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 January 22, 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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) “Development Fee” means the amount CMPA will pay the Developer as provided in Subsection 2.06(b) hereof.

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

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

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

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

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

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

(26) “Management Fee” means the amount CMPA will pay the Developer as provided in Subsection 2.06(b) hereof.

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

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

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

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

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(31) “Master Development Agreement (2006)” means the Master Development Agreement (Community Maritime Park Project) dated March 27, 2006, by and between CMPA and the City.

(32) “Master Lease (2006)” means the Master Lease (Community Maritime Park) dated March 27, 2006, by and between CMPA and the City.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II.
PURPOSE AND INTENT; SCOPE AND COMPENSATION.

Section 2.01 Purpose and Intent of this Agreement.

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

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

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

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

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

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

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

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

Section 2.03 Authorized Representative

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

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

Section 2.04 Project Coordination.

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

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

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

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

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

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

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

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

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

Section 2.05 Operating Responsibility, Funding, and Revenues.

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

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

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

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for all operating costs of the Public Improvements, including payment of the Management Fee. The Developer will manage the Public Improvements for an initial term that shall be the shorter of fifteen (15) years or as long as it owns all or part of the Private Improvements; provided, however, that CMPA may eliminate this portion of the Project work pursuant to Section 12.01 hereof if the Developer materially defaults in its performance of its Public Improvements management responsibilities. The parties may mutually agree to renew the term of the Developer's management responsibilities. Management fees may be renegotiated at the end of years five (5) and ten (10) from the commencement of operations of the multi-use stadium.

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

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

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

(4) As soon as practicable, but not later than ninety (90) days after substantial completion of the first of the Public Improvements, the Developer shall present to CMPA a written annual budget of the upcoming year's planned uses of the Public Improvements. CMPA shall review the proposed budget and within thirty (30) days respond in writing to the Developer, indicating approval or recommending changes. If CMPA recommends changes, the parties shall thereafter cooperatively develop a mutually acceptable budget within thirty (30) days. After the first budget is approved, the parties shall repeat the process on an annual basis; provided, however, that the parties may mutually agree to adjust the budget year to align with a calendar year, a fiscal year, or other measure.

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

(a) Within thirty (30) days after the Effective Date of this Agreement, the Developer shall pay CMPA Seventy Five Thousand Dollars ($75,000) as an earnest money deposit in consideration for exclusive development rights in the Project. CMPA shall hold the deposit in escrow and return it to the Developer upon the substantial completion of the Community Multi-Use Facility. The Developer may use the escrowed deposit as collateral for any letter of credit, bond, or other financial support for the Project.

(b) The parties recognize and acknowledge that it is standard in the real estate development industry for a property owner to offer and pay a Development Fee to induce developers to engage in the bidding/proposal process, which requires substantial investment in time and resources on the part of the prospective developers to accomplish the owner's objectives. A Development Fee represents a partial return on developers' significant investment made in research, analysis, preparation and presentation of the development proposal, and it serves as partial compensation for the equity invested in creating a development firm capable of delivering the services required by a particular project, including assembling, managing, and providing the necessary administrative, legal and other expertise. The Development Fee does not cover the Developer's direct costs associated with the Public Improvements. The Development Fee provided for herein was established through the competitive RFP process, has been reviewed by independent advisers on behalf of CMPA and the City, and is consistent with industry standards.

(1) CMPA shall pay the Developer a Development Fee equal to four percent (4%) of the costs actually expended in the Public Improvements Budget, attached hereto as Exhibit "F, with the exception of: (a) the cost of Wetland Mitigation; (b) Impact Fees; (c) Developer Fee; and (d) any unused contingencies plus office lease expense.. Installment payments of fees shall be made based upon the above formula applied to the eligible costs within the Project Budget that can be funded with public or Developer funding committed at that time, with subsequent adjustments as funding and allocation of funding to eligible and ineligible cost components are actualized.

(2) The Development Fee shall be deemed earned upon the Effective Date of this Agreement and shall be included as a portion of the Project cost in any Public Financing. CMPA shall pay the Developer one-quarter (1/4) of the Development Fee at the closing of the Public Financing, one-quarter (1/4) of the Development Fee at the Site Preparation Project Commencement Date, and the remainder in equal monthly amounts over the anticipated construction period for the initial construction phase of the Public Improvements; provided, however, that the monthly payment amounts shall be adjusted as the Project progresses such that the total Development Fee finally paid is a percentage of actual costs rather than budgeted costs.

(c) Upon substantial completion of the Public Improvements, CMPA shall pay the Developer the property Management Fee equal to the following: (i) four percent (4%) of all office or other income from the Public Improvements (exclusive of the multi-use stadium); (ii) a fixed fee to be negotiated for the management of the park facilities including, but not limited to landscaping, capital improvements, security, and parking; (iii) ten percent (10%) of gross revenues for event production, facilities rentals (excluding income derived from Pelican's lease), and sponsorship income (excluding stadium naming rights) administered by the Developer; and (iv) an annual facility management fee of Two Hundred Fifty Thousand Dollars ($250,000) for managing the multi-use stadium, said fee to be adjusted annually to reflect the local consumer price index for each year after substantial completion of the Public Improvements. CMPA shall pay the Management Fee from its operating budget described in Section 2.05(c)(2) hereof, and not from the Construction Fund. Management fees may be renegotiated every five (5) years after commencement of operations of the multi-use stadium.

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

ARTICLE III.
PROJECT SCHEDULE.

Section 3.01 Project Schedule.

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

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

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

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

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

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

ARTICLE IV.
SITE PREPARATION PROJECT AND PUBLIC IMPROVEMENTS.

Section 4.01 Site Preparation Project Permit.

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

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

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

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

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

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

Section 4.03 Site Preparation Project Plans and Specifications.

(a) (1) The Developer will retain the Project Professionals to prepare the Site Preparation Project plans and specifications, the preliminary list of which is attached hereto as Exhibit "C". The Developer will notify CMPA of any subsequent changes thereto or additional Project Professionals retained with respect to the Site Preparation Project. The fees and expenses of such Project Professionals for the Site Development Project shall be paid or reimbursed from the Public Financing.

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

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

Section 4.04 Construction of the Site Preparation Project.

(a) (1) The Developer shall select the Contractor to construct the Site Preparation Project substantially in accordance with the Site Preparation plans and specifications. The Developer shall establish a guaranteed maximum price, guaranteeing the maximum price for the construction cost of the Site Preparation Project or designated portions thereof. The guaranteed maximum price shall provide

for reimbursement of actual general conditions and reasonable allowances for overhead, profit, and construction contingencies.

(2) The Developer may act as a Contractor, provided it is properly licensed and otherwise legally authorized to do so.

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

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

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

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

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

(2) If the Developer or CMPA believes adequate progress in the construction of the Site Preparation Project is not being made, the Developer or CMPA shall give notice to the Contractor for the Site Preparation Project, with a copy thereof provided to the other party not giving the notice, that adequate progress is not being made in the construction of the Site Preparation Project and to respond within ten (10) days thereafter as to why adequate progress is or is not being made toward completion of the Site Preparation Project.

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

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

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

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

Section 4.05 Site Preparation Project Completion Certificate.

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

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

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

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

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

Section 4.06 Public Improvements Plans and Specifications.

(a) (1) The Developer will retain the Project Professionals to prepare the Public Improvements plans and specifications, the preliminary list of which is attached hereto as Exhibit "C". The Developer will notify CMPA any subsequent changes thereto or additional Project Professionals retained with respect to the Public Improvements. The fees and expenses of such Project Professionals for the Public Improvements shall be paid or reimbursed from the Public Financing.

