. 49

50 (a) The Project Site consists of approximately thirty (30) acres and has, for purposes of the  
51 development of the Project and the Sub-Lease of parts of the Project Site for development of the Private  
52 Improvements and the Public Improvements, been divided into Parcels, which are depicted on the Parcel  
53 Plan.  
54

55 (b) The Parcels are identified on the initial Parcel Plan attached hereto as Exhibit "B" for the  
56 uses identified thereon.

1  
2 (c) The Parcel Plan may be changed from time to time upon recommendation by the  
3 Developer to CMPA and approval of such changes by CMPA. Any changed, amended or revised Parcel  
4 Plan shall be substituted for the Parcel Plan attached hereto as Exhibit "B".  
5

6 **Section 6.03** Notice of Intention to Sub-Sublease. If prior to the Sub-Lease Commencement Date the  
7 Developer has negotiated a Sub-Sublease with another for one or more Parcels, then the Developer shall  
8 give notice thereof to CMPA and present the terms of the Sub-Sublease to CMPA for review and  
9 approval, which approval shall not be unreasonably withheld. A Sub-Sublease shall not go into effect  
10 unless and until after the Sub-Lease Commencement Date.  
11

12 **Section 6.04** The Developer's Right of Access to the Project Site.  
13

14 (a) From the Effective Date until the Termination Date or Expiration Date, CMPA hereby  
15 grants to the Developer, subject to the compliance with the indemnity provisions of subsection (c), the  
16 right to enter upon the Project Site, together with persons and materials, for the purposes described in  
17 subsection (b).  
18

19 (b) The Developer may enter upon the Project Site when authorized as provided in this  
20 Section 6.04 for the following purposes:  
21

22 (1) To make physical inspection of the Parcel, including subsurface tests, soil test  
23 borings, water surveys, topographical surveys, sewage disposal surveys, drainage, and similar physical  
24 determinations;  
25

26 (2) To make an accurate survey of the boundaries of the Parcel, or any part or parts  
27 thereof, showing the exact location of any encroachments, easements, rights-of-way, covenants or  
28 restrictions burdening or appurtenant thereto, any improvements thereon, and any streets, alleys,  
29 thoroughfares, ways and highways bordering the Parcel;  
30

31 (3) To make any other inspections, tests, surveys and appraisals deemed necessary  
32 by the Developer;  
33

34 (4) To conduct and to carry out any and engineering studies and operations; and  
35

36 (5) To show the Parcel, or any part or parts thereof to any prospective tenants,  
37 contractors, or other professionals.  
38

39 (6) To conduct limited, supervised public tours.  
40

41 (c) In addition to the provisions of Section 8.01 hereof, the Developer shall cause any sub-  
42 lessee to agree to indemnify, defend and save harmless CMPA and the City from any and all losses,  
43 costs, damages, expenses and reasonable attorneys' fees which the CMPA or City may suffer or incur  
44 from damages to person or property as a result of the entering upon the Project Site or any Parcel by the  
45 Developer or a sub-lessee or any of their agents, employees, invitees or representatives.  
46

47 **Section 6.05** Signs. Subject to any applicable law, ordinance, or regulation (including any insurance  
48 indemnification or easement requirement), as of the Effective Date and thereafter, the Developer may  
49 place one or more signs announcing the Project and containing information about the Developer and the  
50 Project upon the Project Site.  
51

52 **ARTICLE VII.**  
53 **INSURANCE.**  
54

55 **Section 7.01** Insurance Requirements Generally.  
56

1 (a) (1) All insurance required by this Agreement shall be obtained from financially  
2 responsible insurance companies either duly authorized under the laws of the State of Florida to do  
3 insurance business in the State of Florida (or subject to legal process in the State of Florida) and shall be  
4 issued and countersigned by duly authorized representatives of such companies for the State of Florida.  
5

6 (2) The insurance coverage and limits required shall be evidenced by properly  
7 executed certificates of insurance. No less than thirty (30) days' written notice by registered or certified  
8 mail must be given the Developer and CMPA of any cancellation, intent not to renew, or reduction in the  
9 policy coverage.

10 (3) The liability insurance coverage required by this Agreement are to be endorsed  
11 to be primary to any insurance carried by CMPA (or for the benefit of CMPA) or any self-insurance  
12 program thereof.  
13

14 (b) (1) All of the required insurance coverage set forth in this ARTICLE VII must be  
15 issued as required by law and must be endorsed, where necessary, to comply with the minimum  
16 requirements contained herein.  
17

18 (2) Renewal certificates of insurance which conform in every respect with the  
19 requirements of this ARTICLE VII are to be provided CMPA prior to expiration of current coverage  
20 provided that if the renewal certificates are not available prior to the expiration date of current coverage  
21 and renewal coverage have been obtained, the Developer will notify CMPA of the identity of the renewal  
22 insurance carriers no later than 5:00 p.m. on the date of expiration of the then current coverage.  
23

24 (3) The person required by this Agreement to obtain any policy of insurance shall  
25 cause to be provided to the other party hereto certified true copies of any such insurance policy upon  
26 written request of any other party hereto.  
27

28 (c) (1) The insurance coverage and limits required of Contractors under this Agreement  
29 are designed to meet the minimum requirements of the Developer.  
30

31 (2) The coverage and limits required of Contractors by this Agreement are not  
32 designed by CMPA as a recommended insurance program for the Developer.  
33

34 (d) (1) Each Contractor alone shall be responsible for the sufficiency of its own  
35 insurance program. CMPA will in no way be responsible to the Developer or any Contractor for any  
36 inadequacy of a Contractor's overall insurance program.  
37

38 (2) The City is self-insured and shall be responsible for the sufficiency of its  
39 insurance program. The Developer will in no way be responsible to the City, CMPA, or any other party for  
40 any inadequacy of the City's or CMPA's overall insurance program.  
41

42 **Section 7.02** Insurance During Construction of the Project.  
43

44 (a) Beginning on the Site Preparation Project Commencement Date and continuing until the  
45 Site Preparation Project Completion Date, except as otherwise expressly set forth herein, the Developer  
46 shall cause each Contractor to provide or cause to be provided, pay for and keep in full force and effect  
47 insurance policies satisfying the requirements of the types and amounts of insurance described in Section  
48 7.02(b) below. All policies of each Contractor shall provide that the Developer and CMPA are named as  
49 an additional insureds as to the operations of the Contractor under the contract with the Developer and  
50 shall also provide the "Severability of Interests Provision."  
51

52 (b) The following minimum insurance coverage is required to be obtained and maintained by  
53 each Contractor for the Site Preparation Project and, after execution of the Sub-Sublease, for each Parcel  
54 from the Commencement Date until the Completion Date as to that Parcel:  
55  
56

1 (1) Workers' compensation and employer's liability insurance for all employees  
2 engaged in work under a contract with the Developer in accordance with the laws of the State of Florida,  
3 whether legally required or not. The amount of the employer's liability insurance shall not be less than:

4  
5 Employer's Liability

6  
7 \$1,000,000 Limit Each Accident

8  
9 \$1,000,000 Limit Disease  
10 Aggregate

11  
12 \$1,000,000 Limit Disease  
13 Each Employee

14  
15 If any class of employees engaged in work under this Agreement is not protected under the applicable  
16 workers' compensation law, but is protected under some other statutory form of employee protection, the  
17 Contractor shall be required to provide similar protection for all such employees as required by applicable  
18 law. If applicable to each component of the Project, coverage must be provided as required by the U.S.  
19 Longshoreman's and Harbor Worker's Compensation Act.

20  
21 (2) Commercial general liability insurance with a limit of not less than that necessary  
22 to comply with the umbrella or excess liability policy required in Section 7.02(b)(4) as to primary liability  
23 coverage and limits. Coverage shall include personal injury, contractual liability for the construction  
24 contract; independent contractors; broad form property damage including completed operations; and  
25 products and completed operations coverage and shall include coverage for "(X) Explosion," "(C)  
26 Collapse," and "(U) Underground Property Damage Liability" exposures. The Developer shall require that  
27 a Contractor maintain "Completed Operations Liability Coverage" for a period of three (3) years following  
28 the Completion Date in an amount not less than \$3,000,000 combined single limit per occurrence and  
29 aggregate as provided herein and in the umbrella or excess liability policy as provided in Section  
30 7.02(b)(4). This insurance coverage shall be issued on an "occurrence" basis.

31  
32 (3) Automobile liability insurance with a limit of not less than that necessary to comply  
33 with the umbrella or excess liability policy required in Section 7.02(b)(4) as to primary liability coverage  
34 and limits. Coverage shall be in accordance with the laws of the State of Florida as to the ownership,  
35 maintenance, and use of vehicles, including all owned, non-owned, leased, or hired vehicles.

36  
37 (4) Umbrella liability insurance or excess liability insurance in addition to the required  
38 primary comprehensive general liability, automobile liability, and employer's liability coverage with a limit  
39 of not less than:

40  
41 Bodily Injury, Personal Injury &  
42 Property Damage Liability--\$3,000,000 Combined  
43 Single Limit per  
44 Occurrence & Aggregate

45  
46 This insurance coverage shall be issued on the "occurrence basis."

47  
48 (5) The Developer shall require each Contractor to either name the Developer and  
49 CMPA as additional insureds or require the Contractor to provide an Owners and Contractors Protective  
50 Liability Insurance in a form acceptable to the Developer and CMPA.

51  
52 (6) Builder's risk insurance shall be purchased, kept in full force and effect, and paid  
53 for by the Contractor.

54  
55 The Amount of Insurance is to be 100% of the completed value of the work  
56 described in the construction contract for that part of the Project. Such coverage will additionally include

1 an amount equal to 10% of the Amount of Insurance of the completed value of the work described in this  
2 Contract for materials and equipment stored off the construction site, in transit or delivery, including  
3 loading and unloading. The limits of insurance shall additionally include any damages suffered by the City  
4 due to any delay of completion of the work described in this Agreement caused by an insurable loss.  
5

6 The policy must be specifically endorsed to eliminate any "Occupancy" clause or  
7 similar warranty or representation that the premises in the course of construction shall not be occupied or  
8 used without specific endorsement of the policy. The policy must be endorsed to provide that the Builder's  
9 Risk Coverage will continue to apply until final acceptance of the work described in this Agreement by the  
10 City, which acceptance shall not be deemed to have been made solely on account of occupancy of any  
11 portion of the premises by the City.  
12

13 Such Builder's Risk Coverage shall have a maximum deductible of \$25,000 each  
14 claim. The Contractor shall also be responsible for any and all claims which fall within the deductible  
15 amounts. The City shall be listed as a Named Insured by endorsement on the policy as well as the  
16 Certificate of Insurance and a certified copy of the policy shall be supplied to the City.  
17

18 The policy shall contain a "Waiver of Subrogation" clause in favor of the  
19 Developer, CMPA, and the City, any subsidiaries or affiliates, its elected and appointed officials,  
20 employees, volunteers, representatives, and agents which would waive any subrogation against any of  
21 them. The policy shall contain no exclusion which would exclude damage or loss caused by breakage,  
22 freezing, temperature extremes or temperature change, water, flood, leakage, or seepage, or, if any of  
23 such risks are excluded from the primary policy, coverage for such risk shall be provided by a separate  
24 policy or policies which otherwise comply with provisions of this Agreement.  
25

26 (7) Other insurance coverage may be required when unusual operations are  
27 necessary to complete the construction of the Project, including, but not limited to, use of aircraft  
28 (including helicopters and balloons), pile drivers, cranes, barges, underwater equipment or explosives,  
29 and any other high risk circumstances. No aircraft or explosives shall be used without prior written notice  
30 to, and approval by, CMPA. Minimum insurance coverage and limits shall be determined at the time of  
31 such advance written notice at the sole discretion of CMPA.  
32

33 **Section 7.03** Waiver of Subrogation Requirement. The Developer, with respect to construction of  
34 each part of the Project, shall cause each Contractor's insurance carriers to agree to a joint waiver of  
35 Subrogation with respect to builders risk insurance covering said construction project, which waivers shall  
36 include the Contractors and all subordinate contractors. If requested by CMPA, the Developer shall  
37 furnish to CMPA a certified true copy of any of the respective builders risk insurance policies required by  
38 this Agreement with copies of all endorsements added during the policy term.  
39

40 **Section 7.04** Insurance After Completion of Construction. Upon completion of the Site Preparation  
41 Project and after the Sub-Lease Commencement Date, the Developer shall maintain insurance as  
42 required by the Sub-Lease.  
43

44 **Section 7.05** Insurance Exclusive of Indemnity. The insurance obligations of the Developer and  
45 CMPA specified in this ARTICLE VII are exclusive of, and in addition to, any and all indemnity obligations  
46 of the Developer and CMPA under this Agreement.  
47

## 48 **ARTICLE VIII.**

### 49 **INDEMNIFICATION.**

50

51 **Section 8.01** Indemnification by the Developer.  
52

53 (a) In consideration of the promises and covenants made herein, the Developer agrees to  
54 indemnify, defend and hold harmless, CMPA, its respective agents, officers, or employees from any and  
55 all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees  
56 through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of,

1 or by reason of any act or omission of the Developer, its agents, employees or contractors arising out of,  
2 in connection with or by reason of, the performance of any and all services covered by this Agreement, or  
3 which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all  
4 services covered by this Agreement, or which are alleged to have arisen out of, in connection with, or by  
5 reason of, the performance of such services.

6  
7 (b) The Developer's indemnity obligations under subsection (a) shall survive the earlier of the  
8 Termination Date or the Expiration Date, but shall apply only to occurrences, acts, or omissions that arise  
9 on or before the earlier of the Termination Date or the Expiration Date.

10  
11 (c) The Developer's indemnity hereunder is in addition to and not limited by any insurance  
12 policy and is not and shall not be interpreted as an insuring agreement between or among the parties to  
13 this Agreement.

14  
15 (d) Notwithstanding any provision in this Agreement or any other, the parties expressly  
16 intend and covenant that the Developer shall not be liable for any pre-existing environmental conditions,  
17 and the Developer shall not be liable for, and shall not indemnify CMPA or any other person for, the  
18 presence of any hazardous substance on, under, or adjacent to any Parcel prior to the Commencement  
19 Date of construction work on the Parcel. For purposes of this Subsection 8.01(d), "hazardous substance"  
20 shall have the meaning ascribed by any federal, state, county, or local law of any nature regulating,  
21 relating to, or imposing liability or standards of conduct concerning any substance designated as a  
22 "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste,"  
23 "pollutant," "contaminant" or similar term describing other harmful or potentially harmful properties or  
24 effects.

25  
26 **Section 8.02** Indemnification by CMPA.

27  
28 (a) CMPA agrees to indemnify, defend and hold harmless, the Developer, its respective  
29 agents, officers, and employees from any and all liabilities, damages, penalties, judgments, claims,  
30 demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury,  
31 bodily injury, death or property damage arising out of, or by reason of, any act or omission of CMPA, its  
32 respective agents or employees arising out of, in connection with or by reason of, the performance of any  
33 and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with  
34 or by reason of, the performance of any and all services covered by this Agreement, or which are alleged  
35 to have arisen out of in connection with, or by reason of, the performance of such services.

36  
37 (b) CMPA shall indemnify, defend and hold harmless the Developer, its agents, officers, and  
38 employees from any and all liabilities, damages, costs, penalties, judgments, claims, demands, losses, or  
39 expenses (including, but not limited to, actual attorneys' fees and engineering fees) arising from or  
40 attributable to any breach by CMPA, as the case may be, of any representations or warranties contained  
41 in Section 9.01, or covenants contained in Section 9.02.

42  
43 (c) CMPA's indemnity obligations under this Section 8.02 shall survive the earlier of the  
44 Termination Date or the Expiration Date, but shall only apply to occurrences, acts or omissions that arise  
45 on or before the earlier of the Termination Date or the Expiration Date. CMPA's indemnity hereunder is  
46 not and shall not be interpreted as an insuring agreement between or among the parties to this  
47 Agreement, but is in addition to and not limited by any insurance policy.

48  
49 (d) CMPA shall indemnify and hold harmless the Developer for damages when the  
50 Developer discovers or encounters pre-existing hazardous substances (as defined in Subsection 8.01(d)  
51 hereof) during the performance of services under this Agreement when the presence of such materials  
52 was unknown or not reasonably discoverable. This indemnification shall only be effective if the Developer  
53 immediately stops construction work and notifies CMPA of the hazardous substance.

1 **Section 8.03** Limitation of Indemnification. Notwithstanding anything to the contrary contained  
2 herein, with respect to the indemnification obligations of the Developer (as set forth in Section 8.01) and  
3 CMPA (as set forth in Section 8.02), the following shall apply:

4  
5 (a) the indemnifying party's obligations under this Article shall be limited or reduced to the  
6 extent that the indemnified party could have reduced its damages or liability through the reasonable  
7 mitigation of damages (for example, if the indemnified party's liability is \$20.00, but had the indemnified  
8 party reasonably mitigated the damages, its liability would be \$15.00, then the indemnifying party's  
9 obligation to indemnify is limited to \$15.00); the indemnifying party shall not be responsible for damages  
10 that could have been, but were not, mitigated by the indemnified party;

11  
12 (b) the indemnifying party shall not be responsible for that portion of any damages caused by  
13 the negligent, intentional, willful or malicious acts or omissions of the indemnified party, nor those which  
14 violate any law; and

15  
16 (c) there shall be no obligation to indemnify hereunder in the event that the indemnified party  
17 (1) shall have effected a settlement of any claim without the prior written consent of the Indemnifying  
18 party (which consent shall not be unreasonably withheld), or (2) shall not have subrogated the  
19 indemnifying party to the indemnified party's rights against any third party by an assignment to the  
20 indemnifying party of any cause or action against such third party.

21  
22 **ARTICLE IX.**  
23 **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER.**

24  
25 **Section 9.01** Representations and Warranties. The Developer represents and warrants to  
26 CMPA that each of the following statements is presently, and, as of the date of original issuance of the  
27 Bonds, will be, true and accurate and agrees CMPA may rely upon each of the following statements:

28  
29 (a) The Developer is a Florida limited liability company duly organized and validly existing  
30 under the laws of the State of Florida, has all requisite power and authority to carry on its business as  
31 now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and  
32 under each document or instrument contemplated by this Agreement to which it is or will be a party, is  
33 qualified to do business in the State of Florida, and has consented to service of process upon a  
34 designated agent for service of process in the State of Florida.

35  
36 (b) This Agreement and, to the extent such documents presently exist in form accepted by  
37 CMPA and the Developer, each document contemplated or required by this Agreement to which the  
38 Developer is or will be a party have been duly authorized by all necessary action on the part of, and have  
39 been or will be duly executed and delivered by, the Developer, and neither the execution and delivery  
40 thereof, nor compliance with the terms and provisions thereof or hereof: (1) requires the approval and  
41 consent of any other party, except such as have been duly obtained or as are specifically noted herein;  
42 or, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or  
43 binding on the Developer.

44  
45 (c) This Agreement and, to the extent such documents presently exist in form accepted by  
46 CMPA the Developer, each document contemplated or required by this Agreement to which the  
47 Developer is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding  
48 obligation of the Developer enforceable against the Developer in accordance with the terms thereof,  
49 except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from  
50 time to time in effect which affect creditors' rights generally and subject to usual equitable principles in  
51 the event that equitable remedies are involved.

52  
53 (d) There are no pending or, to the knowledge of the Developer, threatened actions or  
54 proceedings before any court or administrative agency against the Developer which question the validity  
55 of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the

1 aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder  
2 or the financial condition of the Developer.

3  
4 (e) The Developer has filed or caused to be filed all federal, state, local and foreign tax  
5 returns, if any, which were required to be filed by the Developer, and has paid, or caused to be paid, all  
6 taxes shown to be due and payable on such returns or on any assessments levied against the Developer.

7  
8 (f) All financial information and other documentation, including that pertaining to the Project  
9 or the Developer, delivered by the Developer to CMPA, was, on the date of delivery thereof, true and  
10 correct.

11  
12 (g) The principal place of business and principal executive offices of the Developer are in  
13 San Antonio, Texas.

14  
15 (h) The Developer has the experience, expertise, and capability to complete the Site  
16 Preparation Project and to develop the Project pursuant to the terms of this Agreement and the Sub-  
17 Lease.

18  
19 (i) Before construction commences, the Developer shall qualify as a design-build firm for  
20 purposes of the Consultants' Competitive Negotiation Act, Section 287.055, *Florida Statutes*.

21  
22 (j) The Developer shall not alter or modify the design criteria approved by the CMPA on  
23 November 28, 2007, in a manner that the final design criteria and construction of the Project triggers the  
24 Development of Regional Impact (DRI) requirements of section 380.06, *Florida Statutes*.

