

MASTER LEASE
(COMMUNITY MARITIME PARK)

LESSOR:

CITY OF PENSACOLA, FLORIDA

and

LESSEE:

COMMUNITY MARITIME PARK ASSOCIATES, INC.

Dated as of March 27, 2006

TABLE OF CONTENTS

RECITALS	1
DEFINITIONS	1
LEASE	8
PURPOSE.....	8
TERM	8
RENT	8
LEASE COMMENCEMENT DATE	8
PUBLIC IMPROVEMENTS	9
MARITIME MUSEUM PROJECT.....	13
PRIVATE IMPROVEMENTS	13
REVENUES FROM THE LEASED PROPERTY	14
OWNERSHIP OF IMPROVEMENTS	15
PERMITS AND APPROVALS; FEES	15
RIGHT OF ACCESS TO THE LEASED PROPERTY	16
COMPOSITION OF BOARD OF TRUSTEES OF LESSEE.....	16
FINANCIAL REPORTING; AUDIT	16
REPRESENTATIONS AND WARRANTIES.....	16
PROPERTY CONDITION	17
GENERAL OBLIGATIONS OF THE PARTIES	18
CONDEMNATION	20
DEFAULT; REMEDIES	20
RIGHT TO CONTEST.....	22
DISPUTE RESOLUTION	23
OWNERSHIP AT TERMINATION	24
INSURANCE.....	24

CASUALTY	28
ASSIGNMENT.....	29
SUCCESSORS IN INTEREST.....	29
NOTICES.....	29
ESTOPPEL CERTIFICATES	30
SEVERABILITY	30
LEASEHOLD MORTGAGES.....	30
SALE OR ASSIGNMENT BY LESSOR.....	34
COMPLETE AGREEMENT	35
NON-DISCRIMINATION.....	35
SUBROGATION	35
CONFORMITY TO LAW	35
LICENSES AND PERMITS	35
RADON GAS.....	35
RESTRAINTS UPON USE	35
NO MERGER.....	36
SUBORDINATION	36
DELAYS	36
GOOD FAITH AND FAIR DEALING	36

EXHIBITS

- "A" Leased Property Description
- "B" Initial Parcel Plan

MASTER LEASE

THIS IS A MASTER LEASE, executed on the dates hereinafter set forth and commencing on the date provided herein, between CITY OF PENSACOLA, a Florida municipal corporation ("Lessor"), and COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida not for profit corporation ("Lessee") for the following uses and purposes:

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 Lessee, dated July 29, 2005, subject to the negotiation of a master development agreement between the City and Lessee 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 a Master Development Agreement and a Master Lease to set forth the respective duties and responsibilities of the parties pertaining to the development of the Leased Property (as hereinafter defined), including each parcel constituting part of the Leased Property and the design, development, construction, completion, operation and maintenance of the Project (as hereinafter defined).

The City and Lessee have entered into and concluded negotiations for the Master Development Agreement and the Master Lease, which negotiations have resulted in this Master Lease.

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

The Trustees of Lessee have approved this Master Lease and have authorized and directed certain individuals to execute this Master Lease on behalf of Lessee.

AGREEMENT

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

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

2. **DEFINITIONS**. Capitalized terms used in this Master Lease shall have the following definitions:

2.01. As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, the singular shall include the plural as well as the singular number.

2.01.01. "Act" means Part III, Chapter 163, *Florida Statutes*; Municipalities, Chapter 166, *Florida Statutes*.

2.01.02. "Agreement Expiration Certificate" means the instrument executed by the City and the Master Developer in accordance with Section 18.17 of the Master Development Agreement certifying that all obligations of the City and the Master Developer under the Master Development Agreement have been satisfactorily completed in accordance with their terms.

2.01.03. "Agreement Termination Certificate" means the instrument executed by the City and the Master Developer in accordance with Section 12.06 of the Master Development Agreement certifying that the Master Development Agreement has been terminated.

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

2.01.05. "Approved Development Plan" means the Development Plan approved by the City in accordance with the City's Land Development Code.

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

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

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

2.01.09. "Building Official" means that Person or those Persons authorized under the Florida Building Code (2001 edition) to issue on behalf of the City a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion.

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

2.01.11. "City Contribution" means the funds provided by the City to the Master Developer in the aggregate amount of up to \$40,000,000.00 to be disbursed in accordance with Article V of the Master Development Agreement and applied to the cost of the Site Preparation Project and designing, constructing, equipping, installing and completing the Public Improvements.

2.01.12. "Certificate of Completion" means the certificate of completion issued by a Building Official pursuant to the Florida Building Code (2001 Edition).

2.01.13. "Certificate of Occupancy" means the final, temporary or partial Certificate of Occupancy issued by a Building Official pursuant to the Florida Building Code (2001 Edition).

2.01.14. "City" means the City of Pensacola, a municipal corporation created under the laws of the State of Florida.

2.01.15. "City Codes" or "Codes" means the ordinances and codes of the City that regulate the development and construction of the Project and each Building, including but not limited to, the building codes and zoning regulations known as the ULDR and the Florida Building Code (2001 Edition).

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

2.01.17. "Community Multi-Use Facility" means that part or 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 public events.

2.01.18. "Conference Center" means that part or component of the Public Improvements consisting of a facility in which conferences, seminars, meetings and other such events can be held.

2.01.19. "Construction Commencement Date" means the date on which the Lessee or a Sub-Lessee commences or causes a Contractor to commence construction of any part of the Public Improvements or the Private Improvements, but which, for the Public Improvements, shall not be later than December 31, 2008. With respect to the Public Improvements, the parties acknowledge that the Construction Commencement Date shall occur within such time as will enable the Lessor to comply with its obligation for at least 85% of the Public Financing obtained from bond proceeds to be expended within three years of the date such bonds are issued.

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

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

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

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

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

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

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

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

2.01.28. "Expiration Date" means the date on which the Master Development Agreement expires, as evidenced by the Agreement Expiration Certificate being recorded in the Public Records of Escambia County, as provided in Section 18.17 of the Master Development Agreement.

2.01.29. "Fair Value" means the value of a Parcel on which Private Improvements are constructed to be subject to a Sub-Lease between the Lessee and a Sub-Lessee as determined in accordance with Paragraphs 10.01.01 through 10.01.04.

2.01.30. "Hotel Project" means that part 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 a Parcel to be used as a hotel and uses appurtenant thereto.

2.01.31. "Lease Commencement Date" means the date on which this Master Lease commences as provided in Paragraph 7.

2.01.32. "Leased Property" means the real property described in Exhibit "A".

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

2.01.34. "Maritime Museum Lease" means the Sub-Lease between Lessee 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.

2.01.35. "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, which are to be used for a maritime museum and uses appurtenant thereto and complementary thereto, including classrooms, offices, food service, and a museum store.

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

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

2.01.38. "Master Development Agreement" means the Master Development Agreement (Community Maritime Park Project) between the City and the Master Developer concerning the redevelopment of the Property.

2.01.39. "Master Lease" means this Master Lease between the City, as Lessor, and the Master Developer, as Lessee, for the Leased Property for the development of the Project, including all attached exhibits, as amended, modified or restated from time to time.

2.01.40. "Office Project" means that part or 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.

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

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

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

2.01.44. "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 that will use the Community Multi-Use Facility for its home baseball games.

2.01.45. "Permit" means any zoning, variance, special exception, yard modification, zoning approval, development order respecting land use and City Codes, and consents required to be granted, awarded, issued, or

given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Project, or any part thereof, to commence, continue or be completed, but does not include a Building Permit.

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

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

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

2.01.49. "Private Improvements" means the improvements constructed on the Leased Property consisting of the Retail Project, the Hotel Project, the Residential Project, and the Office Project.

2.01.50. "Project" means, collectively, the Site Preparation Project, the Maritime Museum Project, the Public Improvements and the Private Improvements.

2.01.51. "Project Coordinator" means the Lessee.

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

2.01.53. "Proposal" means the proposal for redevelopment of the Leased Property, dated July 29, 2005, submitted by the Lessee to the City in response to the RFP, including the Parcel Plan attached thereto.

2.01.54. "Public Financing" means the Bonds or other funds available to Lessor to pay the Public Improvements Cost and such other costs as may be required by this Agreement to be paid by Lessor.

2.01.55. "Public Improvements" means the improvements on the Leased Property for the use by the public to be designed, constructed, installed and equipped as provided in this Agreement including the Community Multi-Use Facility, the Conference Center, and the Park.

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

2.01.57. "Public Improvements Plans and Specifications" means the plans and specifications for the Public Improvements.

2.01.58. "Public Improvements Property" means each Parcel that will contain any of the Public Improvements.

2.01.59. "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 Leased Property, which are to be used for residential purposes and may include commercial and retail uses on the different levels.

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

2.01.61. "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 Leased Property in accordance with the Act and the Plan.

2.01.62. "Right to Contest" means the procedure set forth in Paragraph 22 for challenging any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as described therein.

2.01.63. "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 Leased Property for construction thereon of the Public Improvements and the Private Improvements.

2.01.64. "Studer" means The Studer Group LLC, a Florida limited liability company.

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

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

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

2.01.68. "Unavoidable Delay" means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are defined in and subject to the conditions described in Paragraph 43 hereof.

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

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

4. **PURPOSE.** Subject to the terms and conditions of this Master Lease, Lessee shall use the Leased Property to construct, develop, operate and maintain the Public Improvements and the Private Improvements on the Leased Property.

5. **TERM.** The term of this Master Lease shall commence on the Lease Commencement Date and shall continue for a period of sixty (60) years.

6. **RENT.** In consideration of the warranties, representations and covenants made by Lessee in this Master Lease, and subject to the manner in which rent is computed hereunder for a Sub-Lease, annual rent payable under this Master Lease shall be the sum of One Dollar (\$1.00) per year, such rental obligation commencing on the Lease Commencement Date.

7. **LEASE COMMENCEMENT DATE.** Provided that the Master Development Agreement has not been terminated earlier in accordance with its provisions, this Master Lease shall commence, and Lessee shall be entitled to possession of the Leased Property, upon Lessee's certification in writing to the Lessor, and the Lessor's acceptance of such certification, of satisfaction of all the following terms and conditions:

7.01. Lessee demonstrates to the satisfaction of the Lessor that it has the capability to cause the development of the Project.

7.02. 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 Lessee and the Lessor.

7.03. Pelicans have committed to use of the Community Multi-Use Facility with terms and conditions acceptable to Lessee and Lessor, 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 Lessee for five (5) years beginning on the Construction Completion Date of the Community

Multi-Use Facility. Such amounts shall be used to fund any operating deficit of Lessee for the Project, or if there is not any operating deficit in any year, then such payment shall be contributed by Lessee to charities in the Pensacola area.

7.04. The University of West Florida has committed funds to the initial development of the Maritime Museum Project with terms and conditions acceptable to Lessee and Lessor, 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.

7.05. 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 Lessor.

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

7.07. The Lessor has received and accepted a project development strategy (including parking) from Lessee.

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

7.09. 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 Lessee'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.

7.10. Lessee agrees to provide Lessor with a certification of completion of the foregoing conditions on or before March 15, 2008. Such date shall be extended if there is a referendum on the Project. The extension shall be the amount of time from the date of certification of the requirement for a referendum to the date the results of the referendum are certified.

8. **PUBLIC IMPROVEMENTS.** Lessor hereby grants to Lessee the right to construct, equip, finance and operate the Public Improvements subject to the following terms and conditions and in accordance with the following procedures:

8.01. Lessee shall construct the Public Improvements in accordance with plans and specifications for the Public Improvements approved by the Lessor and in accordance with the procedures set forth in Paragraph 8.03 below. The costs of construction of the Public Improvements shall be paid by the Lessor in accordance with the following:

8.01.01. As provided in the Master Development Agreement, 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 Public Improvements Costs. The moneys in the

Construction Fund shall be applied to the payment of 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 Public Improvements Costs. The Construction Fund shall remain in existence after expiration or termination of the Master Development Agreement until all Public Improvements Costs are paid.

8.01.01.1. From time to time as Lessee receives invoices or the equivalent from Project Professionals, Contractors and other vendors for goods or services in connection with the Public Improvements, Lessee shall submit to the Lessor 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 Lessor and submitted to the Lessor for payment from the Construction Fund.

8.01.01.2. The Lessor will make payments from the Construction Fund in response to a Payment Request in accordance with the Florida Prompt Payment Act, codified as §§ 218.70, *Florida Statutes*, et seq.

8.01.02. The Payment Request shall be signed by an Authorized Representative of Lessee 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 Lessee for the benefit of the Lessor for completion of the development of the Public Improvements, each item is a proper charge against the cost for the completion of 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.

8.01.03. The City shall determine if the Payment Request is in proper form, includes required information, is for a 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 Paragraph 8.01.03, 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 Paragraph 8.01.03, then it shall return the Payment Request to Lessee with a statement of the reason(s) for the Lessor declining to approve the request.

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.