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

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

Section 4.07 Construction of the Public Improvements.

(a) (1) The Developer shall select the Contractor to construct the Public Improvements substantially in accordance with the Public Improvements plans and specifications. The Developer shall establish a guaranteed maximum price, guaranteeing the maximum price for the construction cost of the Public Improvements or designated portions thereof. The guaranteed maximum price shall provide for reimbursement of actual general conditions and reasonable allowances for overhead, profit, and construction contingencies.

(2) The Developer may act as a Contractor, provided it is properly licensed and otherwise legally authorized to do so.

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

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

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

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

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

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

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

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

Section 4.08 City Not in Privity with Contractors. The City shall not be deemed to be in privity of contract with any Contractor or provider of services with respect to the construction of any part of the Site Preparation Project or the Public Improvements.

Section 4.09 Payment of Contractors and Suppliers. Agreements between the Developer and a Contractor for the Site Preparation Project or for the Public Improvements will provide that:

(a) A Contractor shall promptly pay, or cause to be paid, all moneys due and legally owing to all persons doing any work or furnishing any materials, fuel, machinery or supplies to that Contractor in connection with construction of the Site Preparation Project or the Public Improvements for which that Contractor is responsible. There shall not be a breach of this Section 4.09 unless and until a lien is filed arising out of the Site Preparation Project or the Public Improvements and the Contractor fails to comply with the requirements described herein.

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

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

ARTICLE V.
SITE PREPARATION PROJECT AND PUBLIC IMPROVEMENTS BUDGET AND FINANCING.

Section 5.01 Budget.

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

(b) The Developer has prepared the Public Improvements Budget, which sets forth the estimated Site Preparation Project Costs and estimated Public Improvements Costs, a copy of which is attached to this Agreement as Exhibit “F.” The Public Improvements Budget includes the Developer’s

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direct costs, including construction costs. The Developer may recommend to CMPA changes to the Public Improvements Budget as a result of preparation of the plans and specifications or actual costs of the design, construction, and installation of site work and improvements constituting the Site Preparation Project and the Public Improvements. Any changes proposed by the Developer from time to time to the Public Improvements Budget shall be reviewed by CMPA and shall be approved by CMPA prior to commencement of any construction on the Project Site.

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

(d) When the Bonds are issued for the Public Financing, the Developer shall be entitled to reimbursement, from the proceeds of such Bonds, for all costs advanced by the Developer associated with the Site Preparation Project or the Public Improvements. This subsection shall not be construed as a limitation or condition precedent to any right of the Developer to payment pursuant to Subsection 12.05(d).

Section 5.02 Public Improvements Financing.

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

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

(c) In no event shall the obligations, either express or implied, of CMPA under the provisions of this Agreement to pay the Site Preparation Project Costs or the Public Improvements Costs be or constitute a general obligation or indebtedness of the City, or a pledge of the ad valorem taxing power of the City, within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from the Public Financing. No person or entity, including, but not limited to, the Developer, any construction lender, or any Contractor, subcontractor, materialman, or supplier for any part of the Project, shall have the right to compel the exercise of the ad valorem taxing power of the City or any other governmental entity on any real or personal property or taxation in any form to pay the City's obligations or undertakings hereunder.

Section 5.03 Developer Advances to the Project.

(a) The parties recognize that, given the Project design criteria, the limits on Public Financing, and the market conditions current as of the Effective Date, additional Project financing might

be necessary to deliver a Project that satisfies all stakeholders. As a good faith effort to help ensure Project success, the Developer shall have the option, but not the obligation, to advance funds to the Project to be used for the Public Improvements. At its sole option, the Developer may advance up to Two Million Nine Hundred and Fifty Thousand Dollars ($2,950,000).

(b) Should the Developer opt to advance funds pursuant to Subsection 5.03(a), all advances shall require approval of CMPA at a mutually agreeable rate of interest and shall be paid back to the Developer upon the earlier of (i) the procurement of state and/or federal grants or (ii) via a credit or reduction in the Sub-Lease payments .

Section 5.04 Payment of Public Improvements Costs.

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

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

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

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

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

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

Section 5.05 Reporting and Auditing.

(a) The Developer shall annually supply anticipated operating budgets to CMPA and offer on a quarterly basis to supply associated summary financial position documentation related to the

management and operation of the Public Improvements for which the Developer has contracted to operate and manage.

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

ARTICLE VI.
SUB-LEASE OF PROJECT SITE.

Section 6.01 Sub-Lease.

(a) As the lessee under the Master Lease (2006), and at the appropriate time for timely and effective delivery of the Private Improvements, CMPA shall enter into a single Sub-Lease with the Developer, in the form attached hereto as Exhibit "G". The Sub-Lease will not commence until satisfaction or waiver of the conditions set forth in Section 11.01 below and Paragraph 7 of the Sub-Lease. The Sub-Lease and all other long-term leases associated with the Project shall be for a unified term(s) so that they all end on the same date. The Developer shall negotiate with the City to extend the term for the Sub-Lease for an effective term ending in 99 years.

(b) The rent for the lands associated with the Private Improvements shall be at the fair value rent based upon the estimated fair value of the unimproved property as of the Effective Date of this Agreement, as determined by the City of Pensacola's real estate advisor within ninety (90) days of the Effective Date. To determine the estimated value of the unimproved property, the City's real estate advisor shall consider the methodology employed to produce the report, dated December 6, 2005, prepared on behalf of CMPA by Abramson & Associates, Inc. as well as such other factors considered relevant to a fair valuation of the land. Within thirty (30) days after receipt of the City's real estate advisor's estimation the Developer shall notify CMPA in writing that it either (1) agrees with the updated estimation or (2) it contests the updated estimation, in which event the Developer shall the right to retain, at its cost, another evaluation consultant to produce a report within sixty (60) days. The parties shall thereafter attempt to agree on the estimated value of the unimproved property as of the Effective Date of this Agreement. If they are unable to do so, they may agree that the two evaluation consultants choose a third evaluation consultant to determine the value, or they may proceed to dispute resolution proceedings under ARTICLE XIV hereof.

(c) The Sub-Lease payments shall begin prorata upon the completion of construction of each Private Improvement structure as defined by the City building department's issuance of a certificate of occupancy for final build-out. Sub-Lease payments shall be due only for the prorata area of the Project on which vertical Private Improvements have been made, consistent with the following:

(1) If material construction has commenced on any Private Improvements within the first twenty-four (24) months of the effective date of the Sub-Lease, then the only Sub-Lease payments made for the next thirty-six (36) months shall be prorata for that portion of the Project Site that is developed once the certificate of occupancy is issued.

(2) If, within thirty-six (36) months of completion of any of the Private Improvements, the Developer commences material construction of any of the other Private Improvements, then the prorata portion of Sub-Lease payments due shall be for those Private Improvements that have certificates of occupancy.

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(3) If, within thirty-six (36) months of completion of any of the Private Improvements, the Developer does not commence material construction of any of the other Private Improvements, then either (i) Sub-Lease payments shall be due on the entire property available for construction of the Private Improvements, or (ii) the parties may amend the Sub-Lease to eliminate the Developer's exclusive right to develop those portions of the Project.

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

Section 6.02 Parcels.

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

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

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

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

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

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

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

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

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

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

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

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

(6) To conduct limited, supervised public tours.

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

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

ARTICLE VII.
INSURANCE.

Section 7.01 Insurance Requirements Generally.