25  
26 **Section 9.02 Covenants.** The Developer covenants with CMPA that until the earlier of the  
27 Termination Date or the Expiration Date:

28  
29 (a) The Developer shall timely perform or cause to be performed all of the obligations  
30 contained herein which are the responsibility of the Developer to perform.

31  
32 (b) During each year this Agreement and the obligations of the Developer under this  
33 Agreement shall be in effect, the Developer shall cause to be executed and to continue to be in effect  
34 those instruments, documents, certificates, permits, licenses and approvals and shall cause to occur  
35 those events contemplated by this Agreement that are applicable to, and that are the responsibility of, the  
36 Developer.

37  
38 (c) The Developer shall assist and cooperate with CMPA to accomplish the development of  
39 the Project by the Developer in accordance with the Plan, this Agreement, and the associated plans and  
40 specifications and will not violate any laws, ordinances, rules, regulations, orders, contracts or  
41 agreements that are or will be applicable thereto, including the Plan and the Act.

42  
43 (d) The Developer shall promptly cause to be filed when due all federal, state, local and  
44 foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby.

45  
46 (e) The Developer shall maintain its status as a Florida limited liability company, and will  
47 provide a process for management succession to ensure continuity of business management of the  
48 Developer, and the successful completion of the Project, and continued operation of the Project.

49  
50 (f) Other than sales and assignments contemplated by this Agreement, the Developer shall  
51 not sell, lease, transfer or otherwise dispose of all or substantially all its assets without approval of CMPA  
52 and will otherwise take no action which shall have the effect, singularly or in the aggregate, of rendering  
53 the Developer unable to continue to observe and perform the covenants, agreements, and conditions  
54 hereof and the performance of all other obligations required by this Agreement.  
55

1 (g) Except for the removal of any structures, plants, items or other things from the Project  
2 Site after the Commencement Date necessary for construction of the Site Preparation Project to  
3 commence and continue, the Developer shall not permit, commit, or suffer any waste or impairment of the  
4 Project Site prior to the Termination Date or the Expiration Date.  
5

6 (h) Provided all conditions precedent thereto have been satisfied or waived as provided  
7 herein, the Developer shall design, construct and complete the Site Preparation Project such that it is  
8 substantially complete as provided in this Agreement.  
9

10 **ARTICLE X.**  
11 **REPRESENTATIONS, WARRANTIES AND COVENANTS OF CMPA.**  
12

13 **Section 10.01** Representations and Warranties. CMPA represents and warrants to the Developer  
14 that each of the following statements is currently true and accurate and agrees that the Developer may  
15 rely on each of the following statements:  
16

17 (a) CMPA is a Florida non-profit corporation duly organized and validly existing under the  
18 laws of the State of Florida, has all requisite corporate power and authority to carry on its business as  
19 now conducted, own or hold its properties and to enter into and perform its obligations hereunder and  
20 under each document or instrument contemplated by this Agreement to which it is or will be a party, is  
21 qualified to do business in Florida, and has consented to service of process upon a designated agent for  
22 service of process in the State of Florida.  
23

24 (b) This Agreement and, to the extent such documents presently exist in form accepted by  
25 CMPA and the Developer, each document contemplated or required by this Agreement to which CMPA is  
26 or will be a party have been duly authorized by all necessary action on the part of, and have been or will  
27 be duly executed and delivered by, CMPA, and neither the execution and delivery thereof, nor  
28 compliance with the terms and provisions thereof or hereof (1) requires the approval and consent of any  
29 other party, except such as have been duly obtained or as are specifically noted herein, or (2)  
30 contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on  
31 CMPA.  
32

33 (c) This Agreement and, to the extent such documents presently exist in form accepted by  
34 the CMPA and the Developer, each document contemplated or required by this Agreement to which  
35 CMPA is or will be a party constitute, or when entered into will constitute, legal, valid and binding  
36 obligations of CMPA enforceable against CMPA in accordance with the terms thereof, except as such  
37 enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from  
38 time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the  
39 event that equitable remedies are involved.  
40

41 (d) There are no pending or threatened actions or proceedings before any court or  
42 administrative agency against CMPA, or against any trustee of CMPA, which question the validity of any  
43 document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially  
44 adversely affect the consummation of the transactions contemplated hereunder or the financial condition  
45 of CMPA.  
46

47 (e) CMPA has not breached the Master Development Agreement (2006) or the Master Lease  
48 (2006).  
49

50 (f) CMPA has procured this Agreement in accordance with the Consultants' Competitive  
51 Negotiation Act, Section 287.055, *Florida Statutes*, and thereby satisfied Sections 4.03(a)(1) and  
52 4.04(a)(1) of the Master Development Agreement (2006) and Section 8.03.01 of the Master Lease (2006).  
53

54 (g) The design criteria approved by CMPA on November 28, 2007, do not trigger the  
55 Development of Regional Impact (DRI) requirements of section 380.06, *Florida Statutes*.  
56

1 **Section 10.02 Covenants.** CMPA covenants with the Developer that until the earlier of the  
2 Termination Date or the Expiration Date:

3  
4 (a) CMPA shall timely perform or cause to be performed all of the obligations contained  
5 herein which are the responsibility of CMPA to perform.

6  
7 (b) During each year that this Agreement and the obligations of CMPA under this Agreement  
8 shall be in effect, CMPA shall cause to be executed and to continue to be in effect those instruments,  
9 documents, certificates, permits, licenses and approvals, and shall cause to occur those events  
10 contemplated by this Agreement that are applicable to and are the responsibility of CMPA.

11  
12 (c) CMPA shall assist and cooperate with the Developer to accomplish the development of  
13 the Project in accordance with this Agreement and the Plans and Specifications, will carry out its duties  
14 and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules,  
15 regulations, orders, contracts, or agreements that are or will be applicable thereto, and CMPA will not  
16 urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders or approve or  
17 enter into any contracts or agreements, including issuing any bonds, notes, or other forms of  
18 indebtedness, that will result in any provision of this Agreement to be in violation thereof.

19  
20 (d) Except for the removal of objects from the Project Site as contemplated by this  
21 Agreement, CMPA shall not permit, commit, or suffer any waste or impairment of the Project Site before  
22 the Sub-Lease Commencement Date, nor shall CMPA request or recommend any rezoning of the Project  
23 Site, or any part thereof, which will prevent or adversely affect the development of the Project.

24  
25 (e) CMPA shall maintain its financial capability to carry out its responsibilities as  
26 contemplated by this Agreement and shall notify the Developer of any event, condition, occurrence, or  
27 change in its financial condition which adversely affects, or with the passage of time is likely to adversely  
28 affect, CMPA's financial capability to carry out its responsibilities contemplated hereby.

29  
30 **ARTICLE XI.**  
31 **CONDITIONS PRECEDENT.**

32  
33 **Section 11.01 Construction of Site Preparation Project.** Subject to termination of this  
34 Agreement pursuant to Section 12.05, the obligation of the Developer to cause construction of the Site  
35 Preparation Project on the Commencement Date is subject to the fulfillment to the satisfaction of, or  
36 waiver in writing by, the Developer of the following conditions:

37  
38 (a) In association with the Public Financing, the City and the CRA have already or will  
39 immediately adopt a reimbursement resolution for the Project.

40  
41 (b) The bulk head, fill and site improvement related approvals and permits necessary for site  
42 development have been obtained and issued to the City and CMPA.

43  
44 (c) Adoption of an interlocal agreement between the City and the CRA (and possibly  
45 including CMPA and the Developer) reasonably required for the Public Financing, committing revenues to  
46 support issuance of the Bonds, and the issuance of such Obligations and all related matters.

47  
48 (d) Development of design plans and drawings (in phases if necessary) to a stage from  
49 which contractors can provide guaranteed maximum price commitment consistent with this Agreement.

50  
51 (e) Documented commitment from Studer concerning use of the conference center venue  
52 and other facilities within the project including form of agreement, consistent with this Agreement.

53  
54 (f) Documented commitment from the Pelicans committing to use multi-purpose facility,  
55 including form of agreement, consistent with this Agreement.

1 (g) Documented commitment from UWF concerning Maritime Museum, Maritime Research  
2 Facility, Multi-Cultural Center, Amphitheater (exclusive of grounds), and use of conference center venue,  
3 all of which are consistent with this Agreement.  
4

5 **Section 11.02** Responsibilities of the Parties for Conditions Precedent. The parties hereto shall not,  
6 individually or collectively, knowingly, intentionally or negligently prevent any condition precedent from  
7 occurring; provided, however, nothing in this Section 11.02 is intended or shall be deemed to deny any  
8 party the right to reasonably exercise its discretion to the extent permitted by law or this Agreement.  
9

10 **Section 11.03** Certification of Satisfaction of Waiver. At any time when one party determines in its  
11 opinion that the conditions precedent in Section 11.01 have been satisfied or waived, or some  
12 combination thereof, that party shall submit to the other party a certification that such conditions  
13 precedent have been satisfied or waived. Within thirty (30) days of receipt of such certification the party  
14 receiving the certification shall accept such certification or reject such certification and give notice to the  
15 certifying party of the reason(s) for such rejection. If the parties are unable to resolve any difference of  
16 opinion whether any condition(s) precedent have been satisfied or waived, then the dispute resolution  
17 process set forth in ARTICLE XIV shall be invoked.  
18

19 **ARTICLE XII.**  
20 **DEFAULT; TERMINATION.**

21  
22 **Section 12.01** Default by the Developer.  
23

24 (a) There shall be an "event of default" by the Developer upon the occurrence of anyone or  
25 more of the following after the Effective Date:  
26

27 (1) The Developer shall fail to perform or comply with any material provision of this  
28 Agreement applicable to it within the time prescribed therefore after receipt of a notice from CMPA  
29 pursuant to Subsection 12.01(b)(1); or  
30

31 (2) The Developer shall make a general assignment for the benefit of its creditors, or  
32 shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy,  
33 or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization,  
34 arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or  
35 future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the  
36 material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or  
37 acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or any material part of  
38 such entity's properties; or  
39

40 (3) Within sixty (60) days after the commencement of any proceeding by or against  
41 the Developer seeking any reorganization, arrangement, composition, readjustment, liquidation,  
42 dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall  
43 not have been dismissed or otherwise terminated, or if, within sixty (60) days after the appointment  
44 without the consent or acquiescence of the Developer of any trustee, receiver or liquidator of any of such  
45 entities or of any material part of any of such entity's properties, such appointment shall not have been  
46 vacated; or  
47

48 (b) (1) If an event of default by the Developer described in subsection (a) above shall occur,  
49 CMPA shall provide written notice thereof to the Developer, and, if such event of default shall not be  
50 cured by the Developer within thirty (30) days after receipt of the written notice from CMPA specifying in  
51 reasonable detail the event of default by the Developer, or if such event of default is of such nature that it  
52 cannot be completely cured within such time period, then if the Developer shall not have commenced to  
53 cure such default within such thirty (30) day period and shall not diligently prosecute such cure to  
54 completion within such reasonable longer period of time as may be necessary (provided, however, if the  
55 Developer is proceeding diligently and in good faith, the curative period shall be extended for a period of  
56 not exceeding six (6) months without any approval or consent of CMPA being required, but such approval

1 will be required if the curative period is to be extended beyond six (6) months) then, in addition to any  
2 remedy available to it, CMPA may terminate this Agreement or pursue any and all legal or equitable  
3 remedies to which CMPA is entitled, provided, however, if the Developer shall fail to cure such event of  
4 default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event  
5 of default, then CMPA may proceed to enforce other available remedies without providing any additional  
6 notice to the Developer.  
7

8 (2) Any time periods or deadlines provided in this Agreement shall be tolled or  
9 extended by the amount of time to cure any event of default hereunder if such event affects the  
10 Developer's or CMPA's ability to perform by such deadline or the expiration of such period.  
11

12 (c) Under this Agreement and any similar provision under the Sub-Lease, all Plans and  
13 Specifications, working drawings, construction contracts, contract documents, building permits, Permits,  
14 management agreements, and financial commitments (all only to the extent assignable) with respect to  
15 the Project shall, if such default has not been previously cured, on the day following receipt by the  
16 Developer of notice from CMPA of its election to terminate under Subsection 12.01(b)(1), be deemed  
17 then assigned to CMPA making said election, without necessity of any other action being taken or not  
18 taken by any party hereto. The Developer shall transfer and deliver to CMPA upon making said election,  
19 all assignable Plans and Specifications, working drawings, construction contracts, contract documents,  
20 financial commitments, management agreements, and all Permits, and, at the direction of CMPA, the  
21 Developer shall vacate the Project Site.  
22

23 (d) In the event of a termination of this Agreement pursuant to this Section 12.01, the  
24 Developer shall not be entitled to any reimbursement from CMPA for costs incurred by the Developer  
25 which have not already been reimbursed or owing at the time of such termination.  
26

27 **Section 12.02** Default by CMPA.  
28

29 (a) Provided the Developer is not then in default under Section 12.01, there shall be an  
30 "event of default" by CMPA under this Agreement in the event CMPA shall fail to perform or comply with  
31 any material provision of this Agreement applicable to it; provided, however, that suspension of or delay  
32 in performance by CMPA during any period in which the Developer is in default of this Agreement as  
33 provided in Section 12.01 hereof will not constitute an event of default by CMPA under this subsection  
34 (a).  
35

36 (b) (1) If an event of default by CMPA described in subsection (a) shall occur, the  
37 Developer shall provide written notice thereof to CMPA, and, after expiration of the curative period  
38 described in paragraph (2) below, may terminate this Agreement, institute an action to compel specific  
39 performance of the terms hereof by CMPA or pursue any and all legal or equitable remedies to which the  
40 Developer is entitled; provided, however, if the event of default by CMPA occurs on or prior to the Sub-  
41 Lease Commencement Date, any monetary recovery by the Developer in any such action shall be limited  
42 to amounts payable under Subsection 12.05(e) hereof, plus reasonable attorneys' fees.  
43

44 (2) The Developer may not terminate this Agreement or institute an action described  
45 in paragraph (1) above if CMPA cures such event of default within thirty (30) days after receipt by CMPA  
46 of written notice from the Developer specifying in reasonable detail the event of default by CMPA, or if  
47 any such event of default is of such nature that it cannot be completely cured within such period, then  
48 within such reasonably longer period of time as may be necessary to cure such default, provided  
49 however, if CMPA is proceeding diligently and in good faith, the curative period shall be extended for a  
50 period of not exceeding six (6) months without any approval or consent of the Developer being required,  
51 but such approval will be required if the curative period is to be extended beyond six (6) months after the  
52 notice of default has been given by the Developer to CMPA if CMPA has commenced to cure such  
53 default within such thirty (30) day period and is diligently prosecuting such curative action to completion.  
54 CMPA shall within said thirty (30) day period or such longer period promptly, diligently and in good faith  
55 proceed to cure such event of default after receipt of the notice from the Developer and shall succeed in  
56 curing such event of default within said period of time, provided, however, if CMPA shall fail to cure such

1 event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure  
2 such event of default, then the Developer may proceed with its available remedies without providing any  
3 additional notice to CMPA.

4  
5 (3) Any time periods or deadlines provided in this Agreement shall be tolled or  
6 extended by the amount of time to cure any event of default hereunder if such event affects the  
7 Developer's or CMPA's ability to perform by such deadline or the expiration of such period.

8  
9 **Section 12.03 Obligations, Rights and Remedies Cumulative.** Unless specifically stated herein to the  
10 contrary, the specified rights and remedies to which either CMPA or the Developer are entitled under this  
11 Agreement are not exclusive and are intended to be in addition to any other remedies or means of  
12 redress to which CMPA or the Developer may lawfully be entitled and are not specifically prohibited by  
13 this Agreement. The suspension of, or delay in, the performance of its obligations by the Developer, while  
14 CMPA shall at such time be in default of their obligations hereunder shall not be deemed to be an "event  
15 of default." The suspension of, or delay in, the performance of the obligations by CMPA while the  
16 Developer shall at such time be in default of its obligations hereunder shall not be deemed to be an  
17 "event of default" by CMPA.

18  
19 **Section 12.04 Non-Action on Failure to Observe Provisions of this Agreement.** The failure of CMPA or  
20 the Developer to promptly or continually insist upon strict performance of any term, covenant, condition or  
21 provision of this Agreement, or any Exhibit hereto, or any other agreement, instrument or document of  
22 whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that  
23 CMPA or the Developer may have, and shall not be deemed a waiver of a subsequent default or  
24 nonperformance of such term, covenant, condition or provision.

25  
26 **Section 12.05 Termination.**

27  
28 (a) CMPA and the Developer acknowledge and agree that as of the Effective Date certain  
29 matters mutually agreed by the parties hereto to be essential to the successful development of the Project  
30 have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the  
31 control of any of the parties hereto or which cannot be definitely resolved under this Agreement. In  
32 recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate  
33 or responsible party therefore diligently and in good faith seeks to the fullest extent of its capabilities to  
34 cause such event or condition to occur or be satisfied, the failure of the events or conditions listed in  
35 subsection (b) below to occur or be satisfied shall not constitute an event of default by any party under  
36 this ARTICLE XII, but may, upon the election of any party hereto, be the basis for a termination of this  
37 Agreement in accordance with this Section 12.05.

38  
39 (b) In addition to any other rights of termination provided elsewhere in this Agreement, this  
40 Agreement may be terminated as provided in Subsection 12.05(c) by the CMPA or the Developer after  
41 the occurrence of any of the following events or conditions:

42  
43 (1) the entire Project Site is taken by the exercise of the power of eminent domain by  
44 a governmental authority (including the City) or a person entitled to exercise such power or benefiting  
45 therefrom, or such part of the Project Site is taken by the power of eminent domain so as to prevent  
46 development of the Project as contemplated by this Agreement;

47  
48 (2) the appropriate governmental authority (including the City in the good faith  
49 exercise of its governmental and regulatory authority and responsibility), denies or fails to issue the  
50 Permits necessary to commence construction of the Site Preparation Project on the Project Site, provided  
51 the Developer has proceeded diligently, expeditiously and in good faith to obtain such approval, permits  
52 or other necessary actions;

53  
54 (3) the conditions precedent set forth in Section 11.01 have not been satisfied to the  
55 satisfaction of the Developer or waived by the Developer by two (2) years from the Effective Date; or  
56

1 (4) the parties agree that the Project has become infeasible for any of the reasons  
2 specified in Section 15.01 hereof.  
3

4 (c) Upon the occurrence of an event described in Subsection 12.05(b) or in the event that  
5 the Developer or CMPA, after diligently and in good faith to the fullest extent its capabilities, is unable to  
6 cause a condition precedent to its respective obligations to occur or be satisfied, then the Developer or  
7 CMPA may elect to terminate this Agreement by giving a notice to the other party hereto within ninety  
8 (90) days of the occurrence of such event or the determination of inability to cause a condition precedent  
9 to occur or be satisfied, stating its election to terminate this Agreement as a result thereof, in which case  
10 this Agreement shall then immediately terminate.  
11

12 (d) In addition to any other rights of termination provided elsewhere in this Agreement,  
13 CMPA shall have the right to terminate this Agreement if CMPA determines, in the good faith exercise of  
14 its discretion, that it is in CMPA's best interest to do so.  
15

16 (e) In the event of a termination pursuant to this Section 12.05, or if the Project does not  
17 proceed for any reason other than default by the Developer, including but not limited to lack of Public  
18 Financing, then the provisions of Section 8.01 and Section 8.02 shall apply and shall survive termination  
19 of this Agreement, and the Developer shall be entitled to a termination payment equal to the sum of the  
20 following three amounts:  
21

22 (1) Reimbursement of up to One Hundred Fifty Thousand Dollars (\$150,000) of the  
23 Developer's actual and verifiable third-party costs for substantive work performed before the Effective  
24 Date and necessary for the Site Preparation Project and the Public Improvements, such as design and  
25 engineering efforts and preparation of Project documentation, including but not limited to this Agreement  
26 and associated implementing documents, but excluding proposal preparation. Other third-party costs  
27 incurred before the Effective Date shall not be reimbursable.  
28

29 (2) Reimbursement of all actual and verifiable costs the Developer incurs after the  
30 Effective Date for substantive work performed for the Site Preparation Project and the Public  
31 Improvements, provided that CMPA has approved the contracts for such work. Third-party costs for work  
32 reasonably attributable to the Private Improvements shall not be reimbursable.  
33

34 (3) Payment of a termination fee in lieu of the Development Fee earned pursuant to  
35 Subsection 2.06(a), which termination fee shall be Fifty Thousand Dollars (\$50,000) if the Public  
36 Financing is not available; provided, however, that if the Public Financing is available, or later becomes  
37 available within twenty-four (24) months following termination, the termination fee shall be Two Hundred  
38 Fifty Thousand Dollars (\$250,000), payable at such time as Public Financing funds are available, and  
39 less the amount of any termination fee previously paid.  
40

41 Upon any termination before the end of the term of this Agreement or the Sub-Lease without cause, the  
42 Developer shall be entitled to and have a lien upon CMPA's interest in the Property equivalent to the  
43 termination payment amount. Except as set forth in this Subsection 12.05(e), upon termination neither  
44 the Developer nor CMPA shall be obligated or liable one to the other in any way, financially or otherwise,  
45 for any claim or matter arising from or as a result of this Agreement or any actions taken by the Developer  
46 and CMPA, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its  
47 own costs.  
48

49 (f) Notwithstanding anything to the contrary contained herein, in the event that any party  
50 shall have, but shall not exercise, the right hereunder to terminate this Agreement because of the non-  
51 satisfaction of any condition specified in this Section 12.05, and such condition is subsequently satisfied,  
52 then the non-satisfaction of such condition shall no longer be the basis for termination of this Agreement.  
53

54 **Section 12.06** Agreement Termination Certificate.  
55

1 (a) In the event of a termination of this Agreement for any reason prior to the Expiration  
2 Date, each of the parties hereto do covenant and agree with each other to promptly execute an  
3 Agreement Termination Certificate prepared by the party electing to terminate this Agreement. The  
4 Agreement Termination Certificate shall be substantially in the form attached hereto as Exhibit "H" and  
5 shall expressly state that this Agreement has been terminated in accordance with its terms, is no longer  
6 of any force and effect except for those provisions hereof which expressly survive termination, that the  
7 rights, duties and obligations of the parties hereto have been terminated and released (subject to those  
8 surviving provisions hereof) and that the Project Site is no longer subject to any restrictions, limitations or  
9 encumbrances imposed by this Agreement.