8.02. Lessee shall have the right to enter into agreements for use and lease of the Public Improvements (all of which, with terms of more than thirty [30] days, shall be subject to the approval of Lessor), including:

8.02.01. Use agreements with athletic teams and other organizations for use of the Community Multi-Use Facility for festivals and other public events and functions.

8.02.02. Use agreements with organizations for use of the Conference Center.

8.03. Contractors for the Public Improvements shall be selected and construction work shall be completed in accordance with the following:

8.03.01. Lessee shall select through competitive selection (utilizing the same procedure as Lessor would have used) Contractors to construct the Public Improvements substantially in accordance with the Public Improvements Plans and Specifications.

8.03.02. Each Contractor shall be required to continue to pursue and prosecute the construction of the Public Improvements with due diligence.

8.03.03. All construction work on the Public Improvements shall be done substantially in accordance with the Public Improvements Plans and Specifications, and shall be of a quality generally recognized for projects similar to the Public Improvements.

8.03.04. All obligations of a Contractor with respect to commencement, continuation and completion of construction of the Public Improvements shall be subject to delays and extensions from time to time for Unavoidable Delay.

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

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

8.03.07. Each contract between any Contractor for the Public Improvements and Lessee shall provide, among other things, that: (i) notice shall be given to the party of any material defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract, Lessee or Lessor shall have the right, but not the obligation, to cure any defaults by the Contractor under such contract without penalty to Lessee or Lessor 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 Lessee or Lessor.

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

8.03.09. To the extent possible under State law, Lessee agrees to include in any contract with a Contractor for the Public Improvements a provision whereby construction materials may be purchased on behalf of and for the benefit of Lessor and be exempt from sales tax.

8.03.10. CMPA agrees to include in any contract with a Contractor for the Public Improvements a provision under which 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 Public Improvements from trade Contractors and suppliers listed in the City's Small Business Enterprise Directory.

8.04. All agreements between Lessee and a Contractor for construction of the Public Improvements shall provide, among other things, that:

8.04.01. (i) notice shall be given to Lessee and the Lessor of any material defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract, Lessee or the Lessor shall have the right, but not the obligation, to cure any defaults by the Contractor under such contract without penalty to Lessee or the Lessor 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 Lessee or the Lessor.

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

8.04.03. To the extent possible under State law, Lessee agrees to include in any contract with a Contractor for the Public Improvements a provision whereby construction materials may be purchased on behalf of and for the benefit of the Lessor and be exempt from sales tax.

8.05. The location of the Public Improvements shall be as set forth in the Parcel Plan.

8.06. The parties acknowledge and agree that a portion of the Public Financing is derived from the proceeds of Bonds of the Lessor, issued pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code and the regulations and rulings pertaining thereto (the "Code"), and a Non-Arbitrage and Tax Certificate of the Lessor (the "Tax Agreement") delivered in connection with the issuance of the Bonds. The Lessor and Lessee hereby acknowledge that the use and application of the proceeds of the Bonds are subject to the requirements of the Code and the Tax Agreement, and hereby agree that, any provision hereof, or of the Master Development Agreement, to the contrary notwithstanding, (i) the proceeds of the Bonds shall be used only to pay for costs of the Public Improvements that qualify for financing under the Code and the Tax Agreement, and (ii) the use, occupancy, operation and management of the Public Improvements financed with the Bond proceeds shall be subject to the requirements of the Code and Tax Agreement. Lessee hereby agrees that each Sub-lease shall conform to the requirements of the Code and the Tax Agreement, and shall contain such provisions relating to such requirements as may be necessary to assure that no use of the Public Facilities will be made that would violate such requirements. The Lessor and Lessee agree that neither of them shall take any action, or enter into any transaction, sublease or other arrangement that would adversely affect the tax status of the Bonds for federal income tax purposes.

9. **MARITIME MUSEUM PROJECT.** Subject to approval of Lessor and agreement of UWF, Lessee shall enter into the Maritime Museum Lease with the University of West Florida for the lease to UWF of 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 Project thereon. The Maritime Museum Project may, in addition to museum passive and interactive exhibits and displays, contain a museum shop, visitor services, food and beverage service, and other uses ancillary to the operation of a maritime museum. The Maritime Museum Lease shall provide that it is assignable by Lessee to the Lessor, including being automatically assigned to the Lessor upon the termination of this Agreement due to a default hereunder by Lessee.

10. **PRIVATE IMPROVEMENTS.** Lessee shall have the right to enter into a Sub-Lease of a Parcel for development of any component of the Private Improvements thereon of Parcels designated for private development in the Parcel Plan, and for those parts of Public Improvements set aside for a commercial enterprise. Any such Sub-Lease shall be subject to approval of Lessor as provided herein.

10.01. A Sub-Lease shall contain such terms and conditions as Lessee shall recommend are in the best interest of Lessee and Lessor, and consistent with the purposes of the Project and the Plan. All Sub-Leases shall have a termination date that ends on or before the end of the term of this Master Lease, subject to the following: if Lessee believes it in the best interest of the Project for the term of a Sub-Lease with a Developer to end after the end of the term of this Master Lease, then as part of its submission of the Sub-Lease for Lessor's approval, Lessee shall justify to Lessor the reasons for its recommendation for such sublease term. If such Sub-Lease term is approved by Lessor, the Sub-Lease shall make provision for Lessor to assume Lessee's position under the terms of the Sub-Lease after termination of this Master Lease.

10.01.01. The ground lease payments to be paid by a Developer for a Sub-Lease shall yield fair value to the Lessor as of the fair value determination date set forth in the Sub-Lease.

10.01.02. Lessee shall justify to the Lessor that the lease payments under the Sub-Lease yield fair value to the Lessor with such

valuations, analysis and expert opinions as Lessee shall deem necessary or appropriate for such purpose.

10.01.03. Any Private Improvements Sub-Lease shall be subject to the approval of Lessor in its absolute discretion as a condition to execution of the lease by Lessee.

10.01.04. Upon execution of a Sub-Lease by Lessee and a Developer, the Sub-Lease shall be submitted to the Lessor for its approval. Such submission shall include a detailed report on the manner in which Lessee determined fair value, with appropriate documentation and analysis supporting such determination. If the Lessor agrees that the proposed lease terms yields fair value to the Lessor, then, subject to any comment of the Lessor on any other provision of the Sub-Lease, the Lessor shall give its approval of the Sub-Lease within thirty (30) days of its submission to the Lessor by Lessee, provided, however, if the Lessor desires additional information or documentation with respect to Lessee's determination of fair value, or desires to have a separate determination made of fair value, then the Lessor will notify Lessee of such decision within thirty (30) days of receipt of the Sub-Lease from Lessee. The Lessor shall then have thirty (30) days within which to satisfy itself as to the proposed lease payments yielding fair value to the Lessor, or to make its own determination of fair value. If the Lessor's determination of fair value is more than that submitted by Lessee by less than ten percent (10%), then the Sub-Lease shall be renegotiated to provide for a fair value equaling the average of the two values determined by the above processes or such other amount as is approved by the Lessor. If the Lessor's determination is more than that submitted by Lessee by more than ten percent (10%), then the Lessor and Lessee shall agree upon a third party expert who shall evaluate the two preceding evaluations and determine a final fair value which shall be no lower or higher than the first two values, and Lessee shall renegotiate lease terms with the Developer to yield such fair value.

10.02. All revenues received for Sub-Lease of parcels for Private Improvements shall be paid by Lessee to Lessor.

11. **REVENUES FROM THE LEASED PROPERTY.** Revenues from the Leased Property shall be managed in the following manner:

11.01. Except as otherwise provided herein and subject to any Sub-Leases or use agreements entered into by Lessee with tenants, users, or operators of any part of the Leased Property, all revenues from the Leased Property shall be paid to Lessee, and shall include, but not be limited to, the following: (1) any development fees, surcharges and assessments paid pursuant to the Sub-Lease; (2) parking revenues on the Property; (3) use payments and other revenue sharing, e.g., concessions, from use of the community multi-use facility; (4) income from the conference center; (5) income from all festival uses; and, (6) all revenues derived from the sale of any naming rights related to the Project, provided that: (a) such name shall be subject to the approval of the Lessor; and (b) the proceeds from the naming rights for the Public Improvements shall be paid to the Lessee and may be used to pay operating, maintenance or upgrade costs of any of the Public Improvements.

11.02. After receipt of revenues from the Leased Property, Lessee agrees to apply the revenues for payment in accordance with the following priorities: (i) first, to pay operating and maintenance costs; (ii) second, to deposit into an operating and

maintenance reserve fund, which shall be maintained as a separate and distinct account and shall contain reserves for at least six (6) months of operations based on historical experience and future projections; (iii) third, to deposit into a capital renewal and replacement fund until the sum of such fund is One Hundred Thousand Dollars (\$100,000), plus five percent (5%) of Lessee's annual gross operating revenues beginning in the year following the year in which such sum is accumulated in the fund; and (iv) fourth, to deposit into a separate fund of Lessee, with the balance in such separate fund each year being distributed to a Pensacola charity selected by the Trustees of Lessee.

11.03. Lessor agrees that an amount equal to at least ten percent (10%) of the ground lease revenue it receives will be deposited in a renewal and replacement fund to be used to improve, repair, update, and replace parts of the Public Improvements from time to time as deemed necessary by Lessor.

11.04. On or about July 1st of each year Lessee shall prepare and provide to Lessor a projection of operating costs, maintenance and renewal and replacement costs for the year beginning October 1st, and projections for the succeeding three (3) years thereafter.

12. **OWNERSHIP OF IMPROVEMENTS.** During the term of this Master Lease, the vertical and horizontal improvements constructed as part of the Public Improvements will be owned by the Lessor. The vertical and horizontal improvements on the Maritime Museum Site with funds raised by UWF will be owned by UWF subject to the terms of the Maritime Museum Lease. That part of the property on which the Private Improvements are constructed will be owned by the Lessor, subject to the Master Lease and Sub-Leases with private developers for the vertical development constituting the Private Improvements. The vertical and horizontal improvements constructed by private developers as part of the Private Improvements will be owned by the private developers, subject to the terms of the private development Sub-Leases.

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

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

13.02. Lessor also agrees, to the extent permitted by law, contract or covenants to waive its normal and customary fees for the construction of the Public Improvements, and to assist Lessee in the negotiation of reduced fees with Escambia County and the Emerald Coast Utilities Authority.

13.03. Lessor also agrees to negotiate to have electric power provided to the Public Improvements billed through Lessor at its electric power rates the cost of which shall be born by Lessee.

14. **RIGHT OF ACCESS TO THE LEASED PROPERTY.** Lessor agrees to grant Lessee the right to enter upon the Leased Property with personnel and materials for the purpose of conducting the work necessary to complete construction of the Public Improvements and leasing of parcels to developers for construction of the Private Improvements.

15. **COMPOSITION OF BOARD OF TRUSTEES OF LESSEE.** Lessee agrees that its governing Board of Trustees shall be comprised of not less than seven (7) people, a majority of whom shall be residents of the City of Pensacola, and three (3) of whom shall be representatives appointed by Lessor. The number of Trustees the Lessor shall be entitled to appoint to the Board of Trustees shall always be at least one-third (1/3) (rounded up) of the composition of the Board of Trustees.

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

17. **REPRESENTATIONS AND WARRANTIES.**

17.01. Lessee represents and warrants to the Lessor that each of the following statements is currently, and, as of the date of original issuance of the Bonds, will be, true and accurate and agrees the Lessor may rely upon each of the following statements:

17.01.01. Lessee is a Florida non-profit corporation duly organized and validly existing under the laws of the State of Florida, will apply for and maintain its status as a corporation recognized under Section 501(c)(3) of the Internal Revenue Code, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this 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.

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

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

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

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

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

17.01.07. The principal place of business and principal executive offices of Lessee are in the corporate limits of the City of Pensacola, Florida.

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

17.02. Lessor represents, and agrees that Lessee may rely upon, the following statements:

17.02.01. Entering into this Master Lease is a valid, binding and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

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

17.02.03. Lessor owns fee simple title to the Leased Property.

17.02.04. The individuals executing this Master Lease and related documents on behalf of Lessee are duly authorized to take such action, which action shall be, and is, binding on Lessee.

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

extent and condition. The Lessee fully accepts the Leased Property in its present physical state and condition.

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

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

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

19.03. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Master Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by leasehold mortgagees. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Master Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, *Florida Statutes*, and subsequent revisions of that law. **UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED.** If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

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

19.05. For all portions of the leased property that are not tax-exempt, Lessee agrees to pay when due all real property taxes and special assessments of

whatsoever kind levied and assessed against the Leased Property, if any. Upon a Sub-Lease going into effect, the Sub-Lessee shall pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Parcel subject to the Sub-Lease and all improvements built and placed on the Parcel by the Sub-Lessee. The Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Master Lease, including any sales taxes due on rental payments.