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

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

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

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

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

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

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

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

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

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

Section 7.02 Insurance During Construction of the Project.

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

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

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

Employer's Liability

$1,000,000 Limit Each Accident

$1,000,000 Limit Disease
Aggregate

$1,000,000 Limit Disease
Each Employee

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

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

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

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

Bodily Injury, Personal Injury &
Property Damage Liability--$3,000,000 Combined
Single Limit per
Occurrence & Aggregate

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

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

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

The Amount of Insurance is to be 100% of the completed value of the work described in the construction contract for that part of the Project. Such coverage will additionally include an amount equal to 10% of the Amount of Insurance of the completed value of the work described in this Contract for materials and equipment stored off the construction site, in transit or delivery, including loading and unloading. The limits of insurance shall additionally include any damages suffered by the City due to any delay of completion of the work described in this Agreement caused by an insurable loss.

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

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

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

(7) Other insurance coverage may be required when unusual operations are necessary to complete the construction of the Project, including, but not limited to, use of aircraft (including helicopters and balloons), pile drivers, cranes, barges, underwater equipment or explosives, and any other high risk circumstances. No aircraft or explosives shall be used without prior written notice

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to, and approval by, CMPA. Minimum insurance coverage and limits shall be determined at the time of such advance written notice at the sole discretion of CMPA.

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

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

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

ARTICLE VIII.
INDEMNIFICATION.

Section 8.01 Indemnification by the Developer.

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

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

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

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

Section 8.02 Indemnification by CMPA.

(a) CMPA agrees to indemnify, defend and hold harmless, the Developer, its respective agents, officers, and employees from any and all liabilities, damages, penalties, judgments, claims,

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demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of, any act or omission of CMPA, its respective agents or employees arising out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services covered by this Agreement, or which are alleged to have arisen out of in connection with, or by reason of, the performance of such services.

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

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

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

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

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

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

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

ARTICLE IX.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER.

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

(a) The Developer is a Florida limited liability company duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and

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under each document or instrument contemplated by this Agreement to which it is or will be a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.

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

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

(d) There are no pending or, to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency against the Developer which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Developer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF CMPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XI.
CONDITIONS PRECEDENT.

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

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

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

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

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

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

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

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

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

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

ARTICLE XII.
DEFAULT; TERMINATION.

Section 12.01 Default by the Developer.

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

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

(2) The Developer shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy,

or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation or shall file an answer admitting, or shall fail reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Developer or any material part of such entity's properties; or

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

(b) (1) If an event of default by the Developer described in subsection (a) above shall occur, CMPA shall provide written notice thereof to the Developer, and, if such event of default shall not be cured by the Developer within thirty (30) days after receipt of the written notice from CMPA specifying in reasonable detail the event of default by the Developer, or if such event of default is of such nature that it cannot be completely cured within such time period, then if the Developer shall not have commenced to cure such default within such thirty (30) day period and shall not diligently prosecute such cure to completion within such reasonable longer period of time as may be necessary (provided, however, if the Developer is proceeding diligently and in good faith, the curative period shall be extended for a period of not exceeding six (6) months without any approval or consent of CMPA being required, but such approval will be required if the curative period is to be extended beyond six (6) months) then, in addition to any remedy available to it, CMPA may terminate this Agreement or pursue any and all legal or equitable remedies to which CMPA is entitled, provided, however, if the Developer shall fail to cure such event of default within said thirty (30) day or longer period or ceases to proceed diligently to timely cure such event of default, then CMPA may proceed to enforce other available remedies without providing any additional notice to the Developer.

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

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

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

Section 12.02 Default by CMPA.

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

provided in Section 12.01 hereof will not constitute an event of default by CMPA under this subsection (a).

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

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

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

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

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

Section 12.05 Termination.

(a) CMPA and the Developer acknowledge and agree that as of the Effective Date certain matters mutually agreed by the parties hereto to be essential to the successful development of the Project have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the control of any of the parties hereto or which cannot be definitely resolved under this Agreement. In recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate

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or responsible party therefore diligently and in good faith seeks to the fullest extent of its capabilities to cause such event or condition to occur or be satisfied, the failure of the events or conditions listed in subsection (b) below to occur or be satisfied shall not constitute an event of default by any party under this ARTICLE XII, but may, upon the election of any party hereto, be the basis for a termination of this Agreement in accordance with this Section 12.05.

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

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

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

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

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

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

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

(1) Return of the Developer's earnest money deposit pursuant to Subsection 2.06(a) hereof.

(2) Reimbursement of all actual and verifiable costs the Developer incurs in developing the site for the Project.

(3) Payment of the Development Fee earned pursuant to Subsection 2.06(b) hereof, provided, however, that the Development Fee shall be the greater of four percent (4%) of the anticipated net amount of the Bonds or four percent (4%) of the Developer's actual expenditures to date on the Site Preparation Project or the Public Improvements.

Upon any termination before the end of the term of this Agreement or the Sub-Lease without cause, the Developer shall be entitled to and have a lien upon CMPA's interest in the Property equivalent to the termination payment amount. Except as set forth in this Subsection 12.05(d), upon termination neither the Developer nor CMPA shall be obligated or liable one to the other in any way, financially or otherwise,

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for any claim or matter arising from or as a result of this Agreement or any actions taken by the Developer and CMPA, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

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

Section 12.06 Agreement Termination Certificate.

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

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

ARTICLE XIII.
RIGHT TO CONTEST.

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

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

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

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

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

(d) the party seeking the benefit of this Section 13.02 shall have furnished to the other parties such security, if any, as may be required in such proceeding or as may be reasonably requested

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by the others, to protect the Project and the Project Site, and any part thereof, and any interest of such parties hereunder.

ARTICLE XIV.
DISPUTE RESOLUTION.

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

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

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

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

ARTICLE XV.
UNAVOIDABLE DELAY.

Section 15.01 Unavoidable Delay.

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

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

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

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

(b) (1) The parties recognize and agree that under certain economic conditions in the nation or in the northwest Florida area certain parts of the Project may not be economically feasible at the time provided in the Project Schedule when the Developer must decide whether to proceed with that part of the Project. In such an event, which is beyond the control of the parties to this Agreement, it is the intent and desire of the parties that the rights, duties and obligations of the Developer to develop various parts of the Project should not be lost, waived or forfeited solely as a result of such severe, adverse economic conditions. In such an event, the parties agree the provisions of this subsection (b) may be invoked by the Developer for an extension of time in which to proceed with the acquisition or lease of Parcels and the development of the Project.

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

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

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

ARTICLE XVI.
RESTRICTIONS ON USE.

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

ARTICLE XVII.
FIRE OR OTHER CASUALTY.

Section 17.01 Loss or Damage to Project.

(a) Until the Termination Date or the Expiration Date, whichever is later, and without regard to the extent or availability of any insurance proceeds, the Developer covenants and agrees to assist CMPA in diligently commencing and completing, or causing other persons to diligently commence and complete, the reconstruction or repair of any loss or damage caused by fire or other casualty to each and

every part of the Site Preparation Project to substantially the condition as existed prior to the occurrence of such loss or damage, promptly after CMPA approves the plans and specifications for such reconstruction or repairs.

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

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

Section 17.03 Project Insurance Proceeds.

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

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

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

ARTICLE XVIII.
MISCELLANEOUS

Section 18.01 Assignments. The Developer shall not have the right to assign its rights and obligations under this Agreement with the prior written consent of CMPA, which shall not be unreasonably withheld.

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

Section 18.03 Notices.