10  
11 (b) The certificate described in subsection (a) shall be prepared in a form suitable for  
12 recording and promptly after execution by all of the parties hereto shall be recorded in the public records  
13 of Escambia County, Florida.

14  
15 **ARTICLE XIII.**  
16 **RIGHT TO CONTEST.**

17  
18 **Section 13.01 Right to Contest.** Subject to the conditions set forth in Section 13.02 below,  
19 CMPA or the Developer each may, at its sole discretion and expense, after prior written notice to the  
20 other party hereto, contest by appropriate action or proceeding conducted in good faith and with due  
21 diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes,  
22 assessments, impact fees or other public charges of a similar nature that may from time to time be levied  
23 upon or assessed by any appropriate governmental authority against the Developer, the Project (or any  
24 part thereof), the Project Site, furniture, fixtures, equipment or other personal property thereon, and the  
25 revenues generated from the use or operation of any or all of the above, any other payment specifically  
26 identified in this Agreement, or compliance with any law, rule, regulation, or other such legal requirement.

27  
28 **Section 13.02 Conditions.** The right to contest any charge, payment or requirement pursuant to  
29 Section 13.01 is subject to the following:

30  
31 (a) such proceeding shall suspend the execution or enforcement of such charge, payment or  
32 requirement;

33  
34 (b) such proceeding will not create any risk of impairment of the acquisition or preparation of  
35 the Project Site, the construction, completion, operation or use of the Project, the Project Site, or any part  
36 thereof, in any material respect, and neither the Project or Project Site, nor any part of the Project or the  
37 Project Site, would be subject to any risk of being involuntarily sold, forfeited or lost or the acquisition of  
38 the Project Site or the construction, equipping, or completion of the Project or any part thereof be delayed  
39 or prohibited;

40  
41 (c) such proceeding will not subject any other party to criminal liability or risk of material civil  
42 liability for failure to comply therewith, or involve risk of any material claim against such party; and

43  
44 (d) the party seeking the benefit of this Section 13.02 shall have furnished to the other  
45 parties such security, if any, as may be required in such proceeding or as may be reasonably requested  
46 by the others, to protect the Project and the Project Site, and any part thereof, and any interest of such  
47 parties hereunder.

48  
49 **ARTICLE XIV.**  
50 **DISPUTE RESOLUTION.**

51  
52 In the event of any dispute arising out of or in any related to this Agreement, or any of the  
53 transactions or occurrences described or contemplated herein, the parties shall be obligated to follow the  
54 following dispute resolution procedures:  
55

1 (a) First, the parties shall attempt to negotiate a resolution of the dispute by direct  
2 discussions. Such negotiation shall be initiated by written demand by one party to another, and the  
3 negotiations may occur with or without counsel, as the parties elect.  
4

5 (b) Second, in the event that any dispute is not resolved under paragraph (a) within three  
6 weeks of written demand for negotiation, the parties shall mediate the dispute under the statutes and  
7 rules governing mediation in the state of Florida. The parties shall first attempt to select a mediator by  
8 mutual agreement. Any mediator selected, or sought to be appointed as provided below, shall be a  
9 mediator certified by the Supreme Court of Florida to mediate civil cases. If they cannot do so within thirty  
10 (30) business days following the expiration of the ninety (90) day negotiation period, the parties shall  
11 petition the then Chief Judge of the First Judicial Circuit of Florida to appoint an appropriate mediator.  
12 Such mediation shall be without prejudice to further voluntary or court-ordered mediation in the event it is  
13 unsuccessful. The costs of obtaining the appointment of a mediator, the fees and expenses of the  
14 mediation, or any other cost or charge of the mediation shall be borne equally by the parties, unless  
15 otherwise agreed.  
16

17 (c) If any dispute is not resolved pursuant to the foregoing process, either party may resort to  
18 any other judicial or non-judicial remedies available to them under this Agreement and applicable law.  
19

## 20 **ARTICLE XV.**

### 21 **UNAVOIDABLE DELAY.**

22

#### 23 **Section 15.01 Unavoidable Delay.**

24

25 (a) (1) Any delay in performance of or inability to perform any obligation under this  
26 Agreement (other than an obligation to pay money) due to any event or condition described in paragraph  
27 (2) as an event of "Unavoidable Delay" shall be excused in the manner provided in this Section 15.01.  
28

29 (2) "Unavoidable Delay" means any of the following events or conditions or any  
30 combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence,  
31 archaeological excavations required by law, unavailability of materials after timely ordering of same,  
32 epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes,  
33 floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local  
34 weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays  
35 due to proceedings under Chapters 73, 74 or 75, *Florida Statutes*, restoration in connection with any of  
36 the foregoing or any other cause beyond the reasonable control of the party performing the obligation in  
37 question, including, without limitation, economic conditions described in section 15.01(b) and such causes  
38 as may arise from the act of the other party to this Agreement, or acts of any governmental authority.  
39

40  
41 (3) An application by any party hereto (referred to in this paragraph (3) and in  
42 paragraph (4) as the "Applicant") for an extension of time pursuant to this subsection (a) must be in  
43 writing, must set forth in detail the reasons and causes of delay, and must be filed with the other party to  
44 this Agreement within seven (7) days following the occurrence of the event or condition causing the  
45 Unavoidable Delay or seven (7) days following the Applicant becoming aware (or with the exercise of  
46 reasonable diligence should have become aware) of such occurrence.  
47

48 (4) The Applicant shall be entitled to an extension of time for an Unavoidable Delay  
49 only for the number of days of delay due solely to the occurrence of the event or condition causing such  
50 Unavoidable Delay and only to the extent that any such occurrence actually delays that party from  
51 proceeding with its rights, duties and obligations under this Agreement affected by such occurrence.  
52

53 (b) (1) The parties recognize and agree that under certain economic conditions in the  
54 nation or in the northwest Florida area certain parts of the Project may not be economically feasible at the  
55 time provided in the Project Schedule when the Developer must decide whether to proceed with that part  
56 of the Project. In such an event, which is beyond the control of the parties to this Agreement, it is the

1 intent and desire of the parties that the rights, duties and obligations of the Developer to develop various  
2 parts of the Project should not be lost, waived or forfeited solely as a result of such severe, adverse  
3 economic conditions. In such an event, the parties agree the provisions of this subsection (b) may be  
4 invoked by the Developer for an extension of time in which to proceed with the acquisition or lease of  
5 Parcels and the development of the Project.

6  
7 (2) In the event adverse economic conditions in the northwest Florida area prevent  
8 the successful development of any part of the Project at the time set forth in the Project Schedule, the  
9 Developer may submit a request to CMPA for an extension of time in the Project Schedule for up to six  
10 (6) months per request. In its request, the Developer shall certify that adverse economic conditions in the  
11 northwest Florida area prevent the successful economic development of any part of the Project, and that  
12 an extension of time is needed. The Developer shall provide reasonable detail evidencing the basis for  
13 the adverse economic conditions preventing successful development of the Project, or any part thereof.

14  
15 (3) CMPA shall promptly consider the request from the Developer and within thirty  
16 (30) days of receipt of the request from the Developer shall either approve or reject the request. CMPA  
17 may approve an extension of time for up to six (6) months per request. If an extension of time is granted  
18 by CMPA, all dates, time periods, deadlines and other times in which actions are to be taken shall be  
19 extended by the time period of the extension approved by CMPA.

20  
21 (4) At the expiration of any six (6) month or other extension period, the Developer  
22 may request another extension of time and shall present evidence of the adverse economic conditions at  
23 that time preventing successful development of any part of the Project.

24  
25 **ARTICLE XVI.**  
26 **RESTRICTIONS ON USE.**

27  
28 **Section 16.01** Project. Prior to the earlier of the Termination Date or the Expiration Date, no use of the  
29 Project other than as a mixed use project consistent with the uses as described in Section 2.01 shall be  
30 permitted unless and until the Developer or the person, if other than the Developer, intending to so use  
31 the Project or Project Site, shall file with CMPA a request for a release from the restriction imposed by this  
32 Section 16.01. CMPA shall promptly consider such request and either deny the request, approve the  
33 request as filed, or approve the request subject to such terms, conditions and limitations as CMPA may  
34 reasonably require. Unless specifically requested and approved, a release of the restriction imposed by  
35 this Section 16.01 shall not release the Developer from any obligations or restrictions imposed by this  
36 Agreement or any agreement, instrument or document contemplated hereby and in the Sub-Lease.

37  
38 **ARTICLE XVII.**  
39 **FIRE OR OTHER CASUALTY.**

40  
41 **Section 17.01** Loss or Damage to Project.

42  
43 (a) Until the Termination Date or the Expiration Date, whichever is later, and without regard  
44 to the extent or availability of any insurance proceeds, the Developer covenants and agrees to assist  
45 CMPA in diligently commencing and completing, or causing other persons to diligently commence and  
46 complete, the reconstruction or repair of any loss or damage caused by fire or other casualty to each and  
47 every part of the Site Preparation Project to substantially the condition as existed prior to the occurrence  
48 of such loss or damage, promptly after CMPA approves the plans and specifications for such  
49 reconstruction or repairs.

50  
51 (b) CMPA shall review the associated plans and specifications for such reconstruction or  
52 repairs as soon as possible after preparation thereof. Neither CMPA nor the Developer may object to the  
53 plans and specifications for such reconstruction or repairs if the contemplated reconstruction or repairs  
54 will restore the Project, or the damaged portion thereof, to substantially the same condition as existed  
55 prior to the occurrence of such loss or damage in conformance with applicable laws, ordinances, codes,  
56 and regulations in effect at the time of the need for such reconstruction or repairs.

1  
2 **Section 17.02 Partial Loss or Damage to Project.** Any loss or damage by fire or other casualty to  
3 the Project or Project Site, or any portion thereof, which does not render the Project or Project Site  
4 unusable for the use contemplated by Section 2.01 of this Agreement, shall not operate to terminate this  
5 Agreement or to relieve or discharge CMPA or the Developer from the timely performance and fulfillment  
6 of their respective obligations pursuant to this Agreement, subject to an extension of time for an  
7 Unavoidable Delay.

8  
9 **Section 17.03 Project Insurance Proceeds.**

10  
11 (a) Whenever the Site Preparation Project or the Public Improvements, or any part thereof,  
12 shall have been damaged or destroyed, the Developer on behalf of CMPA shall promptly make proof of  
13 loss and shall proceed promptly to collect, or cause to be collected, all valid claims which may have  
14 arisen against insurers or others based upon such damage or destruction.

15  
16 (b) CMPA agrees that all proceeds of property or casualty insurance received as a result of  
17 such loss or damage shall be available and shall be used for payment of the costs of the reconstruction or  
18 repair of the Site Preparation Project or the Public Improvements to the extent necessary to repair or  
19 reconstruct the Project.

20  
21 **Section 17.04 Notice of Loss or Damage to Project.** Each party shall promptly give the other party  
22 and the City written notice of any significant damage or destruction to the Site Preparation Project or the  
23 Public Improvements, stating the date on which such damage or destruction occurred, the expectations  
24 as to the effect of such damage or destruction on the use of the Project, and the proposed schedule, if  
25 any, for repair or reconstruction.

26  
27  
28 **ARTICLE XVIII.**  
29 **MISCELLANEOUS**

30  
31 **Section 18.01 Assignments.** The Developer shall not have the right to assign its rights and obligations  
32 under this Agreement without the prior written consent of CMPA, which shall not be unreasonably  
33 withheld.

34  
35 **Section 18.02 Successors and Assigns.** The terms herein contained shall bind and inure to the  
36 benefit of CMPA, and its successors and assigns, and the Developer, and its successors and assigns,  
37 except as may otherwise be specifically provided herein.

38  
39 **Section 18.03 Notices.**

40  
41 (a) All notices, demands, requests for approvals or other communications given by either  
42 party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid,  
43 return receipt requested or by courier service, or by hand delivery to the office for each party indicated  
44 below and addressed as follows:

45  
46 To CMPA: Community Maritime Park Associates, Inc.  
47 c/o Lacey A. Collier, Chairman/Trustee  
48 3885 Durango Drive  
49 Pensacola, FL 32504

50  
51 Copy to: Edward P. Fleming  
52 McDonald, Fleming Moorhead  
53 25 W. Government Street  
54 Pensacola, FL 32502-5813

55  
56 To Developer: Maritime Park Development Partners, LLC

1 c/o Jeff Galt  
2 85 NE Loop 410, Ste. 207  
3 San Antonio, TX 78216  
4

5 Copy to: Mark G. Lawson  
6 Bryant Miller Olive, P.A.  
7 101 N. Monroe Street, Ste. 900  
8 Tallahassee, FL 32301  
9

10 (b) Notices given by courier service or by hand delivery shall be effective upon delivery and  
11 notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any  
12 person to accept delivery of any notice delivered to the office at the address indicated above (or as it may  
13 be changed) shall be deemed to have been an effective delivery as provided in this Section 18.03. The  
14 addresses to which notices are to be sent may be changed from time to time by written notice delivered to  
15 the other parties and such notices shall be effective upon receipt. Until notice of change of address is  
16 received as to any particular party hereto, all other parties may rely upon the last address given.  
17

18 **Section 18.04 Severability.** If any term, provision or condition contained this Agreement shall, to any  
19 extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term,  
20 provision or condition to persons or circumstances other than those in respect of which it is invalid or  
21 unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement  
22 shall be valid and enforceable to the fullest extent permitted by law.  
23

24 **Section 18.05 Applicable Law and Construction.** The laws of the State of Florida shall govern the  
25 validity, performance and enforcement of this Agreement. This Agreement has been negotiated by CMPA  
26 and the Developer, and the Agreement, including, without limitation, the Exhibits, shall not be deemed to  
27 have been prepared by CMPA or the Developer, but by all equally.  
28

29 **Section 18.06 Venue; Submission to Jurisdiction.**

30  
31 (a) For purposes of any suit, action, or other proceeding arising out of or relating to this  
32 Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Escambia  
33 County, Florida.  
34

35 (b) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida,  
36 Escambia County and the courts thereof and to the jurisdiction of the United States District Court for the  
37 Northern District of Florida, for the purposes of any suit, action, or other proceeding arising out of or  
38 relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise  
39 that such action is brought in an inconvenient forum or that the venue of such action is improper or that  
40 the subject matter thereof may not be enforced in or by such courts.  
41

42 **Section 18.07 Agreement Not a Chapter 86-191, Laws of Florida, Development Agreement.** CMPA  
43 and the Developer acknowledge and agree that this Agreement, including, without limitation, any of the  
44 Exhibits, is not a development agreement as described in Sections 19-31, Chapter 86-191, Laws of  
45 Florida, codified as Sections 163.3220-163.3243, *Florida Statutes*.  
46

47 **Section 18.08 Complete Agreement; Amendments.**

48  
49 (a) This Agreement, and all the terms and provisions contained herein, including without  
50 limitation the Exhibits hereto, constitute the full and complete agreement between the parties hereto to  
51 the date hereof, and supersedes and controls over any and all prior agreements, understandings,  
52 representations, correspondence and statements whether written or oral.  
53

54 (b) Any provisions of this Agreement shall be read and applied *in para material* with all other  
55 provisions hereof.  
56

1 (c) This Agreement cannot be changed or revised except by written amendment signed by  
2 all parties hereto.

3  
4 **Section 18.09 Captions.** The article and section headings and captions of this Agreement and the  
5 table of contents preceding this Agreement are for convenience and reference only and in no way define,  
6 limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this  
7 Agreement or construe any article, section, subsection, paragraph or provision hereof.

8  
9 **Section 18.10 Holidays.** It is hereby agreed and declared that whenever a notice or performance  
10 under the terms of this Agreement is to be made or given on a Saturday or Sunday or on a legal holiday  
11 observed in the City, it shall be postponed to the next following business day.

12  
13 **Section 18.11 Exhibits.** Each Exhibit referred to and attached to this Agreement is an essential  
14 part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically  
15 attached hereto shall be treated as if they are part of this Agreement.

16  
17 **Section 18.12 No Brokers.** CMPA and the Developer hereby represent, agree and acknowledge that  
18 no real estate broker or other person is entitled to claim or to be paid a commission as a result of the  
19 execution and delivery of this Agreement, including any of the Exhibits, or any proposed improvement,  
20 use, disposition, lease, conveyance or acquisition of any or all of the Project Site.

21  
22 **Section 18.13 Not an Agent of City.** During the term of this Agreement, the Developer hereunder  
23 shall not be an agent of the City, with respect to any and all services to be performed by the Developer  
24 (and any of its agents, assigns, or successors) with respect to the Project.

25  
26 **Section 18.14 Recording of Development Agreement.** CMPA and the Developer agree that this  
27 Agreement shall be recorded in the public records of Escambia County, Florida, as soon as possible after  
28 execution thereof. CMPA shall pay the cost of such recording.

29  
30 **Section 18.15 No General Obligation.** In no event shall any obligation of CMPA under this Agreement  
31 be or constitute a general obligation or indebtedness of the City, a pledge of the ad valorem taxing power  
32 of the City or a general obligation or indebtedness of the City within the meaning of the Constitution of the  
33 State of Florida or any other applicable laws, but shall be payable solely from legally available revenues  
34 and funds. Neither the Developer nor any other party under or beneficiary of this Agreement shall ever  
35 have the right to compel the exercise of the ad valorem taxing power of the City or any other  
36 governmental entity or taxation in any form on any real or personal property to pay the City's obligations  
37 or undertakings hereunder.

38  
39 **Section 18.16 Technical Amendments; Changes.** In the event that due to minor inaccuracies  
40 contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or due to  
41 changes resulting from technical matters arising during the term of this Agreement, the parties agree that  
42 amendments to this Agreement required due to such inaccuracies, unforeseen events or circumstances  
43 which do not change the substance of this Agreement may be made and incorporated herein. In addition,  
44 as mutually agreed by the parties, this Agreement (including the Project design and layout) may be  
45 amended and restated to more effectively address the maturation of the Project, market conditions,  
46 challenges and opportunities, performance by the Project participants, and other extraneous factors.

47  
48 **Section 18.17 Term; Agreement Expiration Certificate.**

49  
50 (a) If not earlier terminated as provided in Section 12.05, this Agreement shall terminate on  
51 the date specified in the Agreement Expiration Certificate as described below.

52  
53 (b) Upon completion of the term of this Agreement, all parties hereto shall execute the  
54 Agreement Expiration Certificate substantially in the form attached as Exhibit "I" hereto. The Agreement  
55 Expiration Certificate shall constitute (and it shall be so provided in the certificate) a conclusive  
56 determination of satisfactory completion of all obligations hereunder and the expiration of this Agreement.

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(c) In the event of any dispute as to whether any party is required to execute the Agreement Expiration Certificate, the dispute shall be resolved as provided in ARTICLE XIV.

**Section 18.18 Effective Date.** Upon execution of this Agreement (and such of the Exhibits as are contemplated to be executed simultaneously with this Agreement by the authorized trustees of CMPA and by authorized representatives of the Developer following approval hereof by CMPA and the Developer, this Agreement (and any executed Exhibits) shall be in full force and effect in accordance with its terms and the Effective Date shall be the first day of the month in which all parties have executed same.

