SUMMARY
OF
MASTER DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PENSACOLA, FLORIDA
AND
COMMUNITY MARITIME PARK ASSOCIATES, INC.

The Master Development Agreement formally designates CMPA as the developer of the Project, and provides for CMPA to complete the Site Preparation Project to make the Site ready for construction. The Agreement provides that when the Site Preparation Project is complete, the Public Improvements and the Private Improvements will be constructed under the terms of the Master Lease.

The following represents an Article-by-Article summary of the Master Development Agreement:

I. **Definitions.** This Article defines terms used in the Agreement. All of the defined terms are capitalized in the Agreement.

II. **Purpose and Intent, Proposal.** This Article sets forth the purpose and intent of the Agreement. It describes the public purpose of the Project, how the Project is to be developed under a Master Lease with CMPA in accordance with approved plans and Specifications, and the general obligations of CMPA to carry out the project. The Article formally accepts the CMPA proposal as being consistent with applicable law and responsive to the City's request for proposals. The Article then provides for designating authorized representatives of the City and CMPA to coordinate the Project.

III. **Project Schedule.** This Article provides for the adoption of a project schedule to ensure timely completion of the Project.

IV. **Site Preparation Project.** This Article provides for the manner in which the Site Preparation Project will be completed, including the procedure for obtaining required permits, how contractors are to be selected, and requirements to be included in agreements with contractors. The Site Preparation Project is defined as the construction and completion of those improvements necessary to prepare the Project Site for construction of the Public Improvements (the multi-use facility, the conference center, and the open park), and the Private Improvements (that part of the project devoted to development by private developers). For completion of the Site Preparation Project, this Article provides for plans and specifications for this phase of the development, describes how Project Professionals and Contractors are to be selected consistent with policies of the City, and gives guidelines for construction activity. Additionally:

- The Site Preparation Project will also include the work necessary to complete all environmental remediation by CMPA and/or the State of Florida. Costs associated with the Site Preparation Project are included in the City's maximum financial contribution.
- The Site Preparation Project design and component costs are subject to City Council review and approval.
- Contracts and fee for the Project Professionals and Contractors selected are subject to review and approval by the City.

- Construction of the Site Preparation Project shall commence no later than 24 months following approval of the Development Agreement.

V. **Public Improvements Budget and Financing.** This Article describes how the City will pay for the Site Preparation Project, and limits the total amount the City will commit to the Project to a maximum of $40 million dollars of net proceeds received from a bond issue plus any supplemental grants obtained for the Project. It requires CMPA to submit for City approval a budget for the Public Improvements, and provides a procedure for the manner in which the City will make payments for the Public Improvements. The City will transfer funds into a Construction Fund after review and approval of all submitted invoices by CMPA to the City for Public Improvement Costs.

VI. **Master Lease.** This article provides for the simultaneous execution of the Master Lease, and for the Master Lease to commence after satisfaction of all conditions required by the City. The article generally describes the Parcel Plan (where the various improvements will be located), and provides a procedure for any change to the parcel plan. CMPA is given access to the Project Site for preliminary work, is allowed to erect a sign (with City approval) describing the Project, and agrees to enter into the Maritime Museum Lease with UWF.

VII. **Insurance.** Insurance protection for the City and CMPA is provided for in this Article. All Project Professionals and Contractors will be required to provide insurance coverage acceptable to the City.

XIII. **Indemnification.** This Article provides for indemnification if either party breaches the Agreement or has misrepresented its status. The amount of indemnification for the City is limited under the Agreement and applicable Florida statutes.

IX. **Representations, Warranties and Covenants of CMPA.** The substance of this Article is that CMPA represents that it is validly organized and has the required legal standing to execute the Agreement, and agrees to perform its obligations as outlined in the Agreement.

X. **Representations, Warranties and Covenants of the City.** This is a similar provision for the City, under which the City represents its legal status and that all things required of it under its governing documents have occurred to enable it to execute the Agreement.

XI. **Conditions Precedent.** This Article describes conditions that must be met before certain actions are taken.

Conditions that must be met before CMPA will begin the Site Preparation Project are described in Section 11.01. These include having the Public Financing available, approved plans and specifications, required permits.

Conditions that must be met before the City will authorize issuance of the Bonds are described in Section 11.02. These conditions include:

- Execution of lease and use agreements between The Studer Group and CMPA for office space and use of the Conference Center with terms and conditions acceptable to the City.

- Execution of an agreement with the Pelicans baseball team and CMPA for use of the multi-use facility.
- Execution of the Maritime Museum Lease between UWF and CMPA with all required State approvals and sufficient funds raised to construct a 50,000 square foot facility
- Issuance of required permits for the Site Preparation Project.
- Executed contract between CMPA and contractors for Site Preparation Project and Public Improvements for a guaranteed maximum price within budget subject to City Council approval.
- Final approval of financial requirements for issuance of the bonds.

Section 11.03 sets forth those conditions that must be met before the Commencement Date of the Master Lease. Satisfaction of these conditions will allow CMPA to initiate all steps required for issuance of the bonds by the City. These requirements for commencement of the Master Lease include:

- The City being satisfied with the capacity of CMPA to cause the development of the project, accepting a project development strategy from CMPA.
- Execution of lease and use agreements between The Studer Group and CMPA for office space and use of the Conference Center with terms and conditions acceptable to the City.
- Execution of an agreement with the Pelicans baseball team and CMPA for use of the multi-use facility with minimum payment of $175,000 per season for 10 years.
- Commitment of Pelicans owner acceptable to the City for contribution of $250,000 per year for 5 years to CMPA.
- Execution of the Maritime Museum Lease by UWF and CMPA with all required State approvals and sufficient funds raised to construct a 50,000 square foot facility, including a pledge of $2,250,000 from Quint and Mary Studer acceptable to the City.
- Execution of an agreement between the University of West Florida and CMPA for the use of the Conference Center and classroom and office space acceptable to the City.
- Issuance of required permits for the Site Preparation Project
- Final approval of financial requirements for issuance of the bonds acceptable to the City.

XII. **Default; Termination.** This Article makes provision for what constitutes default under the Agreement by CMPA or the City. It also makes provision for how and on what conditions the Agreement is terminated. All conditions precedent must be satisfied to the satisfaction of the City within two years from the execution of the Master Lease.

XIII. **Right to Contest.** This Article gives either party the right to contest a lien or dispute with a contractor with notice to the other party.

XIV. **Dispute Resolution.** The parties are required under this Article to mediate any dispute before resorting to litigation.

XV. **Unavoidable Delay.** This Article provides a definition for any unavoidable delay that would toll any time periods in the Agreement.

XVI. **Restrictions on Use.** Under this Article the Project Site can only be used for the Project as described in the Agreement.

XVII. **Fire or Other Casualty; Condemnation.** This Article describes how the parties are to use insurance proceeds and consider reconstruction of damaged improvements on the Site.