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

To CMPA: Community Maritime Park Associates, Inc.
c/o Lacey A. Collier, Chairman/Trustee

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3885 Durango Drive
Pensacola, FL 32504

Copy to: Edward P. Fleming
McDonald, Fleming Moorhead
25 W. Government Street
Pensacola, FL 32502-5813

To Developer: Maritime Park Development Partners, LLC
c/o Jeff Galt
85 NE Loop 410, Ste. 207
San Antonio, TX 78216

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

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

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

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

Section 18.06 Venue; Submission to Jurisdiction.

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

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

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

Section 18.08 Complete Agreement; Amendments.

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

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

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

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

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

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

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

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

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

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

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

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Section 18.17 Term; Agreement Expiration Certificate.

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

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

(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]

DRAFT

Executed and delivered
in the presence of:

_____

_____
(Print Name)

_____

_____
(Print Name)

(witnesses as to Lacey A. Collier)

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

By: _____
Lacey A. Collier, Chairman/Trustee

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)

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

DRAFT

Executed and delivered
in the presence of:

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

By: _____
Jeff Galt, [title]

_____
(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)

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

DRAFT

CONSENT AND JOINDER

At a duly called public meeting on January 22, 2009, the City Council approved this Agreement and authorized and directed the execution of this Consent and Joinder by the appropriate officials of the City 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 intention and commitment of the City 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

APPROVED AS TO FORM
AND EXECUTION:

By:_____
City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Al Coby, City Manager of the City of Pensacola, Florida. He is personally known to me or has produced valid Florida drivers' licenses as identification.

(SEAL)

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

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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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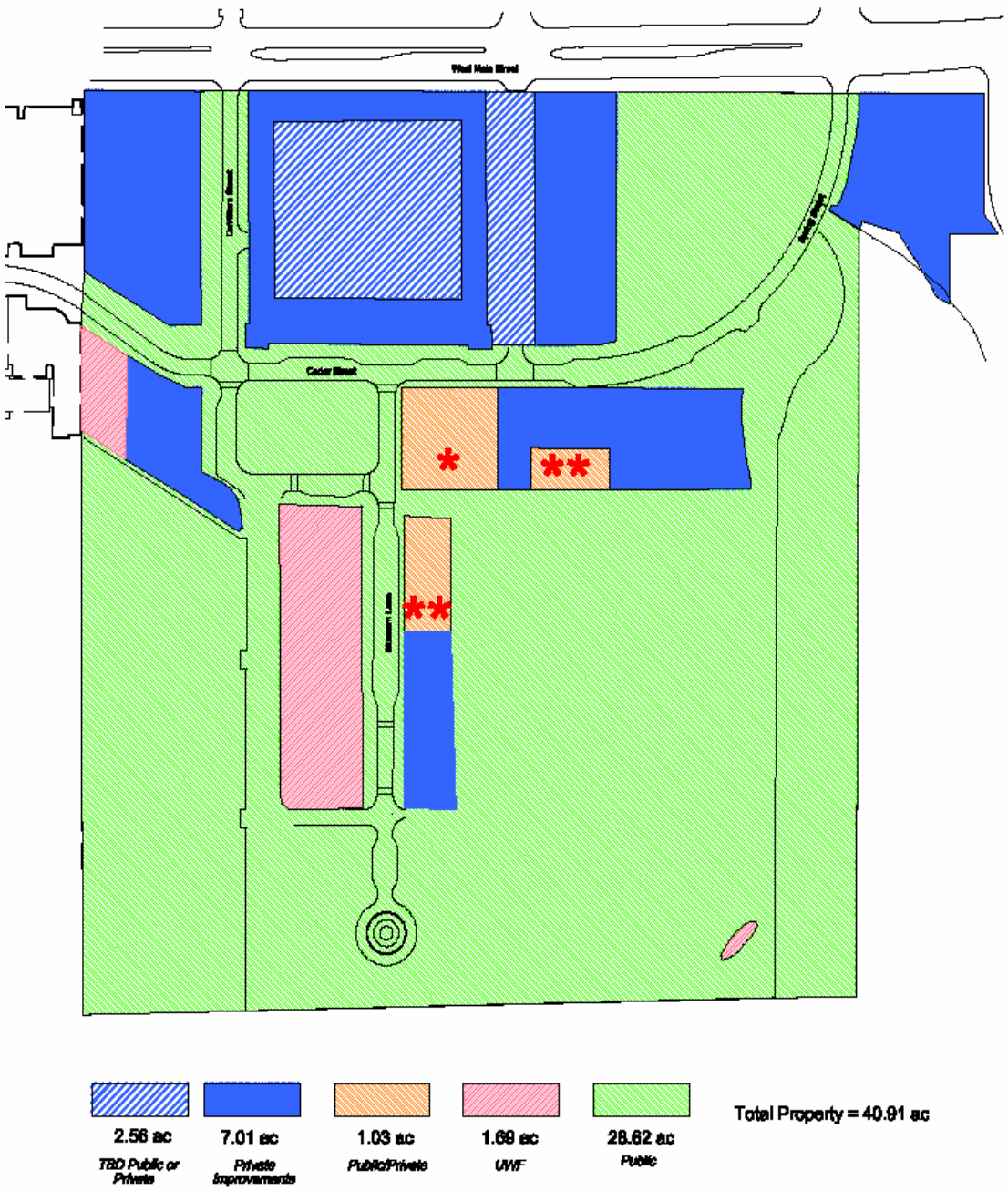
EXHIBIT "B"

Parcel Plan



* Private Improvements do not include Floors Containing UWF Executive Learning Center and Conference Center.

** Private Improvements do not include Ground Floor Locker Rooms, Second Level Stadium Concessions and Restrooms, and Third Level Stadium Suites.

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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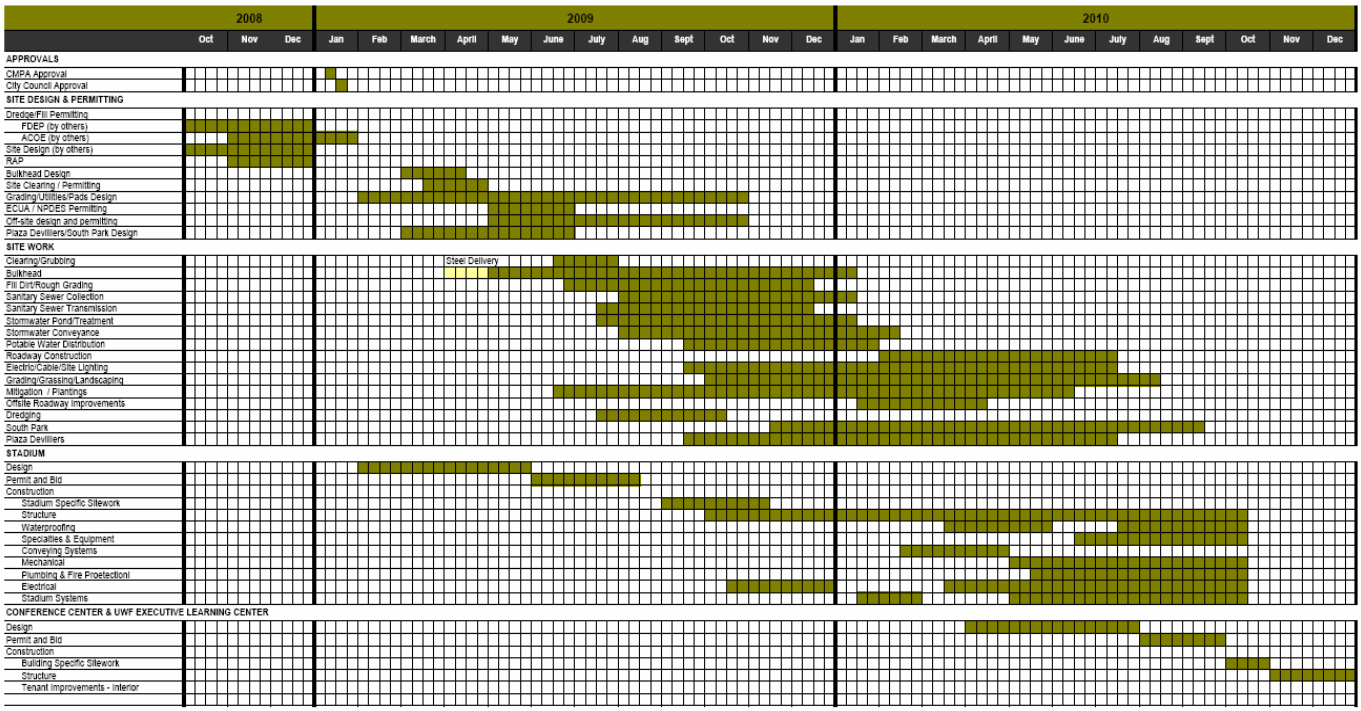
EXHIBIT "D"

Preliminary Project Schedule



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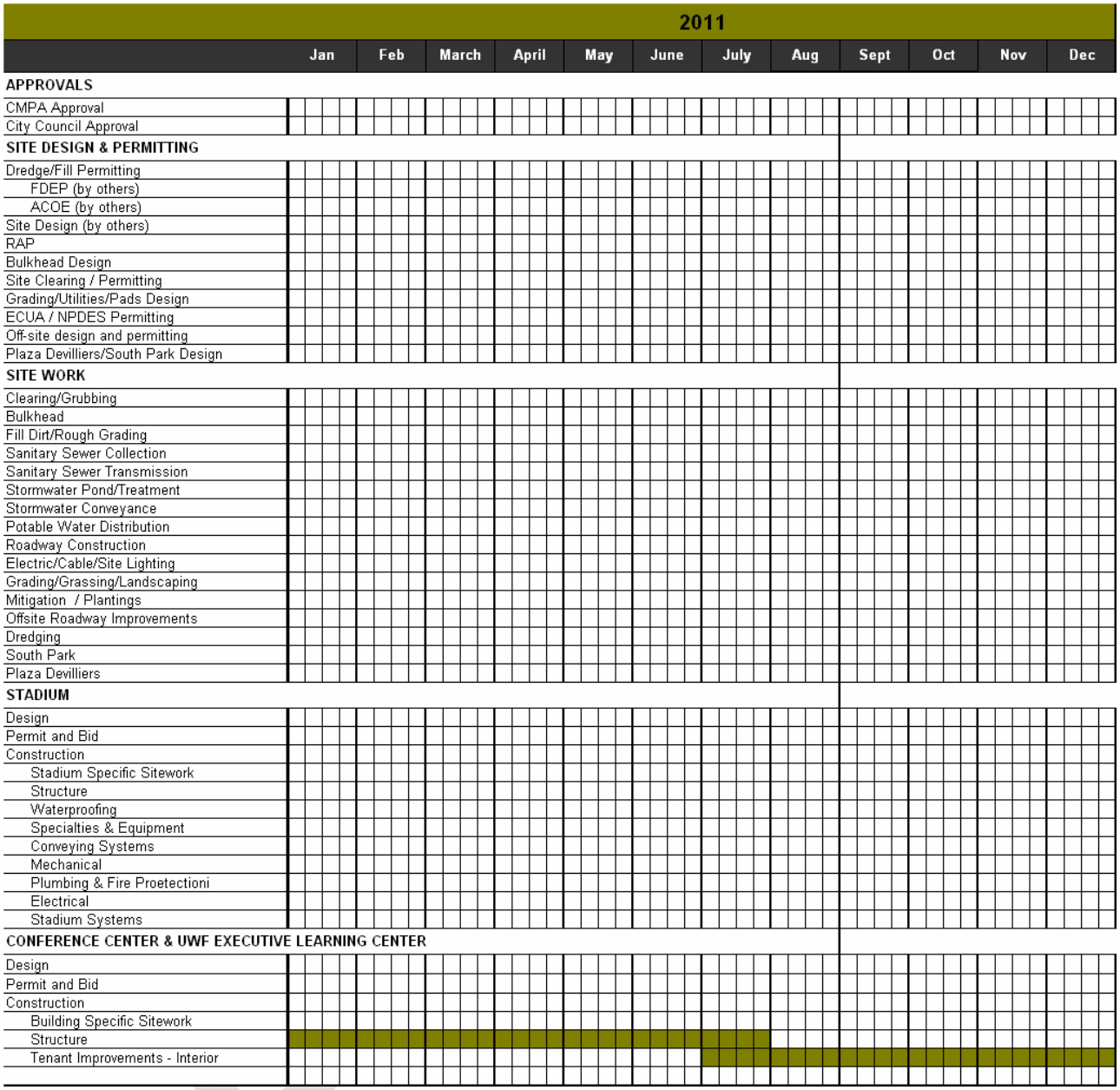
2011
Jan
Feb
March
April
May
June
July
Aug
Sept
Oct
Nov
Dec
APPROVALS
CMPA Approval
City Council Approval
SITE DESIGN & PERMITTING
Dredge/Fill Permitting
FDEP (by others)
ACOE (by others)
Site Design (by others)
RAP
Bulkhead Design
Site Clearing / Permitting
Grading/Utilities/Pads Design
ECUA / NPDES Permitting
Off-site design and permitting
Plaza Devilliers/South Park Design
SITE WORK
Clearing/Grubbing
Bulkhead
Fill Dirt/Rough Grading
Sanitary Sewer Collection
Sanitary Sewer Transmission
Stormwater Pond/Treatment
Stormwater Conveyance
Potable Water Distribution
Roadway Construction
Electric/Cable/Site Lighting
Grading/Grassing/Landscaping
Mitigation / Plantings
Offsite Roadway Improvements
Dredging
South Park
Plaza Devilliers
STADIUM
Design
Permit and Bid
Construction
Stadium Specific Sitework
Structure
Waterproofing
Specialties & Equipment
Conveying Systems
Mechanical
Plumbing & Fire Proetectioni
Electrical
Stadium Systems
CONFERENCE CENTER & UWF EXECUTIVE LEARNING CENTER
Design
Permit and Bid
Construction
Building Specific Sitework
Structure
Tenant Improvements - Interior

EXHIBIT "E"

Community Maritime Park

Site Preparation Project Completion Certificate

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

Certified this __ day of _____, 200_.

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

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

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

Accepted and Agreed to by:

COMMUNITY MARITIME PARK ASSOCIATES, INC.