**Section 18.19 Approvals Not Unreasonably Withheld.** The parties hereto represent that it is their respective intent as of the Effective Date and do covenant and agree in the future that all approvals, consents, and reviews will be undertaken and completed as expeditiously as possible, in good faith, and will not be arbitrarily or unreasonably withheld, unless otherwise expressly authorized by the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals.

[SIGNATURES ON FOLLOWING PAGES]

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Executed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)

(witnesses as to Lacey A. Collier)

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2009, by Lacey A. Collier, chairman and trustee of Community Maritime Park Associates, Inc., a Florida not-for-profit corporation. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)

**COMMUNITY MARITIME PARK  
ASSOCIATES, INC.,**  
a Florida not-for-profit corporation

By: \_\_\_\_\_  
Lacey A. Collier, Chairman/Trustee

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number:

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Executed and delivered  
in the presence of:

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Name)

(witnesses as to Scott R. Davison)

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2009, by Jeff Galt, \_\_\_\_\_ of Maritime Park Development Partners, LLC, a Florida limited liability company. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)

**MARITIME PARK DEVELOPMENT  
PARTNERS, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Jeff Galt, [title]

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number:

**CONSENT AND JOINDER**

At a duly called public meeting on March 23, 2009, the City Council, acting separately and concurrently as the governing body of both the City and the CRA, approved this Agreement and authorized and directed the execution of this Consent and Joinder by the appropriate officials of the City and CRA evidencing same.

This Consent and Joinder is provided for the purpose of acknowledging that this Agreement is to be construed as consistent with and in furtherance of the objectives of the Master Development Agreement (2006) and Master Lease (2006), acknowledging the joinder, intention and commitment of the City and CRA to cooperatively work with the CMPA and the Developer toward successful development of the Project as provided for herein, and acknowledging that full performance hereunder shall be deemed and construed as full performance under the Master Development Agreement (2006) and Master Lease (2006) in all respects.

**CITY OF PENSACOLA, FLORIDA**

By: \_\_\_\_\_  
Al Coby, City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

**COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF PENSACOLA, FLORIDA**

By: \_\_\_\_\_  
Al Coby, City Manager

ATTEST:

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM  
AND EXECUTION:

By: \_\_\_\_\_  
City Attorney

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**EXHIBIT "A"**

**Project Site  
Legal Description**

THAT PORTION OF THE WATERFRONT TRACT, CITY OF PENSACOLA, ESCAMBIA COUNTY, FLORIDA, ACCORDING TO THE OFFICIAL MAP OF WATERFRONT DRAWN BY WILLIAM GALT CHIPLEY IN 1889 AND REVISED IN 1890, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH RIGHT-Of-WAY LINE OF MAIN STREET (R/W VARIES), BEING 210 FEET WEST OF THE WEST RIGHT OF WAY LINE OF DEVILLIERS STREET (50' R/W); THENCE SOUTH AND PARALLEL TO SAID DEVILLIERS STREET TO THE POINT OF INTERSECTION WITH THE WESTERLY EXTENSION OF THE SOUTH FACE OF A CONCRETE SEAWALL; THENCE EASTERLY ALONG SAID WESTERLY EXTENSION AND ALONG SAID SEAWALL, TO THE POINT OF INTERSECTION WITH THE EASTERLY EXTENSION OF SAID SEAWALL AND SOUTHERLY EXTENSION OF THE WEST LINE OF BLOCK 3, OLD CITY TRACT; THENCE NORTHERLY ALONG SAID SOUTHERLY EXTENSION TO THE POINT OF INTERSECTION WITH THE MEAN HIGH WATER LINE OF PENSACOLA BAY; THENCE EASTERLY ALONG SAID MEAN HIGH WATER LINE TO THE POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE WEST LINE OF PARCEL "C", PORT ROYAL PHASE II, AS RECORDED IN PLAT BOOK 15, PAGE 98, OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG SAID SOUTHERLY EXTENSION OF SAID WEST LINE OF SAID PARCEL "C" TO THE NORTH LINE OF SAID PARCEL "C"; THENCE EASTERLY ALONG SAID NORTH LINE OF SAID PARCEL "C" TO THE WEST RIGHT-Of-WAY LINE OF PORT ROYAL WAY (PRIVATE DRIVE), AS RECORDED IN O. R. BOOK 1749, PAGE 253-254, OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE NORTHERLY ALONG SAID WEST LINE TO THE SOUTH RIGHT-OF-WAY LINE OF SAID MAIN STREET; THENCE WESTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE OF MAIN STREET TO THE POINT OF BEGINNING.

SUBJECT TO AN EXISTING DRAINAGE AND PUBLIC RIGHT-OF-WAY EASEMENT IN THE APPROXIMATE LOCATION OF THE SOUTHERLY EXTENSION OF THE SPRING STREET RIGHT-OF-WAY (R/W VARIES) AS LOCATED NORTH OF MAIN STREET.



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**EXHIBIT "C"**

**Developer's Project Professionals**

**Project Role**

**Company**

Developer	Maritime Park Development Partners, LLC
Project Manager	Bruce Cutright
Minority & Women-Owned Business Inclusion	The Target Group
Architect - Multi use Stadium	HOK Sport, HKS or other
Architect - Commercial & Residential	Spencer Maxwell Bullock
Architect - Commercial & Residential	Bullock Tice Associates
Engineer - Civil	Baskerville- Donovan, Inc.
Engineer - Traffic	Engineering and Planning P.C.
Engineer - Environmental	Qore Environmental Consultants
Financing - Public	The Normandy Group. LLC
Financing - Institutional	CapMark Financial Services
Financing - Private	Brass Real Estate Funds
Marketing -Coordinating Broker	Saxet Realty
Marketing - Office Leasing Broker	NAI Halford
Marketing - Residential Broker	John S Carr & Co.
Insurance	Quinn Insurance
Insurance	Fisher-Brown Insurance
Public Relations	BPM
Photography	Al Henderson Photography

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**EXHIBIT "D"**

**Preliminary Project Schedule**

*[Insert separate document – emailed from MPDP March 10, 2009]*

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*[Insert separate document – emailed from MPDP March 10, 2009]*

1 EXHIBIT "E"

2  
3 Community Maritime Park

4  
5 Site Preparation Project Completion Certificate

6  
7 Pursuant to Section 4.05 of the Development Agreement (Community Maritime Park) between  
8 Community Maritime Park Associates, Inc. ("CMPA"), and Maritime Park Development Partners, LLC (the  
9 "Developer") with an Effective Date of January \_\_, 2009 (the "Development Agreement"), the Developer  
10 does hereby certify to CMPA that the part of or all of the Site Preparation Project (as that term is defined  
11 in the Development Agreement) described in the attachment to this Certificate has been completed  
12 substantially in accordance with the Site Preparation Project plans and specifications and the  
13 Development Agreement. The Developer does hereby request CMPA agree to such certification.  
14

15 Certified this \_\_ day of \_\_\_\_\_, 200\_.

16  
17 MARITIME PARK DEVELOPMENT PARTNERS, LLC,  
18 a Florida limited liability company

19  
20  
21 By: \_\_\_\_\_  
22 Authorized Representative

23  
24 STATE OF FLORIDA  
25 COUNTY OF ESCAMBIA

26  
27 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_  
28 \_\_\_\_\_, \_\_\_\_\_ of Maritime Park Development Partners, LLC, a  
29 Florida limited liability company. He/she is personally known to me or has produced a valid driver's  
30 license as identification.

31  
32 (SEAL)

33  
34  
35 \_\_\_\_\_  
36 Printed/Typed Name: \_\_\_\_\_  
37 Notary Public-State of Florida  
38 Commission Number:

39 Accepted and Agreed to by:

40  
41 COMMUNITY MARITIME PARK ASSOCIATES, INC.

42  
43 By: \_\_\_\_\_  
44 Authorized Representative

45  
46 STATE OF FLORIDA  
47 COUNTY OF ESCAMBIA

48  
49 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_  
50 \_\_\_\_\_, \_\_\_\_\_ of Community Maritime Park Associates, Inc., a Florida not-for-profit  
51 corporation. He/she is personally known to me or has produced a valid driver's license as identification.

52  
53 (SEAL)

54  
55 \_\_\_\_\_  
56 Printed/Typed Name: \_\_\_\_\_

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Notary Public-State of Florida  
Commission Number:

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**EXHIBIT "F"**

**Public Improvements Budget**

*[Insert separate document – emailed from MPDP March 10, 2009]*

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**EXHIBIT "F" Continued**  
**Public Improvements Budget**  
**Alternate Scenarios**  
**Limited Public Funds**

*[Insert separate document – emailed from MPDP March 10, 2009]*



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## EXHIBITS

"A"	Project Site
"B"	Sub-Leased Property Description
"C"	Initial Parcel Plan

1 SUB-LEASE

2  
3 THIS IS A SUB-LEASE, executed on the dates hereinafter set forth and commencing  
4 on the date provided herein, between COMMUNITY MARITIME PARK ASSOCIATES, INC., a  
5 Florida not-for-profit corporation ("Sub-Lessor" or "CMPA"), and MARITIME PARK  
6 DEVELOPMENT PARTNERS, LLC, a Florida limited liability company ("Sub-Lessee" or  
7 "Developer") for the following uses and purposes:  
8

9 **RECITALS**

10  
11 CMPA and the City of Pensacola, Florida (the "City"), are parties to two agreements  
12 dated March 27, 2006 – the Master Development Agreement (Community Maritime Park  
13 Project) and the Master Lease (Community Maritime Park) – which set forth CMPA's and the  
14 City's respective duties and responsibilities pertaining to the development of real property  
15 for a project known and referred to as the Community Maritime Park or the Project (as  
16 hereinafter defined).  
17

18 With the City's approval, CMPA conducted a two-stage competitive procurement  
19 (RFQ No. 2007-02 and RFP No. 2007-03) to select a private sector developer to implement  
20 CMPA's vision of the Project, which culminated on August 22, 2008, with the trustees of  
21 CMPA voting to negotiate a development agreement (the "Development Agreement") and  
22 this Sub-Lease with the Sub-Lessee.  
23

24 CMPA and the Sub-Lessee have entered into and concluded negotiations, which have  
25 resulted in the Development Agreement and this Sub-Lease.  
26

27 At a duly called public meeting on March 23, 2009, the City Council approved this  
28 Sub-Lease and authorized and directed its execution by the appropriate officials of CMPA.  
29

30 The trustees of CMPA have approved this Sub-Lease and have authorized and  
31 directed certain individuals to execute this Sub-Lease on behalf of CMPA.  
32

33  
34 **AGREEMENT**

35  
36 NOW THEREFORE, in consideration of the mutual promises and covenants set forth  
37 below and other good and valuable consideration, the receipt and adequacy of which are  
38 acknowledged, the parties agree as follows:  
39

40 1. **RECITALS**. The foregoing recitals are true, correct and incorporated into  
41 this Sub-Lease.

42 2. **DEFINITIONS**. Capitalized terms used in this Sub-Lease shall have the  
43 following definitions. As to each of the following definitions, use of the masculine gender  
44 shall be considered and construed to include correlative words of the feminine and neuter  
45 genders. Unless the context shall indicate otherwise, the singular shall include the plural  
46 as well as the singular number.

47 2.01. "Act" means the Constitution of the State of Florida; Section 163.01,  
48 *Florida Statutes*; Part III, Chapter 163, *Florida Statutes*; Chapter 166, *Florida Statutes*, the  
49 Charter of the City; other applicable provisions of law; and ordinances and resolutions of  
50 the City implementing them.

1 2.02. "Applicable Law" means with respect to any Person, all provisions of  
2 constitutions, statutes, rules, regulations and orders of governmental bodies or regulatory  
3 agencies applicable to such Person, and all orders and decrees of all courts and arbitrators  
4 in proceedings or actions to which the Person is a party or by which it or its properties are  
5 bound.

6 2.03. "Approved Development Plan" means the community redevelopment  
7 plan for the Area, including the Project Site, as approved by the CRA and adopted by the  
8 City Council on March 27, 1984, by adoption of its Resolution No. 15-84, and including any  
9 amendments to the plan, specifically including, but not limited to, the amendment adopted  
10 by the City Council on June 23, 2005.

11 2.04. "Area" means the area located within the corporate limits of the City  
12 having conditions of slum and blight (as those conditions are defined in the Act).

13 2.05. "Authorized Representative" means the Person or Persons designated  
14 and appointed from time to time as such by either party.

15 2.06. "Bonds" means that part of the Public Financing consisting of the  
16 revenue bonds to be issued or committed to by Sub-Lessor to pay the Public  
17 Improvements Costs in a net amount not to exceed \$40 million and secured by payments  
18 made by the CRA to the City.

19 2.07. "Building Official" means that Person or those Persons authorized  
20 under the Florida Building Code (2004 Edition, as amended) to issue on behalf of the City a  
21 Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of  
22 Completion.

23 2.08. "Building Permit" means for all or each part of the Project to be  
24 constructed on a Parcel, any permit, including foundation only permits, issued by the  
25 appropriate department, office or official of the City or other governmental authority  
26 having jurisdiction over the construction on the Development Site.

27 2.09. "Certificate of Completion" means the certificate of completion issued  
28 by a Building Official pursuant to the Florida Building Code (2004 Edition, as amended).

29 2.10. "Certificate of Occupancy" means the final, temporary or partial  
30 Certificate of Occupancy issued by a Building Official pursuant to the Florida Building Code  
31 (2004 Edition, as amended).

32 2.11. "City" means the City of Pensacola, a Florida municipal corporation  
33 created under the laws of the State of Florida, and any successors or assigns thereto.

34 2.12. "City Codes" or "Codes" means the ordinances and codes of the City  
35 that regulate the development and construction of the Project and each Building, including  
36 but not limited to, the building codes and zoning regulations known as the ULDR and the  
37 Florida Building Code (2004 Edition, as amended).

38 2.13. "City Council" means the governing body of the City, by whatever  
39 name known or however constituted from time to time.

40 2.14. "Community Multi-Use Facility" means that component of the Public  
41 Improvements consisting of a structure that can be used for various public events,  
42 including professional or amateur sports, concerts, and other community events.

43 2.15. "Conference Center" means that component of the Public  
44 Improvements consisting of a venue in which conferences, seminars, meetings and other  
45 similar-type events can be held, which may be part of the Public Improvements or the

1 Private Improvements, as the Developer determines in light of market conditions and  
2 Project economics.

3 2.16. "Construction Commencement Date" means the date on which the  
4 Sub-Lessee or a Sub-Sublessee commences or causes a Contractor to commence  
5 construction of any part of the Public Improvements or the Private Improvements.

6 2.17. "Construction Completion Date" means the date on which construction  
7 for all or that portion of the Public Improvements or the Private Improvements on a  
8 particular Parcel is Substantially Complete in accordance with the terms of this Sub-Lease.

9 2.18. "Construction Financing" means the funds provided by the  
10 Construction Lender under the Construction Loan for the commercially reasonable hard and  
11 soft construction and development costs related solely to developing any part of the Private  
12 Improvements, including the design, professional consulting, construction and equipping  
13 costs, and the costs for the Private Improvements to be made on a Parcel, which may be  
14 secured by a leasehold mortgage, security interest, pledge, lien or other encumbrances  
15 and includes all modifications, renewals, extensions and replacements thereof and future  
16 advances thereunder against the Sub-Lessee's or Sub-Sublessee's leasehold interest in  
17 that Parcel.

18 2.19. "Construction Financing Documents" means any commitment,  
19 agreement, note, leasehold mortgage or other instrument evidencing and securing the  
20 Construction Loan, as amended, modified, renewed, extended, replaced or restated from  
21 time to time.

22 2.20. "Construction Lender" means any Person providing the Construction  
23 Loan.

24 2.21. "Construction Loan" means funds in the principal amount evidenced in  
25 the commitment made by Construction Lender in favor of the Sub-Lessee or Sub-Sublessee  
26 for the construction of any part of the Private Improvements.

27 2.22. "Contractor" means one or more Persons constituting a general  
28 contractor or other type of construction contractor properly licensed by the State of Florida,  
29 or other appropriate jurisdiction to the extent required by Applicable Law, authorized to  
30 perform construction contractor services in the State of Florida, registered with the City as  
31 required by Applicable Law, and bonded and insured to the extent required by Applicable  
32 Law, as more particularly described in the Development Agreement.

33 2.23. "CRA" means the Community Redevelopment Agency of the City of  
34 Pensacola, Florida, a body politic and corporate created by the City pursuant to Part III,  
35 Chapter 163, Florida Statutes.

36 2.24. "Developer" means Maritime Park Development Partners LLC, a Florida  
37 limited liability company.

38 2.25. "Development Agreement" means the agreement between CMPA and  
39 the Developer with an effective date of \_\_\_\_\_, 2009, authorizing the Developer to  
40 undertake and complete the Site Preparation Project and the public Improvements and  
41 providing for execution of this Sub-Lease for development of the Private Improvements.

42 2.26. "Effective Date" means the date specified in Section 42 hereof.

43 2.27. "Expiration Date" means the date on which the Development  
44 Agreement expires, as provided in Section 18.17 of the Development Agreement.

45 2.28. "Hotel Project" means that component of the Private Improvements  
46 that may consist of the design, development, construction, completion and operation of

1 those buildings, structures, facilities and other improvements to be constructed and  
2 installed on a Parcel to be used as a hotel and uses appurtenant thereto.

3 2.29. "Major Alteration" means any exterior addition, alteration, change or  
4 improvement that would substantially affect the structural integrity of all or part of any  
5 structure located on the Sub-Leased Property.

6 2.30. "Maritime Museum Project" means the design, development,  
7 construction, and completion of those buildings, structures, facilities, and other  
8 improvements pursuant to a sub-lease between CMPA and the University of West Florida.

9 2.31. "Master Developer" means Community Maritime Park Associates, Inc.,  
10 a Florida not-for-profit corporation.

11 2.32. "Master Development Agreement (2006)" means the Master  
12 Development Agreement (Community Maritime Park Project) dated March 27, 2006,  
13 between the City and the Master Developer concerning the redevelopment of the Property.

14 2.33. "Master Lease (2006)" means the Master Lease dated March 27, 2006,  
15 between the City, as Lessor, and the Master Developer, as Lessee, for the development of  
16 the Project, including all attached exhibits, as amended, modified or restated from time to  
17 time.

18 2.34. "Notice of Commencement" means the notice recorded as provided in  
19 section 713.13, *Florida Statutes*.

20 2.35. "Offer" means an offer to purchase the Sub-Leased Property, which  
21 triggers Sub-Lessee's Right of First Refusal as provided in and subject to the conditions  
22 described in Paragraph 31 hereof.

23 2.36. "Office Project" means that component of the Private Improvements  
24 consisting of the office building(s) to be constructed on one or more Parcels by a Developer  
25 pursuant to a Sub-Lease, including office space to be leased and used by The Studer Group  
26 LLC.

27 2.37. "Parcel" means each distinct part of the Sub-Leased Property that is  
28 subject to the issuance of a separate Building Permit, as identified and depicted on the  
29 Parcel Plan.

30 2.38. "Parcel Plan" means the depiction and description of each Parcel,  
31 which may be changed from time to time as provided in Section 6.02 of the Development  
32 Agreement, the initial form of which is attached hereto as Exhibit "C."

33 2.39. "Park" means that component of the Public Improvements consisting  
34 of an open space, public park, and walkways.

35 2.40. "Permit" means any zoning, variance, special exception, yard  
36 modification, zoning approval, development order respecting land use and City Codes, and  
37 consents required to be granted, awarded, issued, or given by any governmental authority  
38 relative to the regulation of land use or zoning in order for construction of the Project, or  
39 any part thereof, to commence, continue or be completed, but does not include a Building  
40 Permit.

41 2.41. "Person" means any natural person, firm, partnership (general or  
42 limited), corporation, company, joint venture, estate, trust, business trust, cooperative,  
43 limited liability corporation, limited liability partnership, limited liability company or body  
44 politic, including any heir, executor, administrator, trustee, receiver, successor or assignee,  
45 or other person acting in a similar representative capacity.

1           2.42. "Plan" means the community redevelopment plan for the Area,  
2 including the Sub-Leased Property, as approved by the CRA and adopted by the City  
3 Council on March 27, 1984, by adoption of its Resolution No. 15-84, and including any  
4 amendments to the Plan, specifically including, but not limited to, the amendment adopted  
5 by the City Council on June 23, 2005.

6           2.43. "Plans and Specifications" mean the plans and specifications separately  
7 identified and used by the Developer and the Contractor to obtain Building Permits for the  
8 Project, as such plans and specifications are amended, modified, or restated from time to  
9 time.

10           2.44. "Private Improvements" means the improvements constructed on the  
11 Sub-Leased Property consisting of the Retail Project, the Hotel Project, the Residential  
12 Project, and the Office Project.