XVIII. **Miscellaneous.** This Article provides for how notices under the Agreement are to be given, that jurisdiction of any dispute will be in Escambia County, and that the Agreement is to be governed by Florida law.

MASTER DEVELOPMENT AGREEMENT

(Community Maritime Park Project)

between

CITY OF PENSACOLA, FLORIDA

and

COMMUNITY MARITIME PARK ASSOCIATES, INC.

Dated March 27, 2006

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A	Project Site
B	Parcel Plan
C	Site Preparation Project Completion Certificate
D	Agreement Termination Certificate
E	Agreement Expiration Certificate
F	Master Lease

MASTER DEVELOPMENT AGREEMENT

(Community Maritime Park Project)

This Master Development Agreement (the "Agreement") is made as of the Effective Date described in Section 18.18 below by and between the CITY OF PENSACOLA, FLORIDA, a Florida municipal corporation (the "City"), and COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida not for profit corporation ("CMPA").

RECITALS

On September 15, 2005, pursuant to the Notice of Intent to Dispose of Property and Request for Proposals, dated June 29, 2005, the City accepted the proposal of CMPA, dated July 29, 2005, subject to the negotiation of a master development agreement between the City and CMPA pertaining to and setting forth the terms and conditions for the development of real property for a project known and referred to as the Community Maritime Park.

The City has authorized the preparation of this Master Development Agreement and a Master Lease (as hereinafter defined) to set forth the respective duties and responsibilities of the parties pertaining to the development of the Project Site (as hereinafter defined), including each parcel constituting part of the Project Site and the design, development, construction, completion, operation and maintenance of the Site Preparation Project (as hereinafter defined).

The City and CMPA have entered into and concluded negotiations for the master development agreement, which negotiations have resulted in this Agreement.

Due to certain terms and conditions of this Agreement and in order to provide for the successful development of the Project, the City 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 provide 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).

At a duly called public meeting on March 27, 2006, the City Council approved this Agreement and authorized and directed its execution by the appropriate officials of the City.

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*.

(3) "Agreement" means this Master 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 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 "E."

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

(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 City, respectively, pursuant to Section 2.04.

(8) "Bonds" means that part of the Public Financing consisting of the revenue bonds to be issued 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 CMPA commences or causes a Contractor to commence construction of the Site Preparation Project, as provided in Section 4.04 hereof.

(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 Public Improvements consisting of a structure in which conferences, seminars, meetings and other similar-type events can be held.

(15) "Contractor" means one or more individuals or firms 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, bonded and insured to the extent required by applicable law and this Agreement.

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

(17) "Developer" means any entity which enters into a Sub-Lease with CMPA for development of any part of the Private Improvements on a particular Parcel.

(18) "Effective Date" means March 27, 2006.

(19) "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.

(20) "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.

(21) "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

(22) "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.

(23) "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, food service, and a museum store.

(24) "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.

(25) "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.

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

(27) "Master Lease" means the ground lease between the City and CMPA pursuant to which CMPA will manage the development of the Project and will enter into the Maritime Museum Lease and Sub-Leases, subject to City approval, for design, construction, management, operation and use of the Public Improvements, the Private Improvements, and the Maritime Museum Project, the form of which is attached hereto as Exhibit "F".

(28) "Master Lease Commencement Date" means the date on which the Master Lease goes into effect as provided in the Master Lease.

(29) "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 Studer.

(30) "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 Master Lease.

(31) "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), the initial form of which is attached hereto as Exhibit "B".

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

(33) "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, that will use the Community Multi-Use Facility for its home baseball games.

(34) "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.

(35) "Private Improvements" means the improvements constructed on the Project Site consisting of the Retail Project, the Hotel Project, the Residential Project, and the Office Project.

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

(37) "Project Coordinator" means CMPA, or its successor who shall provide the project coordination services described in Section 2.05.

(38) "Project Professionals" means any architects, engineers, consultants, planners, construction managers or any other persons, or combination thereof, retained or employed by CMPA in connection with the planning, design, construction, and completion of the Site Preparation Project.

(39) "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 as provided in this Agreement, including Section 3.01.

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

(41) "Proposal" means the proposal for redevelopment of the Project Site, dated July 29, 2005, submitted by CMPA to the City in response to the RFP, including the Parcel Plan.

(42) "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 to be paid by the City.

(43) "Public Improvements" means the improvements to be completed under the terms of the Master Lease 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, the Conference Center, and the Park.

(44) "Public Improvements Budget" means the budget setting forth the estimated Public Improvements Costs.

(45) "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 and the Permits for the Public Improvements, and the costs to construct, equip, install and complete the Public Improvements.

(46) "Redevelopment Act" means Chapter 163, Part III, *Florida Statutes* (2005), as amended from time to time.

(47) "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.

(48) "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 include commercial and retail uses located on the different levels of the Private Improvements.

(49) "RFP" means the Notice of Intent to Dispose of Property and Request for Proposals published by the City on June 29, 2005, soliciting proposals from persons interested in redeveloping the Project Site in accordance with the Act and the Plan.

(50) "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.

(51) "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.

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

(53) "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 Project Completion Certificate.

(54) "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.

(55) "Site Preparation Project Plans and Specifications" means the plans for the Site Preparation Project.

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

(57) "Sub-Lease" means the sub-lease for any Parcel or Parcels being leased by CMPA to a Developer for development of any part of the Private Improvements on that Parcel or Parcels.

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

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

(60) "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.

(61) "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 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 (2005), as amended from time to time.

ARTICLE II.
PURPOSE AND INTENT; PROPOSAL.

Section 2.01 Purpose and Intent of this Agreement.

(a) The purpose of this Agreement is to redevelop the Project Site and further the implementation of the Plan by providing for the completion of the Site Preparation Project and contemplates the lease of the Project Site to CMPA pursuant to the Master Lease. The Project is intended by the parties to enhance the quality of life, increase employment and improve the aesthetic and useful enjoyment of the Area through the eradication of conditions of blight, all in accordance with and in furtherance of the Plan and as authorized by and in accordance with the Act. The design, construction and completion of the Public Improvements shall be done in accordance with the Master Lease. The design, construction and completion of each component of the Private Improvements shall be in accordance with the terms of the Master Lease and each Sub-Lease.

(b) It is the intent of the parties to this Agreement that the Project is being undertaken by CMPA in the public interest as a non-profit entity that is functioning to relieve the burdens of government and to act as the master developer to carry out a public purpose of benefit to the greater Pensacola community, including the Area. It is further 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, specifically including the Area. The parties further intend that the Private Improvements should be subject to ad valorem taxation and that any Developer or 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 parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the City's power and authority under the Act.