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

_____
Printed/Typed Name: _____

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Notary Public-State of Florida
Commission Number:

DRAFT

EXHIBIT "F"

Public Improvements Budget

DESCRIPTION	%	TOTAL
USES OF FUNDS		
CONSTRUCTION COSTS:		
Remediation/Site Work/Utilities/Landscaping		18,712,824
Multi-Use Stadium		15,855,161
Conference Center & UWF Executive Learning Center		9,552,501
TOTAL CONSTRUCTION COSTS		**44,120,487**
WETLANDS MITIGATION		**1,000,000**
SOFT COSTS:		
Civil Engineering & Permitting		988,037
Architectural Design & Permitting		1,341,525
Miscellaneous Professional Fees		775,000
Impact Fees (ECUA)		500,000
Miscellaneous Costs		640,000
Development Fee and Overhead		1,914,602
TOTAL SOFT COSTS		**6,159,164**
Total Project Costs Before Soft Cost Contingency		51,279,651
SOFT COST CONTINGENCY	2.00%	123,183
TOTAL PROJECT COSTS		**51,402,834**

SOURCES OF FUNDS	
CRA Bond Funding (Remainder of original commitment of $40 million)	38,000,000
State and Federal Grants (EDA, THUD, EPA, TCSP, LHHS, Army Corps, etc.)	13,402,834
TOTAL SOURCES OF FUNDS	**51,402,834**

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EXHIBIT "F" Continued

Public Improvements Budget
Alternate Scenarios
Limited Public Funds

Aternatives - Scenario if no public funds are raised beyond the original CRA Bonds of $40 million:

1) Include UWF Executive Learning Center in a portion of the Private Improvements
2) Include Conference Center in the hotel portion of the Private Improvements with discounted rate for civic & non-profit events
3) Postpone the construction of the Conference Center until funds are available

Reduction in Project Estimate without Conference Center or UWF Executive Learning Center funded in Phase 1:

Conference Center & UWF Executive Learning Center	
Construction Costs	(9,552,501)
Soft Costs (excluding Developer Fee)	(494,285)
Developer Fee	(401,871)
Total Project Estimate Reduction	(10,448,657)
Net Project Costs with out Conference Center & UWF Executive Learning Center in Phase 1	40,954,177
CRA Bonds	38,000,000
Developer loan to the CMPA should addiitonal funding not be raised	2,954,177

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EXHIBIT "G"

Sub-Lease Form

SUB-LEASE

(COMMUNITY MARITIME PARK)

SUB-LESSOR:

COMMUNITY MARITIME PARK ASSOCIATES, INC.

and

SUB-LESSEE:

MARITIME PARK DEVELOPMENT PARTNERS, LLC

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EXHIBITS

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

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SUB-LEASE

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

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).

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

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

At a duly called public meeting on November 20, 2008, the City Council approved this Sub-Lease and authorized and directed its execution by the appropriate officials of CMPA.

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

AGREEMENT

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

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

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

2.01. "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.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.15. "Conference Center" means that component of the Public Improvements consisting of a venue in which conferences, seminars, meetings and other

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similar-type events can be held, which may be part of the Public Improvements or the Private Improvements, as the Developer determines in light of market conditions and Project economics.

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

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

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

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

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

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

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

2.23. "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.

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

2.25. "Development Agreement" means the agreement between CMPA and the Developer with an effective date of __, 2008, authorizing the Developer to undertake and complete the Site Preparation Project and the public Improvements and providing for execution of this Sub-Lease for development of the Private Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.41. "Person" means any natural person, firm, partnership (general or limited), corporation, company, joint venture, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or body

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politic, including any heir, executor, administrator, trustee, receiver, successor or assignee, or other person acting in a similar representative capacity.

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

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

2.44. “Private Improvements” means the improvements constructed on the Sub-Leased Property consisting of the Retail Project, the Hotel Project, the Residential Project, and the Office Project.

2.45. “Project” means, collectively, the Site Preparation Project, the Maritime Museum Project, the Public Improvements and the Private Improvements.

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

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

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

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

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

2.51. “Public Improvements Costs” means the costs of the Public Improvements paid from the Public Financing, including costs to plan, design, coordinate, and obtain the Site Preparation Permit, the Building Permit and the Permits for the Public Improvements, and the costs to construct, equip, install and complete the Public Improvements.

2.52. “Public Improvements Property” means each Parcel that will contain any of the Public Improvements.

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

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2.54. "Retail Project" means that portion or component of the Private Improvements consisting of the design, development, construction, completion and operation of those buildings, structures, facilities and other improvements to be constructed and installed on the Sub-Leased Property, which are to be used for commercial retail purposes, which may consist in whole or in part of retail uses in other parts of the Private Improvements.

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

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

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

2.58. "Sub-Lease Commencement Date" means the date on which this Sub-Lease commences as provided in Paragraph 7.

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

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

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

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

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

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

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

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

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5. **TERM**. The term of this Sub-Lease shall commence on the Sub-Lease Commencement Date and shall continue for a period of ninety-nine (99) years; provided, however, that if different Parcels have different Commencement Dates the term for each Parcel shall be such that the term for all expires on a single date ninety-nine (99) years from the earliest Commencement Date. While the Master Lease (2006) term is sixty (60) years, the parties agree that it is in the best interest of the Project for the term of this Sub-Lease to be longer; therefore, pursuant to section 10.01 of the Master Lease (2006), the City shall assume Sub-Lessor's position under this Sub-Lease after the expiration of the Master Lease (2006).

6. **RENT**.

6.01. Sub-Lessee's initial annual rent payable under this Sub-Lease shall be at the fair value of the estimated value of the unimproved property as determined pursuant to Section 6.01(b) of the Development Agreement.

6.02. The initial annual rent shall be increased by ten percent (10%) every five (5) years measured from the Commencement Date of the Sub-Lease for the first Parcel on which Private Improvements are developed.

6.03. The Sub-Lease payments shall begin prorata for each Parcel upon the issuance of a Notice of Commencement of construction of any part of the Private Improvements upon that Parcel. Sub-Lease payments shall be due only for the prorata area of the Project on which vertical Private Improvements have been made, consistent with the following:

6.03.01. If construction has commenced on any Private Improvements within the first twenty-four (24) months of the effective date of the Sub-Lease, then the only Sub-Lease payments made for the next thirty-six (36) months shall be prorata for that portion of the Project Site that is developed once the Certificate of Occupancy is issued.

6.03.02. If, within thirty-six (36) months of completion of any of the Private Improvements, the Developer commences material construction of any of the other Private Improvements, then the prorata portion of Sub-Lease payments due shall be for those Private Improvements that have Certificates of Occupancy.

6.03.03. If, within thirty-six (36) months of completion of any of the Private Improvements, the Developer does not commence material construction of any of the other Private Improvements, then either (i) Sub-Lease payments shall be due on the entire property available for construction of the Private Improvements, or (ii) the parties may amend this Sub-Lease to eliminate the Developer's exclusive right to develop those portions of the Project.

7. **SUB-LEASE COMMENCEMENT DATE.** Provided that the Development Agreement has not been terminated earlier in accordance with its provisions, this Sub-Lease shall commence with respect to particular Parcels, and Sub-Lessee shall be entitled to possession of such Parcels, upon the recording of a Notice of Commencement of construction of any part of the Private Improvements upon such Parcels.

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

9. **REVENUES FROM THE SUB-LEASED PROPERTY.** Except as otherwise provided herein and subject to any Sub-Subleases or use agreements entered into by Sub-

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Lessee with tenants, users, or operators of any part of the Sub-Leased Property, the Sub-Lessee shall be entitled to all revenues from the Sub-Leased Property.

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

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

11.01. Sub-Lessor agrees to use its best efforts to assist Sub-Lessee in securing all zoning, subdivision, land use, construction and other similar and dissimilar governmental or quasi-governmental approvals, licenses and permits necessary to construct and operate the Project, understanding that the City will not, and cannot, waive or relinquish any governmental or regulatory power or authority. If requested by Sub-Lessee, Sub-Lessor will join in any application for any permit or permits for the Public Improvements, or, alternatively, recommend to and urge any governmental authority to which application for a permit or permits has been made that such permit or permits be issued or approved.

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

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

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

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

14. **REPRESENTATIONS**.

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

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

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

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contemplated or required by this Sub-Lease to which Sub-Lessee is or will be a party have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, Sub-Lessee, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (a) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein; or, (b) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Sub-Lessee.

14.01.03. This Sub-Lease and, to the extent such documents presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document contemplated or required by this Sub-Lease to which Sub-Lessee is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Sub-Lessee enforceable against Sub-Lessee in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

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

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

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

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

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

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

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

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

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

14.02.04. This Sub-Lease and, to the extent such documents presently exist in form accepted by Sub-Lessor and Sub-Lessee, each document contemplated or required by this Sub-Lease to which Sub-Lessor is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of Sub-Lessor enforceable against Sub-Lessor in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

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

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

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

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

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

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

15. **PROPERTY CONDITION.** Subject to other provisions of this Sub-Lease, and to completion of the Site Preparation Project under the Development Agreement, the Sub-Lessor is leasing the Sub-Leased Property in its physically "as is" condition and makes no representation as to its suitability for the uses or purposes provided by this Sub-Lease. The Sub-Lessee acknowledges that it has made, or has had an opportunity to make, a

thorough and complete inspection of the Sub-Leased Property and is fully advised of its extent and condition. The Sub-Lessee fully accepts the Sub-Leased Property in its present physical state and condition.

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

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

16.02. In the event of a breach of any of the provisions of this Sub-Lease, the party not in breach shall be entitled to recover from the breaching party all costs, expenses, reasonable attorneys' fees and damages which may be incurred or sustained by reason of such breach.

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

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

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

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

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

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

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

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

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

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

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

17. **CONDEMNATION**.

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

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

18. **DEFAULT; REMEDIES**.

18.01. Unless and until a lease termination certificate is executed by Sub-Lessor and Sub-Lessee and recorded in the Public Records of Escambia County, reflecting a termination of this Sub-Lease and surrender of the Sub-Leased Property

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pursuant to this Paragraph 18.01, all parties are put on record notice and shall assume and rely upon the fact that this Sub-Lease is in good standing and in full force and effect.

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

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

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

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

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

18.06. In the event there shall be a material default under this Sub-Lease and such default shall continue after the expiration of any applicable grace period and

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shall occur after the issuance of the Certificate of Occupancy or Certificate of Completion for the Public Improvements, Sub-Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth in Paragraph 16.05.02 herein regarding Sub-Lessee's failure to repair and maintain the Sub-Leased Property, excepting, however, Sub-Lessor shall expressly not have the right to terminate this Sub-Lease or obtain the right of re-entry or repossession of the Sub-Leased Property.

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

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

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

19. **RIGHT TO CONTEST**.

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

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

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

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

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

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

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

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

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

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

21. **OWNERSHIP AT TERMINATION**.

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

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

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

22.01. Sub-Lessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by

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law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least $100,000 each person - accident, $100,000 each person - disease, $500,000 aggregate - disease.

22.02. Sub-Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability Form filed by the Insurance Services Office. Sub-Lessor shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of $1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required.

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

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

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

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

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

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22.04. Required insurance shall be documented in the Certificates of Insurance that provide that the City, Sub-Lessor, Sub-Lessee and any pertinent lenders shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Sub-Lease must be listed on the certificate. If required by the City, Sub-Lessor, or Sub-Lessee, the party responsible for maintaining certain insurance shall furnish copies of pertinent insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City, an ACORD 25. To the extent commercially available, Sub-Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies required of Sub-Lessee hereunder with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction.

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

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

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

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

23. **INDEMNIFICATION.**

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

23.02. Sub-Lessor shall indemnify, defend and save harmless Sub-Lessee from and against any and all claims, suits, actions, damages and causes of action

arising during the term of this Sub-Lease, for any bodily injury, loss of life or damage to property sustained within the boundaries of the Property leased under the Master Lease (2006) outside of Sub-Leased Property, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Sub-Lessor shall also specifically defend any action or proceeding brought against Sub-Lessee as the result of any such claim for bodily injury, loss of life or damage to property, at no cost or expense to Sub-Lessee. If Sub-Lessor has supplied Sub-Lessee with evidence of insurance covering any of the aforementioned risks, including through any self-insurance program, no claim shall be made against Sub-Lessor unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof.

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

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

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

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

24.04. The time between the date of the casualty and the date on which Notice of Loss is given shall be considered an Unavoidable Delay under this Sub-Lease. Sub-Lessee will not be obligated to make any repair or restoration that is feasible, unless and until Sub-Lessee's time for performance has been extended by a period of time

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sufficient to repair or restore such loss and complete the balance of the Private Improvements.

25. **ASSIGNMENT.** Sub-Lessee may assign this Sub-Lease, or further sub-sublease its interests hereunder, in whole or in part, without Sub-Lessor's prior approval in Sub-Lessee's absolute discretion. To generate interest in the Private Improvements and attract the greatest overall investment of resources into the Project, the parties intend and agree to allow Sub-Subleases or assignments of the Sub-Leased Property, in whole or in part. Toward this end, the various Parcels may be partitioned by Sub-Lessee into distinct ground lease components for development and sale or lease apart from the remainder of the Parcels of the Sub-Leased Property. Sub-Lessor and the City shall recognize and not disturb the rights of the holders of such separate components, notwithstanding the default of the holders of other components and notwithstanding the default by the holder of any ground lease interest on which the separate component is founded. Upon an assignment of all or part of this Sub-Lease and assumption by the assignee thereof, Sub-Lessee shall be relieved of further liability under this Sub-Lease with respect to the portion assigned.

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

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

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

Copy to: Edward P. Fleming
McDonald, Fleming Moorhead
25 W. Government Street
Pensacola, FL 32502-5813

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

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

Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Paragraph 27. The addresses to which notices are to be sent

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may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

28. **ESTOPPEL CERTIFICATES**. Sub-Lessor agrees that, at any time and from time to time during the Term of this Lease, within twenty (20) days after request by Sub-Lessee, the Authorized Representative of Sub-Lessor will execute, acknowledge and deliver to any prospective purchaser, assignee, mortgagee or other person designated by Sub-Lessee, a certificate stating: (a) that this Sub-Lease is unmodified and in force and effect (or if there have been modifications, that this Sub-Lease is in force and effect as modified, and identifying the modification agreements); (b) confirming that the rent has been paid in full; (c) whether or not there is any existing default by either party hereto, and, if there is any such default, specifying the nature and extent thereof; (d) whether or not there are any setoffs, defenses, or counterclaims against enforcement of the obligations to be performed hereunder; and (e) any other information relating to this Sub-Lease reasonably requested by Sub-Lessee.

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

30. **LEASEHOLD MORTGAGES**.

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

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

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

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

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have sixty (60) days from the date the notice of default was mailed to the leasehold mortgagee within which to cure such default.

30.02.03. In case Sub-Lessee shall default under any of the provisions of this Sub-Lease, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which the Sub-Lessee is required to do or perform and Sub-Lessor shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by Sub-Lessee.

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

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

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

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30.02.07. In the event that a leasehold mortgagee shall become the owner or holder of Sub-Lessee's interest by foreclosure of its mortgage or by assignment of this Sub-Lease in lieu of foreclosure or otherwise, the term "Sub-Lessee," as used in this Sub-Lease, means only the owner or holder of Sub-Lessee's interest for the time being so that, in the event of a sale, assignment or other disposition of Sub-Lessee's interest in this Sub-Lease by the leasehold mortgagee, the leasehold mortgagee shall be entirely freed and relieved of all covenants and obligations of Sub-Lessee under this Sub-Lease and it shall be deemed and construed, without further agreement between Sub-Lessor and the leasehold mortgagee or between Sub-Lessor, the leasehold mortgagee and the leasehold mortgagee's purchaser or assignee at any such sale or upon assignment of Sub-Lessee's interest, that the purchaser or assignee of Sub-Lessee's interest has assumed and agreed to carry out any and all covenants and obligations of Sub-Lessee.

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

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

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

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

30.07. Any leasehold mortgage shall be specifically subject and subordinate to Sub-Lessor's rights under this Sub-Lease and the Master Lease (2006), and to the City's fee ownership of the Sub-Leased Property. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon Sub-Lessee's interest in this Sub-Lease or upon the lien of any leasehold mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against the City's fee interest in the Sub-Leased Property or the Sub-Lessor's interest in this Sub-Lease or the Master Lease (2006). Despite any provision which is or may appear to be to

the contrary in this Sub-Lease, under no circumstances whatsoever shall the City's fee simple title interest, or Sub-Lessor's leasehold interest, of the Sub-Lessor in the Property], or any portion of them, be subordinated to the Sub-Lease.

30.08. A leasehold mortgagee (or its designee or nominee) may become the legal owner and holder of the interest of Sub-Lessee under this Sub-Lease, including, without limitation, ownership of the improvements erected on or to be erected on the Sub-Leased Property, by foreclosure or other enforcement proceedings, or by obtaining an assignment of this Sub-Lease in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding, without Sub-Lessor's consent, subject always to the applicable terms and provisions of this Sub-Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. **LICENSES AND PERMITS**. Sub-Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all Applicable Laws relative to development and operation to be conducted on the Sub-Leased

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Property in accordance with this Sub-Lease, excepting therefrom the permits, licenses, fees and taxes for any part of the Sub-Leased Property that is subsequently assigned or transferred to or owned or controlled by the Sub-Lessor or the City or the agency for which the City shall be responsible at their sole cost and expense. Upon Sub-Lessor's written request, at reasonable intervals, Sub-Lessee agrees to provide Sub-Lessor with a copy of such permits and payments.

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

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

39. **SUBORDINATION**. Sub-Lessor hereby subordinates in favor of any leasehold mortgagee any right to a Sub-Lessor's lien against the furnishings, fixtures, machinery, equipment, furniture, inventory and/or any other items of personal property which are owned by Sub-Lessee or tenants of Sub-Lessee under Sub-Subleases, and now located or may hereafter be delivered or installed in or upon any of the improvements situated upon the Sub-Leased Property. This subordination is self-executing and no further evidence of the subordination must be produced. However, if requested by any leasehold mortgagee, Sub-Lessor shall execute and deliver a subordination agreement in the form reasonably required by such leasehold mortgagee within fifteen (15) business days of written request and the governing body of Sub-Lessor hereby authorizes and instructs its Authorized Representative to sign and deliver such subordination agreement when found not to be inconsistent with the purpose and intent of this Paragraph39.

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

41. **GOOD FAITH AND FAIR DEALING**. Sub-Lessor and Sub-Lessee hereby agree to interpret the terms, conditions and provisions of this Sub-Lease in good faith

exercising reasonable business judgment, and to attempt to resolve any and all issues, disputes or conflicts that may arise hereunder in a reasonable and fair manner.

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

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

[SIGNATURES ON FOLLOWING PAGES]

DRAFT

Executed and delivered
in the presence of:

_____

_____
(Print Name)

_____

_____
(Print Name)

(witnesses as to Lacey A. Collier)

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

By: _____
Lacey A. Collier, Chairman/Trustee

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this __ day of _____, 2008, 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)

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

DRAFT

Executed and delivered
in the presence of:

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

By: _____
, Trustee

_____
(Print Name)

_____

_____
(Print Name)

(witnesses as to)

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this __ day of _____, 2008, by _____, 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)

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

DRAFT

Executed and delivered
in the presence of:

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

By: _____
Jeff Galt, [title]

_____
(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 _____, 2008, 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)

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

DRAFT

CONSENT AND JOINDER

At a duly called public meeting on November ___ 2008, the City Council approved this Sub-Lease and authorized and directed the execution of this Consent and Joinder by the appropriate officials of the City evidencing same.

This Consent and Joinder is provided for the purpose of acknowledging that this Sub-Lease 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 intention and commitment of the City 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.

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

(a) the Master Lease (2006) and Master Development Agreement (2006) are free from default and in full force and effect;
(b) in accordance with Section 5 of the Sub-Lease, the City will allow the continuation of the term beyond the expiration of the Master Lease (2006), with the City assuming the position of the Sub-Lessor thereafter until the expiration of the 99 term of the Sub-Lease;
(c) in accordance with Section 21.07 of the Master Lease (2006), the City will recognize and not disturb the rights and interests of Sub-Lessee or its subtenants;
(d) the City will recognize and respect the leasehold mortgage rights of holders of leasehold mortgages under the Sub-Lease and any Sub-Subleases as provided in Section 30 of the Sub-Lease;
(e) to avoid unnecessary duplication and expense, the allocation of insurance obligations among the Parties to the Master Lease (2006) and the Sub-Lease as set forth in Section 22 of the Sub-Lease will satisfy the requirements of the Master Lease (2006); and
(f) in the interest of allocating insurable casualty risks to insurance companies, the waiver of subrogation and waiver of recovery rights for insured casualty damage contained in Section 25.13 of the Master Lease (2006) shall extend to the Sub-Lessee and its subtenants.

CITY OF PENSACOLA, FLORIDA

By: _____

Al Coby, City Manager

ATTEST:

By:_____
City Clerk

APPROVED AS TO FORM

DRAFT

AND EXECUTION:

By:_____
City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____ 2008, by Al Coby, City Manager of the City of Pensacola, Florida. He is personally known to me or has produced valid Florida drivers' licenses as identification.

(SEAL)

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

DRAFT

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.

DRAFT

EXHIBIT "B"

Sub-Leased Property Description

DRAFT

EXHIBIT "C"

Initial Parcel Plan

* Private Improvements do not Include Floors Containing UWF Executive Learning Center and Conference Center.

** Private Improvements do not Include Ground Floor Locker Rooms, Second Level Stadium Concessions and Restrooms, and Third Level Stadium Suites.

EXHIBIT "H"

Community Maritime Park

Agreement Termination Certificate

Pursuant to Section 12.06 of the Development Agreement (Community Maritime Park) between Community Maritime Park Associates, Inc. (“CMPA”), and Maritime Park Development Partners, LLC (the “Developer") with an Effective Date of January __, 2009 (the "Development Agreement"), _____ _____ does hereby certify to _____ that the Development Agreement has been terminated by _____ and does hereby request _____ agree to such certification.

Certified this __ day of _____, 200_.

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

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

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

Accepted and Agreed to by:

COMMUNITY MARITIME PARK ASSOCIATES, INC.

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

DRAFT

_____

Printed/Typed Name: _____

Notary Public-State of Florida

Commission Number:

DRAFT

EXHIBIT "I"

Community Maritime Park

Agreement Expiration Certificate

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

Certified this __ day of _____, 200_.

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

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

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

Accepted and Agreed to by:

COMMUNITY MARITIME PARK ASSOCIATES, INC.

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

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

(SEAL)

DRAFT

_____

Printed/Typed Name: _____

Notary Public-State of Florida

Commission Number:

DRAFT