13           2.45. "Project" means, collectively, the Site Preparation Project, the  
14 Maritime Museum Project, the Public Improvements and the Private Improvements.

15           2.46. "Project Coordinator" means the Sub-Lessee, or its successor, who  
16 shall provide the project coordination services described in Section 2.04 of the  
17 Development Agreement.

18           2.47. "Project Professionals" means any architects, engineers, consultants,  
19 planners, construction managers or any other persons, or combination thereof, retained or  
20 employed by Sub-Lessee in connection with the planning, design, construction, completion  
21 and opening of the Site Preparation Project.

22           2.48. "Project Site" means the area described and depicted on Exhibit "A,"  
23 which includes each and every Parcel.

24           2.49. "Public Financing" means the Bonds or other funds available to Sub-  
25 Lessor to pay the Public Improvements Costs and such other costs as may be required by  
26 this Sub-Lease or any other agreement to be paid by the City.

27           2.50. "Public Improvements" means the Project improvements for the use  
28 by the public to be designed, constructed, installed and equipped as provided in the  
29 Development Agreement collectively consisting of the Community Multi-Use Facility and the  
30 Park.

31           2.51. "Public Improvements Costs" means the costs of the Public  
32 Improvements paid from the Public Financing, including costs to plan, design, coordinate,  
33 and obtain the Site Preparation Permit, the Building Permit and the Permits for the Public  
34 Improvements, and the costs to construct, equip, install and complete the Public  
35 Improvements.

36           2.52. "Public Improvements Property" means each Parcel that will contain  
37 any of the Public Improvements.

38           2.53. "Residential Project" means that component of the Private  
39 Improvements consisting of the design, development, construction, completion and  
40 operation of those buildings, structures, facilities and other improvements to be  
41 constructed and installed on the Project Site, which are to be used for residential purposes  
42 and may also include commercial, retail and other non-residential uses located on the  
43 different levels of the Private Improvements.

44           2.54. "Retail Project" means that portion or component of the Private  
45 Improvements consisting of the design, development, construction, completion and  
46 operation of those buildings, structures, facilities and other improvements to be  
47 constructed and installed on the Sub-Leased Property, which are to be used for commercial

1 retail purposes, which may consist in whole or in part of retail uses in other parts of the  
2 Private Improvements.

3 2.55. "Right of First Refusal" means the right of Sub-Lessee to acquire the  
4 Sub-Leased Property as provided in and subject to the conditions described in Paragraph  
5 31 hereof.

6 2.56. "Right to Contest" means the procedure set forth in Paragraph 19 for  
7 challenging any lien, payment, charge, or compliance with any law, rule, regulation or  
8 other legal requirement as described therein.

9 2.57. "Site Preparation Project" means that part of the Project consisting of  
10 the design, development, installation, construction, and completion of those improvements  
11 that are necessary to prepare the Sub-Leased Property for construction thereon of the  
12 Public Improvements and the Private Improvements.

13 2.58. "Sub-Lease Commencement Date" means the date on which this Sub-  
14 Lease commences as provided in Paragraph 5.

15 2.59. "Sub-Leased Property" means the real property described in Exhibit  
16 "B".

17 2.60. "Substantial Completion" or "Substantially Complete" or "completion"  
18 or "complete" or words of similar import mean with respect to construction of all or part of  
19 the Project, the earlier of the date on which a Certificate of Occupancy (partial or  
20 temporary) for the shell of any structure(s) (not including any tenant improvements) for all  
21 or that part of the Project has been issued by the City or other appropriate governmental  
22 authority having jurisdiction over the Development Site, or the date on which all or that  
23 portion of the Project has been deemed completed by the Construction Lender under the  
24 Construction Financing therefor.

25 2.61. "Sub-Sublease" means the sub-sublease for any Parcel or Parcels  
26 being leased by the Developer to another for development, occupancy, use or possession  
27 of any part of the Private Improvements on that Parcel or Parcels.

28 2.62. "ULDR" means the Code of Ordinances and Unified Land Development  
29 Regulations of the City, as amended, renumbered, or restated from time to time.

30 2.63. "Unavoidable Delay" means those events constituting excuse from  
31 timely performance by a party hereto from any of its obligations hereunder, as such events  
32 are defined in and subject to the conditions described in Paragraph 40 hereof.

33 2.64. "University of West Florida" or "UWF" means the University of West  
34 Florida, a public institution of higher education that is part of the State University System  
35 of Florida, and also includes the University of West Florida Foundation.

36 3. **LEASE.** Sub-Lessor leases to Sub-Lessee, and Sub-Lessee accepts from  
37 Sub-Lessor, the Sub-Leased Property upon and subject to the terms of this Sub-Lease.

38 4. **PURPOSE.** Subject to the terms and conditions of this Sub-Lease, Sub-  
39 Lessee shall use the Sub-Leased Property to construct, develop, operate and maintain the  
40 Private Improvements on the Sub-Leased Property. These efforts are integral to, and shall  
41 be carried out in light of, the purposes of the Development Agreement.

42 5. **RENT.** Sub-Lessee's annual rent payable under this Sub-Lease shall be at  
43 fair value as determined pursuant to Subsection 6.01(b) of the Development Agreement.  
44 Sub-Lessee's payment of such rent for a particular parcel shall commence prorata upon the  
45 earlier of (i) Substantial Completion of construction of each Private Improvement structure,

1 or (ii) twenty-four (24) months after commencement of substantial construction of Private  
2 Improvements on the parcel.

3 6. **SUB-LEASE COMMENCEMENT DATE AND TERM.** Provided that the  
4 Development Agreement has not been terminated earlier in accordance with its provisions,  
5 this Sub-Lease shall commence with respect to particular Parcels, and Sub-Lessee shall be  
6 entitled to possession of such Parcels, upon the recording of a Notice of Commencement of  
7 construction of any part of the Private Improvements upon such Parcels. The term of the  
8 Sub-Lease for each parcel shall then be:

9 6.01. Ninety-nine (99) years for any parcel required for construction  
10 of a building in which a minimum of twenty percent (20%) of enclosed finished area  
11 occupiable by tenants/end users (excluding parking) is allocated to residential use.

12 6.02. Eighty (80) years for any parcel required for construction of a  
13 building that will be or include a hotel; provided, however, that if such building also meets  
14 the residential threshold specified in Subsection 6.02, the Sub-Lease term shall be ninety-  
15 nine (99) years.

16 6.03. Sixty (60) years for any other parcel.

17 While the Master Lease (2006) term is sixty (60) years, the parties agree that it is in the  
18 best interest of the Project for the term of this Sub-Lease to be longer; therefore, pursuant  
19 to section 10.01 of the Master Lease (2006), the City shall assume Sub-Lessor's position  
20 under this Sub-Lease after the expiration of the Master Lease (2006).

21 7. **PACE OF DEVELOPMENT.** The parties desire to promote timely  
22 development of the Private Improvements.

23 7.01. The disincentives specified in Subsection 7.03 shall apply if the  
24 Developer fails to maintain the following pace of development, unless economically  
25 distressed conditions excuse such failure as provided in Subsection 7.02.

26 7.01.01. Within thirty (30) months after the Effective Date of the  
27 Development Agreement, the Developer will cause commencement of construction on a  
28 Private Improvement structure of no less than thirty thousand (30,000) square feet of  
29 "gross building area" (as defined in Subsection 6.01(b)(2) of the Development Agreement),  
30 and such construction will be substantially completed within forty-eight (48) months of the  
31 Effective Date of the Development Agreement.

32 7.01.02. The foregoing pace of development will apply to each  
33 subsequent year, except development of each Private Improvement structure shall be be  
34 considered cumulatively (for example, if the Developer causes construction of a sixty  
35 thousand (60,000) square foot structure in the first period, the Developer would be deemed  
36 to have met its obligation relative to the second period without construction of a second  
37 building in that period).

38 7.01.03. Should a building be developed containing space for  
39 Studer (or a related entity), the portion of the gross building area allocable to Studer's  
40 occupancy would not count toward the Developer's obligations under this Subsection 7.01,  
41 but the remaining additional gross building area allocated to development of Private  
42 Improvements would count toward that obligation.

43 7.02. Failure to maintain the development pace specified in  
44 Subsection 7.01 shall be excused, and the time periods shall be extended for up to an  
45 additional twelve (12) months, if economically distressed conditions exist when the  
46 disincentives specified in Subsection 7.03 would otherwise apply. If the Developer  
47 exercises its right to an extension for economically distressed conditions, it must

1 subsequently develop a minimum of thirty thousand (30,000) square feet of Private  
2 Improvements before exercise this right a second time. There will be only two (2)  
3 extensions for economically distressed conditions. The Developer bears the burden of  
4 demonstrating that such economically distressed conditions exist, but this burden shall be  
5 deemed met if both of the following are true.

6 7.02.01. Housing starts in Escambia County or the City of  
7 Pensacola for the last 12 month period for which such records are available are below the  
8 seven (7) year average.

9 7.02.02. The vacancy rate for Class A downtown office space in  
10 Florida (or, if not available for Florida as a whole, then for all major markets in Florida for  
11 which such data is published) as reported by any of the major national brokerage firms (for  
12 example, Cushman & Wakefield, CBRE, or Marcus & Millichap) for the most recent period for  
13 which such report is available indicates a vacancy rate of seventeen percent (17%) or more.  
14 If such data is not available for Florida as a whole, then rate shall be calculated as a  
15 weighted (by square footage) average of the vacancy rates for the component individual  
16 markets.

17 7.03. Except as excused for economically distressed conditions  
18 under Subsection 7.02, the following disincentives apply if the Developer fails to maintain  
19 the pace of development specified in Subsection 7.01.

20 7.03.01. The Developer shall pay an additional Three Thousand  
21 Dollars (\$3,000) per month per acre to maintain for an additional twelve (12) months its  
22 right to develop any undeveloped parcels, until such time as the pace of development is in  
23 conformance with Subsection 7.01. Such disincentive payments shall not be refundable or  
24 credited toward the later Sub-Lease payments.

25 7.03.02. If the Developer has not achieved conformance with the  
26 pace of development at the end of this twelve (12) month period, CMPA shall have the right  
27 to terminate the Developer's rights to lease any of the remaining private land.

28 8. **PRIVATE IMPROVEMENTS.** Sub-Lessee shall have the right to enter into a  
29 Sub-Sublease of a Parcel or to partition its rights, interests and obligations under this Sub-  
30 Lease into distinct leasehold interests with respect to a Parcel for development of any  
31 component of the Private Improvements thereon of Parcels designated for private  
32 development in the Parcel Plan. A Sub-Sublease shall contain such terms and conditions as  
33 Sub-Lessee shall determine are consistent with the purposes of the Project and the Plan.

34 9. **REVENUES FROM THE SUB-LEASED PROPERTY.** Except as otherwise  
35 provided herein and subject to any Sub-Subleases or use agreements entered into by Sub-  
36 Lessee with tenants, users, or operators of any part of the Sub-Leased Property, the Sub-  
37 Lessee shall be entitled to all revenues from the Sub-Leased Property.

38 10. **OWNERSHIP OF IMPROVEMENTS.** That part of the property on which the  
39 Private Improvements are constructed will be owned by the City, subject to the Master  
40 Lease (2006), this Sub-Lease, and any Sub-Subleases for the vertical development  
41 constituting the Private Improvements. The vertical and horizontal improvements  
42 constructed by the Sub-Lessee as part of the Private Improvements will be owned by the  
43 Sub-Lessee, subject to the terms of this Sub-Lease and any Sub-Subleases.

44 11. **PERMITS AND APPROVALS; FEES.** Sub-Lessor and Sub-Lessee agree to  
45 follow the following procedure with respect to permits and fees for the development  
46 contemplated by this Agreement:

47 11.01. Sub-Lessor agrees to use its best efforts to assist Sub-Lessee  
48 in securing all zoning, subdivision, land use, construction and other similar and dissimilar

1 governmental or quasi-governmental approvals, licenses and permits necessary to  
2 construct and operate the Project, understanding that the City will not, and cannot, waive  
3 or relinquish any governmental or regulatory power or authority. If requested by Sub-  
4 Lessee, Sub-Lessor will join in any application for any permit or permits for the Public  
5 Improvements, or, alternatively, recommend to and urge any governmental authority to  
6 which application for a permit or permits has been made that such permit or permits be  
7 issued or approved.

8 11.02. Sub-Lessor also agrees, to the extent permitted by law,  
9 contract or covenants to assist Sub-Lessee in the negotiation of reduced fees with  
10 Escambia County, the City, and the Emerald Coast Utilities Authority.

11 11.03. Sub-Lessor also agrees to assist Sub-Lessee in negotiations to  
12 have electric power provided to the Public Improvements billed through the City at its  
13 electric power rates the cost of which shall be born by Sub-Lessor.

14 12. **RIGHT OF ACCESS TO THE SUB-LEASED PROPERTY.** Sub-Lessor agrees  
15 to grant Sub-Lessee the right to enter upon the Sub-Leased Property with personnel and  
16 materials for the purpose of conducting the work necessary to complete construction of the  
17 Private Improvements.

18 13. **FINANCIAL REPORTING; AUDIT.** Sub-Lessee agrees to provide Sub-  
19 Lessor quarterly financial reports in a form acceptable to Sub-Lessor, and, as part of Sub-  
20 Lessor's audit process, provide information as required for an audit of the books and  
21 records of Sub-Lessee.

22 14. **REPRESENTATIONS.**

23 14.01. Sub-Lessee represents to Sub-Lessor that each of the  
24 following statements is true and accurate and agrees the Sub-Lessor may rely upon each  
25 of the following statements:

26 14.01.01. Lessee is a Florida limited liability company duly  
27 organized and validly existing, has all requisite power and authority to carry on its business  
28 as now conducted, to own or hold its properties and to enter into and perform its obligations  
29 hereunder and under each document or instrument contemplated by this Agreement to  
30 which it is or will be a party, is qualified to do business in the State of Florida, and has  
31 consented to service of process upon a designated agent for service of process in the State  
32 of Florida.

33 14.01.02. This Sub-Lease and, to the extent such documents  
34 presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document  
35 contemplated or required by this Sub-Lease to which Sub-Lessee is or will be a party have  
36 been duly authorized by all necessary action on the part of, and have been or will be duly  
37 executed and delivered by, Sub-Lessee, and neither the execution and delivery thereof, nor  
38 compliance with the terms and provisions thereof or hereof: (a) requires the approval and  
39 consent of any other party, except such as have been duly obtained or as are specifically  
40 noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation  
41 or order applicable to or binding on Sub-Lessee.

42 14.01.03. This Sub-Lease and, to the extent such documents  
43 presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document  
44 contemplated or required by this Sub-Lease to which Sub-Lessee is or will be a party  
45 constitutes, or when entered into will constitute, a legal, valid and binding obligation of Sub-  
46 Lessee enforceable against Sub-Lessee in accordance with the terms thereof, except as such  
47 enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time

1 to time in effect which affect creditors' rights generally and subject to usual equitable  
2 principles in the event that equitable remedies are involved.

3 14.01.04. There are no pending or, to the knowledge of Sub-  
4 Lessee, threatened actions or proceedings before any court or administrative agency against  
5 Sub-Lessee which question the validity of this Sub-Lease or any document contemplated  
6 hereunder, or which are likely in any case, or in the aggregate, to materially adversely  
7 affect the consummation of the transactions contemplated hereunder or the financial  
8 condition of Sub-Lessee.

9 14.01.05. Sub-Lessee has filed or caused to be filed all federal,  
10 state, local and foreign tax returns, if any, which were required to be filed by Sub-Lessee,  
11 and has paid, or caused to be paid, all taxes shown to be due and payable on such returns  
12 or on any assessments levied against Sub-Lessee.

13 14.01.06. All financial information and other documentation,  
14 including that pertaining to the Project or Sub-Lessee, delivered by Sub-Lessee to Sub-  
15 Lessor, was, on the date of delivery thereof, true and correct.

16 14.01.07. The principal place of business and principal executive  
17 offices of Sub-Lessee are in San Antonio, Texas.

18 14.01.08. The execution, delivery, consummation, and  
19 performance under this Sub-Lease will not violate or cause the Sub-Lessee to be in default  
20 of any provisions of its governing documents or rules and regulations or any other  
21 agreement to which Sub-Lessee is a party or constitute a default there under or cause  
22 acceleration of any obligation of the Sub-Lessee there under.

23 14.02. Sub-Lessor represents to Sub-Lessee that each of the  
24 following statements is true and accurate and agrees Sub-Lessee may rely upon each of  
25 the following statements:

26 14.02.01. Sub-Lessor is a Florida not-for-profit corporation duly  
27 organized and validly existing under the laws of the State of Florida, will apply for and  
28 maintain its status as a corporation recognized under Section 501(c)(3) of the Internal  
29 Revenue Code, has all requisite power and authority to carry on its business as now  
30 conducted, to own or hold its properties and to enter into and perform its obligations  
31 hereunder and under each document or instrument contemplated by this Sub-Lease to  
32 which it is or will be a party, is qualified to do business in the State of Florida, and has  
33 consented to service of process upon a designated agent for service of process in the State  
34 of Florida.

35 14.02.02. All steps, acts and conditions required to be done as a  
36 condition precedent to the execution of this Sub-Lease have been done, and Sub-Lessor has  
37 full authority to enter into this Sub-Lease.

38 14.02.03. This Sub-Lease and, to the extent such documents  
39 presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document  
40 contemplated or required by this Sub-Lease to which Sub-Lessor is or will be a party have  
41 been duly authorized by all necessary action on the part of, and have been or will be duly  
42 executed and delivered by, Sub-Lessor, and neither the execution and delivery thereof, nor  
43 compliance with the terms and provisions thereof or hereof: (a) requires the approval and  
44 consent of any other party, except such as have been duly obtained or as are specifically  
45 noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation  
46 or order applicable to or binding on Sub-Lessor.

47 14.02.04. This Sub-Lease and, to the extent such documents  
48 presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document

1 contemplated or required by this Sub-Lease to which Sub-Lessor is or will be a party  
2 constitutes, or when entered into will constitute, a legal, valid and binding obligation of Sub-  
3 Lessor enforceable against Sub-Lessor in accordance with the terms thereof, except as such  
4 enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time  
5 to time in effect which affect creditors' rights generally and subject to usual equitable  
6 principles in the event that equitable remedies are involved.

7 14.02.05. There are no pending or, to the knowledge of Sub-  
8 Lessor, threatened actions or proceedings before any court or administrative agency against  
9 Sub-Lessor which question the validity of this Sub-Lease or any document contemplated  
10 hereunder, or which are likely in any case, or in the aggregate, to materially adversely  
11 affect the consummation of the transactions contemplated hereunder or the financial  
12 condition of Sub-Lessor.

13 14.02.06. Sub-Lessor has filed or caused to be filed all federal,  
14 state, local and foreign tax returns, if any, which were required to be filed by Sub-Lessor,  
15 and has paid, or caused to be paid, all taxes shown to be due and payable on such returns  
16 or on any assessments levied against Sub-Lessor.

17 14.02.07. All financial information and other documentation,  
18 including that pertaining to the Project, the City, or Sub-Lessor, delivered by Sub-Lessor to  
19 Sub-Lessee, was, on the date of delivery thereof, true and correct.

20 14.02.08. The principal place of business and principal executive  
21 offices of Sub-Lessor are in the corporate limits of the City of Pensacola, Florida.

22 14.02.09. The execution, delivery, consummation, and  
23 performance under this Sub-Lease will not violate or cause the Sub-Lessor to be in default  
24 of any provisions of its governing documents or rules and regulations or any other  
25 agreement to which Sub-Lessor is a party or constitute a default there under or cause  
26 acceleration of any obligation of the Sub-Lessor there under.

27 14.02.10. The individuals executing this Sub-Lease and related  
28 documents on behalf of Sub-Lessor are duly authorized to take such action, which action  
29 shall be, and is, binding on Sub-Lessor.

30 15. **PROPERTY CONDITION.** Subject to other provisions of this Sub-Lease,  
31 and to completion of the Site Preparation Project under the Development Agreement, the  
32 Sub-Lessor is leasing the Sub-Leased Property in its physically "as is" condition and makes  
33 no representation as to its suitability for the uses or purposes provided by this Sub-Lease.  
34 The Sub-Lessee acknowledges that it has made, or has had an opportunity to make, a  
35 thorough and complete inspection of the Sub-Leased Property and is fully advised of its  
36 extent and condition. The Sub-Lessee fully accepts the Sub-Leased Property in its present  
37 physical state and condition.

