

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

GROUND SUBLEASE

THIS GROUND SUBLEASE (this "Agreement") is made and entered into the 25<sup>th</sup> day of JUNE, 2013 (the "Effective Date") by and between the **COMMUNITY MARITIME PARK ASSOCIATES, INC.**, a Florida not-for-profit corporation, as agent for the City of Pensacola (the "CMPA"), whose address is 222 W. Main Street, Pensacola, Florida 32502, the **CITY OF PENSACOLA**, a Florida municipal corporation (the "City"), whose address is 222 W. Main Street, Pensacola, Florida 32502, and **MARITIME ONE, LLC** ("Sub-Lessee"), whose address is 89 South Alcaniz Street, Pensacola, FL 32502, individually, a "Party" and collectively, the "Parties".

WITNESSETH:

WHEREAS, the City owns that property commonly referred to as the "Community Maritime Park" located in downtown Pensacola on the shore of Pensacola Bay, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Park Property"); and

WHEREAS, pursuant to that certain Master Lease dated March 27, 2006, between the City, as lessor, and the CMPA, as lessee, recorded in O. R. Book 5886, Page 1303, public records of Escambia County, Florida, as amended by that certain Omnibus Amendment between the City and the CMPA dated May 17, 2010, recorded in O. R. Book 6623, Page 1363, public records of Escambia County, Florida, as amended from time to time (collectively, the "Master Lease"), the City leased the Park Property to the CMPA for a term of sixty (60) years which lease commenced on May 28, 2009 and is set to expire on May 28, 2069, for the purpose of constructing a Public/Private development on the Park Property; and

WHEREAS, effective on or about May 17, 2010, City and CMPA entered into that certain Omnibus Amendment to the Master Lease in connection with the use of the New Market Tax Credits for the development of the Park Property (the "Omnibus Amendment") and, such Omnibus Amendment, incorporated herein by reference, further delineated portions of the development as "Public Improvements", and others as "Private Improvements" (the terms "Public Improvements" and "Private Improvements" as used herein shall have the same meanings as set forth in Section 2 of the Master Lease, as amended by the Omnibus Amendment.); and

WHEREAS, Sub-Lessee desires to sublease from CMPA and City, and CMPA and City desires to sublease to Sub-Lessee, the Leased Premises (as more particularly described in Paragraph 1 below) for the construction and operation of certain "Private Improvements" to include at least one mixed use/office building comprised of approximately 18,000 square feet upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, in the event that Sub-Lessee elects to establish a condominium regime on any portion of the Leased Premises, the Parties have agreed that this Agreement and all sub-subleases entered into by Sub-Lessee shall always be subject to Chapter 718, Florida Statutes (2012), as may be amended from time to time (the "Condominium Act") and that the Parties shall amend or modify this Agreement to ensure compliance with the Condominium Act at all times while this Agreement is in effect; and

WHEREAS, CMPA and City are willing to sublease the Leased Premises (defined herein below) for said purpose;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and conditions set forth below, CMPA, City and Sub-Lessee mutually agree, each for itself and its successors, as follows:

1. SUBLEASE; LEASED PREMISES. CMPA and City hereby subleases to Sub-Lessee and Sub-Lessee hereby rents and takes from CMPA and City, the premises consisting of a minimum of approximately 27,391 +/- Square Feet of unimproved parcel commonly referred to as Parcel #1 at the Park Property and as legally described and depicted in Exhibit "A" attached hereto and incorporated by this reference, including ingress, egress, to the property from public rights of way (the "Leased Premises"), subject to terms and conditions herein. The exact size and metes and bounds legal description of said Parcel 1 shall be determined by a current ALTA survey of said Parcel, the cost of which shall be shared equally by the City and Sub-Lessee, and upon the completion of such survey, the Parties shall amend this Agreement to more particularly describe the Leased Premises by reference to such survey and legal description.

2. USE AND DEVELOPMENT OF PREMISES. Sub-Lessee shall be entitled to use the Leased Premises for any and all uses allowable under the law. Sub-Lessee shall, at its own cost and expense, construct at least one Class "A" mixed-use/office building (the "Mixed-Use Building") including all required parking on the Leased Premises in accordance with the following provisions (the "Permitted Use"):

(a) The Mixed-Use Building shall contain approximately 18,000 usable square feet of Class "A" mixed use, office, retail and/or residential uses.

(b) The architectural design, plans and specifications of the Mixed-Use Building improvements shall be in general conformance with the design criteria of the Park Property, dated October 11, 2007, and the City's prior written approval and confirmation that the design, plans and specifications are in general conformance with such design criteria shall conclusively and unconditionally establish that the requirements of this Paragraph (b) have been satisfied.

(c) The Sub-Lessee shall have the right to use for itself and/or to sublease to others any portion of the Mixed-Use Building for any legally permitted purpose. If residential units or condominiums that will be for sale are constructed within any portion of the Mixed-Use Building, the Sub-Lessee shall have the right to sublease those portions.

(d) Sub-Lessee, at its sole option, shall have the right to divide the Leased Premises into two or more sub-parcels and further sublease said sub-parcels for development and use.

(e) Sub-Lessee is encouraged and shall undertake reasonable, good faith efforts, but without any obligation, to utilize natural gas services as financially reasonable and practical.

(f) For so long as Federal and state of Florida New Market Tax Credit regulations apply to the Leased Premises, Sublessee shall not conduct in the Leased Premises or permit any assignee, subtenant or occupant of the Leased Premises to conduct in the Leased Premises any use that constitutes (i) Residential Rental Property (as defined below); or (ii) a trade or business consisting of the operation of a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a sun tan facility, a racetrack or other facility used for gambling or a store principally selling alcoholic beverages for off-premises consumption (each an "Excluded Business"). "Residential Rental Property" means any building or structure if eighty percent (80%) or more of the gross rental income from such building or structure for a taxable year is rental income from dwelling units (as defined in Section 168(e)(2)(A)(ii) of the Internal Revenue Code of 1986, as amended).

(g) Sub-Lessee, shall have the right, but not the obligation, at any time and from time to time during the Term, any Renewal Term, or any subsequent renewal of this Agreement, to make alterations, modifications, additions and other improvements to the Mixed-Use Building and the Leased Premises for any Permitted Use, provided that the architectural design, plans and specifications for all such alterations, modifications, additions and improvements shall comply with Paragraph (b) of this Section.

(h) Notwithstanding the access granted elsewhere in this Agreement, the CMPA and the City shall have the reasonable right to utilize the Leased Premises for activities and events up to and until such time as Sub-Lessee or its agents erects a construction fence on the Leased Premises. The general public shall have the right to access the Leased Premises as public green space until such time as Sub-Lessee's construction fence is erected. The Sub-Lessee shall have no liability or responsibility for such activities undertaken under this clause by the CMPA or City and shall be indemnified and held harmless by the same.

3. COMMENCEMENT DATE: This Agreement shall commence as of the Effective Date. For the purposes of this Agreement, the Effective Date shall also mean the "Commencement Date."

4. TERM; RENEWAL TERM:

(a) The initial term of this Agreement (hereinafter the "Term") shall commence upon the receipt of a final, unconditional certificate of occupancy issued by a Building Official (as defined in the Master Lease) pursuant to the Florida Building Code (2010 Edition) on the entire Mixed-Use Building (the "Certificate of Occupancy"), but in no event later than eighteen (18) months from the Effective Date of this Agreement, and shall end on the last day of the Master Lease by and between the City and CMPA, which is May 28, 2069.

(b) Provided that on the date of the expiration of the Term of this Agreement there does not exist any uncured Event of Default by Sub-Lessee, then Sub-Lessee shall have the right, at its sole option, to extend this Agreement upon the same terms and conditions for a renewal term of forty-five (45) years (the "Renewal Term") by giving the City and CMPA written notice of renewal not less than sixty (60) days prior to end of the Term.

In the event that there is an uncured Event of Default in effect on the date of the expiration of the Term, this Agreement shall only be extended upon the mutual agreement of the parties;

(c) In the event that the Master Lease terminates for any reason on or before the last day of the Term, the Renewal Term or any subsequent renewal of this Agreement, the Parties agree that the City shall automatically be substituted as the sublessor hereunder in the place and stead of the CMPA and that this Agreement shall continue in full force and effect as a direct lease between the City, as lessor, and Sub-Lessee, as lessee, for the remainder of the Term, the Renewal Term and any subsequent renewal of this Agreement. Notwithstanding anything herein to the contrary, neither the Master Lease nor this Agreement can be terminated without giving Sub-Lessee, any mortgagee of Sub-Lessee, and to the extent necessary, any sub-sublessee and/or any mortgagee of any sub-sublessee, the right and opportunity to cure any default under the Master Lease or this Agreement in accordance with the provisions set forth in this Agreement.

(d) At the conclusion of the Renewal Term, Sub-Lessee has the right to extend the Agreement for subsequent terms upon terms and conditions to be negotiated by and between the Parties.

## 5. RIGHTS OF FIRST REFUSAL.

(a) Subject to the Right of First Refusal granted by the City to the CMPA under Section 33 of the Master Lease, City hereby grants to Sub-Lessee, for the entire Term, Renewal Term, and any subsequent terms of this Agreement, a right of first refusal to purchase the Leased Premises upon the same terms and conditions of Section 33 of the Master Lease as if this Agreement were substituted for the "Master Lease", Sub-Lessee were substituted for "Lessee" and the Leased Premises were substituted for the "Leased Property" as such terms within quotation marks are used in said Section 33; provided, however, that the purchase price payable by Sub-Lessee shall be reduced by that portion of any prepaid Annual Rent (defined herein below) and CAM Charges (defined herein below) that are attributable to time periods occurring after the date that title to the Leased Premises is transferred to Sub-Lessee.

## 6. RENT AND CAM CHARGES.

(a) Annual Rent and Periodic Adjustment. Effective and commencing upon the Sub-Lessee's receipt of a Certificate of Occupancy from the City, but in no event later than eighteen (18) months from the Effective Date of this Agreement (the "Rent Commencement Date"), and continuing during the Term, as compensation for the use of the Leased Premises Sub-Lessee agrees to pay to the City annual base rent in the amount of \$46,222.00 (the "Annual Rent" as adjusted from time to time as hereinafter provided) for a period of ten (10) years.

Effective on and as of the first day of the month following the tenth anniversary of the Rent Commencement Date and continuing on the first day of the same month every fifth year

thereafter during the Term, any Renewal Term, and any subsequent renewal of this Agreement, the then current Annual Rent amount shall be increased by seven percent (7%), and such increased Annual Rent amount shall be in effect until the next ensuing increase in the Annual Rent pursuant to this sentence.

(b) Payment Terms. If Sub-Lessee elects to make monthly payments of Annual Rent, (the "Monthly Rent Payment"), over the Term, Renewal Term or any subsequent renewal of the Agreement, the Monthly Rent Payment shall be due and payable in advance on the first (1st) day of each calendar month for the commencing month. The first Monthly Rent Payment shall be pro-rated according to the Rent Commencement Date and shall be due and payable by Sub-Lessee to the City on or before the Rent Commencement Date, and the last Monthly Rent Payment shall be pro-rated if necessary according to the last day of the term, the Renewal Term or any subsequent renewal of this Agreement, as the case may be. Any Monthly Rent Payment remaining outstanding beyond the fifteenth (15th) day of the following calendar month shall be subject to a late fee payable to the City in the amount of five percent (5%) of the Monthly Rent Payment then due plus interest at the highest rate allowed by law, presently one and one half percent (1.5%) per month. In addition to the foregoing, Sub-Lessee shall have the right to pay the Annual Rent in one lump sum payment for any calendar year. If for the first year of the Term Sub-Lessee elects to pay the Annual Rent in one lump sum payment, Sub-Lessee shall make the lump sum payment of Annual Rent on or before the Rent Commencement Date. For every subsequent year thereafter during the course of the Term, Renewal Term, or any subsequent renewal of this Agreement, Sub-Lessee has the right to pay the Annual Rent for the respective calendar year by making the lump sum payment of Annual Rent on or before the yearly anniversary of the Rent Commencement Date.

(c) Rent Prepayment Options. Notwithstanding Paragraph (b) above:

(i) With respect to the initial Term, Sub-Lessee may, at its sole option at any time within thirty-six (36) months after the Rent Commencement Date, prepay to the City the entire Annual Rent to become due during the remainder of the Term by paying the net present value thereof in a single lump sum payment based on a present value discount rate of eight percent (8%) per annum and a residual value at the end of the Term of zero.

(ii) With respect to the Renewal Term or any subsequent renewal of this Agreement, Sub-Lessee may, at its sole option at any time within thirty-six (36) months after the first day of the Renewal Term, or within thirty-six (36) months after the first day of any subsequent renewal of this Agreement, prepay to the City the entire Annual Rent to become due during the remainder of the Renewal Term or any subsequent term by paying the net present value thereof in a single lump sum payment based on a present value discount rate to be determined as hereinafter provided and a residual value at the end of the Renewal Term or any subsequent term of zero. The discount rate to be applied under this Paragraph shall be the present fair market value discount rate as of the first day of the Renewal Term or any subsequent term as agreed upon by the City and Sub-Lessee. If the City and Sub-Lessee cannot agree on such discount rate, the City and Sub-Lessee shall each, at its own expense, select a qualified financial expert to determine such discount rate, and such two experts shall attempt to agree upon such discount rate. If such two experts reach agreement on such discount rate, such agreed upon discount rate shall be

conclusive and binding on all Parties. If such two experts cannot so agree, they shall select a third qualified financial expert to determine such discount rate which shall be in the range, inclusive, between the lowest and highest discount rates initially determined by the two initial experts. Such discount rate as so determined by such third expert shall be conclusive and binding on all Parties.

(d) Annual CAM Charge. Effective and commencing upon the Rent Commencement Date and continuing during the Term, Sub-Lessee shall pay to the CMPA annual fixed common area maintenance expenses in the amount of \$3,971.69, for the first ten (10) year period of the Term, plus, any and all applicable taxes related to the Private Improvements on the Leased Premises (including but not limited to common area landscaping, ad valorem real property taxes, utilities, stormwater retention & drainage, maintenance, management fees, and other customary common area maintenance charges reasonably incurred by the CMPA related to the Leased Premises) (collectively "CAM Charges"). Sub-Lessee shall have the option of either: (i) paying the CAM Charges in equal monthly installments over the Term, Renewal Term or any subsequent renewal of this Agreement, with the equal monthly CAM Charges for a calendar month being due and payable in advance on the first (1st) day of such calendar month (if necessary, the first monthly CAM Charges shall be pro-rated according to the Rent Commencement Date and shall be due and payable by Sub-lessee to the CMPA on or before the Rent Commencement Date, and the last monthly CAM Charges shall be pro-rated if necessary according to the last day of the Term, the Renewal Term or any subsequent renewal of this Agreement, as the case may be), (ii) paying to the CMPA the CAM Charges which shall be due and owing for any calendar year in one lump sum payment on or before the Rent Commencement Date for the respective calendar year; or (iii) pre-paying to the CMPA the CAM Charges, within thirty-six (36) months after the Rent Commencement Date, the entire CAM Charges to become due over the Term in a lump sum payment based on a present value discount rate of eight percent (8%) per annum and a residual value at the end of the Term of zero, which shall be applied to the total CAM Charges otherwise due over the Term. With respect to the Renewal Term or any subsequent renewal of this Agreement, Sub-lessee may, at its sole option at any time within thirty-six (36) months after the first day of the Renewal Term or any subsequent renewal of this Agreement, prepay to the CMPA the entire CAM Charges to become due during the remainder of the Renewal Term or any subsequent renewal of this Agreement, by paying the net present value thereof in a single lump sum payment based on a present value discount rate determined in accordance with Section 6 (c)(ii) above and a residual value at the end of the Renewal Term of zero. Sub-Lessee shall not be liable for any share of the expenses incurred on the Park Property relating to any Public Improvements, Site Preparation Project, Site Improvement Project or Private Improvements on any other Parcel as defined by the Master Lease and the Omnibus Amendment.

(e) Periodic Adjustment of CAM Charge. Effective on and as of the first day of the month following the tenth anniversary of the Rent Commencement Date and continuing on the first day of the same month every fifth year thereafter during the Term, the Renewal Term or any subsequent renewal of this Agreement, the then current CAM Charges amount shall be increased by seven percent (7%), and such increased CAM Charges amount shall be in effect until the next ensuing increase in the CAM Charges pursuant to this sentence.

(f) Sales Tax. Concurrently with each installment or payment of Annual Rent and CAM Charges, Sub-Lessee shall pay to the City or CMPA an amount equal to the applicable sales tax, if any, on each such installment or prepayment of Annual Rent and CAM Charges.

7. TAXES/EXPENSES RELATED TO LEASED PREMISES: CMPA, the City and Sub-Lessee shall cause the Leased Premises to be separately assessed for ad valorem real property taxes ("Taxes"). Sub-Lessee shall be responsible for the full and timely payment of any and all taxes assessed or levied on the Leased Premises, including paying directly all Taxes, including sales tax, if applicable, permit fees, license fees, storm water fees and assessments, building insurance, utilities, and maintenance incurred by Sub-Lessee with respect to the Leased Premises, the Mixed-Use Building, and any other improvements in connection therewith and located on the Leased Premises. Notwithstanding the foregoing and in accordance with Paragraph 21 below, it is anticipated that this Paragraph 7 shall be expressly subject to the terms and conditions of a certain declaration of condominium, together with governing organizational documents for the condominium regime and related documents in connection with the condominium regime, to be recorded in the public records of Escambia County, Florida by Sub-Lessee affecting a portion of the Mixed Use Building, (any and all such documents, as amended from time to time, referred to herein collectively as the "Declaration"), and expressly subject to the Condominium Act. The City and CMPA hereby agree to modify or alter this Agreement to ensure compliance with the Declaration and the Condominium Act at all times during the Term, Renewal Term or any subsequent renewal of this Agreement.

8. ASSIGNMENT; SUB-SUBLEASES; AND MORTGAGES: Except as expressly permitted below, Sub-Lessee shall have the right, at any time, to assign this Agreement and/or sub-sublease all or any portion of the Leased Premises or Mixed-Use Building, or to mortgage all or portions of the Leased Premises or Mixed-Use Building, with the prior consent or approval of the Mayor's Office and CMPA, which consent or approval shall not be delayed or unreasonably withheld. Upon written request by Sub-Lessee to assign, sub-sublease or mortgage all or any portion of the Leased Premises, the CMPA and Mayor's Office shall have five (5) business days within which to respond to any such written request by Sub-Lessee. If either the Mayor's Office or the CMPA fails to respond to the written request of Sub-Lessee to assign, sub-sublease or mortgage all or any portion of the Leased Premises within five (5) business days, such request by Sub-Lessee shall be deemed approved by the Mayor's Office and CMPA without any further action by the Mayor's Office or CMPA.. Notwithstanding the foregoing, the above referenced consent and approval required by the Mayor's Office and CMPA shall not apply to nor affect Sub-Lessee's right, or any sub-sublessee's right, to assign, sub-sublease or mortgage any residential condominium units within the Mixed-Use Building, nor shall it apply to any subsequent transfer, assignment or mortgage by any sub-sublessees with respect to any residential condominium units within the Mixed-Use Building. It is anticipated that this Paragraph 8 shall be expressly subject to the Declaration creating a condominium regime affecting a portion of the Mixed Use Building and the Condominium Act. The City and CMPA hereby agree to modify or alter this Agreement to ensure compliance with the Declaration and the Condominium Act at all times during the Term, Renewal Term or any subsequent renewal of this Agreement. The right of consent and approval by the Mayor's Office and CMPA shall not apply to any sub-sublease entered into by Sub-Lessee with Beck Property Company, LLC to sub-sublease all or any portion of the Mixed Use Building.

9. IMPROVEMENTS. This Agreement represents a ground sublease only. During the Term, Renewal Term or any subsequent renewal approved by the Parties, Sub-Lessee shall own the Mixed-Use Building and related improvements constructed on the Leased Premises. Upon expiration of the Renewal Term or any subsequent term renewal approved by the City and Sub-Lessee or termination of this Agreement by reason of an uncured Event of Default by Sub-Lessee, ownership of the Mixed-Use Building and related improvements and any other improvements constructed on the Leased Premises shall revert to City in their "as is" condition. Notwithstanding the foregoing, the City and CMPA shall comply with the notice and cure provisions set forth in Section 31 of this Agreement.

10. CONDITION OF LEASED PREMISES UPON DELIVERY. Subject to the terms of this Agreement, CMPA and City sublease to Sub-Lessee the Leased Premises in its "as is" condition. Upon request of the Sub-Lessee, the City shall provide the following items to Sub-Lessee:

- (a) "As built" drawings of all existing improvements which relate to the subject Leased Premises, including all utilities, surface improvements, sub-surface improvements, drainage improvements, and other matters; and
- (b) A recorded plat or survey depicting all roads, easements, rights-of-way, sidewalks, elevations, wetlands and retention areas within the Park Property and evidencing dedication of all such elements to the City; and
- (c) Evidence from the Department of Environmental Protection and the Florida Department of Health that the Leased Premises is in full compliance with all health and environmental laws, codes, and regulations, and that the Park Property is in compliance with any Remedial Action Plan ("RAP"), and no further environmental analyses or work is required; and
- (d) Evidence that any and all deed covenants/restrictive covenants relative to the Park Property have been duly and properly recorded in the Public Records of Escambia County, Florida, provided that such covenants and restrictions shall not materially reduce the fair market value of the Leased Premises nor prohibit or materially impair, impede or interfere with the Permitted Use of the Leased Premises by Sub-Lessee. Notwithstanding the foregoing, This Paragraph 10(d) shall not prohibit any future deed covenants/restrictive covenants that are mutually agreeable to the Parties; and
- (e) Evidence that all existing utility and irrigation lines on the Leased Property have been located and segregated from all other elements of the Park Property unless said utility lines specifically service the Leased Premises; and
- (f) A survey or other evidence showing the elevations of the Leased Premises and the Park Property for the purpose of establishing a basis for flood certification; and
- (g) A mutually agreed license, permit, or temporary construction easement over and across those portions of the Park Property requested by Sub-Lessee reasonably necessary for

transporting materials, storing materials, parking, staging construction, supervising construction, and constructing any improvements on the Leased Premises. Any damages caused by Sub-Lessee, Sub-Lessee's contractors or tenants during the construction of the Mixed-Use Building on the Leased Premises shall be promptly repaired by the Sub-Lessee.

(h) Evidence that the existing infrastructure for necessary utilities (including electricity, natural gas, drainage/stormwater management, sewer, etc.) is sufficient to support the improvements contemplated herein.

11. **MAINTENANCE.** The following maintenance obligations shall apply:

(a) **City's Obligations.** The City agrees to properly maintain the grounds and common use infrastructure surrounding and adjacent to all Private Improvements on the Park Property, including the Leased Premises and all common areas shared by the Parcels containing Private Improvements. The City shall at all times perform its maintenance requirements set forth in this paragraph in a safe, neat and orderly manner and shall keep the same free from trash, debris or other unsafe, unsightly or unsanitary matter

(b) **CMPA's Obligations:** CMPA shall be responsible for maintaining the grounds and common use infrastructure associated with the Public Improvements on the Park Property. CMPA shall at all times properly maintain the Public Improvements in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter.

(c) **Sub-Lessee's Obligations.** All improvements constructed by the Sub-Lessee on the Leased Premises shall be the responsibility of the Sub-Lessee and shall be maintained at Sub-Lessee's sole cost and expense. Sub-Lessee shall at all times maintain the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter. Furthermore, the Sub-Lessee agrees to maintain the non-leased premises as shown in Exhibit "B" (the "Non-Leased Premises") in a safe, neat and orderly manner, free from trash, debris or other unsafe, unsightly or unsanitary matter until such time as any Public Improvements would be constructed on the Non-Leased Premises. Such Public Improvements may include, but are not limited to sidewalks or pathways, streetlights, benches, viewing platforms, docks or piers. The City and CMPA hereby grant to Sub-Lessee, and any agent or sub-sublessee of Sub-Lessee, access to and from the Non-Leased Premises and any and all such easements as may be necessary for Sub-Lessee to perform its duties in regards to maintenance of the Non-Leased Premises. Notwithstanding the foregoing, CMPA shall at all times be responsible for maintaining the grounds and common use infrastructure associated with the Non-Leased Premises in accordance with the standards set forth in Paragraph 11(b).

Within thirty (30) days of the Effective Date of this Agreement, Sub-Lessee agrees to provide to the CMPA an irrevocable stand-by letter of credit (the "Letter of Credit") from a reputable financial institution in form and content reasonably acceptable and mutually agreeable to each of the CMPA, City and Sub-Lessee, in the amount of \$125,000.00, which provides that the Letter of Credit shall be payable to the CMPA upon an uncured Event of Default by Sub-Lessee as more particularly set forth in this Agreement, but which Letter of Credit shall expire pursuant its own terms upon the earlier to happen of the following events: (i) Sub-Lessee provides proof of the

closing of a construction loan for the construction of the Mixed-Use Building as contemplated under Paragraph 16(d) below; or (ii) Sub-Lessee provides proof of purchase of a performance bond relating to the completion of the construction of the Mixed-Use Building in form and content reasonably satisfactory to the City and CMPA; or (iii) the issuance of a building permit from the City; or (iv) upon termination of this Agreement in accordance with the terms set forth in this Agreement, including without limitation pursuant to Paragraph 16 below.

12. PAYMENT OF UTILITIES. Sub-Lessee shall arrange for direct billing with all appropriate utility providers.

13. DAMAGE AND DESTRUCTION. In the event that the Mixed-Use Building on the Leased Premises shall be damaged by fire, wind, rain or other casualty, including but not limited to hurricane or flood, and such damage renders the Mixed-Use Building untenable in whole or in part, as reasonably determined by Sub-Lessee and/or pursuant to the Declaration and/or Condominium Act, Sub-Lessee shall give prompt, reasonable notice thereof to CMPA and the City and the same shall be repaired, restored and/or rebuilt by Sub-Lessee at its sole cost and expense, but then only to the extent of any applicable insurance proceeds plus the deductible amount thereto, to the condition at least equal to that which existed prior to its damage or destruction and in compliance with all laws and regulations applicable at the time of repair and/or restoration of the Mixed-Use Building, and in accordance with a schedule as reasonably approved by the CMPA and City, but subject in all respects to the Declaration and Condominium Act. Notwithstanding the foregoing, if the Mixed-Use Building is totally destroyed during the last ten (10) years of the Term, the Renewal Term or any subsequent renewal of this Agreement, Sub-Lessee, at its election, may elect either to repair the same or to terminate this Agreement and to demolish the same and tender possession of the Leased Premises to the City by removal and grading the area previously occupied by such improvements, leaving the same in a neat and clean condition. For the purposes of this Paragraph the term "totally destroyed" shall mean that the total aggregate cost to repair or replace the damage to the Mixed-Use Building exceeds fifty percent (50%) of the "actual cash value" of the Mixed-Use Building at the time of the casualty event. In the event of any damage or destruction to the Mixed-Use Building or any other improvements on the Leased Premises including, but not limited to, improvements on any sub-parcel, the Annual Rent and CAM Charges shall be abated (or refunded as appropriate) for all such periods of time during which the Mixed-Use Building is untenable. In addition, Sub-Lessee shall not be responsible for any extraordinary expenses, assessments, or any charges whatsoever resulting from a casualty, including but not limited to fire, rain, wind, flood or hurricane, in regards to damage or destruction to any common areas, common area infrastructure or any improvements on any other Parcel.

Notwithstanding the foregoing and as set forth more particularly herein, the Parties acknowledge that Sub-Lessee intends to establish a condominium regime on a portion of the Mixed Use Building on the Leased Premises and shall be obligated at all times to comply with the Condominium Act with respect to the units in the Mixed Use Building. In addition, the condominium regime on a portion of the Mixed Use Building will be created upon the recording of the Declaration and said Declaration will contain provisions relating to the damage or destruction of the Leased Premises in accordance with the Condominium Act. As a result, this Paragraph 13 shall at all times be expressly subject to the Declaration of the condominium

regime on a portion of the Mixed Use Building and expressly subject to the Condominium Act, and the City and CMPA hereby agree to modify or alter this Agreement to ensure compliance with the Declaration and the Condominium Act at all times during the Term, Renewal Term or any subsequent renewal of this Agreement.

14. ENVIRONMENTAL CLEAN-UP.

(a) CMPA and the City acknowledge that the prior use of the Leased Premises included the use and storage of environmental contaminants and "Hazardous Substances" (hereinafter defined). No party to this Agreement can be compelled to conduct any additional clean up or remediation of the Leased Premises. On or before the Rent Commencement Date, and after any investigation of the status of the Leased Premises, Sub-Lessee may request that the City or the CMPA, at the City's or CMPA's expense, clean up, remediate and remove all Hazardous Substances from, on and under the Leased Premises and the soil and groundwater thereof, and perform all necessary remediation and restorative work, as required to be performed by any federal, state or local governmental agency or political subdivision, so that the Leased Premises, the soil thereunder and groundwater are in full compliance with all Environmental Laws, and so that Sub-Lessee can immediately commence construction of Sub-Lessee's improvements for the Permitted Use. If City or CMPA agrees to undertake such work, any such work shall be done by one or more contractors selected by the City or CMPA and approved, in advance, by Sub-Lessee and under the supervision of a consulting engineer selected by the CMPA or City and approved by Sub-Lessee, in each case such approval by Sub-Lessee shall not be unreasonably withheld. All costs and expenses of such remedial work shall be paid by the CMPA or City including, without limitation, the charges of such contractors and consulting engineers. Nothing herein shall require CMPA or City to undertake any clean up or remediation of the Leased Premises. In the event the Leased Premises do not meet the environmental requirements of Sub-Lessee and the City or CMPA is unwilling to engage in additional clean up or remediation, any Party may rescind and cancel this Agreement on or before commencement of vertical construction and upon such termination no Party shall thereafter have any further liability or obligation under this Agreement to any other Party.

(b) As used herein, the term "Hazardous Substances" means and includes any and all substances, chemicals, wastes, sewage or other materials which are now or hereafter regulated, controlled or prohibited by any local, state or federal law or regulation requiring removal, warning or restrictions on the use, generation, disposal or transportation thereof including, without limitation, (a) any substance defined as "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", or "air pollutant" in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901, et seq., the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. Section 1251, et seq., of the Clean Air Act (CAA), 42 U.S.C. Section 7401, et seq., all as amended and amended hereafter; (b) any hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical, or compound described in any other federal, state, or local statute, ordinance, code, rule, regulation, order, decree or other law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous

substance, chemical, material, compound or waste (collectively, "Environmental Laws"). As used herein the term "Hazardous Substances" also means and includes, without limitation, asbestos; flammable, explosive or radioactive materials; antifreeze; diesel fuel; gasoline; oil; motor oil; waste oil; petroleum (including without limitation, crude oil or any fraction thereof); petroleum based products; paints and solvents; lead; cyanide; DDT; printing inks; acids; pesticides; ammonium compounds; polychlorinated biphenyls; and other regulated chemical products.

15. **STORMWATER MANAGEMENT.** Sub-Lessee is hereby granted an easement for and shall have the right to utilize the storm water retention facilities serving the Leased Premises (the "Retention Facilities"). CMPA and/or City shall be responsible for the operation, maintenance and repair of the Retention Facilities. The use of the Retention Facilities shall include the use of the existing wet retention pond located to the west of the Leased Premises and South of Main Street, and any other retention facilities, now existing or constructed in the future, necessary to handle all drainage and storm water retention requirements imposed on the Leased Premises by virtue of any law, statute, code, regulation, or other government mandate.

16. **CONTINGENCIES; DUE DILIGENCE PERIOD;**

This Agreement is contingent upon the following:

(a) Permits, Consents and Approvals: This Agreement is contingent on the ability of the Sub-Lessee to obtain all necessary permits, consents and approvals for the construction and operation of an approximately 18,000 square foot Mixed-Use Building on the Leased Premises, together with its related amenities and improvements, and for Sub-Lessee's initial site improvements and infrastructure. The City and CMPA shall fully cooperate with Sub-Lessee in obtaining, as determined by Sub-Lessee, all such necessary permits, consents and approvals required for Sub-Lessee's Permitted Use. However, the City does not waive any right or processes as required by law. If Sub-Lessee, after utilizing Sub-Lessee's reasonable, good faith efforts, has been unable to obtain all necessary permits, consents and approvals for the construction and operation of the Mixed-Use Building and related improvements, through no fault of its own, within six (6) months after the Commencement Date, this Agreement may be terminated at the option of the City, CMPA or Sub-Lessee, and upon such termination no Party shall thereafter have any further liability or obligation under this Agreement to any other Party.

(b) Environmental Assessment: Sub-Lessee has the option to complete an environmental site assessment and to review all aspects of the condition of the Leased Premises including, but not limited to, a review of the processes and procedures used for any prior remediation or ongoing RAP, and to review any Environmental Site Assessment provided by the City and/or CMPA to the Sub-Lessee as set forth above, to determine whether any hazardous substances are located in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations. If Sub-Lessee elects to perform said environmental site assessment, it shall be completed after the City has completed any remediation of the Leased Premises and prior to the end of the Due Diligence Period, and the cost of said assessment shall be paid by the Sub-Lessee. If any Hazardous Substances are determined to be located in, on or under the Leased Premises by said environmental site assessment, this Agreement may be

terminated at the option of the Sub-Lessee on the date that written notice is given to the City provided that written notice is given prior to the end of the Due Diligence Period, and upon such termination no Party shall thereafter have any further liability or obligation under this Agreement to any other Party.

(c) Title Commitment and Resulting Policy: This Agreement is contingent upon the ability of Sub-Lessee to obtain, at Sub-Lessee's sole cost and expense, a leasehold title insurance commitment and resulting first priority leasehold title insurance policy from a reputable national title insurance underwriter in an amount not less than the full replacement value of the Private Improvements on the Leased Premises. Sub-Lessee shall have the right to review and approve the title commitment and all exceptions to title therein. Sub-Lessee shall obtain such title commitment on or before sixty (60) days after the Commencement Date of this Agreement. Within fifteen (15) days after Sub-Lessee's receipt of said title commitment, if any liens are disclosed or if Sub-Lessee objects to any other exceptions noted therein, it shall advise the CMPA and City in writing thereof. The CMPA and City shall have thirty (30) days after the receipt of Sub-Lessee's title exception notice, to notify Sub-Lessee in writing whether the CMPA and/or City is willing, in its reasonable judgment, or is able to resolve said liens and cure the objections. Sub-Lessee shall have the right to update the title commitment before any construction loan closing and object to any new or additional title exceptions shown by said update. The CMPA and City agrees to execute and deliver an owner's affidavit and other documents required by the title company for issuing the title policy. If the liens and title objections are not removed or resolved to Sub-Lessee's and its lender's satisfaction, on or before the date that Sub-Lessee intends to close on a construction loan, then Sub-Lessee shall have the right to terminate this Agreement or accept title in its then current condition. If Sub-Lessee elects to terminate this Agreement pursuant to this Paragraph 16(c), then no Party shall thereafter have any further liability or obligation under this Agreement to any other Party.

(d) Financing. This Agreement is contingent upon Sub-Lessee's ability to obtain a loan from a lender in an amount and on terms and conditions acceptable to Sub-Lessee (in its sole discretion) to be secured by a first lien mortgage or security deed on this Agreement and sub-leasehold estate created hereby. In the event the loan has not closed on or before six (6) months after the expiration of the Due Diligence Period, the Agreement may be rescinded at the option of Sub-Lessee, and upon such termination, no Party shall thereafter have any further liability or obligation under this Agreement to any other Party. It is the condition precedent to Sub-Lessee's obligation to close on the loan that all other contingencies hereunder have been satisfied or waived; the City and CMPA have completed all required environmental remediation and a no further action letter has been issued in regards to the Leased Premises; and the City and CMPA have delivered the Leased Premises to Sub-Lessee in accordance with this Agreement. CMPA and the City agree not to unreasonably withhold its consent to the timely execution of any loan documents that may be required by any construction and/or permanent lender of Sub-Lessee or any lender of any sub-sublessee. Further, CMPA and City may execute, for the benefit of any such lender of Sub-Lessee and any such lender of any sub-sublessee, any estoppel certificates and/or non-disturbance and attornment agreements reasonably requested by the same. The Parties hereby agree to modify, alter, and/or amend this Agreement as requested by Sub-Lessee in order to account for any reasonable accommodations or requests by any mortgagee of Sub-Lessee or by any mortgagee of any sub-sublessee.

(e) Approval of Condominium. This Agreement is contingent upon the Division of Florida Condominiums, Timeshares and Mobile Homes (the "Division") approving Sub-Lessee's creation of a condominium as a part of the Mixed Use Building on the Leased Premises. Upon the expiration of the Due Diligence Period, Sub-Lessee shall have six (6) months within which to submit all necessary and required documents to the Division, including but not limited to the Declaration, for the creation of the condominium on the Leased Premises. The City and CMPA hereby agree to join in the Declaration as requested by Sub-Lessee, that Sub-Lessee shall prepare for the purpose of submitting a portion of the Leased Premises to condominium status, and the City and CMPA hereby agree to execute any and all documents necessary for Sub-Lessee to create the condominium on the Leased Premises. If Sub-Lessee is unable to obtain approval of the condominium regime on the Leased Premises from the Division for any reason whatsoever during the six (6) month period commencing from the expiration of the Due Diligence Period, then Sub-Lessee shall have the right to terminate this Agreement upon providing written notice to the City and CMPA prior to the expiration of the said six (6) month time period, and no Party shall thereafter have any further liability or obligation under this Agreement to any other Party.

(f) Sub-Lessee's Due Diligence Period. Promptly after the Commencement Date, the CMPA and the City shall allow Sub-Lessee, its employees, agents, contractors, engineers, surveyors and other representatives, at any time and from time to time during normal business hours, to inspect and to copy any and all documents and records (in whatever form or format, whether written, electronic or otherwise), including without limitation appraisals, surveys, plats, drawings, environmental reports, geotechnical reports, engineering reports and plans, storm water plans, development plans and design criteria, related to the Park Property or the Leased Premises. Beginning on the Commencement Date, the City and CMPA hereby grant to Sub-Lessee, its employees, agents, contractors, engineers, surveyors and other representatives the right to enter upon the Leased Premises for the purpose of study, examination, the making of surveys, topographical surveys, environmental site assessments, soil tests, borings, installation of ground water monitoring wells, removal of soil and water samples, and other examinations which in Sub-Lessee's sole judgment might prove useful in determining the conditions affecting the use of the Leased Premises for Sub-Lessee's Permitted Use and the feasibility of the transactions contemplated by this Agreement and of Sub-Lessee's Permitted Use of the Leased Premises. Sub-Lessee shall have a period of six (6) months from and after the Commencement Date (the "Due Diligence Period") to determine, in its sole and absolute discretion, the suitability of the Leased Premises for Sub-Lessee's Permitted Use and the feasibility of the transactions contemplated by this Agreement and of Sub-Lessee's Permitted Use of the Leased Premises. Should Sub-Lessee determine, in its sole and absolute discretion that the Leased Premises are not suitable or the contemplated transactions or Sub-Lessee's Permitted Use of the Leased Premises is not feasible, then Sub-Lessee may terminate this Agreement by so notifying the City and CMPA in writing prior to the expiration of the Due Diligence Period. In the event that Sub-Lessee timely terminates this Agreement in accordance with this Paragraph, Sub-Lessee shall promptly repair any damage to the Leased Premises caused by Sub-Lessee's inspection activities. Sub-Lessee's obligations under this Paragraph shall survive the termination of this Agreement.

17. CONDEMNATION. If all or substantially all (more than fifty percent (50%) of the gross area of the Leased Premises) of the Leased Premises shall be taken by eminent domain,

condemnation or in any other manner for public or quasi-public use or purpose (a "Taking") (other than for temporary use or occupancy), the term of this Agreement shall, at the option Sub-Lessee, terminate as of the date of vesting of title and no further rent shall be due hereunder, or a pro-rata refund of rent paid shall be made. If Sub-Lessee does not terminate this Agreement pursuant to the preceding sentence or if less than fifty percent (50%) of the gross area of the Leased Premises is taken by eminent domain, the parties shall enter into good faith negotiations to modify, alter, or amend this Agreement such that the Leased Premises remains tenable. All Parties to this Agreement shall have the right to participate in any condemnation proceedings. Each Party shall notify the other Parties promptly of any contemplated or threatened condemnation proceeding of which it shall become aware and shall keep the other informed of developments with respect thereto. In the event of any Taking of the Mixed-Use Building or any other improvements on the Leased Premises, including, but not limited to, improvements on any sub-parcel, the Annual Rent and CAM Charges shall be abated (or refunded as appropriate) for all such periods of time during which the Mixed-Use Building is untenable. Notwithstanding the foregoing and as set forth more particularly herein, the Parties acknowledge that Sub-Lessee intends to establish a condominium regime on a portion of the Mixed Use Building on the Leased Premises and shall be obligated at all times to comply with the Condominium Act with respect to the units in the Mixed Use Building. In addition, the condominium regime on a portion of the Mixed Use Building will be created upon the recording of the Declaration and said Declaration will contain provisions relating to condemnation proceedings and any proceeds arising out of such condemnation proceedings with respect to the Leased Premises. As a result, this Paragraph 17 shall at all times be expressly subject to the Declaration of the condominium regime on a portion of the Mixed Use Building and expressly subject to the Condominium Act, and the City and CMPA hereby agree to modify or alter this Agreement to ensure compliance with the Declaration and the Condominium Act during the Term, Renewal Term or any subsequent renewal of this Agreement.

18. FORCE MAJEURE. Each Party's obligations under this Agreement shall be abated or excused when performance of such obligations are rendered impossible or impracticable for a period of more than thirty (30) days by reason of strikes, riots, acts of God, shortages of labor or materials, theft, fire, public enemy, injunction, insurrection, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the control of the Party from who performance is required (each a "force majeure event"), until such force majeure event is eliminated or ceases to exist; provided however, that each responsible Party shall use all due diligence to eliminate or mitigate such force majeure event or the effects thereof as soon as possible.

19. PARKING: Sub-Lessee shall provide all parking required by the Pensacola, Florida – Code of Ordinances, as amended from time to time, that regulate the development and construction of the Mixed-Use Building on the Leased Premises, including but not limited to, the building codes and zoning regulations known as the ULDR and the Florida Building Code (2010 Edition) (collectively the "City Code") for the Mixed-Use Building within the boundaries of the Leased Premises as shown in Exhibit "A". Sub-Lessee may count adjacent, non-reserved, public, on-street parking as permitted within the City Code. Sub-Lessee shall have the right of first refusal to participate in development of, or to secure via separate agreement reserved

parking within any future parking lot or structure constructed within the boundaries of the Park Property, should such construction ever occur.

20. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Sub-Lessee, in the use and enjoyment of the Leased Premises, shall comply with all governmental regulations, statutes, ordinances, rules, ordinances and directives of any federal, state, county or municipal governmental units or agencies having jurisdiction over the Leased Premises or the business being conducted thereon and all published rules and regulations now in effect or hereafter reasonably imposed by CMPA or City; provided, however, any such rules and regulations imposed by CMPA and/or City on its own discretion shall be imposed uniformly against all similar businesses or industries located or providing services at the Park Property and shall not conflict with the provisions of this Agreement or unreasonably interfere with or impact Sub-Lessee's business operations at the Leased Premises. CMPA shall provide its support to Sub-Lessee before any governmental or municipal agency to support ordinances and regulations that further Sub-Lessee's Permitted Use for the Leased Premises.

21. COMPLIANCE WITH THE CONDOMINIUM ACT. The Parties acknowledge that Sub-Lessee may construct the Mixed-Use Building containing office, retail, residential and/or condominium units on the Leased Premises. Accordingly, the Parties, and any sub-sublessees who sub-sublease all or any portion of the Leased Premises, acknowledge that they will be subject to the requirements and provisions of the Condominium Act. In accordance with the Condominium Act, to create the condominium regime on a portion of the Mixed-Use Building, Sub-Lessee will be required to file the Declaration with the Division and record the same in the public records of Escambia County, Florida, and the City and CMPA hereby consent to this filing and recording and will join in the filing and recording of the Declaration, without further approval being necessary. The City and CMPA hereby agree to modify, alter, or amend this Agreement to ensure during the Term, Renewal Term or subsequent renewal of this Agreement, that the terms and conditions set forth herein are at all times in compliance with the Condominium Act, and to ensure the marketability of the units within the Mixed Use Building. The City further acknowledges and consents, without further consent or approval being required from the City or CMPA, that Sub-Lessee shall be entering into sub-subleases with sub-sublessees for the Leased Premises and that these sub-subleases will be expressly subject to the Declaration referenced herein and the Condominium Act.

22. ENVIRONMENTAL MATTERS.

(a) Compliance. Sub-Lessee shall comply with all federal, state, municipal and county laws, statutes, ordinances, codes, administrative orders, rules and regulations and permits relating to environmental matters, stormwater, and other pollution control applicable to the construction, occupancy and operation of the Leased Premises, including specifically any existing RAP. Sub-Lessee shall furnish to the CMPA or its designee at the time same are filed, received, submitted or tendered, a copy of every permit application, permit, notice, order or other document sent to or received from any regulatory agency responsible for environmental matters, stormwater, or other pollution control. Sub-Lessee is prohibited from allowing, causing, condoning, licensing, permitting or sanctioning any activities, conduct or operations that enable or result in any pollutants, contaminants, hazardous materials or substances or other waste to be accumulated,

deposited, placed, released, spilled, stored or used upon or under any portion of the Leased Premises, Park Property, adjacent private property or adjacent waters contrary to or in violation of any of said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. In the event Sub-Lessee violates this prohibition, Sub-Lessee shall be solely responsible for any and all reporting, cleanup, remediation, fines and penalties in accordance with said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits.

Sub-Lessee agrees to indemnify, defend and hold harmless CMPA and City against any and all actions, claims, demands, judgments, penalties, liabilities, costs, damages and expenses, remediation costs and response costs, including court costs and attorney's fees incurred by CMPA and City, arising out of or in connection with contamination resulting from Sub-Lessee's occupation of and operations on the Leased Premises. The terms of this Paragraph 22 (a) shall survive the termination of this Agreement.

(b) Representations by CMPA. CMPA represents and warrants to its actual knowledge without independent investigation that:

(i) it has not received any notice of violation of any environmental laws with respect to the Leased Premises;

(ii) it has not been a party to any actions, suits, proceedings or damage settlements relating in any way to contamination in, upon, over or from the Leased Premises; and

(iii) the Leased Premises is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites, CERCLIS or any other list of hazardous sites maintained by any federal, state or local government agency.

To the extent permitted by law, CMPA shall indemnify, defend and hold Sub-Lessee harmless against any and all actions, claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorney's fees incurred by Sub-Lessee, directly or indirectly, resulting from the incorrectness or untruthfulness of any warranty or representation set forth in this Paragraph, or from the existence of new, previously unknown contamination deposited in, upon, under, over or from the Leased Premises prior to the Commencement Date or as a result of any act or omission of CMPA, its agents, contractors licensees or employees. The representations, warranties and indemnities of CMPA contained in this Section shall survive the termination of this Agreement.

23. **SEVERABILITY**. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby.

24. **SURRENDER AND HOLDING OVER**. The following provisions shall apply:

(1) With City and CMPA's Consent.

If Sub-Lessee shall, with the consent of the City and CMPA, hold over after the expiration or sooner termination of the Term of this Agreement, any Renewal Term or any subsequent renewal, the resulting tenancy privilege shall, unless otherwise mutually agreed by the Parties, be on a month-to-month basis until such time as Sub-Lessee shall surrender the Leased Premises (with sixty (60) days prior written notice to City and CMPA) or City and/or CMPA shall reenter the Leased Premises (with sixty (60) days prior written notice to Lessee.) During such month-to-month tenancy, Sub-Lessee shall pay rent to City or CMPA as may be established in accordance with the provisions of this Agreement, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

(2) Without City's and CMPA's Consent.

If Sub-Lessee shall, without the consent of the City and CMPA, hold over after the expiration or sooner termination of the Term of this Agreement, the resulting tenancy privilege shall, unless otherwise mutually agreed by the Parties, be on a month-to-month basis until such time as Sub-Lessee shall surrender the Premises (with sixty (60) days prior written notice to City and CMPA) or City and CMPA shall reenter the Premises (with sixty (60) days prior written notice to Sub-Lessee.) During such month-to-month tenancy, Sub-Lessee shall pay rent equal to one hundred fifty percent (150%) of the rent in effect at the time of expiration or termination, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

25. CORPORATE TENANCY. If Sub-Lessee is a limited liability company, the undersigned representative of Sub-Lessee hereby warrants and certifies that Sub-Lessee is a limited liability company in good standing and is authorized to do business in the State of Florida. The undersigned representative of Sub-Lessee hereby further warrants and certifies that he or she, as such representative, is authorized and empowered to bind the entity to the terms of this Agreement by his or her signature thereto. CMPA or City, before it accepts and delivers this Agreement, may require Sub-Lessee to supply it with a certified copy of the corporate resolution or such other document authorizing the execution of this Agreement by Sub-Lessee.

26. INTEGRATION, MERGER AND AMENDMENT. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and fully substitutes, replaces, and supersedes all prior negotiations, agreements and understandings with respect thereto. This Agreement contains the entire agreement between the Parties (including any promoters, agents, representatives, or affiliated individuals and entities) hereto and may not be altered, changed or amended, except by written instrument signed by all Parties hereto, and executed with the same formalities as this Agreement. Notwithstanding the foregoing, the City and CMPA hereby agree to modify, alter, or amend this Agreement to ensure during the Term, any Renewal Term or subsequent renewal of this Agreement, that the terms and conditions set forth herein are at all times in compliance with the Condominium Act.

27. NO WAIVER. No provision of this Agreement shall be deemed to have been waived by any Party except by a written instrument duly executed by the waiving Party. The terms, provisions, covenants, and conditions contained in this Agreement shall apply to, inure to the

benefit of, and be binding upon the Parties hereto and upon their respective successors in interest and legal representatives, except as otherwise expressly provided herein.

28. **INSURANCE.** Sub-Lessee shall procure and maintain at all times during the term of this Agreement, insurance of the types and to the limits specified herein issued by insurer(s) qualified to do business in Florida whose business reputation, financial stability and claims payment reputation are reasonably satisfactory to CMPA and City. Sub-Lessee acknowledges and agrees that the minimum limits of insurance herein required may become inadequate following the initial Term of this Agreement, and, therefore agree that the minimum limits may be increased to commercially reasonable limits upon the commencement of any Renewal Term. The Parties to this Agreement acknowledge that the creation of the condominium on the Leased Premises will require adherence to the Condominium Act at all times. The Parties further agree that upon the creation of the condominium on the Leased Premises, this Paragraph 28 may need to be modified or altered from time to time to ensure compliance at all times with the Condominium Act, and the City and CMPA hereby agree to all such modifications or alterations as may be necessary. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

(a) Commercial General Liability Coverage. Sub-Lessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability forms filed by the Insurance Services Office. CMPA 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 policy coverage and the total amount of coverage required. Coverage must be provided for bodily injury and property damage liability for premises and operations. Fire Legal Liability shall be endorsed onto this policy in an amount of at least \$300,000 per occurrence. The coverage shall be written on occurrence-type basis and the CMPA and the City must be listed as additional insureds as their respective interests may appear. 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.

(b) Builder's Risk Insurance. Sub-Lessee shall require any contractor constructing improvements on the Leased Premises to provide Builder's Risk Insurance on an Inland Marine "All-Risk" type form which includes collapse coverage. The Amount of Insurance shall be 100% of the completed value of the work described in this Agreement. The policy shall contain a "Waiver of Subrogation" clause in favor of the City and the CMPA.

(c) Property Insurance. Sub-Lessee shall maintain in force at all times, property insurance coverage which insures any improvements on the Leased Premises against fire, extended coverage and Standard Insurance Office (SIO) defined "Special Perils" of physical damage, flood and wind. The amount of coverage will be 100% of the replacement cost. The policy shall contain a "Waiver of Subrogation" clause in favor of the City and the CMPA.

(d) Certificates of Insurance. Sub-Lessee's required insurance shall be documented in Certificates of Insurance that list this Agreement and provide that CMPA shall be notified at

least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. If required by CMPA, Sub-Lessee shall furnish copies of Sub-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 reasonably acceptable to the CMPA. Sub-Lessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies reasonably acceptable to CMPA and City and shall file with CMPA and City 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 reasonably acceptable to CMPA and City, Sub-Lessee shall, upon instructions of CMPA or City, cease all operations under the Agreement until directed by CMPA or City, in writing, to resume operations.

(e) Required Insurance Primary. Each Party's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the responsible Party's required coverage.

(f) Loss Control and Safety. Sub-Lessee shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the Leased Premises and the manner in which such activities shall be undertaken, and to that end, Sub-Lessee shall not be deemed to be an agent of CMPA or City. Reasonable precaution shall be exercised at all times by Sub-Lessee for the protection of all persons, including employees, and property.

(g) Mutual Indemnification and Releases. Sub-Lessee shall indemnify and hold harmless CMPA and City from any and all fines, claims, suits, actions, demands, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorney's fees) in connection with any loss of life, bodily or personal injury, or damage to or loss of property arising from or out of any occurrence in, upon, at or about the Leased Premises or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act omission, negligence, misconduct or breach of this Agreement by Sub-Lessee, its employees, agents, customers, clients, invitees or by any other person entering the Leased Premises under express or implied invitation of Sub-Lessee, or arising out of Sub-Lessee's use of the Leased Premises, including the water and waterfront. CMPA and City shall not be liable or responsible for any loss or damage to any property or the death or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other Private or Public Improvement tenants or by any other matter beyond the control of CMPA or City, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises, or failure to make repairs or from any cause whatsoever except CMPA's gross negligence or willful misconduct.

CMPA and/or City shall indemnify and hold harmless Sub-Lessee from any and all fines, claims, suits, actions, demands, losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees) in connection with any loss of life, bodily or personal injury, or damage to or loss of property arising from or out of any occurrence in, upon, at or about the Public Improvements or other Private Improvements or any part thereof occasioned or caused in

whole or in part, either directly or indirectly, by the act omission, negligence, misconduct or breach of this Agreement by CMPA or the City, its employees, agents, customers, clients, invitees or by any other person entering the Leased Premises under express or implied invitation of CMPA or the City, or arising out of CMPA's or the City's control of the surrounding Public Improvements and Private Improvements, including the water and waterfront. Sub-Lessee shall not be liable or responsible for any loss or damage to any property or the death or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other Private or Public Improvement tenants or by any other matter beyond the control of Sub-Lessee, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises, or failure to make repairs or from any cause whatsoever except Sub-Lessee's gross negligence or willful misconduct.

29. MPDP INDEMNITY. CMPA agrees to indemnify and hold Sub-Lessee harmless from any cost, expense, or damage associated with that certain lawsuit pending in the United States District Court for the Northern District of Florida, styled: Community Maritime Park Associates, Inc., v. Maritime Park Development Partners, LLC, Case Number 3:11cv60/MCR/CJK.

30. DEFAULT. CMPA and or the City, at its election, may exercise any one or more of the options referred to in Section 31 below upon the happening and the continuation uncured of any one or more of the following events (each, an "Event of Default"), to wit:

(a) Sub-Lessee's failure to pay the Annual Rent, CAM Charges or any other sums payable hereunder for a period of thirty (30) days after written notice by the City; or

(b) Sub-Lessee's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Agreement for a period of sixty (60) days after written notice by the City or CMPA, provided that if such failure cannot reasonably be cured within such sixty (60)-day period, Sub-Lessee shall have as much time as necessary to cure such failure provided that Sub-Lessee commences to cure such failure within such sixty (60)-day period and thereafter diligently and continuously prosecutes such cure until completion; or

(c) The filing of a voluntary petition in bankruptcy by Sub-Lessee or the filing of an involuntary petition in bankruptcy against Sub-Lessee and such involuntary bankruptcy petition is not dismissed within sixty (60) days after service upon Sub-Lessee; or

(d) Sub-Lessee making an assignment for the benefit of creditors; or

(e) A receiver or trustee being appointed for Sub-Lessee or a substantial portion of Sub-Lessee's assets and, if such appointment is without Sub-Lessee's consent, such appointment is not terminated or rescinded within sixty (60) days after Sub-Lessee is served with notice of such appointment ; or

(f) Sub-Lessee's interest under this Agreement being sold under execution or other legal process; or

(g) Sub-Lessee fails to keep the Leased Premises, the Mixed-Use Building and related infrastructure, and all furnishings located therein in good and safe condition and repair consistent with the manner in which comparable high quality properties of similar age and use in the Pensacola marketplace are kept (reasonable wear and tear excepted) for a period of sixty (60) days after written notice by the City, provided that if such failure cannot reasonably be cured within such sixty (60)-day period, Sub-Lessee shall have as much time as necessary to cure such failure provided that Sub-Lessee commences to cure such failure within such sixty (60)-day period and thereafter diligently and continuously prosecutes such cure until completion. Should CMPA or City fail to maintain the Public Improvements in a manner consistent with comparable public facilities, Sub-Lessee's standard of maintenance for the Private Improvements shall be relieved in the same degree as the decrease in standards maintained by CMPA and/or City; Notwithstanding the foregoing, Sub-Lessee shall have no duty or obligation to cure any alleged default that is the result of any casualty (including but not limited to fire, wind, flood, rain or hurricane), condemnation proceeding or other event that is not susceptible to being cured by Sub-Lessee and no such event shall constitute an Event of Default under this Agreement; or

(h) Sub-Lessee fails to diligently occupy, maintain and operate the Mixed-Use Building and Leased Premises or comply with any laws, ordinances, codes and regulations applicable thereto for a period of sixty (60) days after written notice by the City, provided that if such failure cannot reasonably be cured within such 60-day period, Sub-Lessee shall as much time as necessary to cure such failure provided that Sub-Lessee commences to cure such failure within such sixty (60)-day period and thereafter diligently and continuously prosecutes such cure until completion. Notwithstanding the foregoing, Sub-Lessee shall have no duty or obligation to cure any alleged default that is the result of any casualty (including but not limited to fire, wind, flood, rain or hurricane), condemnation proceeding or other event that is not susceptible to being cured by Sub-Lessee and no such event shall constitute an Event of Default under this Agreement; or

(i) Notwithstanding the provisions of Paragraph 31 of this Agreement, in the event the City elects to terminate this Agreement because of Sub-Lessee's uncured default hereunder beyond the applicable grace, notice and cure periods, the City agrees to and shall recognize and attorn to all sub-subleases, any sub-sublessee and any mortgagee of any sub-sublessee (including all cross access, utility, drainage, signage and other easements and similar rights granted therein) that is then in possession of its sub-subleased portion of the Leased Premises, provided that said sub-sublessee is not in default under the terms and provisions of its sub-sublease, beyond any applicable grace, notice and cure period (with said cure accomplished by either the sub-sublessee or its mortgagee) and that said sub-sublessee shall pay rent directly to the City in accordance with the rent terms set forth in the applicable sub-sublease. The City agrees to accept such sub-sublessee as its own, shall honor all remaining terms and provisions of any such sub-sublease, and shall enter into new direct leases with such sub-sublessees for the balance of their applicable sub-sublease terms, including any renewal and extension rights hereunder.

31. REMEDIES. Upon the occurrence and continuation uncured of any such Event of Default, the following options shall apply:

(a) Upon the occurrence of an Event of Default, CMPA and/or the City shall serve Sub-Lessee and any mortgagee of Sub-Lessee with a written notice specifying the nature of the default and giving Sub-Lessee and any mortgagee of Sub-Lessee thirty (30) days from the date of receipt of said notice in which to correct or remedy any monetary default, or if the default is non-monetary and of a nature which cannot be completely cured or remedied within sixty (60) days, then giving the Sub-Lessee and any such mortgagee sixty (60) days from the date of receipt of said notice within which to commence curing such default and staying termination of this Agreement as long as Sub-Lessee and/or any such mortgagee is diligently pursuing the cure of the default until completion. In the event Sub-Lessee and/or any such mortgagee has not cured the monetary default within the thirty (30) day period or the non-monetary default within the sixty (60) day period, or diligently commenced action to remedy such default in the case of a default that is non-monetary and of a nature that cannot be completely cured or remedied within sixty (60) days, CMPA and/or the City may terminate this Agreement by mailing a written notice of termination to Sub-Lessee, and this Agreement and the terms hereof shall terminate and expire upon the date fixed in the said notice of termination. Sub-Lessee shall vacate and surrender the Leased Premises to the City and CMPA on or before the termination date, without further notice or demand. If Sub-Lessee fails to vacate the Leased Premises after receiving the notice of termination, or if Sub-Lessee shall abandon or vacate the Leased Premises before the end of the Term, any Renewal Term or any subsequent renewal of this Agreement, then the City and/or CMPA shall have the right to reenter and repossess itself of the Leased Premises without further notice or demand, and without legal proceedings, using such action or means as may be necessary to secure possession and to remove there from any personal property belonging to Sub-Lessee, all without prejudice to any claim for rent and without being guilty of any manner of trespass or forcible entry or detainer or incurring any other liability.

(b) Sub-Lessee, and any holder of a mortgage on any portion of the Leased Premises, and/or any sub-sublessee, and/or any sub-sublessee's mortgagee shall have the same right to notice of any default and the same right to cure any default as is provided in the Master Lease, and shall have the rights of its mortgagee or mortgagees, if any, as provided in Section 32 of the Master Lease, which Section 32 of the Master Lease is adopted hereby and incorporated within this Agreement as if fully set forth herein. Notwithstanding any provision herein to the contrary, in addition, as long as there is a leasehold mortgage outstanding on any portion of the Leased Premises, this Agreement cannot be terminated for any Event of Default other than a default in payment of the Annual Rent due the City and/or CMPA pursuant to the terms of this Agreement, provided that any leasehold mortgagee is afforded the right to cure said default in payment in accordance with this Paragraph 31.

(c) Any sub-sublessee, and/or any sub-sublessee's mortgagee holding a mortgage on any portion of the Leased Premises, shall have the same right to notice of any default and the same right to cure any default of this Agreement as provided for in Paragraph 31 (a) of this Agreement.

(d) Upon the occurrence of an Event of Default based on the failure to pay monthly Rent Payments, CAM Payments or other monetary sums required by this Agreement to be paid by Sub-Lessee to CMPA or the City, and Sub-Lessee, any such mortgagee of Sub-Lessee, or any sub-sublessee or any mortgagee of any sub-sublessee fails to cure a monetary default within

thirty (30) days or the non-monetary default within sixty (60) days, or diligently commenced action to remedy such default in the case of a default that is non-monetary and of a nature that cannot be completely cured or remedied within sixty (60) days, after the notice required in Paragraph 31 (a) above, the City or CMPA may record a claim of lien that states the description of the Leased Premises, the name of Sub-Lessee, the name and address of CMPA or the City, as the case may be, the amount due CMPA or the City, as the case may be, and the due dates. Such claim of lien must be executed and acknowledged by an officer or authorized agent of CMPA or the City, as the case may be. The lien is effective from and shall relate back to recording of this Agreement or a Memorandum of this Agreement. However, as to subleasehold mortgages of record, the lien is effective only from and after recording of a claim of lien in the public records of Escambia County. The lien is not effective more than one (1) year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The one-year period is automatically extended for any length of time during which CMPA or the City, as the case may be, is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by Sub-Lessee or any other person claiming an interest in the Leased Premises. The claim of lien secures all unpaid monthly Rent Payments, CAM Payments and other monetary amounts that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by CMPA or the City, as the case may be, incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(e) By recording a notice in substantially the following form, Sub-Lessee or Sub-Lessee's agent or attorney, or any mortgagee of Sub-Lessee, may require CMPA and/or City to enforce a recorded claim of lien against the Leased Premises:

#### NOTICE OF CONTEST OF LIEN

TO: (Name and address of CMPA and City) You are notified that the undersigned contests the claim of lien filed by you on, (year), and recorded in Official Records Book at Page, of the public records of Escambia County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this day of, (year).

Signed: (Sub-Lessee or Attorney)

After notice of contest of lien has been recorded, Sub-Lessee shall mail a copy of the recorded notice to CMPA and City by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, Sub-Lessee has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which Sub-Lessee is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by Sub-Lessee or by any other person claiming an interest in the parcel.

No forbearance by CMPA or City of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a

waiver of the terms, provisions, and covenants herein contained. Forbearance by CMPA to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that CMPA may suffer by reason of termination of this Agreement or the deficiency from any re-letting as provided for above shall include the expense of repossession or re-letting and any repairs or remodeling undertaken by CMPA following repossession.

32. QUIET ENJOYMENT. Provided Sub-Lessee has performed all of the terms, covenants, agreements and conditions of this Agreement, including the payment of Rent and all other sums due hereunder, Sub-Lessee, and any sub-sublessee of Sub-Lessee, shall peaceably and quietly hold and enjoy the Leased Premises subject to the provisions and conditions of this Agreement, it being understood that the Park Property will host athletic events, music concerts, and other festival type activities.

33. CITY'S, CMPA'S AND SUB-LESSEE'S RIGHTS CUMULATIVE. The rights of the City, CMPA or Sub-lessee hereunder shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of the City, CMPA or Sub-Lessee to exercise promptly any such rights afforded it by said laws shall not operate to forfeit any such rights.

34. PROTECTION AGAINST LIENS. This Agreement is a sublease under the Master Lease. This Agreement hereby incorporates by reference the provisions of Section 32 of the Master Lease regarding leasehold mortgages encumbering Sub-Lessee's right, title and interest in, to and under this Agreement and the Leased Premises and the Sub-Lessee's subleasehold estate in the Leased Premises, as well as any leasehold mortgages encumbering any sub-sublessee's sub-subleasehold estate in the Leased Premises.

35. MORTGAGEES OF SUB-SUBLEASES.

(a) If any sub-sublessee shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the City and CMPA 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 shall apply:

(i) When giving notice to any sub-sublessee with respect to any default under the provisions of any sub-sublease, the Sub-Lessee will also serve a copy of such notice upon the leasehold mortgagee. No such notice to the sub-sublessee 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.

(ii) In case the sub-sublessee shall default under any provision of the sub-sublease, 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-sublessee is required to do or perform and

the Sub-Lessee shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the sub-sublessee. The leasehold mortgagee, upon the date of mailing by Sub-Lessee of the notice referred to in Paragraph 35(a)(i) shall have in addition to any period of grace extended to the sub-sublessee under the terms and conditions of the sub-sublease for a non-monetary default, a period of sixty (60) 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-sublessee for failure to pay rent, or failure to pay any amount otherwise required under the terms of the sub-sublease (e.g., including, but not limited to, taxes or assessments), the leasehold mortgagee shall have thirty (30) days from the date of the notice of default was mailed to the leasehold mortgagee within which to cure such default.

(iii) In case the sub-sublessee shall default under any of the provisions of the sub-sublease, 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-sublessee is required to do or perform and the Sub-Lessee shall accept such performance on the part of the leasehold mortgagee as though the same had been done or performed by the sub-sublessee.

(iv) In the case of any default by the sub-sublessee, the Sub-Lessee will take no action to effect a termination of the terms of the sub-sublease after the service of a notice provided for in Paragraph 35(a)(ii) above by reason of any such default, without first giving to the leasehold mortgagee a reasonable time, from the mailing of the default notice by Sub-Lessee to sub-sublessee, with a copy to such leasehold mortgagee, within which either: (i) to obtain possession of the property covered by the sub-sublessee (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-sublessee's interest under the sub-sublease 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 35 shall preclude the Sub-Lessee from exercising any rights or remedies under the sub-sublease with respect to any other default by the sub-sublessee during any period of forbearance.

(v) In the event of termination of the sub-sublease or of any succeeding lease made pursuant to the provisions of this Paragraph 35 prior to its stated expiration date, the Sub-Lessee will enter into a new lease of the property covered by the sub-sublease 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 any additional rent and upon the covenants, agreements, terms, provisions and limitations contained in the sub-sublease, provided that such leasehold mortgagee makes written request and executes, acknowledges and delivers to the Sub-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 Sub-Lessee of all amounts then due to the Sub-Lessee, including reasonable attorney's fees, court costs and disbursements incurred by the

Sub-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 Sub-Lessee subsequent to the date of termination of the sub-sublease 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.

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

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

(c) So long as the sub-sublessee's interest in the sub-sublease 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-sublease or any part of it, nor shall they cancel, abridge or otherwise modify the sub-sublease without the prior written consent of such leasehold mortgagee in each instance.

(d) Reference in the sub-sublease to acquisition of the sub-sublessee's interests in the sub-sublease by the leasehold mortgagee shall be deemed to refer, where circumstances require, to acquisition of the sub-sublessee's interest in the sub-sublease 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.

(e) Reference in the sub-sublease 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 Sub-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.

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

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

(h) The provisions of this Paragraph 35 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-sublease pursuant to any foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

(i) Notwithstanding any contrary provision of the sub-sublease, the leasehold mortgagee shall not be liable or responsible in any respect for any of sub-sublessee's obligations under the sub-sublease unless and until the leasehold mortgagee becomes the owner and holder of sub-sublessee's leasehold interest in the sub-sublease through foreclosure or bankruptcy proceedings, or assignment in lieu thereof.

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

36. NOTICES. Any notices required by this Agreement or by law to be sent to CMPA and/or the City shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to the City as follows:

Mayor, City of Pensacola  
Attn: City Attorney  
222 West Main Street, 7th Floor  
Pensacola, Florida 32502

and

Community Maritime Park Associates, Inc.  
Attn: Executive Director  
222 West Main Street  
Pensacola, Florida 32502

with a copy to:

Edward P. Fleming, Esq.  
McDonald Fleming Moorhead  
25 West Government Street  
Pensacola, Florida 32502

Any notices required by this Agreement or by law to be sent to Sub-Lessee shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Sub-Lessee as follows:

MARITIME ONE, LLC  
Attn: Justin A. Beck  
89 South Alcaniz Street  
Pensacola, Florida 32502

with a copy to:

James S. Campbell, Esq.  
Beggs & Lane, RLLP  
501 Commendencia Street  
Pensacola, Florida 32502

Any Party may change the above address by providing written notice to the other Party.

---

37. VENUE. Venue for any claim, action or proceeding arising out of this Agreement shall be Escambia County, Florida.

38. STATE LAW APPLICATION. The laws of the State of Florida shall be the law applied in resolution of any action, claim or other proceeding arising out of this Agreement.

39. PREVAILING PARTY ATTORNEY'S FEES. The prevailing party in any action, claim or proceeding arising out of this Agreement shall be entitled to attorney's fees and costs from the losing party.

40. MEMORANDUM OF AGREEMENT. Sub-Lessee shall at Sub-Lessee's sole expense, record this Agreement within the official records of the Escambia County Clerk of the Court, or have executed a recordable memorandum or short-form of this Agreement and record the memorandum or short-form within the official records of the Escambia County Clerk of the Court.

41. ESTOPPEL CERTIFICATES. Within ten (10) days after a written request from Sub-Lessee, any mortgagee of Sub-Lessee, any sub-sublessee, or any mortgagee of any sub-sublessee, the City and CMPA shall certify, by a duly executed and acknowledged written instrument, to any prospective purchaser, assignee, mortgagee, or other person designated by Sub-Lessee or proposed mortgagee or proposed assignee of any sub-sublessee of the Leased Premises or any other person, firm or corporation specified by Sub-Lessee or any sub-sublessee, as to the validity and force and effect of this Agreement, the validity and force and effect of the Master Lease, the existence of any default on the part of any Party hereunder or any default under the Master Lease, and the existence of any offset, counterclaim or defense thereto on the part of any Party, as well as to any other matters as may be reasonably requested by Sub-Lessee, all without charge and as frequently as Sub-Lessee, any mortgagee of Sub-Lessee, any sub-sublessee, or any mortgagee of any sub-sublessee, deems necessary. The City's or CMPA's failure or refusal to deliver such instrument within such time shall be conclusive upon CMPA that: (i) neither the City nor CMPA has transferred or assigned the Agreement or any interest therein, transferred or assigned the Master Lease or any interest therein or sublet the Leased Premises or any portion thereof, except as represented by Sub-Lessee; (ii) the Agreement and/or Master Lease is in full force and effect and has not been modified or amended, except as represented by Sub-Lessee; (iii) neither the City nor CMPA has any defense, counterclaim, charge, lien or claim of offset under the Agreement or under the Master Lease or otherwise against rents and charges due or to become due hereunder; and (vi) there are no uncured Events of Default or events which with the giving of notice or passage of time, or both, would become Events of Default by Sub-Lessee under this Agreement or under the Master Lease.

42. CONSENT OF MORTGAGES OF CITY OR CMPA; SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN; Within thirty (30) days of the Commencement Date, the City and the CMPA shall request each holder of any mortgage or lien presently encumbering all or any part of the Park Property, the Leased Premises, or the CMPA's interest and leasehold estate under Master Lease to consent to this Agreement and to enter into a Subordination, Non-Disturbance and Attornment Agreement acceptable to Sub-Lessee whereby such holder agrees that neither this Agreement, as modified, amended, renewed and/or extended from time to time, nor Sub-Lessee's use and occupancy of the Leased Premises shall be disturbed by reason of any foreclosure of such holder's lien or mortgage and whereby, in consideration thereof, Sub-Lessee acknowledges that this Agreement and Sub-Lessee's subleasehold estate in the Leased Premises are subject and subordinate to such mortgage or lien. Sub-Lessee's obligations under this Agreement are expressly subject to and conditioned upon all such mortgage and lien holders giving their respective consents to this Agreement and entering into such Subordination, Non-

Disturbance and Attornment Agreements within 30 days of the Commencement Date. In addition, at any time during the Term, Renewal Term or any subsequent renewal of this Agreement, the City shall execute a Subordination, Non-Disturbance and Attornment Agreement for the benefit of Sub-Lessee, any mortgagee of sublessee, any sub-sublessee, and/or any mortgagee of any sub-sublessee within thirty (30) days of request by the same.

43. ACCESS AND EASEMENTS: During the Term, Renewal Term, or any subsequent renewal of this Agreement, the City shall provide and maintain ingress and egress easements and curb cuts, onto all roads and drives adjacent to the Leased Premises, and all permits relating thereto for the benefit of Sub-Lessee, and as otherwise required for Sub-Lessee's orderly development of the Leased Premises, as well as providing the appropriate and necessary easements for all utility services needed for the orderly development of the Leased Premises, and as otherwise contemplated under this Agreement..

44. NON-DISCRIMINATION. Sub-Lessee agrees that it will not discriminate upon the basis of race, creed, color, national origin, age, disability or sex in the construction, use, occupancy, or operation of the Leased Premises or in the improvements to be erected thereon.

45. SIGNAGE. Sub-Lessee may, at its own expense, install and operate necessary and appropriate identification, directional and other signs on its Leased Premises and all improvements constructed thereon in conformance with the Codes of the City. All signs located on the Leased Premises, are subject to the approval of the City pursuant to provisions set forth in any applicable sign ordinance duly adopted by the City. CMPA represents and warrants that no third party has any rights to have any signage on the Leased Premises or any approval rights in regards to any signage located or to be located on the Leased Premises. CMPA shall not enter into any Agreement which restricts Sub-Lessee's rights under this Paragraph. Sub-Lessee shall have the right to place wayfaring signs on existing rights-of-way and shall have a right to place signage on any common sign erected on the Park Property at the sole discretion of the City.

46. MITIGATION OF DAMAGES. The City, CMPA and Sub-Lessee each agree to use commercially reasonable efforts to mitigate the amount of damages, loss, expenses or other liabilities which each may suffer or sustain as a result of any breach or Event of Default by another Party of any of the terms, covenants, conditions, representations and warranties of such Party as set forth in this Agreement.

47. LIENS. In the event any contractor, subcontractor, materialmen, mechanics and/or laborers shall file any lien or claim of lien against the Park Property or the Leased Premises, as a result of any work undertaken by City or CMPA pursuant to the terms and provisions of this Agreement, or otherwise, City and CMPA shall require its contractor to either pay or transfer the same to its payment bond or other security within thirty (30) days after the lien or claim of lien has been filed in the Public Records of Escambia County, Florida.

48. SUCCESSORS AND ASSIGNS. The terms and provisions of this Agreement are binding upon and shall inure to the benefit of, and be enforceable by and against, the City, CMPA and Sub-Lessee, and their respective successors and assigns.

49. CONTRACT INTERPRETATION. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Agreement and shall not negate or invalidate any provision of this Agreement.

50. 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."

51. RECITALS: The recitals set forth at the beginning of this Agreement are true and correct and hereby made a part of this Agreement.

52. DEFINED TERMS. Any terms capitalized but not defined in this Agreement shall have the same meaning as set forth in the Master Lease.

IN WITNESS WHEREOF, the Parties have set their hands and seals the date first written above.

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

By:   
J. Collier Merrill, Chairman

Date: 6/20/13

WITNESS/ATTEST:

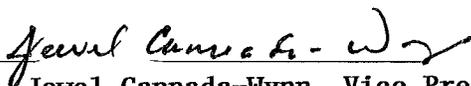
  
Edward E. Spears, Executive Director

WITNESS:

  
Print Name: Amanda E Bills

**THE CITY OF PENSACOLA,**  
a Florida municipal corporation

By:   
William H. Reynolds  
City Administrator  
City of Pensacola

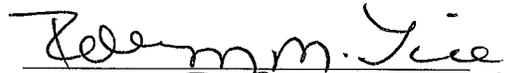
By:   
Jewel Cannada-Wynn, Vice President of City Council  
On behalf of City Council

Date: 6-25-13

WITNESS/ATTEST:

  
Ericka L. Burnett, City Clerk

WITNESS:

  
Print Name: ROBYN M. TICE

**MARITIME ONE, LLC**  
a Florida Limited Liability Company

By:   
Justin A. Beck, Managing Member

WITNESS:

  
Print Name: NICOLE M. ARD

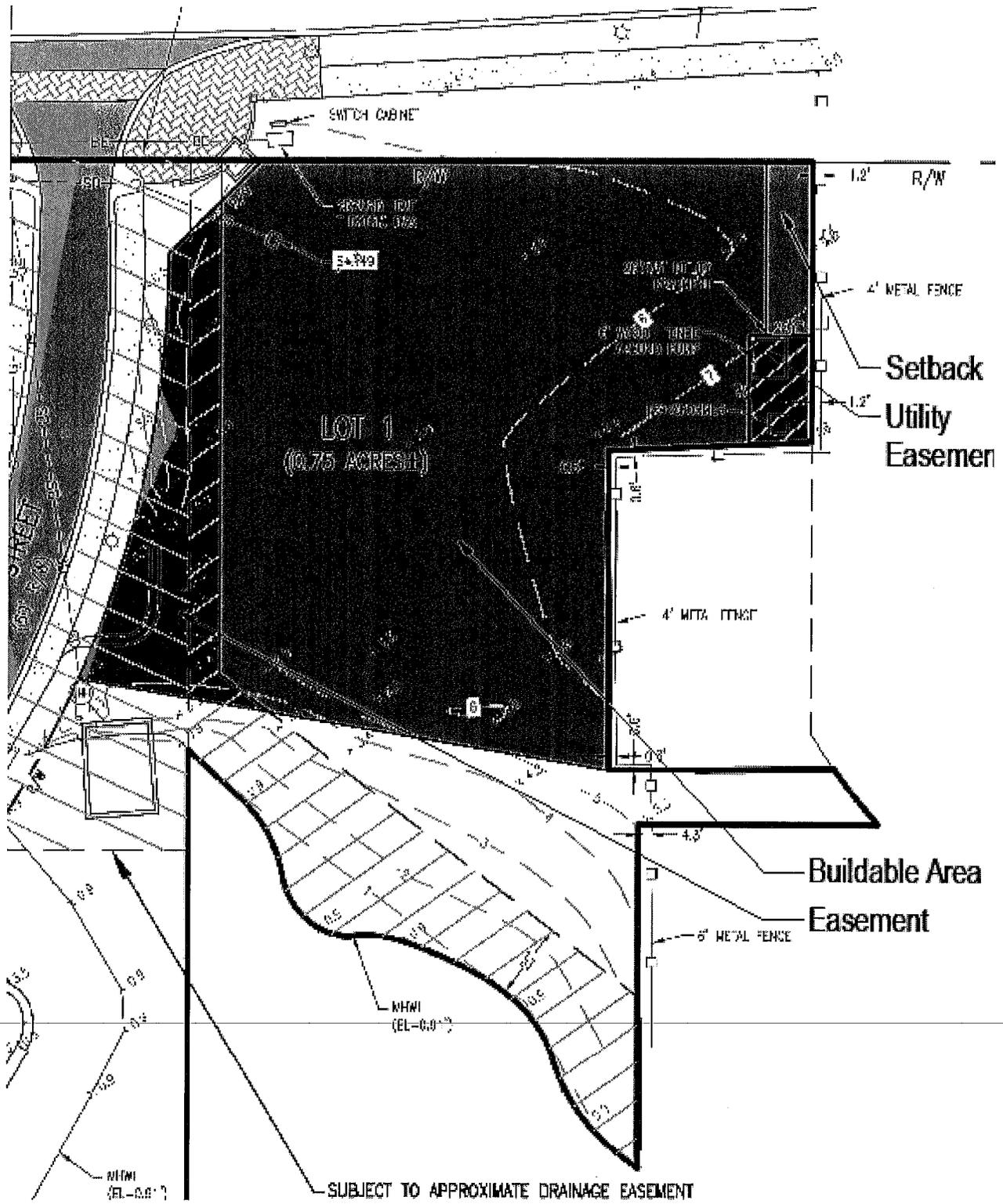
WITNESS:

  
Print Name: EDITH K. MASON

Legal in form and valid as drawn:

  
James M. Messer, City Attorney

Attachment "A"  
 To be replaced by Official Survey  
 As per Section 1 of this Agreement



1 Buildable Area: 0.62 acres +/- (27,391 SF +/-)  
 A100 SCALE: 1" = 40'-0"