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

19.05.02. Lessor and Lessee understand and agree that the development contemplated by this Master Lease is being undertaken by Lessee in the public interest as a nonprofit entity to carry out a public purpose for the benefit of the Lessor. The parties intend that the Parcels of the Leased Property on which the Public Improvements and the Maritime Museum Project are located be exempt from ad valorem taxation, as such improvements will be owned by Lessor, will be for a public purpose, will be for public use and not for a predominant private use, and will be an asset of Lessor for the benefit of its citizens. Lessor and Lessee understand and agree that the Private Improvements shall be subject to ad valorem taxation, and that any developer or other person owning, renting, or using any of the Private Improvements will not be permitted to apply for or seek to have any part of the Private Improvements declared exempt from ad valorem taxation.

19.06. For the Public Improvements, the Lessee agrees, at its expense, to keep and maintain the Leased Property, the improvements, furnishings, fixtures and personal property located thereon in a good state of repair and condition, normal wear and tear or damage by the elements excepted, excepting therefrom all or any part of the Leased Property or improvements placed thereon that are subsequently assigned or transferred to or owned by the Lessor.

19.06.01. For the Private Improvements, the Private Improvement Sub-Lessee shall be required under the terms of the Sub-Lease to pay all repair and maintenance costs as described herein.

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

19.06.03. If the Lessee or any successor or assign of Lessee shall fail to comply with the provisions of this Paragraph 19.06.03, Lessor shall have the right to obtain specific performance from such Lessee, or any successor or assign of Lessee, to enforce such repair and maintenance obligations including the ability to force such Lessee, or any successor or assign of Lessee, to levy and collect assessments for such repairs and maintenance.

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

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

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

19.10. After the Lease Commencement Date, Lessee will record at its own expense this Master Lease in the Public Records of Escambia County, and thereafter, Lessee shall record at its own expense any amendments to this Master Lease in the Public Records of Escambia County.

20. **CONDEMNATION.**

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

20.02. In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be sufficient for the continued operation of the Leased Property for the purposes intended by the Lessee, then this Master Lease shall continue in full force and effect, and the Lessee shall be entitled to any claim against the condemnor that the Lessee may be entitled to. The Lessee shall use the proceeds received by the Lessee pursuant to this Paragraph 20 for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit pertaining to the taken improvement owned by Lessee, its successors and assigns.

21. **DEFAULT; REMEDIES.**

21.01. Subject to Unavoidable Delay, should Lessee fail to commence construction of the Public Improvements by December 31, 2008, this Master Lease and the leasehold estate created thereby shall terminate. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation

under this Master Lease. Unless and until a lease termination certificate is executed by Lessor and Lessee and recorded in the Public Records of Escambia County, reflecting a termination of this Master Lease and surrender of the Leased Property pursuant to this Paragraph 21.01, all parties are put on record notice and shall assume and rely upon the fact that this Master Lease is in good standing and in full force and effect.

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

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

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

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

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

21.06. In the event there shall be a material default under this Master Lease and such default shall continue after the expiration of any applicable grace period and shall occur after the issuance of the Certificate of Occupancy or Certificate of Completion for the Public Improvements, Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth in Paragraph 19.06.03 herein regarding the Lessee's failure to repair and maintain the Leased Property, excepting, however, Lessor shall expressly not have the right to terminate this Master Lease or obtain the right of re-entry or repossession of the Leased Property.

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

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

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

22. **RIGHT TO CONTEST.** Subject to the conditions set forth in Paragraph 22.01 below, the Lessor or Lessee each may, at its sole discretion and expense, after prior written notice to the other party hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof), the Leased Property, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Agreement, or compliance with any law, rule, regulation, or other such legal requirement.

22.01. The right to contest any charge, payment or requirement pursuant to Paragraph 22 is subject to the following:

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

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

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

22.01.04. the party seeking the benefit of this Paragraph 22.01 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 Leased Property, and any part thereof, and any interest of such parties hereunder.

23. **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:

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

23.02. Second, in the event that any dispute is not resolved under Paragraph 23.01 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.

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

24. **OWNERSHIP AT TERMINATION.**

24.01. Subject to the provisions of Paragraph 24.02 below, any improvements and fixtures located on the Leased Property at termination of the Lease shall become the property of the Lessor.

24.02. Any trade fixtures or personal property installed, attached to or located on the Leased Property by any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such Developer's property and may be removed by the Developer upon the termination of the Sub-Lease, provided that such Developer repair, restore and save the Lessor harmless from all damage to any of the Leased Property including improvements located thereon and owned or controlled by such Developer, caused by such removal. While this Master Lease is in effect, any Developer shall be entitled to depreciation on the improvements and fixtures that are now or shall subsequently be erected upon the Leased Property.

25. **INSURANCE.** Insurance shall be issued by an insurer whose business reputation; financial stability and claims payment reputation is satisfactory to Lessor. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

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

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

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

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

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

25.03. Lessee shall require its contractors throughout construction of the Public Improvements, and shall require its or its sublessees' contractors during

construction of the Private Improvements and the Maritime Museum Project to provide or cause to be provided, pay for and keep in full force and effect the types and amounts of insurance described in Section 7.02 of the Master Development Agreement.

25.04. As long as it is available, Lessor will maintain property insurance on the insurable portions of the Public Improvements and the Private Improvements. Lessor will not maintain property insurance on Lessee's contents nor will the Lessor maintain property insurance on the Maritime Museum Project. Lessee will reimburse Lessor on an annual basis for that portion of the Lessor's total property insurance premium related to the property insured by the Lessor under this agreement. Lessee understands and agrees that the property insurance coverage types, cost and deductible amount may vary annually based on the Lessee's total property schedule coverage. Lessee further agrees that more than one insurance company may write the property insurance and, the amount of premium Lessee will reimburse the Lessor may be the sum of those individual insurance company's premium charges. Lessee will provide verification to the Lessor of completed building values as well as any changes in building values.

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

25.06. Required insurance shall be documented in the Certificates of Insurance that provide that Lessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Lease must be listed on the certificate. If required by Lessor, Lessee shall furnish copies of Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Lessor, an ACORD 25. Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the Lessor the Lessee shall, upon instructions of Lessor, cease all operations under the Master Lease until directed by Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521.

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

25.08. Lessee shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, Lessee shall not be deemed to be an agent of Lessor. Precaution shall be exercised at all times by Lessee for the protection of all persons, including employees, and property. Lessee

shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

25.09. The University of West Florida will own the improvements on the Maritime Museum Site. Lessee will require, in the Maritime Museum Lease, that the following minimum insurance coverage be provided in the Maritime Museum Lease:

25.09.01. Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law, to include Employers Liability Coverage of at least **\$100,000** each person -accident, **\$100,000** each person - disease, **\$500,000** aggregate - disease.

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

25.09.02.1. Occurrence-type coverage with the Lessor listed as an additional insured for Commercial General Liability, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors.

25.09.02.2. Umbrella Liability Insurance coverage, not more restrictive than the underlying insurance policy coverage, written on an occurrence-type basis.

25.09.02.3. The Maritime Museum Lease will also provide that the minimum limits of insurance may be increased to reasonable amounts upon any anniversary date of this Master Lease.

25.09.03. Property insurance coverage which insures any buildings or improvements constructed on the Master Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage. In addition to the other requirements of this section, the company or companies providing property insurance coverage pursuant to this Paragraph shall be qualified to do business in the State of Florida. The amount of coverage will be 100% of the replacement cost excluding foundation and site work. Such policy shall contain a Waiver of Subrogation endorsement in favor of the Lessor. The Maritime Museum Lease will provide that any payment made as a result of any insurable loss shall be applied to the repair or replacement of such buildings or Improvements subject to the rights of any Lender or Mortgagee and that such funds shall be expended on such repair or replacement within a reasonable period of time.

25.09.04. The Maritime Museum Lease will provide for thirty (30) day advance notice of cancellation, nonrenewal or adverse change or restriction in any insurance coverage provided under the Maritime Museum Lease. Provision will also be made in the Maritime Museum Lease that this Master Lease shall

be listed on insurance certificates, and if required by Lessor, for the furnishing of copies of insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the Lessor, an ACORD 25. The Maritime Museum Lease will also provide that any cancelled, adversely changed, restricted or non-renewed policies will be replaced with new policies acceptable to Lessor and will file with the Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. The Maritime Museum Lease will provide that Lessee or Lessor shall be entitled to the UWF to cease all operations under the Maritime Museum Lease until directed by Lessee and Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521.

25.09.05. The Maritime Museum Lease will provide that UWF's required coverage shall be considered primary and all other insurance shall be considered as excess, over and above UWF's coverage.

25.09.06. The Maritime Museum Lease will provide that UWF shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, UWF shall not be deemed to be an agent of the Lessee or Lessor. The Maritime Museum Lease will provide that UWF will act to protect all persons, including employees, and property on the leased premises, make special effort to detect hazards and take prompt action where loss control/safety measures should reasonably be expected.

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

25.11. To the extent permitted by law, specifically including Section 768.28, *Florida Statutes*, and subject to the limits of liability contained therein, Lessor shall indemnify, defend and save harmless the Lessee from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Master Lease, for any bodily injury, loss of life or damage to property sustained on the public streets within the boundaries of the Leased Property except to the extent caused by the negligence or willful misconduct of Lessee, its officers, employees, agents, contractors or sublessees, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Lessor shall also specifically defend any action or

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

25.12. The Lessee shall not be deemed to be in default under the provision of this Paragraph 25 if all or a portion of insurance required under this paragraph is not commercially available.

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

25.14. To the extent Lessor satisfies its insurance obligations under this Master Lease through a program of self-insurance, such program shall be considered an "insurance policy" for purposes of this Paragraph 25 by coverage types and limits at least equal to those required above and give no less protection than would be afforded by comparable policies issued by a neutral third-party insurer. To the extent Lessor self-insures through a program of self-insurance, Lessor shall be considered an "insurer" within the meaning of this Paragraph 25 under such policies.

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

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

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

26.03. If the Lessee determines in its reasonable opinion that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to

the Lessor. Upon such surrender, this Master Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee except for the extent required for the redemption of the Bonds.

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

27. **ASSIGNMENT.** Lessee cannot assign this Master Lease without Lessor's prior approval in Lessor's absolute discretion.

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

29. **NOTICES.** All notices required by law and by this Master Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

29.01. By certified mail, return receipt requested, to the following addresses:

29.01.01. 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 Lessee: 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 Lessor: 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

29.01.02. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Paragraph 29.01. 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.

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

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

32. **LEASEHOLD MORTGAGES.**

32.01. No mortgage may be placed on the Leased Property or on Lessee's leasehold interest under this Master Lease. A Sub-Lessee of Private Improvements under a Private Improvements Sub-Lease shall be entitled to mortgage the leasehold interest under the Sub-Lease, each of which Sub-Leases shall contain substantially the following provisions:

32.02. If the Sub-Lessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the Lessee a duplicate original of the mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Clerk of the Circuit Court of Escambia County, together with a written notice setting forth the name and address of the leasehold mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Paragraph 32 shall apply.

32.02.01. When giving notice to the Sub-Lessee with respect to any default under the provisions of the Sub-Lease, the Lessee will also serve a copy of such notice upon the leasehold mortgagee. No such notice to the

Sub-Lessee shall be deemed to have been given, unless a copy of such notice has been mailed to such leasehold mortgagee, which notice must specify the nature of each such default.

32.02.02. In case the Sub-Lessee shall default under any of the provisions of the Sub-Lease, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to perform any matter or thing which the Sub-Lessee is required to do or perform and the Lessee shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the Sub-Lessee. The leasehold mortgagee, upon the date of mailing by Lessee of the notice referred to in Paragraph 32.02.01 shall have, in addition to any period of grace extended to the Sub-Lessee under the terms and conditions of the Sub-Lease for a non-monetary default, a period of one hundred twenty (120) days within which to cure any non-monetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of the Sub-Lessee for failure to pay rent, or failure to pay any amount otherwise required under the terms of the Sub-Lease (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have sixty (60) days from the date the notice of default was mailed to the leasehold mortgagee within which to cure such default.

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

32.02.04. In the case of any default by the Sub-Lessee, the Lessee will take no action to effect a termination of the term of the Sub-Lease after the service of a notice provided for in Paragraph 32.02.02 above by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, from the mailing of the default notice by Lessee to Sub-Lessee, with a copy to such leasehold mortgagee, within which either: (i) to obtain possession of the Property covered by the Sub-Lease (including possession by a receiver) and cure such non-monetary default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire the Sub-Lessee's interest under the Sub-Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured, and provided further, that nothing in this Paragraph 32 shall preclude the Lessee from exercising any rights or remedies under the Sub-Lease with respect to any other default by the Sub-Lessee during any period of forbearance.

32.02.05. In the event of the termination of the Sub-Lease or of any succeeding lease made pursuant to the provisions of this Paragraph 32 prior to its stated expiration date, the Lessee will enter into a new lease of the Property covered by the Sub-Lease with the leasehold mortgagee or, at the request of such leasehold mortgagee, to a corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the holder of the note secured by the

leasehold mortgage held by such leasehold mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in the Sub-Lease, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to the Lessee such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to the Lessee of all amounts then due to the Lessee, including reasonable counsel fees, court costs and disbursements incurred by the Lessee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by the Lessee subsequent to the date of termination of the Sub-Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new lease.

32.02.06. The leasehold mortgagee of all or any portion of the Property covered by the Sub-Lease may become the legal owner and holder of the Sub-Lessee's interest in the Sub-Lease for such Property covered by the Sub-Lease by foreclosure of its mortgage or as a result of the assignment of the Sub-Lease in lieu of foreclosure, whereupon such leasehold mortgagee shall immediately become and remain liable under the Sub-Lease as provided in this Paragraph 32, except that such leasehold mortgagee may assign the Sub-Lease without the Lessee's consent to any institutional assignee at any time whether prior or subsequent to the Construction or Completion of the improvements erected or to be erected upon the Property covered by the Sub-Lease.

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

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

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

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

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

32.07. Any leasehold mortgage shall be specifically subject and subordinate to the Lessee's rights under the Sub-Lease and the Master Lease, and to Lessor's fee ownership of the Property covered by the Sub-Lease. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon the Sub-Lessee's interest in the Sub-Lease or upon the lien of any leasehold mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against the Lessor's fee interest in the Property covered by the Sub-Lease or the Lessee's interest in the Sub-Lease or the Master Lease. Despite any provision which is or may appear to be to the contrary in the Sub-Lease, under no circumstances whatsoever shall Lessor's fee simple title interest, or Lessee's leasehold interest, of the Lessee in the Leased Property, or any portion of them, be subordinated to the Sub-Lease.

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

32.09. The provisions of this Paragraph 32 in favor of the leasehold mortgagee shall inure to the benefit of the leasehold mortgagee and its successors, assigns and designees, and also any other purchaser or transferee of the Sub-Lease pursuant to any foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

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

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

33. **SALE OR ASSIGNMENT BY LESSOR.**

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

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

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

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

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

33.03. In the event the Lessee fails to elect to purchase the Leased Property (or applicable portion thereof) within said ninety (90) day period and in accordance with the foregoing, then Lessor shall be free to accept the Offer and the Leased Property (or applicable portion thereof) may be sold and conveyed to the buyer under the Offer free and clear of the Right of First Refusal (subject to the provisions of Paragraph 33.01 above).

33.04. Notwithstanding anything to the contrary contained in this Paragraph 33, the Right of First Refusal herein shall not apply to Lessor's conveyance, sale or transfer of the entire Leased Property to a duly created agency of the Lessor, provided such conveyance, sale or transfer is subject to all the terms, conditions and covenants in this Master Lease, including this Paragraph 33, and such transferee expressly assumes in

writing all terms, conditions and covenants in this Master Lease applicable to the Lessor hereunder, and such written assumption is recorded in the Public Records of the County.

34. **COMPLETE AGREEMENT.** The parties mutually represent and warrant to each other that this Master Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Master Lease been induced on the part of any party except as expressed in writing in this Master Lease.

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

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

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

38. **LICENSES AND PERMITS.** Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all Applicable Laws relative to development and operation to be conducted on the Leased Property in accordance with this Master Lease, excepting therefrom the permits, licenses, fees and taxes for any part of the Leased Property that is subsequently assigned or transferred to or owned or controlled by the Lessor or the agency for which Lessor shall be responsible at its sole cost and expense. Upon Lessor's written request, at reasonable intervals, Lessee agrees to provide Lessor with a copy of such permits and payments.

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

40. **RESTRAINTS UPON USE.** Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions within the zoning of the Leased Property. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority.

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

42. **SUBORDINATION.** Lessor hereby subordinates in favor of any leasehold mortgagee any right to a Lessor's lien against the furnishings, fixtures, machinery, equipment, furniture, inventory and/or any other items of personal property which is owned by Lessee or tenants of Lessee under Private Improvement Sub-Leases, and now located or may hereafter be delivered or installed in or upon any of the improvements situated upon the Leased Property. This subordination is self-executing and no further evidence of the subordination must be produced. However, if requested by any leasehold mortgagee, Lessor shall execute and deliver a subordination agreement in the form reasonably required by such leasehold mortgagee within fifteen (15) business days of written request and the governing body of Lessor hereby authorizes and instructs its Authorized Representative to sign and deliver such subordination agreement when found not to be inconsistent with the purpose and intent of this Paragraph 42.

43. **DELAYS.** In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in the Master Lease shall be extended by the time period caused by the Unavoidable Delay. "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 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).

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

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

[SIGNATURES ON FOLLOWING PAGES]

Executed and delivered
in the presence of:

CITY OF PENSACOLA, FLORIDA

Elaine O. Mager
Elaine O. Mager
(Print Name)

By: Thomas J. Bonfield
Thomas J. Bonfield
City Manager

Janet Brown
Janet Brown
(Print Name)

ATTEST:

By: Ericka L. Burnett
City Clerk

APPROVED AS TO FORM
AND EXECUTION:

By: [Signature]
City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 4th day of ~~March~~ ^{APRIL}, 2006, by Thomas J. Bonfield and Ericka L. Burnett, 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.

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



Executed and delivered
in the presence of:

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

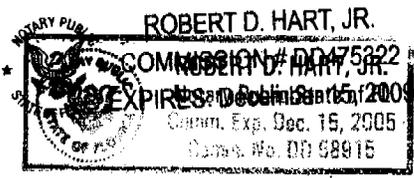
**COMMUNITY MARITIME PARK
ASSOCIATES, INC.,**
a Florida not-for-profit corporation

By: [Signature]
Quinton D. Studer, Trustee

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 29th 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.

[Signature] (SEAL)



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

A0129676

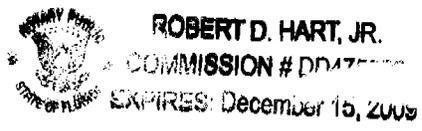
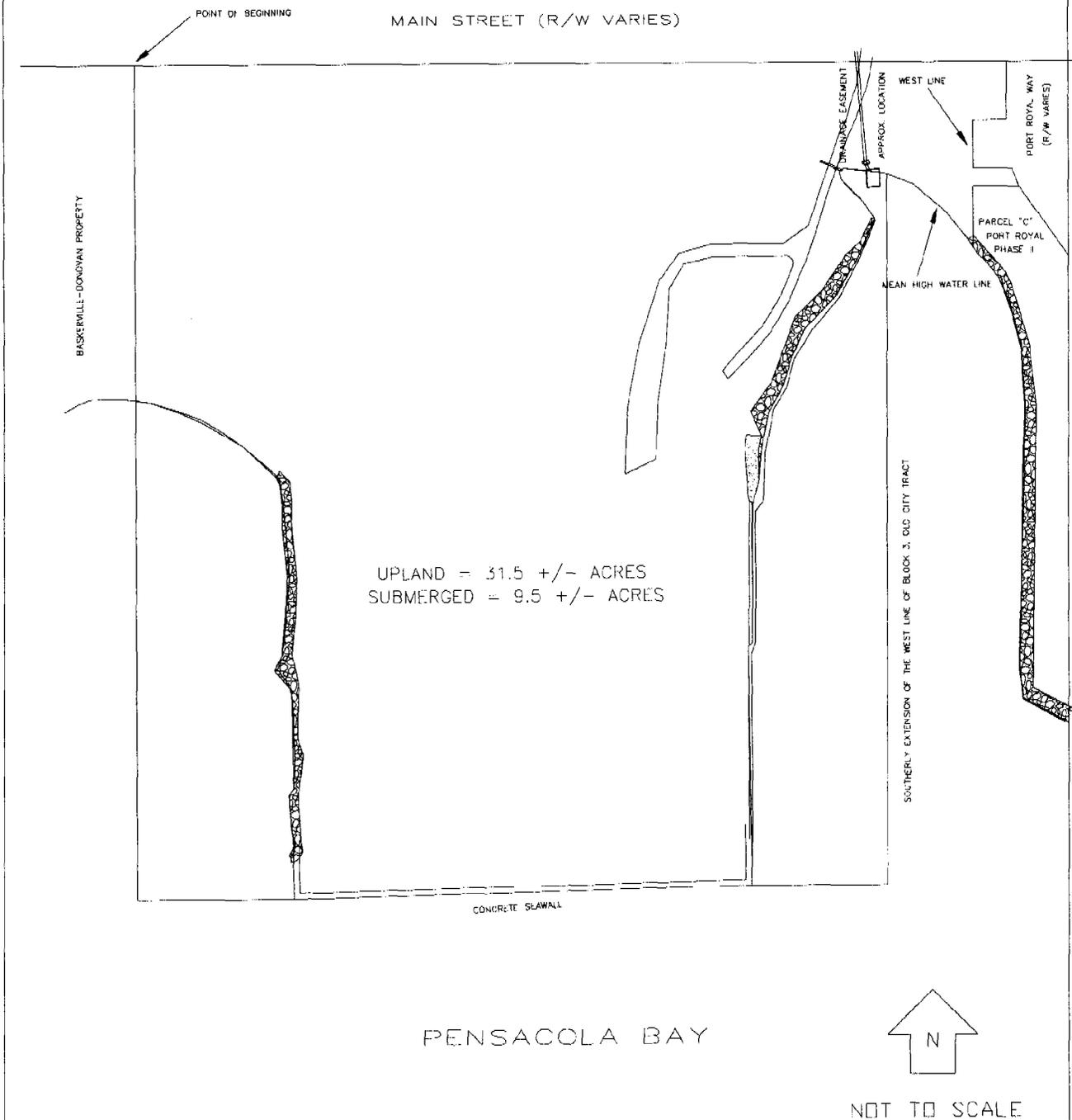


EXHIBIT A



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:
- ▲ Multi-purpose Park
 - Ⓜ Maritime Museum
 - ⓐ Conference Center
 - ⓑ Public Open Space
 - ⓓ Private Development

URBAN DESIGN ASSOCIATES

MASTER LEASE

(COMMUNITY MARITIME PARK)

LESSOR: CITY OF PENSACOLA, FLORIDA

and LESSEE: COMMUNITY MARITIME PARK
ASSOCIATES, INC.

Dated as of March 27, 2006

TABLE OF CONTENTS

RECITALS	1	DEFINITIONS
.....	1	LEASE
.....	8	PURPOSE
.....	8	TERM
.....	8	RENT
.....	8	LEASE
COMMENCEMENT DATE	8	PUBLIC
IMPROVEMENTS	9	MARITIME MUSEUM
PROJECT	13	PRIVATE IMPROVEMENTS
.....	13	REVENUES FROM THE LEASED
PROPERTY	14	OWNERSHIP OF IMPROVEMENTS
.....	15	PERMITS AND APPROVALS; FEES
.....	15	RIGHT OF ACCESS TO THE LEASED PROPERTY
.....	16	COMPOSITION OF BOARD OF TRUSTEES OF LESSEE
.....	16	FINANCIAL REPORTING; AUDIT
.....	16	REPRESENTATIONS AND WARRANTIES
.....	16	PROPERTY CONDITION
.....	17	GENERAL OBLIGATIONS OF THE
PARTIES	18	CONDEMNATION
.....	20	DEFAULT; REMEDIES
.....	20	RIGHT TO CONTEST
.....	22	DISPUTE RESOLUTION
.....	23	OWNERSHIP AT TERMINATION
.....	24	INSURANCE
.....	24	

CASUALTY	28	ASSIGNMENT
.....	29	SUCCESSORS IN INTEREST
.....	29	NOTICES
.....	29	ESTOPPEL CERTIFICATES
.....	30	SEVERABILITY
.....	30	LEASEHOLD MORTGAGES
.....	30	SALE OR ASSIGNMENT BY LESSOR
.....	34	COMPLETE AGREEMENT
.....	35	NON-DISCRIMINATION
.....	35	SUBROGATION
.....	35	CONFORMITY TO LAW
.....	35	LICENSES AND PERMITS
.....	35	RADON GAS
.....	35	RESTRAINTS UPON USE
.....	35	NO MERGER
.....	36	SUBORDINATION
.....	36	DELAYS
.....	36	GOOD FAITH AND FAIR
DEALING	36	

EXHIBITS

"A" Leased Property Description

Initial Parcel Plan

MASTER LEASE

THIS IS A MASTER LEASE, executed on the dates hereinafter set forth and commencing on the date provided herein, between CITY OF PENSACOLA, a Florida municipal corporation ("Lessor"), and COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida not for profit corporation ("Lessee") for the following uses and purposes:

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 Lessee, dated July 29, 2005, subject to the negotiation of a master development agreement between the City and Lessee 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 a Master Development Agreement and a Master Lease to set forth the respective duties and responsibilities of the parties pertaining to the development of the Leased Property (as hereinafter defined), including each parcel constituting part of the Leased Property and the design, development, construction, completion, operation and maintenance of the Project (as hereinafter defined).

The City and Lessee have entered into and concluded negotiations for the Master Development Agreement and the Master Lease, which negotiations have resulted in this Master Lease.

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

The Trustees of Lessee have approved this Master Lease and have authorized and directed certain individuals to execute this Master Lease on behalf of Lessee.

AGREEMENT

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

1. RECITALS. The foregoing recitals are true, correct and incorporated into this Master Lease.

2. DEFINITIONS. Capitalized terms used in this Master Lease shall have the following definitions:

2.01. As to each of the following definitions, use of the masculine gender shall be considered and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, the singular shall include the plural as well as the singular number.

2.01.01. "**Act**" means Part III, Chapter 163, *Florida Statutes*; **Municipalities**, Chapter 166, *Florida Statutes*.

2.01.02. "Agreement Expiration Certificate" means the instrument executed by the City and the Master Developer in accordance with Section 18.17 of the Master Development Agreement certifying that all obligations of the City and the Master Developer under the Master Development Agreement have been satisfactorily completed in accordance with their terms.

2.01.03. "Agreement Termination Certificate" means the instrument executed by the City and the Master Developer in accordance with Section 12.06 of the Master Development Agreement certifying that the Master Development Agreement has been terminated.

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

2.01.05. "Approved Development Plan" means the Development Plan approved by the City in accordance with the City's Land Development Code.

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

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

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

2.01.09. "Building Official" means that Person or those Persons authorized under the Florida Building Code (2001 edition) to issue on behalf of the City a Certificate of Occupancy, a Temporary Certification of Occupancy, or a Certificate of Completion.

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

2.01.11. "City Contribution" means the funds provided by the City to the Master Developer in the aggregate amount of up to \$40,000,000.00 to be disbursed in accordance with Article V of the Master Development Agreement and applied to the cost of the Site Preparation Project and designing, constructing, equipping, installing and completing the Public Improvements.

2.01.12. "Certificate of Completion" means the **certificate of completion issued by a Building Official pursuant to the Florida Building Code (2001 Edition).**

2.01.13. "Certificate of Occupancy" **means the final, temporary or partial Certificate of Occupancy issued by a Building Official pursuant to the Florida Building Code (2001 Edition).**

2.01.14. "City" means the City of **Pensacola, a municipal corporation created under the laws of the State of Florida.**

2.01.15. "City Codes" or "Codes" **means the ordinances and codes of the City that regulate the development and construction of the Project and each Building, including but not limited to, the building codes and zoning regulations known as the ULDR and the Florida Building Code (2001 Edition).**

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

2.01.17. "Community Multi-Use Facility" means **that part or 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 public events.**

2.01.18. "Conference Center" means that part or component of the Public Improvements consisting of a facility in which conferences, **seminars, meetings and other such events can be held.**

2.01.19. "Construction Commencement Date" **means the date on which the Lessee or a Sub-Lessee commences or causes a Contractor to commence construction of any part of the Public Improvements or the Private Improvements, but which, for the Public Improvements, shall not be later than December 31, 2008.** With respect to the Public Improvements, the parties acknowledge that the Construction Commencement Date shall occur within such time as will enable the Lessor to comply with its obligation for at least 85% of the Public **Financing obtained from bond proceeds to be expended within three years of the date such bonds are issued.**

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

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

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

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

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

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

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

2.01.27. "Developer" means any entity which enters into a Sub-Lease with Lessee for development of part of the Private **Improvements on a particular Parcel**,

2.01.28. "**Expiration Date**" means the date on which the **Master Development Agreement expires, as evidenced** by the **Agreement** Expiration Certificate being recorded in the Public Records of Escambia County, as provided in Section 18.17 of the Master Development Agreement.

2.01.29. "Fair Value" means the value of a Parcel on which Private Improvements are constructed to be subject to a Sub-Lease between the Lessee **and a Sub-Lessee** as determined in accordance with Paragraphs 10.01.01 through 10.01.04.

2.01.30. "Hotel Project" means that part 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 a Parcel to be used as a hotel and uses appurtenant thereto.**

2.01.31. "**Lease Commencement Date**" means the date on which this **Master Lease commences** as provided in Paragraph 7.

2.01.32. "**Leased Property**" means the real property described in Exhibit "A".

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

2.01.34. **"Maritime Museum Lease"** means the SubLease between Lessee 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.

2.01.35. **"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, which are to be used for a maritime museum and uses appurtenant thereto and complementary thereto, including classrooms, offices, food service, and a museum store.

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

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

2.01.38. **"Master Development Agreement"** means the Master Development Agreement (Community Maritime Park Project) between the City and the Master Developer concerning the redevelopment of the Property.

2.01.39. **"Master Lease"** means this Master Lease between the City, as Lessor, and the Master Developer, as Lessee, for the Leased Property for the development of the Project, including all attached exhibits, as amended, modified or restated from time to time.

2.01.40. **"Office Project"** means that part or 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.

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

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

2.01.43. **"Park"** means that part or component of the Public Improvements consisting of an open space, public park, and walkways.

2.01.44. **"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 that will use the Community Multi-Use Facility for its home baseball games.

2.01.45. **"Permit"** means any zoning, variance, special exception, yard modification, zoning approval, development order respecting land use and City Codes, and consents required to be granted, awarded, issued, or

given by any governmental authority relative to the regulation of land use or zoning in order for construction of the Project, or any part thereof, to commence, continue **or be completed, but does not include a Building Permit.**

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

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

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

2.01.49. "Private Improvements" means the improvements constructed on the Leased Property consisting of the Retail Project, the Hotel Project, the Residential Project, and the Office Project.

2.01.50. "Project" means, collectively, the Site **Preparation Project, the Maritime Museum Project, the Public Improvements and the Private Improvements.**

2.01.51. "Project Coordinator" **means the Lessee.**

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

2.01.53. "Proposal" means the proposal for redevelopment of the Leased Property, dated July 29, 2005, submitted by the Lessee to the City in response to the RFP, including the Parcel Plan attached thereto.

2.01.54. "Public Financing" means the Bonds or other funds **available to** Lessor to pay the Public Improvements Cost and such other costs as may be required by this Agreement to be paid by Lessor.

2.01.55. "Public Improvements" means the improvements on the Leased Property for the use by the public to be designed, **constructed, installed and equipped as provided in this Agreement including the** Community Multi-Use Facility, the Conference Center, and the Park.

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

2.01.57. "Public Improvements Plans and Specifications" means the plans and specifications for the Public Improvements.

2.01.58. "Public Improvements Property" means each Parcel that will contain any of the Public Improvements.

2.01.59. "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 Leased Property, which are to be used for residential purposes and may include commercial and retail uses on the different levels.

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

2.01.61. "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 Leased Property in accordance with the Act and the Plan.

2.01.62. "Right to Contest" means the procedure set forth in Paragraph 22 for challenging any lien, payment, charge, or compliance with any law, rule, regulation or other legal requirement as described therein.

2.01.63. "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 Leased Property for construction thereon of the Public Improvements and the Private Improvements.

2.01.64. "Studer" means The Studer Group LLC, a Florida limited liability company.

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

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

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

2.01.68. "Unavoidable Delay" means those events constituting excuse from timely performance by a party hereto from any of its obligations hereunder, as such events are defined in and subject to the conditions described in Paragraph 43 hereof.

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

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

4. PURPOSE. Subject to the terms and conditions of this Master Lease, Lessee shall use the Leased Property to construct, develop, operate and maintain the Public Improvements and the Private Improvements on the Leased Property.

5. TERM. The term of this Master Lease shall commence on the Lease Commencement Date and shall continue for a period of sixty (60) years.

6. RENT. In consideration of the warranties, representations and covenants made by Lessee in this Master Lease, and subject to the manner in which rent is computed hereunder for a Sub-Lease, annual rent payable under this Master Lease shall be the sum of One Dollar (\$1.00) per year, such rental obligation commencing on the Lease Commencement Date.

7. LEASE COMMENCEMENT DATE. Provided that the Master Development Agreement has not been terminated earlier in accordance with its provisions, this Master Lease shall commence, and Lessee shall be entitled to possession of the Leased Property, upon Lessee's certification in writing to the Lessor, and the Lessor's acceptance of such certification, of satisfaction of all the following terms and conditions:

7.01. Lessee demonstrates to the satisfaction of the Lessor that it has the capability to cause the development of the Project.

7.02. 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 Lessee and the Lessor.

7.03. Pelicans have committed to use of the Community Multi-Use Facility with terms and conditions acceptable to Lessee and Lessor, 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 Lessee for five (5) years beginning on the Construction Completion Date of the Community

Multi-Use Facility. Such amounts shall be used to fund any operating deficit of Lessee for the Project, or if there is not any operating deficit in any year, then such payment shall be contributed by Lessee to charities in the Pensacola area.

7.04. The University of West Florida has committed funds to the initial development of the Maritime Museum Project with terms and conditions acceptable to Lessee and Lessor, 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.

7.05. 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 Lessor.

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

7.07. The Lessor **has received and accepted a project development strategy (including parking)** from **Lessee**.

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

7.09. 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 Lessee'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.

7.10. Lessee agrees to provide Lessor with a certification of completion of the foregoing conditions on or before March 15, 2008. Such date shall be extended if there is a referendum on the Project. The extension shall be the amount of time from the date of certification of the requirement for a referendum to the date the results of the referendum are certified.

8. PUBLIC IMPROVEMENTS, Lessor hereby grants to Lessee the right to construct, equip, finance and operate the Public Improvements subject to the following terms and conditions and in accordance with the following procedures:

8.01. Lessee shall construct the Public Improvements in accordance with plans and specifications for the Public Improvements approved by the Lessor and in accordance with the procedures set forth in Paragraph 8.03 below. The costs of construction of the Public Improvements shall be paid by the Lessor in accordance with the following:

8.01.01. As provided in the Master Development Agreement, 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 Public Improvements Costs. The moneys in the

Construction Fund shall be applied to the payment of 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 Public Improvements Costs. The Construction Fund shall remain in existence after expiration or termination of the Master Development Agreement until all Public Improvements Costs are paid.

8.01.01.1. From time to time as Lessee receives invoices or the equivalent from Project Professionals, Contractors and other vendors for goods or services in connection with the Public Improvements, Lessee shall submit to the Lessor 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 Lessor and submitted to the Lessor for payment from the Construction Fund.

8.01.01.2. The Lessor will make payments from the Construction Fund in response to a Payment Request in accordance with the Florida Prompt Payment Act, codified as §§ 218.70, *Florida Statutes*, et seq.

8.01.02. The Payment Request shall be signed by an Authorized Representative of Lessee 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 Lessee for the benefit of the Lessor for completion of the development of the Public Improvements, each item is a proper charge against the cost for the completion of 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.

8.01.03. The City shall determine if the Payment Request is in proper form, includes required information, is for a 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 Paragraph 8.01.03, 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 Paragraph 8.01.03, then it shall return the Payment Request to Lessee with a statement of the reason(s) for the Lessor declining to approve the request.

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.

8.02. Lessee shall have the right to enter into agreements for use and lease of the Public Improvements (all of which, with terms of more than thirty [30] days, shall be subject to the approval of Lessor), including:

8.02.01. Use agreements with athletic teams and other organizations for use of the Community Multi-Use Facility for festivals and other public events and functions.

8.02.02. Use agreements with organizations for use of the Conference Center.

8.03. Contractors for the Public Improvements shall be selected and construction work shall be completed in accordance with the following:

8.03.01. Lessee shall select through competitive selection (utilizing the same procedure as Lessor would have used) Contractors to construct the Public Improvements substantially in accordance with the Public Improvements Plans and Specifications.

8.03.02. Each Contractor shall be required to continue to pursue and prosecute the construction of the Public Improvements with due diligence.

8.03.03. All construction work on the Public Improvements shall be done substantially in accordance with the Public Improvements Plans and Specifications, and shall be of a quality generally recognized for projects similar to the Public Improvements.

8.03.04. All obligations of a Contractor with respect to commencement, continuation and completion of construction of the Public Improvements shall be subject to delays and extensions from time to time for Unavoidable Delay.

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

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

8.03.07. Each contract between any Contractor for the Public Improvements and Lessee shall provide, among other things, that: (i) notice shall be given to the party of any material defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract, Lessee or Lessor shall have the right, but not the obligation, to cure any defaults by the Contractor under such contract without penalty to Lessee or Lessor 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 Lessee or Lessor.

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

8.03.09. To the extent possible under State law, Lessee agrees to include in any contract with a Contractor for the Public Improvements a provision whereby construction materials may be purchased on behalf of and for the benefit of Lessor and be exempt from sales tax.

8.03.10. CMPA agrees to include in any contract with a Contractor for the Public Improvements a provision under which 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 Public Improvements from trade Contractors and suppliers listed in the City's Small Business Enterprise Directory.

8.04. All agreements between Lessee and a Contractor for construction of the Public Improvements shall provide, among other things, that:

8.04.01. (i) notice shall be given to Lessee and the Lessor of any material defaults thereunder by the Contractor; (ii) in the event of a material breach by Contractor of such contract, Lessee or the Lessor shall have the right, but not the obligation, to cure any defaults by the Contractor under such contract without penalty to Lessee or the Lessor 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 Lessee or the Lessor.

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

8.04.03. To the extent possible under State law, Lessee agrees to include in any contract with a Contractor for the Public Improvements a provision whereby construction materials may be purchased on behalf of and for the benefit of the Lessor and be exempt from sales tax.

8.05. The location of the Public Improvements shall be as set forth in the Parcel Plan.

8.06. The parties acknowledge and agree that a portion of the Public Financing is derived from the proceeds of Bonds of the Lessor, issued pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code and the regulations and rulings pertaining thereto (the "Code"), and a Non-Arbitrage and Tax Certificate of the Lessor (the "Tax Agreement") delivered in connection with the issuance of the Bonds. The Lessor and Lessee hereby acknowledge that the use and application of the proceeds of the Bonds are subject to the requirements of the Code and the Tax Agreement, and hereby agree that, any provision hereof, or of the Master Development Agreement, to the contrary notwithstanding, (i) the proceeds of the Bonds shall be used only to pay for costs of the Public Improvements that qualify for financing under the Code and the Tax Agreement, and (ii) the use, occupancy, operation and management of the Public Improvements financed with the Bond proceeds shall be subject to the requirements of the Code and Tax Agreement. Lessee hereby agrees that each Sub-lease shall conform to the requirements of the Code and the Tax Agreement, and shall contain such provisions relating to such requirements as may be necessary to assure that no use of the Public Facilities will be made that would violate such requirements. The Lessor and Lessee agree that neither of them shall take any action, or enter into any transaction, sublease or other arrangement that would adversely affect the tax status of the Bonds for federal income tax purposes.

9. MARITIME MUSEUM PROJECT. Subject to approval of Lessor and agreement of UWF, Lessee shall enter into the Maritime Museum Lease with the University of West Florida for the lease to UWF of 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 Project thereon. The Maritime Museum Project may, in addition to museum passive and interactive exhibits and displays, contain a museum shop, visitor services, food and beverage service, and other uses ancillary to the operation of a maritime museum. The Maritime Museum Lease shall provide that it is assignable by Lessee to the Lessor, including being automatically assigned to the Lessor upon the termination of this Agreement due to a default hereunder by Lessee.

10. PRIVATE IMPROVEMENTS. Lessee shall have the right to enter into a SubLease of a Parcel for development of any component of the Private Improvements thereon of Parcels designated for private development in the Parcel Plan, and for those parts of Public Improvements set aside for a commercial enterprise. Any such Sub-Lease shall be subject to approval of Lessor as provided herein.

10.01. A Sub-Lease shall contain such terms and conditions as Lessee shall recommend are in the best interest of Lessee and Lessor, and consistent with the purposes of the Project and the Plan. All Sub-Leases shall have a termination date that ends on or before the end of the term of this Master Lease, subject to the following: if Lessee believes it in the best interest of the Project for the term of a Sub-Lease with a Developer to end after the end of the term of this Master Lease, then as part of its submission of the Sub-Lease for Lessor's approval, Lessee shall justify to Lessor the reasons for its recommendation for such sublease term. If such Sub-Lease term is approved by Lessor, the Sub-Lease shall make provision for Lessor to assume Lessee's position under the terms of the Sub-Lease after termination of this Master Lease.

10.01.01. The ground lease payments to be paid by a Developer for a Sub-Lease shall yield fair value to the Lessor as of the fair value determination date set forth in the Sub-Lease.

10.01.02. Lessee shall justify to the Lessor that the **lease** payments under the Sub-Lease yield fair value to the Lessor with such

valuations, analysis and expert opinions as Lessee shall deem necessary or appropriate for such purpose.

1D.01.03. Any Private Improvements Sub-Lease shall be subject to the approval of Lessor in its absolute discretion as a condition to execution of the lease by Lessee.

10.01.04. Upon execution of a Sub-Lease by Lessee and a Developer, the Sub-Lease shall be submitted to the Lessor for its approval. Such submission shall include a detailed report on the manner in which Lessee determined fair value, with appropriate documentation and analysis supporting such determination. If the Lessor agrees that the proposed lease terms yields fair value to the Lessor, then, subject to any comment of the Lessor on any other provision of the Sub-Lease, the Lessor shall give its approval of the Sub-Lease within thirty (30) days of its submission to the Lessor by Lessee, provided, however, if the Lessor desires additional information or documentation with respect to Lessee's determination of fair value, or desires to have a separate determination made of fair value, then the Lessor will notify Lessee of such decision within thirty (30) days of receipt of the Sub-Lease from Lessee. The Lessor shall then have thirty (30) days within which to satisfy itself as to the proposed lease payments yielding fair value to the Lessor, or to make its own determination of fair value. If the Lessor's determination of fair value is more than that submitted by Lessee by less than ten percent (10%), then the Sub-Lease shall be renegotiated to provide for a fair value equaling the average of the two values determined by the above processes or such other amount as is approved by the Lessor. If the Lessor's determination is more than that submitted by Lessee by more than ten percent (10%), then the Lessor and Lessee shall agree upon a third party expert who shall evaluate the two preceding evaluations and determine a final fair value which shall be no lower or higher than the first two values, and Lessee shall renegotiate lease terms with the Developer to yield such fair value.

10.02. All revenues received for Sub-Lease of parcels for Private Improvements shall be paid by Lessee to Lessor.

11. REVENUES FROM THE LEASED PROPERTY. Revenues from the Leased Property shall be managed in the following manner:

11.01. Except as otherwise provided herein and subject to any SubLeases or use agreements entered into by Lessee with tenants, users, or operators of any part of the Leased Property, all revenues from the Leased Property shall be paid to Lessee, and shall include, but not be limited to, the following: (1) any development fees, surcharges and assessments paid pursuant to the Sub-Lease; (2) parking revenues on the Property; (3) use payments and other revenue sharing, e.g., concessions, from use of the community multi-use facility; (4) income from the conference center; (5) income from all festival uses; and, (6) all revenues derived from the sale of any naming rights related to the Project, provided that: (a) such name shall be subject to the approval of the Lessor; and (b) the proceeds from the naming rights for the Public Improvements shall be paid to the Lessee and may be used to pay operating, maintenance or upgrade costs of any of the Public Improvements.

11.02. After receipt of revenues from the Leased Property, Lessee agrees to apply the revenues for payment in accordance with the following priorities: (i) first, to pay operating and maintenance costs; (ii) second, to deposit into an operating and

maintenance reserve fund, which shall be maintained as a separate and distinct account and shall contain reserves for at least six (6) months of operations based on historical experience and future projections; (iii) third, to deposit into a capital renewal and replacement fund until the sum of such fund is One Hundred Thousand Dollars (\$100,000), plus five percent (5%) of Lessee's annual gross operating revenues beginning in the year following the year in which such sum is accumulated in the fund; and (iv) fourth, to deposit into a separate fund of Lessee, with the balance in such separate fund each year being distributed to a Pensacola charity selected by the Trustees of Lessee.

11.03. Lessor agrees that an amount equal to at least ten percent (10%) of the ground lease revenue it receives will be deposited in a renewal and replacement fund to be used to improve, repair, update, and replace parts of the Public Improvements from time to time as deemed necessary by Lessor.

11.04. On or about July 1st of each year Lessee shall prepare and provide to Lessor a projection of operating costs, maintenance and renewal and replacement costs for the year beginning October 1st. and projections for the succeeding three (3) years thereafter.

12. OWNERSHIP OF IMPROVEMENTS. During the term of this Master Lease, the vertical and horizontal improvements constructed as part of the Public Improvements will be owned by the Lessor. The vertical and horizontal improvements on the Maritime Museum Site with funds raised by UWF will be owned by UWF subject to the terms of the Maritime Museum Lease. That part of the property on which the Private Improvements are constructed will be owned by the Lessor, subject to the Master Lease and Sub-Leases with private developers for the vertical development constituting the Private Improvements. The vertical and horizontal improvements constructed by private developers as part of the Private Improvements will be owned by the private developers, subject to the terms of the private development Sub-Leases.

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

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

13.02. Lessor also agrees, to the extent permitted by law, contract or covenants to waive its normal and customary fees for the construction of the Public Improvements, and to assist Lessee in the negotiation of reduced fees with Escambia County and the Emerald Coast Utilities Authority.

13.03. Lessor also agrees to negotiate to have electric power provided to the Public Improvements billed through Lessor at its electric power rates the cost of which shall be born by Lessee.

14. **RIGHT OF ACCESS TO THE LEASED PROPERTY.** Lessor agrees to grant Lessee the right to enter upon the Leased Property with personnel and materials for the purpose of conducting the work necessary to complete construction of the Public Improvements and leasing of parcels to developers for construction of the Private Improvements.

15. **COMPOSITION OF BOARD OF TRUSTEES OF LESSEE.** Lessee agrees that its governing Board of Trustees shall be comprised of not less than seven (7) people, a majority of whom shall be residents of the City of Pensacola, and three (3) of whom shall be representatives appointed by Lessor. The number of Trustees the Lessor shall be entitled to appoint to the Board of Trustees shall always be at least one-third (1/3) (rounded up) of the composition of the Board of Trustees.

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

17. REPRESENTATIONS AND WARRANTIES.

17.01. Lessee represents and warrants to the Lessor that each of the following statements is currently, and, as of the date of original issuance of the Bonds, will be, true and accurate and agrees the Lessor may rely upon each of the following statements:

17.01.01. Lessee is a Florida non-profit corporation duly organized and validly existing under the laws of the State of Florida, will apply for and maintain its status as a corporation recognized under Section 501(c)(3) of the Internal Revenue Code, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this 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.

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

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

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

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

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

17.01.07. The **principal place of business and principal executive offices of Lessee are in the corporate** limits of the City of **Pensacola, Florida.**

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

17.02. Lessor represents, and agrees that Lessee may rely upon, the following statements:

17.02.01. Entering into this Master Lease is a valid, binding and permissible activity within the power and authority of the Lessor and does not violate any City Code, Charter provision, rule, resolution, ordinance, policy or agreement of the Lessor or constitute a default by the Lessor of any agreement or contract to which it is a party.

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

17.02.03. Lessor owns fee simple title to the Leased Property.

17.02.04. The individuals executing this Master Lease and related documents on behalf of Lessee are duly authorized to take such action, which action shall be, and is, binding on Lessee.

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

extent and condition. The Lessee fully accepts the Leased Property in its present physical state and condition.

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

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

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

19.03. Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Leased Property covered by this Master Lease, and that no person shall ever be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party, except for any lien reserved upon the Lessee's (or Lessee's successors and/or assigns) leasehold interests in the Leased Property by leasehold mortgagees. All persons contracting with the Lessee, or furnishing materials or labor to the Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of this Master Lease. The Lessee shall not be deemed to be the agent of the Lessor as to confer upon a laborer bestowing labor upon the Leased Property, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased Property, a lien upon the Lessor's estate under the provisions of Chapter 713, *Florida Statutes*, and subsequent revisions of that law. **UNDER CHAPTER 713 OF THE FLORIDA STATUTES, THIRD PARTIES ARE HEREBY NOTIFIED THAT THEY MAY NOT IMPOSE A LIEN ON THE LESSOR'S INTEREST IN THE LEASED PROPERTY FOR LABOR, SERVICES OR MATERIALS FURNISHED TO, OR AT THE REQUEST OF LESSEE AND ANY SUCH LIENS ARE HEREBY PROHIBITED.** If, notwithstanding said notice, any third party files a mechanic's lien purportedly against the Lessor's estate for or on account of labor, services or materials provided to or at the request of Lessee, Lessee shall dispose of the claim and ensuing litigation as Lessee deems appropriate at Lessee's expense, provided that if such party commences a foreclosure action with respect to such lien, Lessee shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure of Lessor's estate.

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

19.05. For all portions of the leased property that **are not** tax-exempt, **Lessee agrees to** pay when **due all** real property taxes and **special assessments of**

whatsoever kind levied and assessed against the Leased Property, if any. Upon a Sub-Lease going into effect, the Sub-Lessee shall pay when due all real property taxes and special assessments of whatsoever kind levied and assessed against the Parcel subject to the SubLease and all improvements built and placed on the Parcel by the Sub-Lessee. The Lessee further agrees to pay when due all sales and use taxes, and any and all other taxes or assessments imposed upon and being the liability of the Lessee and arising out of this Master Lease, including any sales taxes due on rental payments.

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

19.05.02. Lessor and Lessee understand and agree that the development contemplated by this Master Lease is being undertaken by Lessee in the public interest as a nonprofit entity to carry out a public purpose for the benefit of the Lessor. The parties intend that the Parcels of the Leased Property on which the Public Improvements and the Maritime Museum Project are located be exempt from ad valorem taxation, as such improvements will be owned by Lessor, will be for a public purpose, will be for public use and not for a predominant private use, and will be an asset of Lessor for the benefit of its citizens. Lessor and Lessee understand and agree that the Private Improvements shall be subject to ad valorem taxation, and that any developer or other person owning, renting, or using any of the Private Improvements will not be permitted to apply for or seek to have any part of the Private Improvements declared exempt from ad valorem taxation.

19.06. For the Public Improvements, the Lessee agrees, at its expense, to keep and maintain the Leased Property, the improvements, furnishings, fixtures and personal property located thereon in a good state of repair and condition, normal wear and tear or damage by the elements excepted, excepting therefrom all or any part of the Leased Property or improvements placed thereon that are subsequently assigned or transferred to or owned by the Lessor.

19.06.01. For the Private Improvements, the Private Improvement Sub-Lessee shall be required under the terms of the Sub-Lease to pay all repair and maintenance costs as described herein.

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

19.06.03. If the Lessee or any successor or assign of Lessee shall fail to comply with the provisions of this Paragraph 19.06.03, Lessor shall have the right to obtain specific performance from such Lessee, or any successor or assign of Lessee, to enforce such repair and maintenance obligations including the ability to force such Lessee, or any successor or assign of Lessee, to levy and collect assessments for such repairs and maintenance.

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

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

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

19.10. After the Lease Commencement Date, Lessee will record at its own expense this Master Lease in the Public Records of Escambia County, and thereafter, Lessee shall record at its own expense any amendments to this Master Lease in the Public Records of Escambia County.

20. CONDEMNATION.

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

20.02. In the event of a partial taking by condemnation or eminent domain so that the part not so taken shall be sufficient for the continued operation of the Leased Property for the purposes intended by the Lessee, then this Master Lease shall continue in full force and effect, and the Lessee shall be entitled to any claim against the condemnor that the Lessee may be entitled to. The Lessee shall use the proceeds received by the Lessee pursuant to this Paragraph 20 for purposes of restoring those portions of the improvements upon the remainder of the Leased Property and impacted by the condemnation to as near their former condition as circumstances will permit pertaining to the taken improvement owned by Lessee, its successors and assigns.

21. DEFAULT REMEDIES.

21.01. Subject to Unavoidable Delay, should Lessee fail to commence construction of the Public Improvements by December 31, 2008, this Master Lease and the leasehold estate created thereby shall terminate. Upon such termination, Lessee shall surrender the Leased Property to the Lessor in good condition and repair normal wear and tear excepted. Upon such surrender, neither party shall have any further right or obligation

under this Master Lease. Unless and until a lease termination certificate is executed by Lessor and Lessee and recorded in the Public Records of Escambia County, reflecting a termination of this Master Lease and surrender of the Leased Property pursuant to this Paragraph 21.01, all parties are put on record notice and shall assume and rely upon the fact that this Master Lease is in good standing and in full force and effect.

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

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

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

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

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

21.06. In the event there shall be a material default under this Master Lease and such default shall continue after the expiration of any applicable grace period and shall occur after the issuance of the Certificate of Occupancy or Certificate of Completion for the Public Improvements, Lessor shall have the right to all legal and equitable remedies under applicable law including the remedies set forth in Paragraph 19.06.03 herein regarding the Lessee's failure to repair and maintain the Leased Property, excepting, however, Lessor shall expressly not have the right to terminate this Master Lease or obtain the right of re-entry or repossession of the Leased Property.

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

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

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

22. RIGHT TO CONTEST. Subject to the conditions set forth in Paragraph 22.01 below, the Lessor or Lessee each may, at its sole discretion and expense, after prior written notice to the other party hereto, contest by appropriate action or proceeding conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any lien, any payment of any taxes, assessments, impact fees or other public charges of a similar nature that may from time to time be levied upon or assessed by any appropriate governmental authority against Lessee, the Project (or any part thereof), the Leased Property, furniture, fixtures, equipment or other personal property thereon, and the revenues generated from the use or operation of any or all of the above, any other payment specifically identified in this Agreement, or compliance with any law, rule, regulation, or other such legal requirement.

22.01. The right to contest any charge, payment or requirement pursuant to Paragraph 22 is subject to the following:

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

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

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

22.01.04. the party seeking the benefit of this Paragraph 22.01 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 Leased Property, and any part thereof, and any interest of such parties hereunder.

23. 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:

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

23.02. Second, in the event that any dispute is not resolved under Paragraph 23.01 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.

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

24. OWNERSHIP AT TERMINATION.

24.01. Subject to the provisions of Paragraph 24.02 below, any improvements and fixtures located on the Leased Property at termination of the Lease shall become the property of the Lessor.

24.02. Any trade fixtures or personal property installed, attached to or located on the Leased Property by any of Lessee's subtenants, whether or not attached to the freehold, shall be and remain such Developer's property and may be removed by the Developer upon the termination of the Sub-Lease, provided that such Developer repair, restore and save the Lessor harmless from all damage to any of the Leased Property including improvements located thereon and owned or controlled by such Developer, caused by such removal. While this Master Lease is in effect, any Developer shall be entitled to depreciation on the improvements and fixtures that are now or shall subsequently be erected upon the Leased Property.

25. INSURANCE. Insurance shall be issued by an insurer whose business reputation; financial stability and claims payment reputation is satisfactory to Lessor. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

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

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

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

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

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

25.03. Lessee shall require its contractors throughout construction of the Public Improvements, and shall require its or its sublessees' contractors during

construction of the Private Improvements and the Maritime Museum Project to provide or cause to be provided, pay for and keep in full force and effect the types and amounts of insurance described in Section 7.02 of the Master Development Agreement.

25.04. As long as it is available, Lessor will maintain property insurance on the insurable portions of the Public Improvements and the Private Improvements. Lessor will not maintain property insurance on Lessee's contents nor will the Lessor maintain property insurance on the Maritime Museum Project. Lessee will reimburse Lessor on an **annual** basis for that portion of the Lessor's total property insurance premium related to the property insured by the Lessor under this agreement. Lessee understands and agrees that the property insurance coverage types, cost and deductible amount may vary annually based on the Lessee's total property schedule coverage. Lessee further agrees that more than one insurance company may write the property insurance and, the amount of premium Lessee will reimburse the Lessor may be the sum of those individual insurance company's premium charges. Lessee will provide verification to the Lessor of completed building values as well as any changes in building values.

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

25.06. Required insurance shall be documented in the Certificates of Insurance that provide that Lessor shall be notified **at least** thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. The name of this Lease must be listed on the certificate. If required by Lessor, Lessee shall furnish copies of Lessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by Lessor, an ACORD 25. Lessee shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to Lessor and shall file with Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the Lessor the Lessee shall, upon instructions of Lessor, **cease all** operations under the Master Lease until directed by Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521.

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

25.08. Lessee shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, Lessee shall not be deemed to be an agent of Lessor. Precaution shall be exercised at all times by Lessee for the protection of all persons, including employees, and property. Lessee

shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

25.09. The University of West Florida will own the improvements on the Maritime Museum Site. Lessee will require, in the Maritime Museum Lease, that the following minimum insurance coverage be provided in the Maritime Museum Lease:

25.09.01. Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law, to include Employers Liability Coverage of at least **\$100,000** each person -accident, **\$100,000** each person - disease, **\$500,000** aggregate - disease.

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

25.09.02.1. Occurrence-type coverage with the Lessor listed as an additional insured for Commercial General Liability, including bodily injury and property damage liability for premises, operations, products and completed operations, and independent contractors.

25.09.02.2. Umbrella Liability Insurance coverage, not more restrictive than the underlying insurance policy coverage, written on an occurrence-type basis.

25.09.02.3. The Maritime Museum Lease will also provide that the minimum limits of insurance may be increased to reasonable amounts upon any anniversary date of this Master Lease.

25.09.03. Property insurance coverage which insures any buildings or improvements constructed on the Master Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage. In addition to the other requirements of this section, the company or companies providing property insurance coverage pursuant to this Paragraph shall be qualified to do business in the State of Florida. The amount of coverage will be 100% of the replacement cost excluding foundation and site work. Such policy shall contain a Waiver of Subrogation endorsement in favor of the Lessor. The Maritime Museum Lease will provide that any payment made as a result of any insurable loss shall be applied to the repair or replacement of such buildings or Improvements subject to the rights of any Lender or Mortgagee and that such funds shall be expended on such repair or replacement within a reasonable period of time.

25.09.04. The Maritime Museum Lease will provide for thirty (30) day advance notice of cancellation, nonrenewal or adverse change or restriction in any insurance coverage provided under the Maritime Museum Lease. Provision will also be made in the Maritime Museum Lease that this Master Lease shall

be listed on insurance certificates, and if required by Lessor, for the furnishing of copies of insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the Lessor, an ACORD 25. The Maritime Museum Lease will also provide that any cancelled, adversely changed, restricted or non-renewed policies will be replaced with new policies acceptable to Lessor and will file with the Lessor Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. The Maritime Museum Lease will provide that Lessee or Lessor shall be entitled to the UWF to cease all operations under the Maritime Museum Lease until directed by Lessee and Lessor, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521.

25.09.05. The Maritime Museum Lease will provide that UWF's required coverage shall be considered primary and all other insurance shall be considered as excess, over and above UWF's coverage.

25.09.06. The Maritime Museum Lease will provide that UWF shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, UWF shall not be deemed to be **an agent** of the Lessee or Lessor. The Maritime Museum Lease will provide that UWF will act to protect all persons, including employees, and property on the leased premises, make special effort to detect hazards and take prompt action where loss control/safety measures should reasonably be expected.

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

25.11. To the extent permitted by law, specifically including Section 768.28, *Florida Statutes*, and subject to the limits of liability contained therein, Lessor shall indemnify, defend and save harmless the Lessee from and against any and all claims, suits, actions, damages and causes of action arising during the term of this Master Lease, for any bodily injury, loss of life or damage to property sustained on the public streets within the boundaries of the Leased Property except to the extent caused by the negligence or willful misconduct of Lessee, its officers, employees, agents, contractors or sublessees, and from and against all costs, counsel fees, expenses, liabilities, judgments and decrees incurred in or arising out of any such claim, the investigation of them, or the defense of any action or proceeding brought on them, and from and against any orders, judgments and decrees which may be entered in them. Lessor shall also specifically defend any action or

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

25.12. The Lessee shall not be deemed to be in default under the provision of this Paragraph 25 if all or a portion of insurance required under this paragraph is not commercially available.

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

25.14. To the extent Lessor satisfies its insurance obligations under this Master Lease through a program of self-insurance, such program shall be considered an "insurance policy" for purposes of this Paragraph 25 by coverage types and limits at least equal to those required above and give no less protection than would be afforded by comparable policies issued by a neutral third-party insurer. To the extent Lessor selfinsures through a program of self-insurance, Lessor shall be considered an "insurer" within the meaning of this Paragraph 25 under such policies.

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

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

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

26.03. If the Lessee determines in its reasonable opinion that repair and restoration is not feasible, Lessee will not be obligated to make such repair or restoration. In that event, the Proceeds shall be used to clear that portion of damaged or destroyed improvements affected by the loss, and the cleared lands shall be surrendered to

the Lessor. Upon such surrender, this Master Lease shall terminate as to that surrendered portion. If Proceeds remain after paying for the cost of clearing that portion of the damaged or destroyed improvements affected by the loss, the Proceeds shall be then used to pay any additional costs incurred by the Project as a result of such loss and severance. Thereafter, any remaining Proceeds shall be disbursed to the Lessee except for the extent required for the redemption of the Bonds.

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

27. **ASSIGNMENT**. Lessee cannot assign this Master Lease without Lessor's prior approval in Lessor's absolute discretion.

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

29. NOTICES. All notices required by law and by this Master Lease to be given by one party to the other shall be in writing, and the same may be served as follows:

29.01. By certified mail, return receipt requested, to the following addresses
:

29.01.01. 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 Lessee: 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 Lessor: 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

29.01.02. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Paragraph 29.01. 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.

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

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

32. LEASEHOLD MORTGAGES.

32.01. No mortgage may be placed on the Leased Property or on Lessee's leasehold interest under this Master Lease. A Sub-Lessee of Private Improvements under a Private Improvements Sub-Lease shall be entitled to mortgage the leasehold interest under the Sub-Lease, each of which Sub-Leases shall contain substantially the following provisions:

32.02. If the Sub-Lessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the Lessee a duplicate original of the mortgage in form proper for recording, or a copy of the mortgage certified as a true copy by the Clerk of the Circuit Court of Escambia County, together with a written notice setting forth the name and address of the leasehold mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the following provisions of this Paragraph 32 shall apply.

32.02.01. When giving notice to the Sub-Lessee with respect to any default under the provisions of the Sub-Lease, the Lessee will also serve a copy of such notice upon the leasehold mortgagee. No such notice to the

Sub-Lessee shall be deemed to have been given, unless a copy of such notice has been mailed to such leasehold mortgagee, which notice must specify the nature of each such default.

32.02.02. In case the Sub-Lessee shall default under any of the provisions of the Sub-Lease, the leasehold mortgagee shall have the right to cure such default whether the same consists of the failure to perform any matter or thing which the Sub-Lessee is required to do or perform and the Lessee shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the Sub-Lessee. The leasehold mortgagee, upon the date of mailing by Lessee of the notice referred to in Paragraph 32.02.01 shall have, in addition to any period of grace extended to the Sub-Lessee under the terms and conditions of the Sub-Lease for a non-monetary default, a period of one hundred twenty (120) days within which to cure any non-monetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of the Sub-Lessee for failure to pay rent, or failure to pay any amount otherwise required under the terms of the Sub-Lease (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have sixty (60) days from the date the notice of default was mailed to the leasehold mortgagee within which to cure such default.

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

32.02.04. In the case of any default by the SubLessee, the Lessee will take no action to effect a termination of the term of the SubLease after the service of a notice provided for in Paragraph 32.02.02 above by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, from the mailing of the default notice by Lessee to Sub-Lessee, with a copy to such leasehold mortgagee, within which either: (i) to obtain possession of the Property covered by the Sub-Lease (including possession by a receiver) and cure such non-monetary default in the case of a default which is susceptible of being cured when the leasehold mortgagee has obtained possession; or (ii) to institute foreclosure proceedings and complete such foreclosure or otherwise acquire the Sub-Lessee's interest under the Sub-Lease with diligence and continuity and thereafter to commence and diligently proceed to cure such default; provided, however, that the leasehold mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default shall be timely cured, and provided further, that nothing in this Paragraph 32 shall preclude the Lessee from exercising any rights or remedies under the Sub-Lease with respect to any other default by the Sub-Lessee during any period of forbearance.

32.02.05. In the event of the termination of the Sub-Lease or of any succeeding lease made pursuant to the provisions of this Paragraph 32 prior to its stated expiration date, the Lessee will enter into a new lease of the Property covered by the Sub-Lease with the leasehold mortgagee or, at the request of such leasehold mortgagee, to a corporation formed by or on behalf of such leasehold mortgagee or by or on behalf of the holder of the note secured by the

leasehold mortgage held by such leasehold mortgagee, for the remainder of the term, effective on the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitations contained in the Sub-Lease, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to the Lessee such new lease within thirty (30) days from the date of such termination and such written request and such new lease is accompanied by payment to the Lessee of all amounts then due to the Lessee, including reasonable counsel fees, court costs and disbursements incurred by the Lessee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease, less the net income collected by the Lessee subsequent to the date of termination of the Sub-Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the rent thereafter becoming due under such new lease.

32.02.06. The leasehold mortgagee of all or any portion of the Property covered by the Sub-Lease may become the legal owner and holder of the Sub-Lessee's interest in the Sub-Lease for such Property covered by the Sub-Lease by foreclosure of its mortgage or as a result of the assignment of the Sub-Lease in lieu of foreclosure, whereupon such leasehold mortgagee shall immediately become and remain liable under the Sub-Lease as provided in this Paragraph 32, except that such leasehold mortgagee may assign the Sub-Lease without the Lessee's consent to any institutional assignee at any time whether prior or subsequent to the Construction or Completion of the improvements erected or to be erected upon the Property covered by the Sub-Lease.

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

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

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

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

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

32.07. Any leasehold mortgage shall be specifically subject and subordinate to the Lessee's rights under the Sub-Lease and the Master Lease, and to Lessor's fee ownership of the Property covered by the Sub-Lease. The sentence immediately preceding shall not be deemed or construed (by implication or otherwise) to impose or establish upon the Sub-Lessee's interest in the Sub-Lease or upon the lien of any leasehold mortgage the superiority of any lien or encumbrance, including, without limitation, the lien of any fee mortgage, judgment or tax created directly or indirectly by, through or against the Lessor's fee interest in the Property covered by the Sub-Lease or the Lessee's interest in the Sub-Lease or the Master Lease. Despite any provision which is or may appear to be to the contrary in the Sub-Lease, under no circumstances whatsoever shall Lessor's fee simple title interest, or Lessee's leasehold interest, of the Lessee in the Leased Property, or any portion of them, be subordinated to the Sub-Lease.

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

32.09. The provisions of this Paragraph 32 in favor of the leasehold mortgagee shall inure to the benefit of the leasehold mortgagee and its successors, assigns and designees, and also any other purchaser or transferee of the Sub-Lease pursuant to any foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

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

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

33. SALE OR ASSIGNMENT BY LESSOR.

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

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

33.02.01. **written notice of the election of the Lessee to acquire the Leased Property (or applicable portion thereof);**

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

33.02.03. a duly executed sales agreement which contains the terms and provisions of the offer.

33.03. In the event the Lessee fails to elect to purchase the Leased Property (or applicable portion thereof) within said ninety (90) day period and in accordance with the foregoing, then Lessor shall be free to accept the Offer and the Leased Property (or applicable portion thereof) may be sold and conveyed to the buyer under the Offer free and clear of the Right of First Refusal (subject to the provisions of Paragraph 33.01 above).

33.04. Notwithstanding anything to the contrary contained in this Paragraph 33, the Right of First Refusal herein shall not apply to Lessor's conveyance, sale or transfer of the entire Leased Property to a duly created agency of the Lessor, provided such conveyance, **sale or** transfer is subject to all the terms, conditions and covenants in this Master Lease, including this Paragraph 33, and such transferee expressly assumes in

writing all terms, conditions and covenants in this Master Lease applicable to the Lessor hereunder, and such written assumption is recorded in the Public Records of the County.

34. COMPLETE AGREEMENT. The parties mutually represent and warrant to each other that this Master Lease constitutes the final and complete agreement of the parties on its subject matter and may not be changed, modified, discharged or extended except by written instrument duly executed by the parties. The parties agree that no previous representations or warranties shall be binding upon either party nor has the execution of this Master Lease been induced on the part of any party except as expressed in writing in this Master Lease.

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

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

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

38. LICENSES AND PERMITS. Lessee shall, at its own expense, obtain all necessary permits, and pay all licenses, fees, and taxes required to comply with all Applicable Laws relative to development and operation to be conducted on the Leased Property in accordance with this Master Lease, excepting therefrom the permits, licenses, fees and taxes for any part of the Leased Property that is subsequently assigned or transferred to or owned or controlled by the Lessor or the agency for which Lessor shall be responsible at its sole cost and expense. Upon Lessor's written request, at reasonable intervals, Lessee agrees to provide Lessor with a copy of such permits and payments.

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

40. RESTRAINTS UPON USE. Lessee understands and agrees that its use of the Leased Property is expressly subject to all applicable zoning and building restrictions within the zoning of the Leased Property. The Lessee shall comply in all particulars with all pertinent rules, regulations, laws and ordinances duly and legally promulgated by any governmental authority.

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

42. SUBORDINATION. Lessor hereby subordinates in favor of any leasehold mortgagee any right to a Lessor's lien against the furnishings, fixtures, machinery, equipment, furniture, inventory and/or any other items of personal property which is owned by Lessee or tenants of Lessee under Private Improvement Sub-Leases, and now located or may hereafter be delivered or installed in or upon any of the improvements situated upon the Leased Property. This subordination is self-executing and no further evidence of the subordination must be produced. However, if requested by any leasehold mortgagee, Lessor shall execute and deliver a subordination agreement in the form reasonably required by such leasehold mortgagee within fifteen (15) business days of written request and the governing body of Lessor hereby authorizes and instructs its Authorized Representative to sign and deliver such subordination agreement when found not to be inconsistent with the purpose and intent of this Paragraph 42.

43. DELAYS. In the event either party hereto is delayed in the performance of any act required hereunder by reason of an Unavoidable Delay, performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of such act shall be extended for a period equivalent to the period of the Unavoidable Delay and all dates, time periods, deadlines as contained in the Master Lease shall be extended by the time period caused by the Unavoidable Delay. "Unavoidable Delay" means any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, terrorism, pestilence, archaeological excavations required by law, unavailability of materials after timely ordering of same, epidemics, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, extremely abnormal and excessively inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, delays due to proceedings under Chapters 73 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).

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

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

[SIGNATURES ON FOLLOWING PAGES]

Executed and delivered in the presence of:

CITY OF PENSACOLA, FLORIDA

Elaine O. Mager
Elaine O. Mager
(Print Name)

By: Thomas 5. Bonfield
Thomas 5. Bonfield
City Manager

Q VGA- ir~~~
~Q
(Print Name)

ATTEST:

By: Ericka L. Burnett
City Clerk

APPROVED AS TO FORM AND EXECUTION:

By: [Signature]
City Attorney

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this day of ++ rch, 2006, by Thomas J. Bonfield and Ericka L. Burnett, City Manager and City Clerk, respectively, of the City of Pensacola, Florida. They are perso know_n_ to me or have produced valid Florida drivers' licenses as identification.

(SEAL)

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

Robyn M. Tice
Commission #
DD418777 E
Expires June 8, 2009
QF 806dad Troy Fain • Inaumnca, iic. 800.985-7019

Executed and delivered **COMMUNITY MAR, TIME PARK**

in the presence of: ASSOCIATES, C.,

a Florida not-for-profit corporation

[Handwritten signature]

Quinton D. Studer, Trustee

[Handwritten signature]
(Print Name)

[Handwritten signature]
(Print Name)

[witnesses as to Quinton D. Studer]

STATE OF FLORIDA
COUNTY OF ESCAMBIA

, 7

The foregoing instrument was acknowledged before me this 1 day of March, 2006, by Quinton D. Studer, trustee of Community Park Associates, Inc., a Florida not-for-profit corporation. He is personally known to me and he is a valid driver's license holder.

license as identification.

ROBERT D. HART,
7522
COMMISSIONER
EX-12345678
"I am a citizen of the United States of America."
VF:
Sop
115

[Handwritten signature] (SEAL)

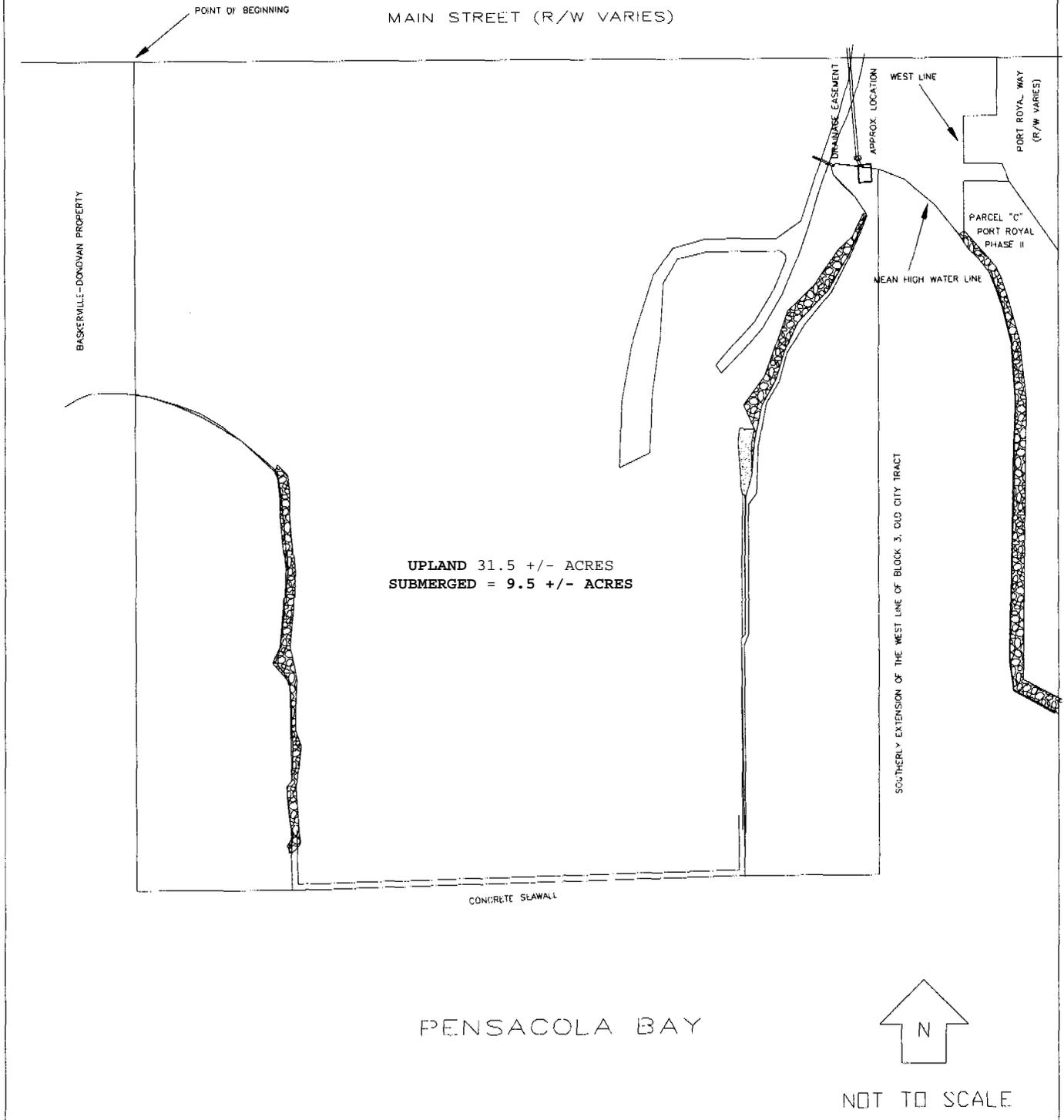
Printed/Typed Name:
Notary Public-State of Florida
Commission Number:

A012967E
i



witnessed and acknowledged before me this 1 day of March, 2006, by Quinton D. Studer, trustee of Community Park Associates, Inc., a Florida not-for-profit corporation. He is personally known to me and he is a valid driver's license holder.

EXHIBIT A



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 (conk)

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.