38 16. **GENERAL OBLIGATIONS OF THE PARTIES.** The following constitute  
39 obligations and covenants of the parties, their successors and assigns:

40 16.01. Sub-Lessee shall keep and maintain all improvements on the  
41 Sub-Leased Property owned by Sub-Lessee in compliance with all Applicable Law. Sub-  
42 Lessee shall have the right, at its own cost, to contest by appropriate legal proceedings,  
43 diligently conducted, the validity or applicability of complying with such laws or  
44 requirements. Sub-Lessor, on written request, shall sign any appropriate papers, or join in  
45 any such contest or empower Sub-Lessee to act in the name of Sub-Lessor as may be  
46 necessary or proper to permit Sub-Lessee to contest such laws or requirements.

47 16.02. In the event of a breach of any of the provisions of this Sub-  
48 Lease, the party not in breach shall be entitled to recover from the breaching party all

1 costs, expenses, reasonable attorneys' fees and damages which may be incurred or  
2 sustained by reason of such breach.

3 16.03. The parties waive the privilege of venue and agree that all  
4 litigation between them in the state courts shall take place in Escambia County and that all  
5 litigation between them in the federal courts shall take place in the Northern District in and  
6 for the State of Florida.

7 16.04. Upon the commencement of this Sub-Lease with respect to  
8 any particular Parcel, Sub-Lessee shall pay when due all real property taxes and special  
9 assessments of whatsoever kind levied and assessed against such Parcel and all  
10 improvements built and placed on the Parcel by Sub-Lessee. Sub-Lessee further agrees to  
11 pay when due all sales and use taxes, and any and all other taxes or assessments imposed  
12 upon and being the liability of the Sub-Lessee and arising out of this Sub-Lease, including  
13 any sales taxes due on rental payments.

14 16.04.01. The Sub-Lessee shall have the right to review or protest,  
15 or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or  
16 other charges imposed upon or against the Sub-Leased Property or the improvements built  
17 and placed on the Sub-Leased Property, and in case any such real property taxes,  
18 assessments, or other charges shall, as a result of such proceedings or otherwise, be  
19 reduced, cancelled, set aside or to any extent discharged, Sub-Lessee shall pay the amount  
20 that shall be finally assessed or imposed against the Sub-Leased Property or the  
21 improvements built and placed on them by Sub-Lessee, which are finally determined to be  
22 due and payable on any such disputed or contested items. All expenses of such litigation,  
23 including court costs, shall be paid by Sub-Lessee free of all expenses to Sub-Lessor. The  
24 term "legal proceeding," as used above, shall be construed as including appropriate appeals  
25 from any administrative actions, judgments, decrees or orders and certiorari proceedings  
26 and appeals from orders entered in them. If required by law, Sub-Lessor agrees to join in  
27 any such legal proceeding or empower Sub-Lessee to act in the name of Sub-Lessor.

28 16.04.02. Sub-Lessor and Sub-Lessee understand and agree that  
29 the Private Improvements shall be subject to ad valorem taxation, and that Sub-Lessee or  
30 other any person owning, renting, or using any of the Private Improvements will not be  
31 permitted to apply for or seek to have any part of the Private Improvements declared  
32 exempt from ad valorem taxation.

33 16.05. For the Private Improvements, Sub-Lessee shall be required to  
34 pay all repair and maintenance costs as described herein.

35 16.05.01. Sub-Lessee agrees, at its expense, to make repairs to  
36 the improvements situated upon the Sub-Leased Property, including electrical, plumbing,  
37 sewer and sewer connections which solely serve the Sub-Leased Property, structural and all  
38 other repairs that may be required to be made.

39 16.05.02. If Sub-Lessee or any successor or assign of Sub-Lessee  
40 shall fail to comply with the provisions of this Paragraph 16.05.02, Sub-Lessor shall have  
41 the right to obtain specific performance from Sub-Lessee, or any successor or assign of  
42 Sub-Lessee, to enforce such repair and maintenance obligations including the ability to force  
43 Sub-Lessee, or any successor or assign of Sub-Lessee, to levy and collect assessments for  
44 such repairs and maintenance.

45 16.06. After the Construction Completion Date, Sub-Lessee may not,  
46 without the prior written consent of Sub-Lessor, which consent will not be unreasonably  
47 delayed, withheld, or conditioned, make any Major Alteration to all or any part of the  
48 completed improvements located on the Sub-Leased Property owned and controlled by  
49 Sub-Lessee or Sub-Lessee's successors or assigns.

1                   16.07.           Sub-Lessee at its expense agrees to deliver the Sub-Leased  
2 Property to Sub-Lessor upon the termination of this Sub-Lease in its then existing state of  
3 repair and condition at the time of surrender.

4                   16.08.           Sub-Lessor covenants, warrants and agrees that Sub-Lessee,  
5 and Sub-Lessee's successors and assigns, shall be entitled peacefully to enjoy, to occupy,  
6 and to possess the Sub-Leased Property throughout the lease term without interference,  
7 hindrance or molestation.

8                   16.09.           After the Sub-Lease Commencement Date, Sub-Lessor will  
9 record at its own expense this Sub-Lease in the Public Records of Escambia County, and  
10 thereafter, Sub-Lessor shall record at its own expense any amendments to this Sub-Lease  
11 in the Public Records of Escambia County.

12           17.       **CONDEMNATION.**

13                   17.01.           In the event of a taking of all of the Sub-Leased Property or so  
14 much of it so as to render the Sub-Leased Property unfit for purposes intended by this  
15 Sub-Lease, for any public or quasi-public purpose, under any statute or by right of eminent  
16 domain, the Sub-Lessee's liability to perform the terms and conditions of this Sub-Lease  
17 shall cease, but the Sub-Lessee shall be entitled to any claim against the condemnor that  
18 the Sub-Lessor may be entitled to.

19                   17.02.           In the event of a partial taking by condemnation or eminent  
20 domain so that the part not so taken shall be sufficient for the continued operation of the  
21 Sub-Leased Property for the purposes intended by the Sub-Lessee, then this Sub-Lease  
22 shall continue in full force and effect, and the Sub-Lessee shall be entitled to any claim  
23 against the condemnor that the Sub-Lessor may be entitled to. The Sub-Lessee, subject to  
24 the rights of its lenders, shall use the proceeds received by the Sub-Lessee pursuant to this  
25 Paragraph 18 for purposes of restoring those portions of the improvements upon the  
26 remainder of the Sub-Leased Property and impacted by the condemnation to as near their  
27 former condition as circumstances will permit pertaining to the taken improvement owned  
28 by Sub-Lessee, its successors and assigns.

29           18.       **DEFAULT; REMEDIES.**

30                   18.01.           Unless and until a lease termination certificate is executed by  
31 Sub-Lessor and Sub-Lessee and recorded in the Public Records of Escambia County,  
32 reflecting a termination of this Sub-Lease and surrender of the Sub-Leased Property  
33 pursuant to this Paragraph 18.01, all parties are put on record notice and shall assume and  
34 rely upon the fact that this Sub-Lease is in good standing and in full force and effect.

35                   18.02.           Lessor and Sub-Lessee each agree promptly to perform,  
36 comply with and abide by this Sub-Lease, and each agree that time of payment and of  
37 performance of material obligations are of the very nature and essence of this Sub-Lease.

38                   18.03.           If Sub-Lessee shall fail in the performance of any material  
39 term of this Sub-Lease, then the Sub-Lessor, or its agent, may send to the Sub-Lessee a  
40 written notice of default, specifying the nature of the default, and Sub-Lessee shall, within  
41 sixty (60) days after the date of the notice, cure and remedy the default, and this Sub-  
42 Lease shall then continue as before; provided, however, in the event such breach cannot  
43 with due diligence be cured within a period of sixty (60) days, and if written notice of the  
44 default shall have been given to Sub-Lessee, and if Sub-Lessee, prior to the expiration of  
45 sixty (60) days from and after the giving of such notice commences to eliminate the cause  
46 of such default and proceeds diligently and with reasonable dispatch to take all steps and  
47 do all work required to cure such default and does so cure such default within a reasonable  
48 period of time, then Sub-Lessee shall not be in default under this Sub-Lease. Failure of the

1 Sub-Lessor to insist upon the strict performance of any of the covenants, conditions and  
2 agreements of this Sub-Lease in any one or more instances, shall not be construed as a  
3 waiver or relinquishment in the future of any such covenants, conditions and agreements.

4 18.04. In the event (i) there shall be a material default under this  
5 Sub-Lease and such default shall continue after the expiration of any applicable grace  
6 period and shall occur prior to the Construction Commencement Date, or (ii) there should  
7 be a material default under the Development Agreement beyond the expiration of any  
8 applicable grace period and the Development Agreement is terminated, Sub-Lessor shall  
9 have the following rights and remedies:

10 18.04.01. Sub-Lessor, by notice in writing transmitted to the Sub-  
11 Lessee, as provided in the paragraph entitled "NOTICES", may at its option declare the Sub-  
12 Lessee's interest under this Sub-Lease ended and without further force and effect. Sub-  
13 Lessor is then authorized to re-enter and repossess the Sub-Leased Property and the  
14 improvements and personal property on them and Sub-Lessee does in such event waive any  
15 demand for possession of the Sub-Leased Property, and agrees to surrender and deliver up  
16 the Sub-Leased Property peaceably to Sub-Lessor. In the event of such action, Sub-Lessee  
17 shall have no claim whatsoever against Sub-Lessor by reason of the improvements made  
18 upon the Sub-Leased Property, rents paid, or from any other cause whatsoever. Sub-  
19 Lessee covenants that no surrender or abandonment of the Sub-Leased Property or of the  
20 remainder of the term shall be valid unless accepted by Sub-Lessor in writing. Sub-Lessor  
21 shall be under no duty to relet the Sub-Leased Property in the event of an abandonment or  
22 surrender or attempted surrender or attempted abandonment of the Sub-Leased Property  
23 by Sub-Lessee. Upon Sub-Lessee's abandonment or surrender or attempted abandonment  
24 or attempted surrender of the Sub-Leased Property, Sub-Lessor shall have the right to  
25 retake possession of the Sub-Leased Property or any part of them, and such retaking of  
26 possession shall not constitute an acceptance of Sub-Lessee's abandonment or surrender.

27 18.05. In the event there shall be a material default under this Sub-  
28 Lease and such default shall continue after the expiration of any applicable grace period and  
29 shall occur after the Construction Commencement Date, Sub-Lessor shall have the right to  
30 all legal and equitable remedies under applicable law, excepting, however, Sub-Lessor shall  
31 expressly not have the right to terminate this Sub-Lease or obtain the right of re-entry or  
32 repossession of the Sub-Leased Property.

33 18.06. In the event there shall be a material default under this Sub-  
34 Lease and such default shall continue after the expiration of any applicable grace period and  
35 shall occur after the issuance of the Certificate of Occupancy or Certificate of Completion for  
36 the Public Improvements, Sub-Lessor shall have the right to all legal and equitable remedies  
37 under applicable law including the remedies set forth in Paragraph 16.05.02 herein  
38 regarding Sub-Lessee's failure to repair and maintain the Sub-Leased Property, excepting,  
39 however, Sub-Lessor shall expressly not have the right to terminate this Sub-Lease or  
40 obtain the right of re-entry or repossession of the Sub-Leased Property.

41 18.07. Sub-Lessor agrees that in the enforcement of Sub-Lessor's  
42 rights under this Sub-Lease, Sub-Lessor will not disturb the occupancy of Sub-Lessee's  
43 subtenants.

44 18.08. Notwithstanding any contrary provisions in this Sub-Lease or  
45 the Development Agreement, once the Developer has caused construction of Private  
46 Development on a parcel, the Developer's failures under this Sub-Lease shall be deemed  
47 "material" and justifying termination of the Sub-Lease only in the most obvious, egregious,  
48 and persistent circumstances.

1           18.09.           If Sub-Lessor shall fail in the performance of any material  
2 term of this Sub-Lease, then Sub-Lessee, or its agent, may send to Sub-Lessor a written  
3 notice of default, specifying the nature of the default, and Sub-Lessor shall, within sixty (60)  
4 days after the date of the notice, cure and remedy the default, and this Sub-Lease shall  
5 then continue as before; provided, however, in the event such breach cannot with due  
6 diligence be cured within a period of sixty (60) days, and if written notice of the default shall  
7 have been given to Sub-Lessor, and if Sub-Lessor, prior to the expiration of sixty (60) days  
8 from and after the giving of such notice commences to eliminate the cause of such default  
9 and proceeds diligently and with reasonable dispatch to take all steps and do all work  
10 required to cure such default and does so cure such default within a reasonable period of  
11 time, then Sub-Lessor shall not be in default under this Sub-Lease. Failure of Sub-Lessee to  
12 insist upon the strict performance of any of the covenants, conditions and agreements of  
13 this Sub-Lease in any one or more instances, shall not be construed as a waiver or  
14 relinquishment in the future of any such covenants, conditions and agreements.

15           18.10.           In the event there shall be a material default under this Sub-  
16 Lease by Sub-Lessor and such default shall continue after any applicable grace period, Sub-  
17 Lessee shall have the right to all legal and equitable remedies under Applicable Law.

18           19.           **RIGHT TO CONTEST.**

19           19.01.           Subject to the conditions set forth in Paragraph 19.02 below,  
20 Sub-Lessor or Sub-Lessee each may, at its sole discretion and expense, after prior written  
21 notice to the other party hereto, contest by appropriate action or proceeding conducted in  
22 good faith and with due diligence, the amount or validity or application, in whole or in part,  
23 of any lien, any payment of any taxes, assessments, impact fees or other public charges of  
24 a similar nature that may from time to time be levied upon or assessed by any appropriate  
25 governmental authority against Sub-Lessee, the Project (or any part thereof), the Sub-  
26 Leased Property, furniture, fixtures, equipment or other personal property thereon, and the  
27 revenues generated from the use or operation of any or all of the above, any other payment  
28 specifically identified in this Sub-Lease, or compliance with any law, rule, regulation, or  
29 other such legal requirement.

30           19.02.           The right to contest any charge, payment or requirement  
31 pursuant to Paragraph 19.01 is subject to the following:

32                   19.02.01.   such proceeding shall suspend the execution or  
33 enforcement of such charge, payment or requirement;

34                   19.02.02.   such proceeding will not create any risk of impairment of  
35 the acquisition or preparation of the Sub-Leased Property, the construction, completion,  
36 operation or use of the Project, the Sub-Leased Property, or any part thereof, in any  
37 material respect, and neither the Project or Sub-Leased Property, nor any part of the Project  
38 or the Sub-Leased Property, would be subject to any risk of being involuntarily sold,  
39 forfeited or lost or the acquisition of the Sub-Leased Property or the construction,  
40 equipping, or completion of the Project or any part thereof be delayed or prohibited;

41                   19.02.03.   such proceeding will not subject any other party to  
42 criminal liability or risk of material civil liability for failure to comply therewith, or involve  
43 risk of any material claim against such party; and

44                   19.02.04.   the party seeking the benefit of Paragraph 19.02 shall  
45 have furnished to the other parties such security, if any, as may be required in such  
46 proceeding or as may be reasonably requested by the others, to protect the Project and the  
47 Sub-Leased Property, and any part thereof, and any interest of such parties hereunder.

1           20.    **DISPUTE RESOLUTION.** In the event of any dispute arising out of or in  
2 any related to this Sub-Lease, or any of the transactions or occurrences described or  
3 contemplated herein, the parties shall be obligated to follow the following dispute  
4 resolution procedures:

5           20.01.         First, the parties shall attempt to negotiate a resolution of the  
6 dispute by direct discussions. Such negotiation shall be initiated by written demand by one  
7 party to another, and the negotiations may occur with or without counsel, as the parties  
8 elect.

9           20.02.         Second, in the event that any dispute is not resolved under  
10 Paragraph 20.01 within three (3) weeks of written demand for negotiation, the parties shall  
11 mediate the dispute under the statutes and rules governing mediation in the state of  
12 Florida. The parties shall first attempt to select a mediator by mutual agreement. Any  
13 mediator selected, or sought to be appointed as provided below, shall be a mediator  
14 certified by the Supreme Court of Florida to mediate civil cases. If they cannot do so within  
15 thirty (30) business days following the expiration of the ninety (90) day negotiation period,  
16 the parties shall petition the then Chief Judge of the First Judicial Circuit of Florida to  
17 appoint an appropriate mediator. Such mediation shall be without prejudice to further  
18 voluntary or court-ordered mediation in the event it is unsuccessful. The costs of obtaining  
19 the appointment of a mediator, the fees and expenses of the mediation, or any other cost or  
20 charge of the mediation shall be borne equally by the parties, unless otherwise agreed.

21           20.03.         If any dispute is not resolved pursuant to the foregoing  
22 process, either party may resort to any other judicial or non-judicial remedies available to  
23 them under this Sub-Lease and applicable law.

24           21.    **OWNERSHIP AT TERMINATION.**

25           21.01.         Subject to the provisions of Paragraph 21.02 below, any  
26 improvements and fixtures located on the Sub-Leased Property at termination of the Sub-  
27 Lease shall become the property of the City.

28           21.02.         Any trade fixtures or personal property installed, attached to  
29 or located on the Sub-Leased Property by any of Sub-Lessee's subtenants, whether or not  
30 attached to the freehold, shall be and remain such subtenants' property and may be  
31 removed by the subtenant upon the termination of the Sub-Lease, provided that such  
32 subtenant repair, restore and save the City harmless from all damage to any of the Sub-  
33 Subleased Property including improvements located thereon and owned or controlled by  
34 such subtenant, caused by such removal.

35           22.    **INSURANCE.** Insurance shall be issued by an insurer whose business  
36 reputation, financial stability and claims payment reputation is satisfactory to Sub-Lessor.  
37 Unless otherwise agreed, or unless otherwise required by the Construction Financing  
38 Documents, the amounts, form and type of insurance shall conform to the following  
39 minimum requirements

40           22.01.         Sub-Lessee shall purchase and maintain Worker's  
41 Compensation Insurance Coverage for all Workers' Compensation obligations required by  
42 law. Additionally, the policy, or separately obtained policy, must include Employers Liability  
43 Coverage of at least \$100,000 each person - accident, \$100,000 each person - disease,  
44 \$500,000 aggregate - disease.

45           22.02.         Sub-Lessee shall purchase coverage on forms no more  
46 restrictive than the latest editions of the Commercial General Liability Form filed by the  
47 Insurance Services Office. Sub-Lessor shall not be considered liable for premium payment,  
48 entitled to any premium return or dividend and shall not be considered a member of any

1 mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per  
2 accident, combined single limit for liability must be provided, with umbrella insurance  
3 coverage making up any difference between the policy limits of underlying policies coverage  
4 and the total amount of coverage required.

5 22.02.01. Commercial General Liability coverage must be  
6 provided, including bodily injury and property damage liability for premises, operations,  
7 products and completed operations, and independent contractors. Fire Legal Liability  
8 insurance must be endorsed on this policy with limits no less than \$100,000 per occurrence.  
9 The coverages shall be written on occurrence-type basis and Sub-Lessor shall be listed as  
10 an additional insured.

11 22.02.02. Umbrella Liability Insurance coverage shall not be more  
12 restrictive than the underlying insurance policy coverages. The coverage shall be written on  
13 an occurrence-type basis.

14 Sub-Lessee understands and agrees that the minimum limits of insurance required may  
15 become inadequate during the term of this Sub-Lease and the minimum limits may be  
16 increased to reasonable amounts upon any annual anniversary date of this Sub-Lease.

17 22.02.03. As long as it is available, Sub-Lessor will cause the City  
18 to maintain property insurance on a replacement cost basis, at full replacement value, on  
19 the insurable portions of the Public Improvements and the Private Improvements, pursuant  
20 to Section 25.04 of the Master Lease (2006). The City will not maintain property insurance  
21 on Sub-Lessee's contents. Sub-Lessee will reimburse the City on an annual basis for that  
22 portion of the City's total property insurance premium related to the Parcels with respect to  
23 which the Sub-Lease has commenced and which are insured by the City. Sub-Lessee  
24 understands and agrees that the property insurance coverage types, cost and deductible  
25 amount may vary annually based on the City's total property schedule coverage. Sub-  
26 Lessee further agrees that more than one insurance company may write the property  
27 insurance and, the amount of premium Sub-Lessee will reimburse the City may be the sum  
28 of those individual insurance company's premium charges. Sub-Lessee will provide  
29 verification to the City of completed building values as well as any changes in building  
30 values.

31 22.03. In the event there is property damage loss to property insured  
32 by the City under the Master Lease (2006) resulting from a natural disaster declared by the  
33 President as qualifying for federal assistance under the Stafford Act or some subsequent  
34 act, Sub-Lessor will cause the City to be responsible for the deductible pursuant to the  
35 Master Lease (2006). For any other property damage loss to property insured by the City  
36 under the Master Lease (2006), if the Sub-Lease has commenced with respect to that  
37 property, the deductible will be the responsibility of Sub-Lessee and Sub-Lessee will  
38 reimburse the City for the deductible. The amount of the deductible will depend upon the  
39 type of deductible applied to the loss. For deductibles that apply on a per structure basis,  
40 the deductible amount will be the building deductible. For deductibles that apply on an  
41 occurrence basis, the deductible amount will be multiplied by the percentage the City's  
42 insured property value under this Sub-Lease bears to the City's insured total property value  
43 less the City's insured property value under the Master Lease (2006).