(d) The Project Site is to be redeveloped according to plans and specifications for a multi-use project which includes residential, retail, hotel, office, conference center, community multi-use facility, maritime museum, and public use components, with related park, pedestrian walkways, streets, parking and infrastructure improvements. As provided in this Agreement, the City intends to undertake certain public actions pursuant to the Act and as implementation of the Plan, including the Site Preparation Project and lease of all of the Project Site pursuant to the Master Lease, assistance in obtaining such approvals by governmental authorities as are necessary for development of the Project, construction of certain public improvements, maintenance and operation of certain public areas and providing adequate utilities to the Project Site necessary to serve the needs of the Project.

(e) As provided in this Agreement, CMPA shall carry out the redevelopment of the Project Site by completing the Site Preparation Project pursuant to this Agreement and by entering into the Master Lease for: (i) construction of the Public Improvements; (ii) subleasing Parcels for the Private Improvements to be constructed and financed by Developers;(iii) operating the Project as a unified and integrated multi-use project; (iv) entering into the Maritime Museum Lease; and (v) entering into contracts, agreements or leases with users, managers, concessionaires, caterers, or operators of some or all of the Public Improvements.

(f) Subject to certain terms, conditions, and requirements as provided herein, the City shall pay CMPA for reasonable and documented costs incurred by CMPA in connection with designing and constructing the Public Improvements.

Section 2.02 CMPA's Proposal.

(a) The Proposal is hereby found by the parties hereto: (i) to be consistent with and in furtherance of the objectives of the Plan, (ii) to conform to the provisions of the Act, (iii) to be responsive to the RFP, (iv) to be in the best interests of the citizens of the City, (v) to further the purposes and objectives of the City and (vi) to further the public purpose of eradicating conditions of blight in the Area.

(b) Based upon and as a result of the findings set forth in subsection (a) above, the Proposal, including such changes and revisions as are provided by this Agreement, is hereby affirmed by CMPA and approved and accepted by the City.

(c) The parties hereto find that the terms and conditions set forth in this Agreement do not, individually or collectively, constitute a substantial deviation from the RFP or the Proposal.

Section 2.03 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 2.04 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 CMPA or the City 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 2.05 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 after the Effective Date of the Master Lease 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) The City and CMPA agree CMPA shall be the initial Project Coordinator.

(c) To provide the coordination for the Site Preparation Project and for development of the Project pursuant to the terms of the Master Lease, 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 to each Developer and Contractor 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.

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

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

Section 2.06 Public Records. All records and documents in the possession of CMPA or any Contractor pertaining to the Project 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 CMPA.

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 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. Except for a change in the Project Schedule requiring City Council approval 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 non-proposing party. In the case of a change in the Project Schedule requiring City Council approval, the time period for review and approval or rejection of the proposed change shall be thirty (30) calendar days.

(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 by the City or CMPA to provide an extension of time for either the City or CMPA to obtain the Site Preparation Project Permit, provided the applicant for such extension certifies to the other party hereto that the failure to obtain the Site Preparation Permit was beyond the reasonable expectation or control of the applicant, 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 delay or failure to act by the applicant.

(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 the City or CMPA, 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.

Section 4.01 Permits.

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

(b) The City shall cooperate with CMPA and any Contractor in obtaining the Site Preparation Project Permit. If requested by CMPA, the City 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) CMPA 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 CMPA agrees to consult with the City from time to time during the preparation and review of the application for the Site Preparation Project Permit and keep the City apprised of the status of the application.

(d) (1) The City's duties, obligations, or responsibilities under any section of 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 Construction. CMPA 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) CMPA will retain through competitive selection (utilizing the same procedure as the City would have used) the Project Professionals to prepare the Site Preparation Project Plans and Specifications, and will notify the City of the names of such professionals and 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 will be paid from the Public Financing.

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

(b) The Site Preparation Project Plans and Specifications shall be coordinated among the Project Professionals, CMPA and the City and shall be submitted by CMPA to the City for review and approval before the commencement of any work on the Site Preparation Project on the Project Site.

Section 4.04 Construction of the Site Preparation Project.

(a) (1) CMPA shall select through competitive selection (utilizing the same procedure as the City would have used) Contractors to construct the Site Preparation

Project substantially in accordance with the Site Preparation Plans and Specifications. Subject to Unavoidable Delay and the conditions precedent set forth in Section 11.01 hereof, CMPA will ensure that the Contractor commences construction of the Site Preparation Project no later than twenty-four (24) months following the Effective Date. Such time period may be extended for up to twenty-four (24) months if a request from CMPA to the City shows good cause for the extension and the City approves it.

(2) For purposes of this Section 4.04, "commence construction" of all or part of the Site Preparation Project means commencement of meaningful physical development of the Site Preparation Project as authorized by the Site Preparation Project Permit, and which is continued and diligently prosecuted toward and with the objective of completion.

(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. For purposes of this subsection (b), "abandoned" means to have ceased any construction work which effectively advances the construction of that part of the Site Preparation Project toward completion, including removing all or substantially all the construction work force from 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 Project Coordinator as to the actual progress of the construction of the Site Preparation Project.

(2) If CMPA, the City or the Project Coordinator believes adequate progress in the construction of the Site Preparation Project is not being made, CMPA, the City or the Project Coordinator shall give notice to the Contractor for the Site Preparation Project, with a copy thereof provided to CMPA, the City or the Project Coordinator 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 CMPA shall provide, among other things, that: (i) notice shall be given to CMPA, the

City and the Project Coordinator of any material defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract, CMPA or the City shall have the right, but not the obligation, to cure any defaults by the Contractor under such contract without penalty to CMPA or the City 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 CMPA or the City, whichever is curing the default.

(2) If CMPA or the City elects to cure a material default by the Contractor under a contract between CMPA and a Contractor, upon receipt of a notice to that effect from CMPA or the City, the Contractor shall be required to immediately deliver to CMPA or the 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 CMPA or the City.

(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, CMPA shall cause the Project Coordinator to coordinate the work of any Contractor hired by CMPA with the Contractor hired by the State.

(f) To the extent possible under State law, CMPA 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.

(g) CMPA agrees to include in any contract with a Contractor for the Site Preparation Project a provision whereby a Contractor agrees to promote the City's Small Business Enterprise Goals, with the requirement that a Contractor certify and document for the City all reasonable efforts employed by the contractor to solicit bids or quotes for the Site Preparation Project from trade contractors and suppliers listed in the City's Small Business Enterprise Directory.

Section 4.05 Site Preparation Project Completion Certificate.

(a) (1) Upon the substantial completion of any part of the Site Preparation Project, CMPA for that part of the Site Preparation Project shall prepare and execute the Site Preparation Project Completion Certificate (the form of which is attached as Exhibit "C"), which shall then be delivered to the City. Upon receipt of the certificate, the City shall promptly and diligently proceed to determine if construction of that part 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, the City shall execute the certificate and return it to CMPA. 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 of Contractor 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 the City shall refuse or fail to execute the Site Preparation Project Completion Certificate after receipt of a request by CMPA to do so, then the City shall, within ten (10) days after its receipt of such request, provide CMPA with a written statement setting forth in reasonable detail the reason(s) why the City has not executed the Site Preparation Project Completion Certificate and what must be done by CMPA to satisfy such objections so that the City would sign the certificate. Upon CMPA satisfying the City's objections, then CMPA shall submit a new request to the City 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 the City refuses to execute the certificate and CMPA does not agree with the objections set forth in the City's statement, then CMPA 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) The Site Preparation Project Completion Certificate shall be in a form sufficient to be recorded in the public records of Escambia County, Florida (see Exhibit "C"). After execution by CMPA and the City, it shall be promptly returned to CMPA who shall record the certificate in the public records of Escambia County, Florida, and pay the cost of such recording.

Section 4.06 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.

Section 4.07 Payment of Contractors and Suppliers. Agreements between CMPA and a Contractor for the Site Preparation Project 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 for which that Contractor is responsible. There shall not be a breach of this Section 4.07 unless and until a lien is filed arising out of the Site Preparation Project and 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, the Contractor of the Site Preparation Project shall comply with all laws, ordinances, codes and regulations then applicable to that part of the Site Preparation Project. Contractor shall have the right, after written notice to CMPA and the City, 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.
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 ($2,000,000.00).

(b) CMPA shall prepare the Public Improvements Budget which shall set forth the estimated costs of the Site Preparation Project and each component of the Public Improvements. CMPA shall submit the Public Improvements Budget to the City, including any changes made thereto from time to time. CMPA may recommend changes to the Public Improvements Budget as a result of preparation of the Public Improvements 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. The Public Improvements Budget, and any changes proposed by CMPA from time to time, shall be reviewed by the City and shall be approved by the City prior to commencement of any construction on the Project Site.

(c) CMPA covenants and agrees with the City 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 Project without the express approval of the City. Any agreements or contracts between CMPA 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) The City shall receive a credit for amounts advanced for any costs of the Site Preparation Project or the Public Improvements prior to the issuance of bonds for the Public Financing. The City shall be entitled to reimbursement, from the proceeds of such bonds upon issuance thereof, for all such advances.

Section 5.02 Public Improvements Financing.

(a) The cost of the Site Preparation Project and the Public Improvements shall be paid from the Public Financing. The City covenants and agrees with CMPA to exercise its best reasonable efforts to obtain lawfully available funds in sufficient amounts to pay the costs of the Public Improvements and to have such funds available when needed to pay such costs.

(b) Should the City not have sufficient funds, or expect to not have sufficient funds, available to it to pay the costs of the Public Improvements when needed, then the City shall promptly so notify CMPA and direct CMPA to revise the plans and specifications for the Site Preparation Project and the Public Improvements Plans and Specifications 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 CMPA receives any such notice, it shall have the right, for a period of one (1) year, to raise public funds (from public sources other than the City) or private funds to complete the Project in accordance with the original plans and specifications. Upon good cause shown to the satisfaction of the City, CMPA shall have the right to extend the period for raising such funds for a period of an additional year on written notice to the City 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 the City under the provisions of this Agreement to pay the costs of the Site Preparation Project or the Public Improvements 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. CMPA, any Construction Lender or any Contractor, subcontractor, materialman, or supplier for any part of the Project, shall not 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 Payment of Public Improvements Costs.

(a) Within thirty (30) days of the Effective Date, the City will create a special fund known as the Community Maritime Park Construction Fund (the "Construction Fund") in which the City will make deposits from time to time so that there are sufficient funds on deposit in the Construction Fund to pay the Site Preparation Project and the Public Improvements Costs. The moneys in the Construction Fund shall be applied to the payment of the Site Preparation Project 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 and the Public Improvements Costs.

(b) (1) From time to time as CMPA 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, CMPA shall submit to the City a request for payment thereof from the Construction Fund ("Payment Request"). Such

request shall be in writing in a form or on a form prescribed by the City and submitted to the City for payment from the Construction Fund.

(2) The City 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 an Authorized Representative of CMPA 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 CMPA for the benefit of the City 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 the City.

(d) The City shall determine if the Payment Request is in proper form, includes required information, is for a Site Preparation Project or Public Improvement Cost, is within the Public Improvements Budget, and is appropriately documented to the satisfaction of the City. If the City 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 the City determines the Payment Request does not satisfy the conditions in this section, then it shall return the Payment Request to CMPA with a statement of the reason(s) for the City declining to approve the request.

(e) The procedure for making payments from the Construction Fund may be superseded and replaced by procedures and requirements set forth in the documents providing for the issuance of the Bonds.

ARTICLE VI.
MASTER LEASE OF PROJECT SITE.

Section 6.01 Master Lease. Simultaneously with the execution of this Agreement, the City and CMPA will execute the Master Lease, the form of which is attached hereto as Exhibit "F". The Master Lease will not commence until satisfaction or waiver of the conditions set forth in Section 11.03 below and Paragraph 7 of the Master Lease.

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 CMPA to the City and approval of such changes by the City. 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-Lease. If prior to the Master Lease Commencement Date CMPA has negotiated a Sub-Lease with a Developer for one or more Parcels, then CMPA shall give notice thereof to the City and present the terms of the Sub-Lease to the City for review and approval. A Sub-Lease shall not go into effect unless and until after the Master Lease Commencement Date.

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

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

(b) CMPA or a proposed 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 and drainage 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;

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

(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 Developers.

(6) To conduct limited, supervised public tours.

(c) In addition to the provisions of Section 8.01, CMPA shall cause any Developer to agree to indemnify, defend and save the City harmless from any and all losses, costs, damages, expenses and reasonable attorneys' fees which the 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 CMPA or a Developer or any of their agents, employees, invitees or representatives.

Section 6.05 Signs. Subject to the written approval of the City and compliance with any applicable law, ordinance, or regulation (including any insurance indemnification or

easement requirement), as of the Effective Date and thereafter, CMPA may place one or more signs announcing the Project and containing information about CMPA and the Project upon the Project Site.

Section 6.06 Maritime Museum Project.

(a) Pursuant to the terms of the Master Lease, CMPA shall enter into a sub-lease for the Maritime Museum Lease with the University of West Florida for the lease to UWF of the Parcel constituting the Maritime Museum Site for a rent of One Dollar ($1.00) per year in consideration of UWF designing, constructing, completing and operating the Maritime Museum thereon.

(b) The Maritime Museum Lease shall provide that it is assignable by CMPA to the City, including being automatically assigned to the City upon termination of the Master Lease due to a default by CMPA under the Master Lease.

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 CMPA and the City 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 the City (or for the benefit of the City) 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 the City 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, CMPA will notify the City 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 CMPA.

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

(d) (1) Each Contractor alone shall be responsible for the sufficiency of its own insurance program. The City will in no way be responsible to CMPA 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. CMPA will in no way be responsible to the City or any other party for any inadequacy of the City'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, CMPA shall cause each Contractor to provide or cause to be provided, pay for and keep in full force and effect with insurance companies 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 CMPA and the City are named as an additional insureds as to the operations of the Contractor under the contract with CMPA 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 Master Lease, 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 CMPA 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

$1,00,000 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. CMPA 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.

(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) CMPA shall require each Contractor to either name CMPA and the City as additional insureds or require the Contractor to provide an Owners and Contractors Protective Liability Insurance in a form acceptable to the City 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 City and CMPA, 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 to, and approval by, the City. Minimum insurance coverage and limits shall be determined at the time of such advance written notice at the sole discretion of the City.

Section 7.03 Waiver of Subrogation Requirement. CMPA, 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 the City, CMPA shall furnish to the City 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 Master Lease Commencement Date, CMPA shall maintain insurance as required by the Master Lease.

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

ARTICLE VIII.
INDEMNIFICATION.

Section 8.01 Indemnification by CMPA.

(a) In consideration of the promises and covenants made herein, CMPA agrees to indemnify, defend and hold harmless, the City, 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 CMPA, 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) CMPA'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) CMPA'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, nor as a waiver of sovereign immunity for liability for torts for any party entitled to assert the defense of sovereign immunity.

Section 8.02 Indemnification by the City.

(a) To the extent permitted by law, the City agrees to indemnify, defend and hold harmless, CMPA, its respective, officers, and 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 City, 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) The City shall indemnify, defend and hold harmless CMPA, its 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 the City, as the case may be, of any representations or warranties contained in Section 9.01, or covenants contained in Section 9.02.

(c) The City'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. The City'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 provided that said obligation shall not be greater than that permitted and shall be limited by the provisions of Section 768.28, *Florida Statutes*, or any successor statute thereto.

Section 8.03 Limitation of Indemnification. Notwithstanding anything to the contrary contained herein, with respect to the indemnification obligations of CMPA (as set forth in Section 8.01) and the City (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); 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 acts which are violative of any law or omissions of the indemnified party; 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 CMPA.

Section 9.01 Representations and Warranties. CMPA represents and warrants to the City 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 the City may rely upon 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 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.

(b) This Agreement and, to the extent such documents presently exist in form accepted by the City and CMPA, 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.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the City and CMPA, each document contemplated or required by this Agreement to which CMPA is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of CMPA enforceable against CMPA 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 CMPA, threatened actions or proceedings before any court or administrative City against CMPA 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 CMPA.

(e) CMPA has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by CMPA, 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 CMPA.

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

(g) The principal place of business and principal executive offices of CMPA are in Pensacola, Florida.

(h) CMPA 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 Master Lease.

Section 9.02 Covenants. CMPA covenants with the City 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 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 that are the responsibility of, CMPA.

(c) CMPA shall assist and cooperate with the City to accomplish the development of the Project by CMPA in accordance with the Plan, the Proposal, this Agreement, and the

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) CMPA 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) CMPA shall apply for and maintain its status as a nonprofit corporation under Section 501(c)(3) of the Internal Revenue Code; will provide in its governing documents that a majority of its trustees or directors be residents of the City of Pensacola, Florida; will provide a process for management succession to ensure continuity of business management of CMPA, and the successful completion of the Project, and continued operation of the Project.

(f) Other than sales and assignments contemplated by this Agreement, CMPA shall not sell, lease, transfer or otherwise dispose of all or substantially all its assets without approval of the City and will otherwise take no action which shall have the effect, singularly or in the aggregate, of rendering CMPA 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, CMPA 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, CMPA shall seek Developers for development of the Parcels.

(i) Provided all conditions precedent thereto have been satisfied or waived as provided herein, CMPA 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 THE CITY.

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

(a) The City is a validly existing Florida municipal corporation, has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in form accepted by the City and CMPA, each document contemplated or required by this

Agreement to which the City 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 City, 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, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City, (3) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the City and CMPA, each document contemplated or required by this Agreement to which the City is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the City enforceable against the City 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 City against the City, or against any officer of the City, 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 the City.

(e) The City owns all of the Project Site.

(f) The appropriate officials of the City and the CRA have executed the Interlocal Agreement.

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

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

(b) During each year that this Agreement and the obligations of the City under this Agreement shall be in effect, the City 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 the City.

(c) The City shall assist and cooperate with CMPA 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, to the extent permitted by law, the City will not enact or adopt or 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, the City shall not permit, commit, or suffer any waste or impairment of the Project Site before the Master Lease Commencement Date, nor shall the City 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) The City shall maintain its financial capability to carry out its responsibilities as contemplated by this Agreement and shall notify CMPA 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, the City's financial capability to carry out its responsibilities contemplated hereby, provided that such capability is limited to the Public Financing.

ARTICLE XI.
CONDITIONS PRECEDENT.

Section 11.01 Construction of Site Preparation Project. Subject to termination of this Agreement pursuant to Section 12.05, the obligation of CMPA 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, CMPA of the following conditions:

(a) The Public Financing is available to pay the Public Improvements Costs;

(b) Site Preparation Project Plans and Specification that are necessary to commence construction shall have been approved by the City, and the permit for the commencement of construction and all other permits necessary for construction to commence have been issued;

(c) A referendum has not been called or sufficient signatures to call a referendum to reverse City Council action have not been verified as provided in the City's Charter which would adversely affect CMPA's ability to develop the Project, or if a referendum is held and City Council action is not reversed as a result of such referendum, or the time has expired to call such a referendum.

Section 11.02 Issuance of Bonds. Subject to termination of this Agreement pursuant to Section 12.05, the obligation of the City to issue the Bonds pursuant to ARTICLE V hereof is subject to the fulfillment to the satisfaction of, or waiver, in writing, by the City of each of the following conditions precedent:

(a) Studer has entered into a lease or other agreement for office space in the Office Project and long-term use of the Conference Center Project with terms and conditions acceptable to the City.

(b) Pelicans have entered into a lease or other agreement for long-term use of the Community Multi-Use Facility with terms and conditions acceptable to the City.

(c) The University of West Florida has approvals from all necessary boards and State officials to own and operate the Maritime Museum Project.

(d) The University of West Florida has sufficient funds available to pay the costs of the construction, equipping and completion of at least fifty thousand square feet (50,000 s.f.) or other level acceptable to the City of the Maritime Museum Project.

(e) The University of West Florida has entered into the Maritime Museum Lease.

(f) There are sufficient funds on deposit in the Trust Fund or are projected to be deposited in the Trust Fund to pay the Public Financing Debt Service without need for any pledge of City general revenue or special specific revenue or revenue directly derived from the Project.

(g) The Site Preparation Permit has been issued and construction of the Site Preparation Project can commence.

(h) The City has approved the site plan for the Project Site pursuant to the City's Land Development Code.

(i) CMPA has contracts with Contractors for construction of the Site Preparation Project and the Public Improvements for a guaranteed maximum price of no more than the aggregate amount for such improvements in the Public Improvements Budget and such additional funds as CMPA may cause to be contributed to the Public Improvements.

(j) The Permits required for construction of the Project to commence have been obtained.

(k) A referendum has not been called or sufficient signatures to call a referendum to reverse City Council action have not been verified as provided in the City's Charter which would adversely affect CMPA's ability to develop the Project, or if a referendum is held and City Council action is not reversed as a result of such referendum, or the time has expired to call such a referendum.

Section 11.03 Master Lease Commencement Date. Subject to termination of this Agreement pursuant to Section 12.05, the Master Lease Commencement Date is subject to the fulfillment to the satisfaction of, or waiver, in writing, by the City and CMPA of each of the following conditions precedent:

(a) CMPA demonstrates to the satisfaction of the City that it has the capability to cause the development of the Project.

(b) Studer has committed to the use of office space in the Office Project and to the use of space in the Conference Center Project with terms and conditions acceptable to CMPA and the City.

(c) Pelicans have committed to use of the Community Multi-Use Facility with terms and conditions acceptable to CMPA and the City, consisting of a use agreement providing for a minimum payment of One Hundred Seventy-Five Thousand Dollars ($175,000.00) per season for ten (10) years, and the commitment of the owner of the Pelicans to contribute Two Hundred Fifty Thousand Dollars ($250,000.00) per year to CMPA for five (5) years beginning on the Completion Date of the Community Multi-Use Facility to fund any operating deficit of CMPA for the Project, or if there is not any operating deficit in any year, then such payment shall be contributed to charities in the Pensacola area.

(d) The University of West Florida has committed funds to the initial development of the Maritime Museum Project with terms and conditions acceptable to CMPA and the City, including a pledge by Quinton D. and Mary P. Studer for a contribution of Two Million Two Hundred Fifty Thousand Dollars ($2,250,000.00) to the Maritime Museum Project, or in the event the Maritime Museum Project is not developed, then applied to the Public Improvements Costs.

(e) The University of West Florida has committed to use of the Conference Center Project and to classroom and office space with terms and conditions acceptable to the City.

(f) An analysis of the Project by an independent consultant retained by the City as reflected in a report delivered to and accepted by the City indicates there is a market for the proposed uses in the Project at a level sufficient for the successful economic viability of the Project.

(g) The City has received and accepted a project development strategy (including parking) from CMPA.

(h) Regulatory approvals for bulk heading and fill have been obtained or are, in the opinion of the City, likely to be obtained in a timely manner.

(i) A referendum has not been called or sufficient signatures to call a referendum to reverse City Council action have not been verified as provided in the City's Charter which would adversely affect CMPA's ability to develop the Project, or if a referendum is held and City Council action is not reversed as a result of such referendum, or the time has expired to call such a referendum.

Section 11.04 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 11.04 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 11.05 Certification of Satisfaction of Waiver. At any time when one party determines in its opinion that the conditions precedent in Section 11.01, Section 11.02, or Section 11.03 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 CMPA.

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

(1) CMPA 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 the City pursuant to Section 12.01(b)(b)(1); or

(2) CMPA 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 CMPA or any material part of such entity's properties; or

(3) Within sixty (60) days after the commencement of any proceeding by or against CMPA 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 CMPA 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 CMPA described in subsection (a) above shall occur, the City shall provide written notice thereof to CMPA, and, if such event of default shall not be cured by CMPA within thirty (30) days after receipt of the written notice from the City specifying in reasonable detail the event of default by CMPA, or if such event of default is of such nature that it cannot be completely cured within such time period, then if CMPA 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 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 City 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, the City may terminate this Agreement or pursue any and all legal or equitable remedies to which the City is entitled, 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 City may proceed to enforce other available remedies without providing any additional notice to CMPA.

(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 CMPA's or City's ability to perform by such deadline or the expiration of such period.

(c) Under this Agreement and any similar provision under the Master 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 CMPA of notice from the City of its election to terminate under Section 12.01(b)(b)(1)), be deemed then assigned to the City making said election, without necessity of any other action being taken or not taken by any party hereto. CMPA shall transfer and deliver to the City 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 the City, the defaulting CMPA shall vacate the Project Site.

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

Section 12.02 Default by the City.

(a) Provided CMPA is not then in default under Section 12.01, there shall be an "event of default" by the City under this Agreement in the event the City 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 the City during any period in which CMPA is in default of this Agreement as provided in Section 12.01 hereof will not constitute an event of default by the City under this subsection (a).

(b) (1) If an event of default by the City described in subsection (a) shall occur, CMPA shall provide written notice thereof to the City, 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 the City or pursue any and all legal or equitable remedies to which CMPA is entitled; provided, however, if the event of default by the City occurs on or prior to the Master Lease Commencement Date, any monetary recovery by CMPA in any such action shall be limited to bona fide third-party out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred by CMPA in connection with this Agreement and the transactions contemplated hereby.

(2) CMPA may not terminate this Agreement or institute an action described in paragraph (1) above if the City cures such event of default within thirty (30) days after receipt by the City of written notice from CMPA specifying in reasonable detail the event of default by the City, 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 the City 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

after the notice of default has been given by CMPA to the City if the City has commenced to cure such default within such thirty (30) day period and is diligently prosecuting such curative action to completion. The City 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 CMPA and shall succeed in curing such event of default within said period of time, provided, however, if the City 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 with its available remedies without providing any additional notice to the City.

(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 CMPA's or City'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 the City or CMPA 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 the City or CMPA may lawfully be entitled and are not specifically prohibited by this Agreement. The suspension of, or delay in, the performance of its obligations by CMPA, while the City 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 the City while CMPA shall at such time be in default of its obligations hereunder shall not be deemed to be an "event of default" by the City.

Section 12.04 Non-Action on Failure to Observe Provisions of this Agreement. The failure of the City or CMPA 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 the City or CMPA 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 City 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 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 City or CMPA 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 (except 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 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 CMPA 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 CMPA or waived by CMPA by the later of (a) two (2) years from the Effective Date or (b) the expiration of the period described in Section 3.01(b) hereof;

(4) the conditions precedent set forth in Section 11.02 have not been satisfied to the satisfaction of the City or waived by the City by the later of (a) two (2) years from the Effective Date or (b) the expiration of the period described in Section 3.01(b) hereof;

(5) the conditions precedent set forth in Section 11.03 have not been satisfied to the satisfaction of the City or waived by the City by the later of (a) two (2) years from the Effective Date or (b) the expiration of the period described in Section 3.01(b) hereof;

(c) Upon the occurrence of an event described in subsection (b) or in the event that CMPA or the City, 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 CMPA or the City 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, neither CMPA nor the City shall be obligated or liable one to the other in any way, financially or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by CMPA and the City, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs; provided, however, the provisions of Section 8.01 and Section 8.02 shall apply and shall survive termination of this Agreement, the provisions of this subsection (d) to the contrary notwithstanding.

(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 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 a certificate prepared by the party electing to terminate this Agreement, which certificate 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, the City or CMPA 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 CMPA, 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 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 subparagraph (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 the State 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 and 74, *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 Agreement, or acts of any governmental authority (except that acts of the City shall not constitute an Unavoidable Delay with respect to performance by the City).

(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 CMPA 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 CMPA 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 CMPA 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, CMPA may submit a request to the City for an extension of time in the Project Schedule for up to six (6) months per request, up to a maximum of two (2) years. In its request, CMPA 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. CMPA shall provide reasonable detail evidencing the basis for the adverse economic conditions preventing successful development of the Project, or any part thereof.

(3) The City shall promptly consider the request from CMPA and within thirty (30) days of receipt of the request from CMPA shall either approve or reject the request. The City may approve an extension of time for up to six (6) months per request, but not to exceed a total of two (2) years. If an extension of time is granted by the City, 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 the City.

(4) At the expiration of any six (6) month or other extension period, CMPA 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, provided that any such extension shall not cause the total extension of time granted pursuant to this subsection (b) to extend beyond two (2) years.

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 with the uses as described in Section 2.01(d) shall be permitted unless and until CMPA or the person, if other than CMPA, intending to so use the Project or Project Site, shall file with the City a request for a release from the restriction imposed by this Section 16.01. The City Council 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 the City may reasonably require. Unless specifically requested and approved, a release of the restriction imposed by this Section 16.01 shall not release CMPA from any obligations or restrictions imposed by this Agreement or any agreement, instrument or document contemplated hereby and in the Master Lease.

ARTICLE XVII.
FIRE OR OTHER CASUALTY; CONDEMNATION.

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, CMPA covenants and agrees to diligently commence and complete or cause 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 the City approves the Site Preparation Project Plans and Specifications for such reconstruction or repairs.

(b) The City shall review the Site Preparation Project Plans and Specifications for such reconstruction or repairs as soon as possible after filing thereof by CMPA or other person. The City agrees to approve the Site Preparation Project Plans and Specifications for such reconstruction or repairs if the reconstruction or repairs contemplated by such Site Preparation Project Plans and Specifications 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 filing with the City of the plans and specifications 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(d) of this Agreement, shall not operate to terminate this Agreement or to relieve or discharge CMPA from the timely performance and fulfillment of CMPA's 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 any part thereof, shall have been damaged or destroyed, 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 by CMPA 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 to the extent necessary to repair or reconstruct the Project.

Section 17.04 Notice of Loss or Damage to Project. CMPA shall promptly give the City written notice of any significant damage or destruction to the Site Preparation Project stating the date on which such damage or destruction occurred, the expectations of CMPA 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 of the Site Preparation Project.

ARTICLE XVIII.
MISCELLANEOUS

Section 18.01 Assignments. CMPA shall not have the right to assign its rights and obligations under this Agreement with the prior written consent of the City.

Section 18.02 Successors and Assigns. The terms herein contained shall bind and inure to the benefit of the City, and its successors and assigns, and CMPA, 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 J. Mort O'Sullivan III O'Sullivan Creel, LLP P. O. Box 12646 Pensacola, FL 32591-2646
Copy to:	Robert D. Hart, Jr. Clark Partington Hart Larry Bond & Stackhouse P.O. Box 13010 Pensacola, FL 32591-3010
To the City:	City of Pensacola P.O. Box 12910 Pensacola, FL 32521-0001 Attention: City Manager
Copy to:	City Attorney City of Pensacola P.O. Box 12910 Pensacola, FL 32521-0001

(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 the City and CMPA, and the Agreement, including, without limitation, the Exhibits, shall not be deemed to have been prepared by the City or CMPA, 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 City acknowledge, agree and represent 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, including the RFP and the Proposal.

(b) Any provisions of this Agreement shall be read and applied *in para materia* 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. The City and CMPA 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, CMPA hereunder shall not be an agent of the City, with respect to any and all services to be performed by CMPA (and any of its agents, assigns, or successors) with respect to the Project.

Section 18.14 Recording of Development Agreement. The City and CMPA agree that this Master Development 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 the City under this Agreement be or constitute a general obligation or indebtedness of the City or 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 CMPA 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; Survey Corrections. 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. The City Manager of the City is authorized to approve such technical amendments on behalf of the City, respectively, and is authorized to execute any required instruments, to make and incorporate such amendment to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

Section 18.17 Term; 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. 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.

(d) The Agreement Expiration Certificate shall be in such form as will enable it to be recorded in the public records of Escambia County, Florida. Following execution by all of the parties hereto, the Agreement Expiration Certificate shall promptly be recorded by CMPA in the public records of Escambia County, Florida and the City shall pay the cost of such recording.

Section 18.18 Effective Date. Following execution of this Agreement (and such of the Exhibits as are contemplated to be executed simultaneously with this Agreement) by the authorized officers of the City and by authorized representatives of CMPA following approval hereof by the City and CMPA, this Agreement (and any executed Exhibits) shall be in full force and effect in accordance with its terms and the Effective Date shall be March 27, 2006.

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 their respective seals affixed this 27th day of March, 2006.

[SIGNATURES ON FOLLOWING PAGES]

Executed and delivered
in the presence of:

CITY OF PENSACOLA, FLORIDA

_____

_____
(Print Name)

By:_____
Thomas J. Bonfield
City Manager

_____

_____
(Print Name)

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 March, 2006, by Thomas J. Bonfield and _____
_____, City Manager and City Clerk, respectively, of the City of Pensacola, Florida. They are personally known to me or have produced valid Florida drivers' licenses as identification.

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

Executed and delivered
in the presence of:

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

By:_____
Quinton D. Studer, Trustee

_____
(Print Name)

_____

_____
(Print Name)
[witnesses as to Quinton D. Studer]

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of March, 2006, by Quinton D. Studer, 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:

By:_____
John H. Fetterman, Trustee

_____
(Print Name)

_____

_____
(Print Name)
[witnesses as to John H. Fetterman]

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of March, 2006, by John H. Fetterman, 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:

By:_____
John C. Cavanaugh, Trustee

_____
(Print Name)

_____

_____
(Print Name)
[witnesses as to John C. Cavanaugh]

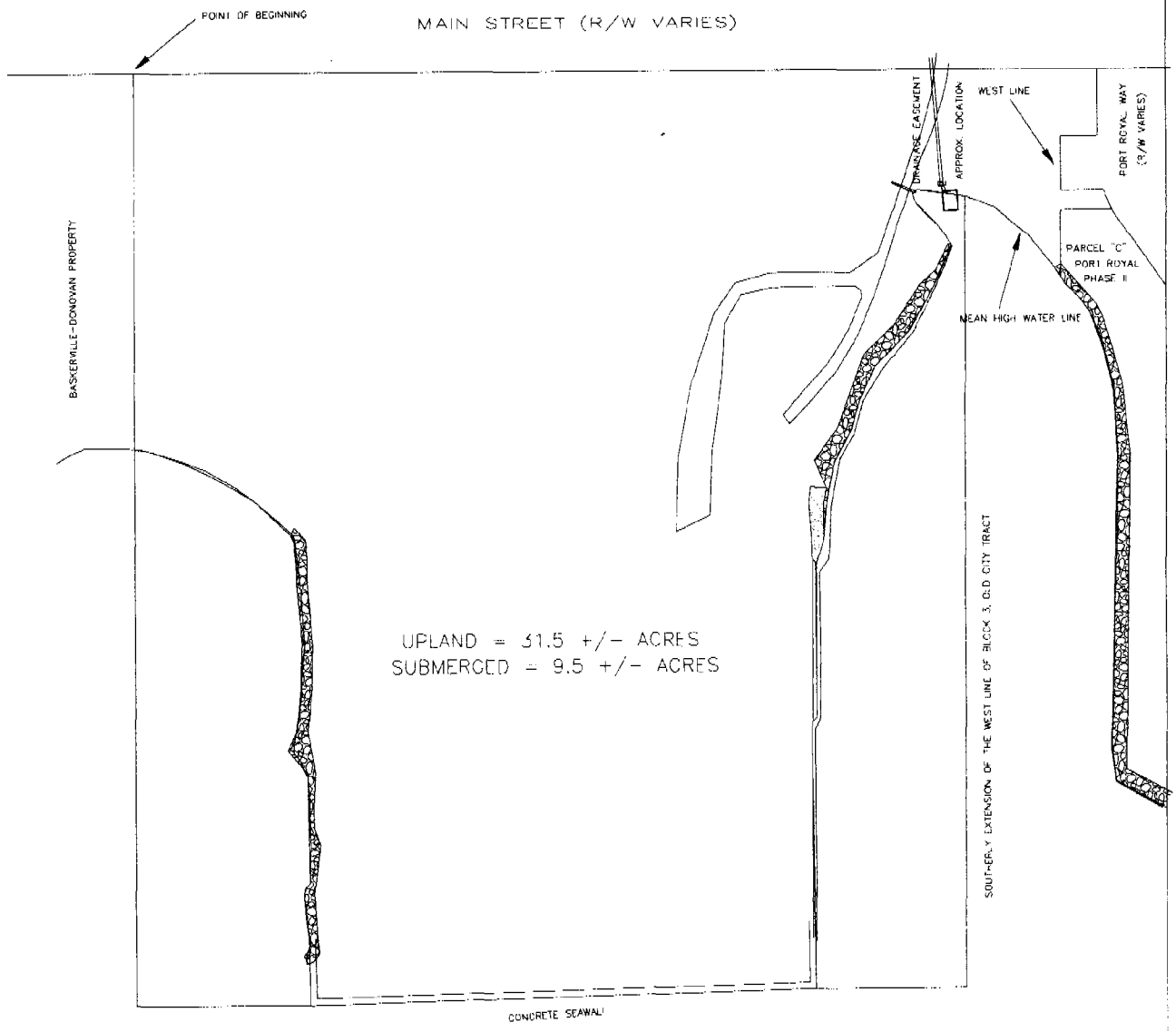
STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of March, 2006, by John C. Cavanaugh, 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:

A0129697

EXHIBIT A



NOT TO SCALE

CITY OF PENSACOLA, FLORIDA
ENGINEERING DEPARTMENT

COMMUNITY MARITIME PARK
PROJECT SITE & LEASED PROPERTY

SKETCH ONLY
NOT A SURVEY

DRAWN BY: DLH
DATE: 3/21/06

EXHIBIT A (cont.)

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.

EXHIBIT 'B'

CONCEPTUAL SITE PLAN
Note: building design and location may vary
LEGEND :
A Multi-purpose Park
B Maritime Museum
C Conference Center
D Public Open Space
E Private Development
URBAN DESIGN ASSOCIATES

EXHIBIT "C"

Community Maritime Park

Site Preparation Project Completion Certificate

Pursuant to Section 4.05 of the Master Development Agreement (Community Maritime Park) between Community Maritime Park Associates, Inc. ("Master Developer") and the City of Pensacola, Florida ("City") with an Effective Date of March 27, 2006 (the "Master Development Agreement"), Master Developer does hereby certify to the City that the part of or all of the Site Preparation Project (as that term is defined in the Master 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 Master Development Agreement. The Developer does hereby request the City agree to such certification.

Certified this _____ day of _____, 200_.

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:_____
Notary Public-State of Florida
Commission Number:

Accepted and Agreed to by:

CITY OF PENSACOLA, FLORIDA

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____ of the City of Pensacola, Florida. He/she is personally known to me or has produced a valid Florida driver's license as identification.

(SEAL)

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

DEC
3/19/2006

EXHIBIT "D"

Community Maritime Park Project

Agreement Termination Certificate

Pursuant to Section 12.06 of the Master Development Agreement (Community Maritime Park) between Community Maritime Park Associates, Inc., a Florida not-for-profit corporation ("Master Developer") and the City of Pensacola, Florida ("City"), with an Effective Date of March 27, 2006, (the "Master Development Agreement"), _____ does hereby certify to _____that the Master Development Agreement has been terminated by _____ and does hereby request _____ agree to such certification.

Certified this _____ day of _____, 20__.

COMMUNITY MARITIME PARK ASSOCIATES, INC.

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, 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:_____
Notary Public-State of Florida
Commission Number:

CITY OF PENSACOLA, FLORIDA

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ of the City of Pensacola, Florida. He/she is personally known to me or have produced a valid Florida driver's license as identification.

(SEAL)

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

DEC
3/19/2006

EXHIBIT "E"

Community Maritime Park Project

Agreement Expiration Certificate

Pursuant to Section 18.17 of the Master Development Agreement (Community Maritime Park) between Community Maritime Park Associates, Inc., a Florida not-for-profit corporation ("Master Developer") and the City of Pensacola, Florida ("City") with an Effective Date of March 27, 2006 (the "Master Development Agreement"), Master Developer does hereby certify to the City that the Master Development Agreement has expired in accordance with its terms and does hereby request the City agree to such certification.

Certified this day of , 20__.

COMMUNITY MARITIME PARK ASSOCIATES, INC.

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2006_, 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:_____
Notary Public-State of Florida
Commission Number:

Accepted and Agreed to by:

CITY OF PENSACOLA, FLORIDA

By: _____
Authorized Representative

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, _____ of the City of Pensacola, Florida. He/she is personally known to me or has produced a valid Florida driver's license as identification.

(SEAL)

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

DEC
3/19/2006

Exhibit "F"

Master Lease
(Community Maritime Park)