44 22.04. Required insurance shall be documented in the Certificates of  
45 Insurance that provide that the City, Sub-Lessor, Sub-Lessee and any pertinent lenders  
46 shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse  
47 change or restriction in coverage. The name of this Sub-Lease must be listed on the  
48 certificate. If required by the City, Sub-Lessor, or Sub-Lessee, the party responsible for  
49 maintaining certain insurance shall furnish copies of pertinent insurance policies, forms,  
50 endorsements, jackets and other items forming a part of, or relating to such policies.

1 Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the  
2 City, an ACORD 25. To the extent commercially available, Sub-Lessee shall replace any  
3 cancelled, adversely changed, restricted or non-renewed policies required of Sub-Lessee  
4 hereunder with new policies acceptable to the City and shall file with the City Certificates of  
5 Insurance under the new policies prior to the effective date of such cancellation, adverse  
6 change or restriction.

7           22.05.           Sub-Lessee's required coverage shall be considered primary  
8 and all other insurance shall be considered as excess, over and above the Sub-Lessee's  
9 coverage.

10           22.06.           Sub-Lessee shall retain control over its employees, agents,  
11 servants and subcontractors, as well as control over its invitees, and its activities on and  
12 about the subject premises and the manner in which such activities shall be undertaken and  
13 to that end, Sub-Lessee shall not be deemed to be an agent of Sub-Lessor. Precaution shall  
14 be exercised at all times by Sub-Lessee for the protection of all persons, including  
15 employees, and property. Sub-Lessee shall make reasonable effort to detect hazards and  
16 shall take prompt action where loss control/safety measures should reasonably be expected.

17           22.07.           Sub-Lessee shall not be deemed to be in default under the  
18 provision of this Paragraph 22 if all or a portion of insurance required under this paragraph  
19 is not commercially available.

20           22.08.           Sub-Lessor and Sub-Lessee hereby waive, or agree to cause  
21 their respective insurers to waive subrogation or consent to a waiver of right of recovery, or  
22 to agree that the insurance is not invalidated if the insured has waived, or has waived  
23 before the casualty, the right to recover against the other for insured casualty losses.

24           23.           **INDEMNIFICATION.**

25           23.01.           Sub-Lessee shall indemnify, defend and save harmless Sub-  
26 Lessor from and against any and all claims, suits, actions, damages and causes of action  
27 arising during the term of this Sub-Lease, for any personal injury, bodily injury, loss of life  
28 or damage to property sustained on any Parcel of the Sub-Leased Property after the Sub-  
29 Lease of that Parcel has commenced, or to or about the improvements placed on the Sub-  
30 Leased Property, or their appurtenances, or upon adjacent sidewalks or streets excepting  
31 therefrom public streets maintained by the City, and from and against all costs, counsel  
32 fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such  
33 claim, the investigation of them, or the defense of any action or proceeding brought on  
34 them, and from and against any orders, judgments and decrees which may be entered in  
35 them. Sub-Lessee shall also specifically defend any action or proceeding brought against  
36 Sub-Lessor as the result of any such claim for bodily injury, loss of life or damage to  
37 property, at no cost or expense to Sub-Lessor. If Sub-Lessee has supplied Sub-Lessor with  
38 evidence of insurance covering any of the aforementioned risks, no claim shall be made  
39 against Sub-Lessee unless and until the insurer shall fail or refuse to defend and/or pay all  
40 or any part thereof.

41           23.02.           Sub-Lessor shall indemnify, defend and save harmless Sub-  
42 Lessee from and against any and all claims, suits, actions, damages and causes of action  
43 arising during the term of this Sub-Lease, for any bodily injury, loss of life or damage to  
44 property sustained within the boundaries of the Property leased under the Master Lease  
45 (2006) outside of Sub-Leased Property, and from and against all costs, counsel fees,  
46 expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the  
47 investigation of them, or the defense of any action or proceeding brought on them, and  
48 from and against any orders, judgments and decrees which may be entered in them. Sub-  
49 Lessor shall also specifically defend any action or proceeding brought against Sub-Lessee as

1 the result of any such claim for bodily injury, loss of life or damage to property, at no cost  
2 or expense to Sub-Lessee. If Sub-Lessor has supplied Sub-Lessee with evidence of  
3 insurance covering any of the aforementioned risks, including through any self-insurance  
4 program, no claim shall be made against Sub-Lessor unless and until the insurer shall fail or  
5 refuse to defend and/or pay all or any part thereof.

6 24. **CASUALTY.** If a casualty loss affecting all or that part of the improvements  
7 located on the Sub-Leased Property should occur for all or that part of the improvements,  
8 Sub-Lessee shall promptly notify the City about the loss ("Notice of Loss"). The Notice of  
9 Loss shall include the date on which the loss occurred and the determination of Sub-  
10 Lessee, in its reasonable opinion, as to whether the repair or restoration of the  
11 improvements affected by the loss is feasible. If repair or restoration is feasible, the  
12 proposed construction schedule and budget for implementing such repair or restoration  
13 shall also be included in the Notice of Loss.

14 24.01. In determining whether repair or restoration is feasible, Sub-  
15 Lessee shall consider, among other factors: (i) the cost of repairing or restoring the  
16 improvements affected by the loss; (ii) the amount of damage or destruction involved and  
17 the insurance proceeds available to pay for the repair or restoration of the improvements  
18 affected by the loss to the condition that existed immediately prior to the casualty  
19 ("Proceeds") less the reasonable expenses incurred in collecting and disbursing such  
20 Proceeds in accordance with the proposed construction schedule and budget; (iii) the effects  
21 of the loss on the Project in a commercially reasonable manner, with or without such  
22 improvements affected by the loss; (iv) the remaining length of the term of this Sub-Lease;  
23 and (v) rights of Sub-Lessee's lenders.

24 24.02. If Sub-Lessee determines in its reasonable opinion that repair  
25 or restoration is feasible, and subject to approval of Sub-Lessor, the Proceeds shall be used,  
26 collected and disbursed to pay for the repair or restoration in accordance with the proposed  
27 construction schedule and budget for implementing such repair or restoration. If any  
28 Proceeds remain after paying for the repair or restoration, they shall be disbursed to Sub-  
29 Lessee.

30 24.03. If Sub-Lessee determines in its reasonable opinion that repair  
31 and restoration is not feasible, Sub-Lessee will not be obligated to make such repair or  
32 restoration. In that event, the Proceeds shall be used to clear that portion of damaged or  
33 destroyed improvements affected by the loss, and the cleared lands shall be surrendered to  
34 the City. Upon such surrender, this Sub-Lease shall terminate as to that surrendered  
35 portion. If Proceeds remain after paying for the cost of clearing that portion of the  
36 damaged or destroyed improvements affected by the loss, the Proceeds shall be then used  
37 to pay any additional costs incurred by the Project as a result of such loss and severance.  
38 Thereafter, any remaining Proceeds shall be disbursed to Sub-Lessee.

39 24.04. The time between the date of the casualty and the date on  
40 which Notice of Loss is given shall be considered an Unavoidable Delay under this Sub-  
41 Lease. Sub-Lessee will not be obligated to make any repair or restoration that is feasible,  
42 unless and until Sub-Lessee's time for performance has been extended by a period of time  
43 sufficient to repair or restore such loss and complete the balance of the Private  
44 Improvements.

45 25. **ASSIGNMENT.** To generate interest in the Private Improvements and  
46 attract the greatest overall investment of resources into the Project, the parties intend and  
47 agree to allow Sub-Subleases or assignments of the Sub-Leased Property, in whole or in  
48 part. Toward this end, the various Parcels may be partitioned by Sub-Lessee into distinct  
49 ground lease components for development and sale or lease apart from the remainder of  
50 the Parcels of the Sub-Leased Property. Sub-Lessor and the City shall recognize and not

1 disturb the rights of the holders of such separate components, notwithstanding the default  
2 of the holders of other components and notwithstanding the default by the holder of any  
3 ground lease interest on which the separate component is founded. Upon an assignment of  
4 all or part of this Sub-Lease and assumption by the assignee thereof, Sub-Lessee shall be  
5 relieved of further liability under this Sub-Lease with respect to the portion assigned.  
6 Before Sub-Lessee develops a Private Improvement on any parcel, assignment of such  
7 parcel shall be subject to Sub-Lessor's approval, which shall not be unreasonably withheld.  
8 After Sub-Lessee develops a Private Improvement on any parcel, Sub-Lessee may assign  
9 this Sub-Lease with respect to such parcel, or further sub-sublease its interests hereunder,  
10 in whole or in part, without Sub-Lessor's prior approval in Sub-Lessee's absolute discretion.

11 26. **SUCCESSORS IN INTEREST.** The covenants and agreements contained in  
12 this Sub-Lease shall be binding on and inure to the benefit of the respective permitted  
13 successors and assigns of the parties whether by merger or otherwise. Wherever used, the  
14 singular number shall include the plural, and the use of any gender shall be applicable to all  
15 genders.

16 27. **NOTICES.** All notices required by law and by this Sub-Lease to be given by  
17 one party to the other shall be in writing, and shall be sent by registered or certified mail,  
18 postage prepaid, return receipt requested or by courier service, or by hand delivery to the  
19 office for each party indicated below and addressed as follows:

20  
21 To Sub-Lessor: Community Maritime Park Associates, Inc.  
22 c/o Lacey A. Collier, Chairman/Trustee  
23 3885 Durango Drive  
24 Pensacola, FL 32504  
25

26 Copy to: Edward P. Fleming  
27 McDonald, Fleming Moorhead  
28 25 W. Government Street  
29 Pensacola, FL 32502-5813  
30

31 To Sub-Lessee: Maritime Park Development Partners, LLC  
32 c/o Jeff Galt  
33 85 NE Loop 410, Ste. 207  
34 San Antonio, TX 78216  
35

36 Copy to: Mark G. Lawson  
37 Bryant Miller Olive, P.A.  
38 101 N. Monroe Street, Ste. 900  
39 Tallahassee, FL 32301  
40

41 Notices given by courier service or by hand delivery shall be effective upon delivery and  
42 notices given by mail shall be effective on the third (3rd) business day after mailing.  
43 Refusal by any person to accept delivery of any notice delivered to the office at the address  
44 indicated above (or as it may be changed) shall be deemed to have been an effective  
45 delivery as provided in this Paragraph 27. The addresses to which notices are to be sent  
46 may be changed from time to time by written notice delivered to the other parties and such  
47 notices shall be effective upon receipt. Until notice of change of address is received as to  
48 any particular party hereto, all other parties may rely upon the last address given.

49 28. **ESTOPPEL CERTIFICATES.** Sub-Lessor agrees that, at any time and from  
50 time to time during the Term of this Lease, within twenty (20) days after request by Sub-

1 Lessee, the Authorized Representative of Sub-Lessor will execute, acknowledge and deliver  
2 to any prospective purchaser, assignee, mortgagee or other person designated by Sub-  
3 Lessee, a certificate stating: (a) that this Sub-Lease is unmodified and in force and effect  
4 (or if there have been modifications, that this Sub-Lease is in force and effect as modified,  
5 and identifying the modification agreements); (b) confirming that the rent has been paid in  
6 full; (c) whether or not there is any existing default by either party hereto, and, if there is  
7 any such default, specifying the nature and extent thereof; (d) whether or not there are  
8 any setoffs, defenses, or counterclaims against enforcement of the obligations to be  
9 performed hereunder; and (e) any other information relating to this Sub-Lease reasonably  
10 requested by Sub-Lessee.

11 29. **SEVERABILITY.** If any paragraph, subparagraph, sentence, clause,  
12 provision, or part of this Sub-Lease shall be held invalid for any reason, the remainder of  
13 this Sub-Lease shall not be affected.

14 30. **LEASEHOLD MORTGAGES.**

15 30.01. No mortgage may be placed on the Sub-Leased Property or on  
16 Sub-Lessor's leasehold interest under the Master Lease. Sub-Lessee shall be entitled to  
17 mortgage the leasehold interest under this Sub-Lease. The leasehold mortgaging provisions  
18 of this Section 30 shall similarly apply to leasehold mortgages of Sub-Sublease interests to  
19 the extent the pertinent Sub-Sublease permits leasehold mortgaging.

20 30.02. If Sub-Lessee shall mortgage its leasehold interest and if the  
21 holder of the mortgage or pledge shall forward to Sub-Lessor a duplicate original of the  
22 mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by  
23 the Clerk of the Circuit Court of Escambia County, together with a written notice setting  
24 forth the name and address of the leasehold mortgagee, then, until the time that the  
25 leasehold mortgage shall be satisfied of record, the following provisions of this Paragraph 30  
26 shall apply.

27 30.02.01. When giving notice to the Sub-Lessee with respect to  
28 any default under the provisions of this Sub-Lease, the Sub-Lessor will also serve a copy of  
29 such notice upon the leasehold mortgagee. No such notice to the Sub-Lessee shall be  
30 deemed to have been given, unless a copy of such notice has been mailed to such leasehold  
31 mortgagee, which notice must specify the nature of each such default.

32 30.02.02. In case Sub-Lessee shall default under any of the  
33 provisions of this Sub-Lease, the leasehold mortgagee shall have the right to cure such  
34 default whether the same consists of the failure to perform any matter or thing which Sub-  
35 Lessee is required to do or perform and Sub-Lessor shall accept such performance on the  
36 part of the leasehold mortgagee as though the same had been done or performed by Sub-  
37 Lessee. The leasehold mortgagee, upon the date of mailing by Sub-Lessor of the notice  
38 referred to in Paragraph 30.02.01 shall have, in addition to any period of grace extended to  
39 Sub-Lessee under the terms and conditions of this Sub-Lease for a non-monetary default, a  
40 period of one hundred twenty (120) days within which to cure any non-monetary default or  
41 cause the same to be cured or to commence to cure such default with diligence and  
42 continuity; provided, however, that as to any default of the Sub-Lessee for failure to pay  
43 rent, or failure to pay any amount otherwise required under the terms of this Sub-Lease  
44 (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall  
45 have sixty (60) days from the date the notice of default was mailed to the leasehold  
46 mortgagee within which to cure such default.

47 30.02.03. In case Sub-Lessee shall default under any of the  
48 provisions of this Sub-Lease, the leasehold mortgagee shall have the right to cure such  
49 default whether the same consists of the failure to pay rent or the failure to perform any

1 other matter or thing which the Sub-Lessee is required to do or perform and Sub-Lessor  
2 shall accept such performance on the part of the leasehold mortgagee as though the same  
3 had been done or performed by Sub-Lessee.

4 30.02.04. In the case of any default by Sub-Lessee, Sub-Lessor  
5 will take no action to effect a termination of the term of this Sub-Lease after the service of a  
6 notice provided for in Paragraph 30.02.02 above by reason of any such default, without first  
7 giving to the leasehold mortgagee a reasonable time, from the mailing of the default notice  
8 by Sub-Lessor to Sub-Lessee, with a copy to such leasehold mortgagee, within which either:  
9 (i) to obtain possession of the Sub-Leased Property (including possession by a receiver) and  
10 cure such non-monetary default in the case of a default which is susceptible of being cured  
11 when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure  
12 proceedings and complete such foreclosure or otherwise acquire Sub-Lessee's interest under  
13 this Sub-Lease with diligence and continuity and thereafter to commence and diligently  
14 proceed to cure such default; provided, however, that the leasehold mortgagee shall not be  
15 required to continue such possession or continue such foreclosure proceedings if the default  
16 shall be timely cured, and provided further, that nothing in this Paragraph 30 shall preclude  
17 Sub-Lessor from exercising any rights or remedies under this Sub-Lease with respect to any  
18 other default by Sub-Lessee during any period of forbearance.

19 30.02.05. In the event of the termination of this Sub-Lease or of  
20 any succeeding sublease made pursuant to the provisions of this Paragraph 30 prior to its  
21 stated expiration date, Sub-Lessor will enter into a new lease of the Sub-Leased Property  
22 with the leasehold mortgagee or, at the request of such leasehold mortgagee, with a  
23 corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the  
24 holder of the note secured by the leasehold mortgage held by such leasehold mortgagee, for  
25 the remainder of the term, effective on the date of such termination, at the rent and  
26 additional rent and upon the covenants, agreements, terms, provisions and limitations  
27 contained in this Sub-Lease, provided that such leasehold mortgagee makes written request  
28 and executes, acknowledges and delivers to Sub-Lessor such new sublease within thirty  
29 (30) days from the date of such termination and such written request and such new  
30 sublease is accompanied by payment to the Sub-Lessor of all amounts then due to Sub-  
31 Lessor, including reasonable counsel fees, court costs and disbursements incurred by Sub-  
32 Lessor in connection with any such default and termination as well as in connection with the  
33 execution and delivery of such new sublease, less the net income collected by Sub-Lessor  
34 subsequent to the date of termination of this Sub-Lease and prior to the execution and  
35 delivery of the new sublease, any excess of such net income over the aforesaid sums and  
36 expenses to be applied in payment of the rent thereafter becoming due under such new  
37 lease.

38 30.02.06. The leasehold mortgagee of all or any portion of the  
39 Sub-Leased Property may become the legal owner and holder of Sub-Lessee's interest in  
40 this Sub-Lease for such Sub-Leased Property by foreclosure of its mortgage or as a result of  
41 the assignment of this Sub-Lease in lieu of foreclosure, whereupon such leasehold  
42 mortgagee shall immediately become and remain liable under this Sub-Lease as provided in  
43 this Paragraph 30, except that such leasehold mortgagee may assign this Sub-Lease  
44 without Sub-Lessor's consent to any institutional assignee at any time whether prior or  
45 subsequent to the construction or completion of the improvements erected or to be erected  
46 upon the Sub-Leased Property.

47 30.02.07. In the event that a leasehold mortgagee shall become  
48 the owner or holder of Sub-Lessee's interest by foreclosure of its mortgage or by  
49 assignment of this Sub-Lease in lieu of foreclosure or otherwise, the term "Sub-Lessee," as  
50 used in this Sub-Lease, means only the owner or holder of Sub-Lessee's interest for the  
51 time being so that, in the event of a sale, assignment or other disposition of Sub-Lessee's

1 interest in this Sub-Lease by the leasehold mortgagee, the leasehold mortgagee shall be  
2 entirely freed and relieved of all covenants and obligations of Sub-Lessee under this Sub-  
3 Lease and it shall be deemed and construed, without further agreement between Sub-  
4 Lessor and the leasehold mortgagee or between Sub-Lessor, the leasehold mortgagee and  
5 the leasehold mortgagee's purchaser or assignee at any such sale or upon assignment of  
6 Sub-Lessee's interest, that the purchaser or assignee of Sub-Lessee's interest has assumed  
7 and agreed to carry out any and all covenants and obligations of Sub-Lessee.

8           30.03.           Within ten (10) days after written request by Sub-Lessee or by  
9 Sub-Lessee's leasehold mortgagee, or in the event that upon any sale, assignment or  
10 mortgaging of Sub-Lessee's interest in this Sub-Lease by Sub-Lessee or Sub-Lessee's  
11 leasehold mortgagee, an offset statement shall be required from Sub-Lessor, Sub-Lessor  
12 agrees to deliver in recordable form a certificate to any proposed leasehold mortgagee,  
13 purchaser, assignee or to Sub-Lessee, certifying (if such be the case): (i) the amount of  
14 rental and additional rental due under this Sub-Lease, if any, and the date to which rentals  
15 have been paid; (ii) that the Sub-Lease is in full force and effect; (iii) that Sub-Lessor has  
16 no knowledge of any default under this Sub-Lease, or if any default exists, specifying the  
17 nature of the default; and (iv) that there are no defenses or offsets which are known and  
18 may be asserted by Sub-Lessor against Sub-Lessee in respect of obligations pursuant to this  
19 Sub-Lease.

20           30.04.           So long as Sub-Lessee's interest in this Sub-Lease shall be  
21 mortgaged to a leasehold mortgagee, the parties agree for the benefit of such leasehold  
22 mortgagee, that they shall not surrender or accept a surrender of this Sub-Lease or any  
23 part of it, nor shall they cancel, abridge or otherwise modify this Sub-Lease without the  
24 prior written consent of such leasehold mortgagee in each instance.

25           30.05.           Reference in this Sub-Lease to acquisition of Sub-Lessee's  
26 interests in the Sub-Lease by the leasehold mortgagee shall be deemed to refer, where  
27 circumstances require, to acquisition of Sub-Lessee's interest in this Sub-Lease by any  
28 purchaser at a sale on foreclosure of the leasehold mortgage and provisions applicable to  
29 the leasehold mortgagee in such instance or instances shall also be applicable to any such  
30 purchaser.

31           30.06.           Reference in this Sub-Lease to a leasehold mortgagee shall be  
32 deemed to refer where circumstances require, to any assignee of a leasehold mortgagee;  
33 provided that such assignee shall forward to Sub-Lessor a duplicate original of the  
34 assignment of the leasehold mortgage in form proper for recording, or a copy of such  
35 assignment, certified as a true copy by the Clerk of the Circuit Court of Escambia County,  
36 together with a written notice setting forth the name and address of the assignee.

37           30.07.           Any leasehold mortgage shall be specifically subject and  
38 subordinate to Sub-Lessor's rights under this Sub-Lease and the Master Lease (2006), and  
39 to the City's fee ownership of the Sub-Leased Property. The sentence immediately  
40 preceding shall not be deemed or construed (by implication or otherwise) to impose or  
41 establish upon Sub-Lessee's interest in this Sub-Lease or upon the lien of any leasehold  
42 mortgage the superiority of any lien or encumbrance, including, without limitation, the lien  
43 of any fee mortgage, judgment or tax created directly or indirectly by, through or against  
44 the City's fee interest in the Sub-Leased Property or the Sub-Lessor's interest in this Sub-  
45 Lease or the Master Lease (2006). Despite any provision which is or may appear to be to  
46 the contrary in this Sub-Lease, under no circumstances whatsoever shall the City's fee  
47 simple title interest, or Sub-Lessor's leasehold interest, of the Sub-Lessor in the Property],  
48 or any portion of them, be subordinated to the Sub-Lease.

49           30.08.           A leasehold mortgagee (or its designee or nominee) may  
50 become the legal owner and holder of the interest of Sub-Lessee under this Sub-Lease,

1 including, without limitation, ownership of the improvements erected on or to be erected on  
2 the Sub-Leased Property, by foreclosure or other enforcement proceedings, or by obtaining  
3 an assignment of this Sub-Lease in lieu of foreclosure or through settlement of or arising  
4 out of any pending or threatened foreclosure proceeding, without Sub-Lessor's consent,  
5 subject always to the applicable terms and provisions of this Sub-Lease.

6 30.09. The provisions of this Paragraph 30 in favor of the leasehold  
7 mortgagee shall inure to the benefit of the leasehold mortgagee and its successors, assigns  
8 and designees, and also any other purchaser or transferee of this Sub-Lease pursuant to  
9 any foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

10 30.10. Notwithstanding any contrary provision of this Sub-Lease, the  
11 leasehold mortgagee shall not be liable or responsible in any respect for any of Sub-Lessee's  
12 obligations under this Sub-Lease unless and until the leasehold mortgagee becomes the  
13 owner and holder of Sub-Lessee's leasehold interest in this Sub-Lease through foreclosure  
14 or bankruptcy proceedings, or assignment in lieu thereof.

15 30.11. Sub-Lessor agrees to amend this Sub-Lease to include such  
16 changes as may be reasonably required by Sub-Lessee's leasehold mortgagee(s), from time  
17 to time, provided, such changes do not materially impair Sub-Lessor's rights under the  
18 Master Lease (2006), or materially increase Sub-Lessor's obligations under this Sub-Lease.

19 31. **SALE OR ASSIGNMENT BY SUB-LESSOR.**

20 31.01. Sub-Lessor shall only sell, transfer or mortgage its interest in  
21 the Sub-Leased Property or this Sub-Lease, or any portion thereof (subject to Sub-Lessee's  
22 right of first refusal provided below) on the following terms. Any such sale, transfer or  
23 mortgage shall be subject to this Sub-Lease (provided Sub-Lessee agrees to attorn to such  
24 purchaser, transferee or mortgagee), and the purchaser, transferee or mortgagee shall  
25 acknowledge in writing that its interest in the Sub-Leased Property is subject to this Sub-  
26 Lease (including Sub-Lessee's Right of First Refusal provided below) and, with respect to a  
27 purchaser or transferee, that it assumes all the obligations and liabilities of Sub-Lessor  
28 hereunder. At the closing of a sale of its interest in the Sub-Leased Property and this Sub-  
29 Lease in accordance with this paragraph, Sub-Lessor shall be released from any liability  
30 hereunder arising after the closing of the sale.

31 31.02. In consideration of Sub-Lessee's execution of this Sub-Lease,  
32 Sub-Lessor hereby grants to Sub-Lessee for the entire Term of this Sub-Lease a right of first  
33 refusal ("Right of First Refusal") with respect to the Sub-Leased Property, subject to the  
34 terms and provisions set forth below. In the event Sub-Lessor receives an offer to purchase  
35 the Sub-Leased Property or any portion thereof during the Term of this Sub-Lease, which  
36 Sub-Lessor intends to accept ("Offer"), Sub-Lessor shall provide written notice of receipt of  
37 the Offer to Sub-Lessee. The giving of such notice shall constitute an offer by Sub-Lessor to  
38 sell the Sub-Leased Property (or applicable portion thereof) to Sub-Lessee at the same  
39 purchase price as contained in the Offer and otherwise in accordance with the terms and  
40 provisions of the Offer. Not later than ninety (90) days after receipt of such notice, Sub-  
41 Lessee may elect to purchase the Sub-Leased Property (or applicable portion thereof) at the  
42 purchase price in accordance with the terms and provisions of the Offer by delivery to Sub-  
43 Lessor of all of the following within such ninety (90) day period:

44 31.02.01. written notice of the election of Sub-Lessee to acquire  
45 the Sub-Leased Property (or applicable portion thereof);

46 31.02.02. a check made payable to the attorneys for Sub-Lessor,  
47 as escrow agent, in the amount of the deposit set forth in the Offer; and

1 31.02.03. a duly executed sales agreement which contains the  
2 terms and provisions of the Offer.

3 31.03. In the event Sub-Lessee fails to elect to purchase the Sub-  
4 Leased Property (or applicable portion thereof) within said ninety (90) day period and in  
5 accordance with the foregoing, then Sub-Lessor shall be free to accept the Offer and the  
6 Sub-Leased Property (or applicable portion thereof) may be sold and conveyed to the buyer  
7 under the Offer free and clear of the Right of First Refusal (subject to the provisions of  
8 Paragraph 31.01 above).

9 31.04. Notwithstanding anything to the contrary contained in this  
10 Paragraph 31, the Right of First Refusal herein shall not apply to Sub-Lessor's conveyance,  
11 sale or transfer of the entire Sub-Leased Property to a duly created agency of the City,  
12 provided such conveyance, sale or transfer is subject to all the terms, conditions and  
13 covenants in this Sub-Lease, including this Paragraph 31, and such transferee expressly  
14 assumes in writing all terms, conditions and covenants in this Sub-Lease applicable to Sub-  
15 Lessor hereunder, and such written assumption is recorded in the Public Records of the  
16 County.

17 32. **COMPLETE AGREEMENT.** The parties mutually represent to each other that  
18 this Sub-Lease constitutes the final and complete agreement of the parties on its subject  
19 matter and may not be changed, modified, discharged or extended except by written  
20 instrument duly executed by the parties. The parties agree that no previous  
21 representations or warranties shall be binding upon either party nor has the execution of  
22 this Sub-Lease been induced on the part of any party except as expressed in writing in this  
23 Sub-Lease. The parties intend that this Sub-Lease be interpreted and applied in light of,  
24 and where reasonable with reference to, the purposes of the Development Agreement and  
25 the Master Developer Agreement (2006).

26 33. **NON-DISCRIMINATION.** Sub-Lessee shall not discriminate against  
27 contractors, sub-sublessees or users of the Private Improvements with regard to race,  
28 creed, color, handicap, familial status, disability, marital status, religion, national origin or  
29 content of speech. Sub-Lessee accepts sole responsibility for ensuring such non-  
30 discriminatory access to the Sub-Leased Property.

31 34. **SUBROGATION.** Sub-Lessor shall have the option, after sixty (60) calendar  
32 days' prior written notice to Sub-Lessee and without waiving or impairing any of Sub-  
33 Lessor's rights, to pay any sum or perform any act required of Sub-Lessee under this Sub-  
34 Lease, and the amount of any such payment and the value of any such performance,  
35 together with interest on them, shall be secured by this Sub-Lease, and shall be promptly  
36 due and payable to Sub-Lessor as additional rent.

37 35. **CONFORMITY TO LAW.** Sub-Lessee acknowledges that the Sub-Leased  
38 Property and improvements to be constructed thereon are subject to all Applicable Law,  
39 and to provisions and restrictions governing land use and zoning, site and structure design,  
40 compliance with building, environmental and occupational codes as determined by the  
41 applicable governing entity or instrumentality having jurisdiction.

42 36. **LICENSES AND PERMITS.** Sub-Lessee shall, at its own expense, obtain all  
43 necessary permits, and pay all licenses, fees, and taxes required to comply with all  
44 Applicable Laws relative to development and operation to be conducted on the Sub-Leased  
45 Property in accordance with this Sub-Lease, excepting therefrom the permits, licenses, fees  
46 and taxes for any part of the Sub-Leased Property that is subsequently assigned or  
47 transferred to or owned or controlled by the Sub-Lessor or the City or the agency for which  
48 the City shall be responsible at their sole cost and expense. Upon Sub-Lessor's written

1 request, at reasonable intervals, Sub-Lessee agrees to provide Sub-Lessor with a copy of  
2 such permits and payments.

3 37. **RADON GAS.** Section 404.056, *Florida Statutes* requires that the following  
4 notification be given for real estate transactions of this type: "RADON GAS: Radon is a  
5 naturally occurring radioactive gas that, when it has accumulated in a building in sufficient  
6 quantities, may present health risks to persons who are exposed to it over time. Levels of  
7 radon that exceed federal and state guidelines have been found in buildings in Florida.  
8 Additional information regarding radon and radon testing may be obtained from your  
9 county public health unit."

10 38. **NO MERGER.** There shall be no merger of this Sub-Lease or of the  
11 leasehold estate hereby created with the fee estate in the Sub-Leased Property or any part  
12 thereof by reason of the fact that the same person may acquire or hold, directly or  
13 indirectly, this Sub-Lease or the leasehold estate hereby created or any interest in this  
14 Sub-Lease or in such leasehold estate as well as the fee estate in the Sub-Leased Property  
15 or any interest in such fee estate.

16 39. **SUBORDINATION.** Sub-Lessor hereby subordinates in favor of any  
17 leasehold mortgagee any right to a Sub-Lessor's lien against the furnishings, fixtures,  
18 machinery, equipment, furniture, inventory and/or any other items of personal property  
19 which are owned by Sub-Lessee or tenants of Sub-Lessee under Sub-Subleases, and now  
20 located or may hereafter be delivered or installed in or upon any of the improvements  
21 situated upon the Sub-Leased Property. This subordination is self-executing and no further  
22 evidence of the subordination must be produced. However, if requested by any leasehold  
23 mortgagee, Sub-Lessor shall execute and deliver a subordination agreement in the form  
24 reasonably required by such leasehold mortgagee within fifteen (15) business days of  
25 written request and the governing body of Sub-Lessor hereby authorizes and instructs its  
26 Authorized Representative to sign and deliver such subordination agreement when found  
27 not to be inconsistent with the purpose and intent of this Paragraph 39.

28 40. **DELAYS.** In the event either party hereto is delayed in the performance of  
29 any act required hereunder by reason of an Unavoidable Delay, performance of such act  
30 shall be excused for the period of the Unavoidable Delay and the period for the  
31 performance of such act shall be extended for a period equivalent to the period of the  
32 Unavoidable Delay and all dates, time periods, deadlines as contained in the Master Lease  
33 shall be extended by the time period caused by the Unavoidable Delay. "Unavoidable  
34 Delay" means any of the following events or conditions or any combination thereof: acts of  
35 God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological  
36 excavations required by law, unavailability of materials after timely ordering of same,  
37 epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes,  
38 earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as  
39 indicated by the records of the local weather bureau for a five-year period preceding the  
40 Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters  
41 73, 74 or 75, *Florida Statutes*, restoration in connection with any of the foregoing or any  
42 other cause beyond the reasonable control of the party performing the obligation in  
43 question, including, without limitation, such causes as may arise from the act of the other  
44 party to this Sub-Lease, or acts of any governmental authority.

45 41. **GOOD FAITH AND FAIR DEALING.** Sub-Lessor and Sub-Lessee hereby  
46 agree to interpret the terms, conditions and provisions of this Sub-Lease in good faith  
47 exercising reasonable business judgment, and to attempt to resolve any and all issues,  
48 disputes or conflicts that may arise hereunder in a reasonable and fair manner.

49 42. **EFFECTIVE DATE.** Upon execution of this Sub-Lease by the authorized  
50 trustees of Sub-Lessor and by the authorized representative of Sub-Lessee, this Sub-Lease

1 shall be in full force and effect in accordance with its terms and the Effective Date shall be  
2 the first day of the month in which all parties have executed same.

3 IN WITNESS WHEREOF, the parties have set their hands and affixed their respective  
4 seals.

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[SIGNATURES ON FOLLOWING PAGES]

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Executed and delivered  
in the presence of:

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Name)

(witnesses as to Lacey A. Collier)

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2009, by Lacey A. Collier, chairman and trustee of Community Maritime Park Associates,  
Inc., a Florida not-for-profit corporation. He is personally known to me or has produced a  
valid driver's license as identification.

(SEAL)

**COMMUNITY MARITIME PARK  
ASSOCIATES, INC.,**  
a Florida not-for-profit corporation

By: \_\_\_\_\_  
Lacey A. Collier, Chairman/Trustee

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number:



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Executed and delivered  
in the presence of:

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Name)

(witnesses as to Scott R. Davison)

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2009, by Jeff Galt, \_\_\_\_\_ of Maritime Park Development Partners, LLC, a Florida  
limited liability company. He is personally known to me or has produced a valid driver's  
license as identification.

(SEAL)

**MARITIME PARK DEVELOPMENT  
PARTNERS, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
Jeff Galt, [title]

\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number:

1 **CONSENT AND JOINDER**

2  
3  
4 At a duly called public meeting on March 23, 2009, the City Council approved this Sub-  
5 Lease and authorized and directed the execution of this Consent and Joinder by the  
6 appropriate officials of the City evidencing same.  
7

8 This Consent and Joinder is provided for the purpose of acknowledging that this Sub-Lease  
9 is to be construed as consistent with and in furtherance of the objectives of the Master  
10 Development Agreement (2006) and Master Lease (2006), acknowledging the intention and  
11 commitment of the City to cooperatively work with the CMPA and the Developer toward  
12 successful development of the Project as provided for herein, and acknowledging that full  
13 performance hereunder shall be deemed and construed as full performance under the  
14 Master Development Agreement (2006) and Master Lease (2006) in all respects.  
15

16 In furtherance of the objectives of the Master Development Agreement (2006) and Master  
17 Lease (2006), the City further confirms and agrees:  
18

19 (a) the Master Lease (2006) and Master Development Agreement (2006) are free  
20 from default and in full force and effect;

21 (b) in accordance with Section 5 of the Sub-Lease, the City will allow the  
22 continuation of the term beyond the expiration of the Master Lease (2006), with the City  
23 assuming the position of the Sub-Lessor thereafter until the expiration of the 99 term of the  
24 Sub-Lease;

25 (c) in accordance with Section 21.07 of the Master Lease (2006), the City will  
26 recognize and not disturb the rights and interests of Sub-Lessee or its subtenants;

27 (d) the City will recognize and respect the leasehold mortgage rights of holders of  
28 leasehold mortgages under the Sub-Lease and any Sub-Subleases as provided in Section 30  
29 of the Sub-Lease;

30 (e) to avoid unnecessary duplication and expense, the allocation of insurance  
31 obligations among the Parties to the Master Lease (2006) and the Sub-Lease as set forth in  
32 Section 22 of the Sub-Lease will satisfy the requirements of the Master Lease (2006); and

33 (f) in the interest of allocating insurable casualty risks to insurance companies,  
34 the waiver of subrogation and waiver of recovery rights for insured casualty damage  
35 contained in Section 25.13 of the Master Lease (2006) shall extend to the Sub-Lessee and  
36 its subtenants.  
37

38 **CITY OF PENSACOLA, FLORIDA**

39  
40 By: \_\_\_\_\_

41  
42 Al Coby, City Manager

43 ATTEST:

44  
45 By: \_\_\_\_\_  
46 City Clerk

47  
48 APPROVED AS TO FORM  
49 AND EXECUTION:

50  
51 By: \_\_\_\_\_  
52 City Attorney



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**EXHIBIT "B"**

Sub-Leased Property Description



1  
2 **EXHIBIT "H"**  
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4 **Community Maritime Park**

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6 **Agreement Termination Certificate**  
7

8 Pursuant to Section 12.06 of the Development Agreement (Community Maritime Park) between  
9 Community Maritime Park Associates, Inc. ("CMPA"), and Maritime Park Development Partners, LLC (the  
10 "Developer") with an Effective Date of January \_\_, 2009 (the "Development Agreement"), \_\_\_\_\_  
11 \_\_\_\_\_ does hereby certify to \_\_\_\_\_ that the Development Agreement has  
12 been terminated by \_\_\_\_\_ and does hereby request \_\_\_\_\_  
13 agree to such certification.  
14

15  
16 Certified this \_\_ day of \_\_\_\_\_, 200\_\_.

17  
18 MARITIME PARK DEVELOPMENT PARTNERS, LLC,  
19 a Florida limited liability company  
20

21  
22 By: \_\_\_\_\_  
23 Authorized Representative  
24

25 STATE OF FLORIDA  
26 COUNTY OF ESCAMBIA  
27

28 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_  
29 \_\_\_\_\_, \_\_\_\_\_ of Maritime Park Development Partners, LLC, a  
30 Florida limited liability company. He/she is personally known to me or has produced a valid driver's  
31 license as identification.  
32

33 (SEAL)  
34  
35

36 \_\_\_\_\_  
37 Printed/Typed Name: \_\_\_\_\_  
38 Notary Public-State of Florida  
39 Commission Number: \_\_\_\_\_

40 Accepted and Agreed to by:  
41

42 COMMUNITY MARITIME PARK ASSOCIATES, INC.  
43

44 By: \_\_\_\_\_  
45 Authorized Representative  
46

47 STATE OF FLORIDA  
48 COUNTY OF ESCAMBIA  
49

50 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_  
51 \_\_\_\_\_, of Community Maritime Park Associates, Inc., a Florida not-for-profit  
52 corporation. He/she is personally known to me or has produced a valid driver's license as identification.  
53

54 (SEAL)  
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\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number:

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2 **EXHIBIT "I"**

3  
4 **Community Maritime Park**

5  
6 **Agreement Expiration Certificate**

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8  
9 Pursuant to Section 18.17 of the Development Agreement (Community Maritime Park) between  
10 Community Maritime Park Associates, Inc. ("CMPA"), and Maritime Park Development Partners, LLC (the  
11 "Developer") with an Effective Date of January \_\_, 2009 (the "Development Agreement"), the Developer  
12 does hereby certify to CMPA that the Development Agreement has expired in accordance with its terms  
13 and does hereby request the City agree to such certification.

14  
15  
16 Certified this \_\_ day of \_\_\_\_\_, 200\_.

17  
18 MARITIME PARK DEVELOPMENT PARTNERS, LLC,  
19 a Florida limited liability company

20  
21  
22 By: \_\_\_\_\_  
23 Authorized Representative

24  
25 STATE OF FLORIDA  
26 COUNTY OF ESCAMBIA

27  
28 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_  
29 \_\_\_\_\_, \_\_\_\_\_ of Maritime Park Development Partners, LLC, a  
30 Florida limited liability company. He/she is personally known to me or has produced a valid driver's  
31 license as identification.

32  
33 (SEAL)

34  
35  
36 \_\_\_\_\_  
37 Printed/Typed Name: \_\_\_\_\_  
38 Notary Public-State of Florida  
39 Commission Number:

40 Accepted and Agreed to by:

41  
42 COMMUNITY MARITIME PARK ASSOCIATES, INC.

43  
44 By: \_\_\_\_\_  
45 Authorized Representative

46  
47 STATE OF FLORIDA  
48 COUNTY OF ESCAMBIA

49  
50 The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_  
51 \_\_\_\_\_, of Community Maritime Park Associates, Inc., a Florida not-for-profit  
52 corporation. He/she is personally known to me or has produced a valid driver's license as identification.

53  
54 (SEAL)

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\_\_\_\_\_  
Printed/Typed Name: \_\_\_\_\_  
Notary Public-State of Florida  
Commission Number: