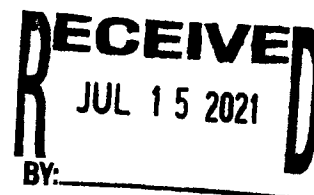


5941 Greenwood Lane  
Pensacola, FL 32504  
July 14, 2021



The Honorable Jared Moore  
Council President  
Pensacola City Council  
The City of Pensacola  
222 West Main Street  
Pensacola, FL 32502

Dear Council President Moore:

On July 15, you will consider Agenda Items 7 and 19 with respect to the city's Multi-Use Facility better known as Blue Wahoos Stadium. I recommend that you vote NO on both agenda items for the reasons that I will explain below. The Blue Wahoos appear to be using strongarm tactics threatening to not extend their lease if "public" funds are not used to pay for changes to Blue Wahoos Stadium mandated by Major League Baseball, the Miami Marlins and the team.

Mayor Grover Robinson is pressuring you and City Council members in your dual roles as the governing bodies of the City and its Pensacola Community Redevelopment Agency (CRA) – a special district of the City and a separate legal entity – to divert nearly \$2 million dollars from approved CRA projects and to give that money to the City of Pensacola to pay for improvements to the city's Blue Wahoos Stadium. In 2011, the for-profit Northwest Florida Professional Baseball, LLC ("Blue Wahoos") agreed to pay for all future "baseball" improvements.

Enclosure (1) is the online version of a Pensacola News Journal story from July 13. The print version published July 14 is titled *City to reimburse Wahoos with \$2M*. The story's subtitle was *Upgrades will keep team downtown for another 10 years*. The most important sentence in Jim Little's reporting claims, "Under the current lease, the city is responsible for the maintenance of the stadium and keeping the stadium up to the requirements of professional baseball." The text that I have underlined refers to "discretionary improvements" to the stadium described in Section 15 of the lease agreement, a contractual obligation of the Blue Wahoos team "not" the City.

Enclosure (2) is the Multi-Use Facility Non-Exclusive Agreement dated July 20, 2011. Its key pages here are 17-19. I have provided the full Agreement for those who have not seen it. There have been four amendments to the Agreement to date but none are directly relevant here. Both Councilwoman Sherri Myers and Councilwoman Ann Hill served on the Community Maritime Park Associates, Inc. (CMPA) Board of Trustees. Myers was on the City Council in 2011 when it voted to approve the Agreement. They can best explain to you the history of the Agreement.

Enclosure (3) is a press release related to the Agreement that appeared on the Minor League Baseball website on November 20, 2011. Mayor Ashton Hayward explained, "This lease will protect the taxpayers from having to subsidize any of the facility's operations and leaves the stadium open to other events and entertainment on the days the Blue Wahoos aren't playing."

Enclosure (4) is Agenda Item 19. The last page – Attachment A – is a Summary of Capital Projects and Estimated Cost. Projects 10-16 totaling \$58,800 likely all fall within the scope of the Agreement's Section 12. They are a contractual obligation of the City of Pensacola. Section 13 describes how the maintenance and repairs should be done. Section 14 describes the Capital Maintenance Fund that is used to pay for these projects resulting from normal wear and tear.

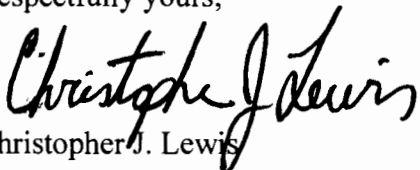
There is no legislative role for City Council involvement in Projects 10-16. Further, it seems very ill-advised, wrong and sets a horrible precedent to divert limited CRA Tax Increment Financing revenues away from previously approved important capital improvement projects in the Urban Core Community Redevelopment Area that Robinson wants you to delay to pay for routine projects that the City of Pensacola is already obligated to pay for using a dedicated fund.

In his agenda item, Robinson deceptively infers that all of the projects – to include Projects 1-9 totaling \$1,916,500 – are a responsibility of the City, "Section 12 of the original Agreement states that the CMPA (now City) is generally responsible for repairs, maintenance, and capital improvements to the stadium." By design, he ignores the Agreement's Section 15 quoted below in full. In 2011, the Blue Wahoos agreed to pay for stadium baseball upgrades like Projects 1-9.

#### 15. MULTI-USE FACILITY IMPROVEMENTS

(a) Discretionary Improvements. Once the Multi-Use Facility is available for NFPB, NFPB shall have the right, from time to time, at its own expense, to make alterations and improvements to the Multi-Use Facility, as shall be reasonably necessary or appropriate, in NFPB's judgment, for NFPB conduct of its business, provided that prior to the commencement of any alternation of any improvement, NFPB shall have provided CMPA with written notice of its plans and specifications and CMPA shall have approved such plans in writing (such approval not to be unreasonably withheld or delayed), and further provided that such alternations or additions to not materially affect the structure or systems or systems or the aesthetic appearance of the Multi-Use Facility or violate any law, ordinances or alternations. Such alterations shall be performed in a good and workmanlike manner. Further, any maintenance and/or repairs relating to any such alterations and/or improvements shall remain the sole responsibility of NFPB unless otherwise agreed by CMPA.

Respectfully yours,

  
Christopher J. Lewis

Enclosure (4)

Copy to:  
Pensacola City Council

**Enclosure (1)**

# **Pensacola to reimburse Blue Wahoos \$2 million for upgrades to Wahoos Stadium**

**Jim Little**

Pensacola News Journal

The Blue Wahoos are heading toward another 10 years of baseball in downtown Pensacola after the City Council on Monday night approved an agreement to reimburse the team for \$2 million in upgrades to Blue Wahoos Stadium.

Sitting as the board of the Community Redevelopment Agency, the council voted 6-0 to approve an agreement with the Blue Wahoos that will allow the team to be reimbursed for upgrades to Blue Wahoos Stadium.

The upgrades to the stadium include new LED stadium lights, artificial turf and relocating each pitchers' bullpen from the field to behind the back fence.

The upgrades at the stadium are needed to meet the requirements of Major League Baseball and the team's MLB affiliate, the Miami Marlins.

During the past nine years, the Wahoos have paid the city more than \$6 million in lease payments and fees.

"What this does, is it commits us to another 10 years, which should be another \$6 million," said Blue Wahoos owner Quint Studer. "I think it's a win-win."

Because the city did not set aside funding for upgrades during the previous lease years, the \$2 million to fund the upgrades will come from several sources in the CRA's budget including \$992,476 meant to improve Reus Street.

Pensacola Mayor Grover Robinson said Monday that the funding change likely will mean a two-year delay in adding improvements to Reus Street.

"That also extends baseball into Pensacola for another 10 years," Robinson said. "That is huge, and a big deal. And I don't think we should lose sight of the fact that we're going to secure baseball in Pensacola for another 10 years. That's the maximum Major League Baseball will contract with the city."

The vote Monday authorized the CRA to reimburse the Blue Wahoos the \$2 million, and on Thursday the City Council will take a vote on extending the Wahoo's lease for another 10 years at Blue Wahoos Stadium.

The only question on the vote Monday night came from Councilwoman Ann Hill who asked if the expense was allowed under the CRA work plan, a document approved each year that describes the work of the CRA. If a project is not described in the work plan it is not legal for the CRA to undertake.

CRA Administrator Helen Gibson said it was covered in the plan's section on improvements to parks and public spaces.

"This would fall into that," Gibson said.

The city and baseball team have been in talks since February on how to pay for the needed upgrades. Under the current lease, the city is responsible for the maintenance of the stadium and keeping the stadium up to the requirements of professional baseball.

Robinson announced last month that the city would keep the current lease in place and find the \$2 million needed to pay for the upgrades.

Last year, Major League Baseball downsized the minor leagues, cutting 43 teams from its affiliation, and is requiring its remaining 120 minor league teams to ensure their facilities meet updated MLB standards.

The Pensacola Blue Wahoos survived the purge but had their affiliation changed from the Minnesota Twins to the Miami Marlins.

The Blue Wahoos paid \$250,000 from their own funds to bring the city-owned stadium's locker room facilities up to MLB standards last year just before the outbreak of COVID-19 scrapped the 2020 season.

Studer told the News Journal on Monday that under the current restructure of Minor League Baseball many teams are having to pay much more than \$2 million to meet the new requirements of the MLB.

"Compared to other cities, that in order to keep a AA team that has a positive impact (on the city), I think Pensacola is in much better shape than most other cities," Studer said. "There are cities that are having to look to build a whole new stadium to keep a team."

*Jim Little can be reached at [jwlittle@pnj.com](mailto:jwlittle@pnj.com) and 850-208-9827.*

**Enclosure (2)**

**MULTI-USE FACILITY**

**NON-EXCLUSIVE USE AGREEMENT**

(Located at the Community Maritime Park)

COMMUNITY MARITIME PARK ASSOCIATES, INC.

and

NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC

Dated as of July 20, 2011

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## **MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT**

THIS MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT ("Agreement") is made and entered into this 20<sup>th</sup> day of July, 2011, by and among NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC, a Florida limited liability company ("NFPB"), and COMMUNITY MARITIME PARK ASSOCIATES, INC., a Florida non-profit corporation ("CMPA").

### **RECITALS:**

- A. The CMPA is constructing the "Vince Whibbs, Sr. Community Maritime Park" (the "Park"). The Park is a 32-acre parcel located on Pensacola Bay in downtown Pensacola, Florida.
- B. Throughout the 450-year history of the City of Pensacola, the Park site was utilized for private commercial and industrial purposes. The Park site was last utilized as a petroleum depot; the site has been vacant for 30 years.
- C. The City of Pensacola acquired the property to adapt it to public use; the present proposed use for the Park was approved by the Pensacola City Council in 2005 and affirmed, via referendum, in September 2006.
- D. Upon completion, the Park is envisioned as a world-class, signature mixed-use development that will re-establish a dynamic public waterfront on the western half of Downtown Pensacola, featuring: an expansive waterfront park, a community multi-use facility suitable for athletic events, festivals, and other community activities, a performing arts amphitheater; a breakwater, parking, and ancillary uses, including infrastructure and site improvements.
- E. NFPB owns a class "AA" minor league baseball team known as the "Carolina Mudcats," an affiliated franchise of the Cincinnati Reds Organization, referred to herein as the "Club."
- F. CMPA desires to have a AA-baseball team in Pensacola, Florida, and believes the presence of this team will encourage the development of the private development parcels at the Park, and will encourage economic development in Pensacola and the surrounding area.
- G. NFPB would like to be able to use the Park as a forum for events, including home baseball games, and related training, exhibition and possible post-season play.
- H. Upon execution and approval of this Use Agreement and upon receipt of all necessary approvals of the Cincinnati Reds, Major League Baseball, and Minor League Baseball, the Carolina Mudcats will be re-named the "Pensacola Blue Wahoos" and will be re-located to Pensacola in 2012.
- I. NFPB and CMPA desire that the Club be permitted to utilize the Multi-Use Facility for its events, including home baseball games and other events.
- J. CMPA and NFPB believe that allowing the Team to be able to use the Multi-Use Facility for its events including home games, exhibitions, practice, and post-season play (as defined more particularly herein) creates a positive economic and entertainment impact for the community.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, NFPB and CMPA, each intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS. As used herein, the following terms shall have the following meanings:

(a) Agreement. The term "Agreement" shall mean this Multi-Use Facility Use Agreement.

(b) Approved Plans. The term "Approved Plans" shall have the meaning given in Section 5 of this Agreement.

(c) Baseball Season. The term "Baseball Season" shall mean, as to each calendar year of the Term, the regular annual period of play of professional baseball games and related activities by the Club at the Multi-Use Facility from March 15 to the date on which the Club's last game is played during the applicable League season, including any and all pre-season games, regular season games, exhibition games, post-season "playoff" games, and "all-star" games, or September 30, whichever shall later occur.

(d) Beneficial Use Date. The term "Beneficial Use Date" shall mean the date on which both (I) all final approvals have been obtained from the League, Minor League Baseball, Major League Baseball, the Cincinnati Reds Baseball Team with which the Club is affiliated, and NFPB, that the Multi-Use Facility can be used for its intended purpose of the Club playing Club Home Games, and (II) the Multi-Use Facility and appurtenant improvements (including, without limitation, parking areas, utilities, drainage facilities, roads and other access, and other improvements required for operation and use of the Multi-Use Facility) have been completed in accordance with the Approved Plans such that the Multi-Use Facility can be used for its intended purpose and a certificate of occupancy and a certificate of substantial completion from the architect of record.

(e) Capital Maintenance Fund. The term "Capital Maintenance Fund" shall have the meaning given in Section 14 of this Agreement.

(f) Capital Maintenance and Repairs. The term "Capital Maintenance and Repairs" shall have such meaning as described in Section 13 of this Agreement.

(g) City. The term "City" shall mean the City of Pensacola, Florida.

(h) Club. The term "Club" shall mean a "AA" minor league professional baseball franchise, or equivalent, owned and operated by NFPB or its successors or assigns, which are presently known as the "Carolina Mudcats" and which, upon approval of Major League Baseball shall be relocated to Pensacola, Florida and re-named the "Blue Wahoos" or such other name as NFPB shall designate from time to time.

(i) Club Home Game. The term "Club Home Game" shall mean all professional minor league baseball games played in the Multi-Use Facility involving the as a participant and member of the League, including without limitation all pre-season games,

regular season games, exhibition games, post-season "playoff" games, and "all-star" games.

(j) CMPA. The term "CMPA" shall have the meaning given in the Introductory paragraph of this Agreement.

(k) CMPA Fees. The term "CMPA Fees" shall have the meaning given in the section 17 of this Agreement.

(l) CMPA Manager. The term "CMPA Manager" shall mean one or more persons designated by CMPA to act as the manager of CMPA's rights and obligations under this Agreement and who shall interface with NFPB in connection with the day-to-day operations and management of the Multi-Use Facility.

(m) CMPA Offices. The term "CMPA Offices" shall mean the administrative offices designated as the CMPA Offices on Exhibit B attached hereto, together with all rights of ingress and egress over the Multi-Use Facility to access such offices.

(n) Community Events. The term "Community Event" shall mean any and all events promoted and/or staged by CMPA in the Multi-Use Facility, excluding Club Home Games and NFPB Events.

(o) County. The term "County" shall mean Escambia County, Florida.

(p) CPI. The term "CPI" shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index of All Urban Consumers (CPI-U), "All Items," U.S. Cities Average, (1982-1984 = 100).

(q) Default. The term "Default" shall have the meaning given in Section 22 of this Agreement.

(r) Defaulting Party. The term "Defaulting Party" shall have the meaning given in Section 22 of this Agreement.

(s) Emergency. A condition which (1) involves a danger to public health or safety, (2) is likely to result in immediate, substantial damage to the Multi-Use Facility, or (3) is sudden and immediate and if not quickly cured would have a material impact on NFPB's ability to use and operate the Multi-Use Facility.

(t) General Public Parking Spaces. The term "General Public Parking Spaces" shall have the meaning given in Section 7(c) of this Agreement.

(u) League. The term "League" shall mean the Southern League of the National Association of Professional Baseball Leagues, Inc. and its successors, and any such other professional baseball league that NFPB in its sole discretion may affiliate the Club with during the Term.

(v) Master Lease. The term "Master Lease" shall mean that certain ground lease dated March 27, 2006 between the City of Pensacola and CMPA relating to the Park and all amendments thereto.

(w) Multi-Use Facility. The term "Multi-Use Facility" shall mean the approximately 5,225 seat community multi-use facility and all physical improvements

thereto now existing or hereafter constructed as more generally shown in Exhibit A; attached hereto, and as specifically set forth in the approved and permitted plans and specifications, as the same may from time to time hereafter be expanded or modified as mutually agreed by the parties.

(x) Naming Rights. The term "Naming Rights" shall have the meaning given in Section 8.3 of this Agreement.

(y) Naming Rights Purchaser. The term "Naming Rights Purchaser" shall have the meaning given in Section 8.3 of this Agreement.

(z) New City Taxes. The term "New City Taxes" shall have the meaning given in the section 17 of this Agreement.

(aa) NFPB. The term "NFPB" shall have the meaning given in the Introductory paragraph of this Agreement.

(bb) NFPB Event. The term "NFPB Event" shall mean any and all events other than Club Home Games promoted and/or staged by NFPB and occurring in the Multi-Use Facility, excluding Community Events.

(cc) NFPB Offices. The term "NFPB Offices" shall mean the administrative offices designated as the NFPB Offices on Exhibit B attached hereto, together with all rights of ingress and egress over the Park and the Multi-Use Facility to access such offices.

(dd) NFPB Reserved Parking Spaces. The term "NFPB Reserved Parking Spaces" shall have the meaning given in Section 7(a) of this Agreement.

(ee) Non-Defaulting Party. The term "Non-Defaulting Party" shall have the meaning given in Section 22 of this Agreement.

(ff) Off-Season. The term "Off-Season" shall mean, as to each calendar year of the Term, the time period other than the Baseball Season.

(gg) Park. The term "Park" shall mean the Vincent J. Whibbs Community Maritime Park within which the Multi-Use Facility is located.

(hh) Rentable Space. The term "Rentable Space" shall mean the rentable space within the dripline of the Multi-Use Facility accessible and from the exterior of the facility as shown on Exhibit A attached hereto, together with all rights of ingress and egress over the Park and the Multi-Use Facility to access such space.

(ii) Special Seating. The term "Special Seating" shall mean all decks, suites, skyboxes, or other separate inventory of seating or game viewing areas at the Multi-Use Facility.

(jj) Use Deadline Date. The term "Use Deadline Date" shall have the meaning given in Section 5(c) of this Agreement.

(kk) Use Fee. The term "Use Fee" shall have the meaning given in Section 6 of this Agreement.

(ll) Use Fee Commencement Date. The term "Use Fee Commencement Date" shall have the meaning given in Section 6 of this Agreement.

(mm) Variable Attendance Surcharge. The term Variable Attendance Surcharge shall have the meaning given in Section 6 of this Agreement.

(nn) Variable Ticket Sales Surcharge. The term "Variable Ticket Sales Surcharge" shall have the meaning given in Section 6 of this Agreement.

(oo) Actual Variable Costs. Shall be the actual costs incurred for the provision of services pursuant to any provision hereunder without any margin or mark-up.

2. **TERM AND TERMINATION.** The "Term" of this Agreement shall commence as of the date this Agreement is fully executed by all of the parties and shall continue for a period of ten (10) years following commencement of the Beneficial Use Date. NFPB shall have the right to renew this Agreement for two (2) additional terms of five (5) years each by giving written notice to CMPA of NFPB's election to so renew, such notice to be given at least ninety (90) days prior to the expiration of the then existing term. Notwithstanding the foregoing, if NFPB fails to give such renewal notice to CMPA ninety (90) days prior to expiration of the then existing term, CMPA shall give written notice to NFPB of such failure and NFPB shall have an additional thirty (30) days after such notice is given by CMPA to exercise NFPB's right to renew the Agreement. Any renewal term of this Agreement shall be on the same terms and conditions as are contained in this Agreement with respect to the Initial term except that the Use Fee under Section 6 of this Agreement may be subject to Increase in an amount not to exceed an additional amount reasonably related to the Increase in the CPI on the date which was six (6) months prior to the expiration of the then existing term over the CPI on the date which was six (6) months prior to the Use Fee Commencement Date.

3. **OWNERSHIP OF THE MULTI-USE FACILITY.** The Multi-Use Facility shall be owned by the CMPA per the terms and conditions of the Master Lease and NFPB shall not have any ownership interest in the Multi-Use Facility. If, for any reason, the Master Lease between the City and the CMPA is terminated, cancelled, or assigned or otherwise reverts back to the City, the City shall assume all rights, responsibilities, and obligations of the CMPA under this Agreement. Notwithstanding the foregoing, it is understood that if any improvement to the Multi-Use Facility is owned by NFPB and is capable of removal at the end of the Term without damage to the Multi-Use Facility, then NFPB shall, provided that it is not in default of the terms and conditions of this Agreement, retain ownership thereof and have the right to remove and dispose of such improvement as it deems appropriate in accordance with Section 16.

4. **USE OF THE MULTI-USE FACILITY.**

(a) NFPB Use. Subject to CMPA's right to use and occupy the CMPA Offices and to use and occupy the Multi-Use Facility for Community Events in accordance with Section 4(b) below, NFPB shall have the right to use and occupy the Multi-Use Facility during both the Baseball Season and the Off-Season, including, but not limited to, the exclusive right to (i) exhibit, promote, schedule and play all Club Home Games, (ii) use and occupy the NFPB Offices during both the Baseball Season and the Off-Season, (iii) use, occupy, sublease, and/or license the Rental Space, (iv) to store all baseball gear and equipment and maintenance equipment in designated storage areas, and (v) to exhibit, promote, schedule, play, and/or stage NFPB Events in accordance with Section 4(c) below.

(b) CMPA Use. Subject to NFPB's right to use the Multi-Use Facility in accordance with Section 4(a) above, CPGA shall have the right (i) to use and occupy the Multi-Use Facility to exhibit, play, and/or stage Community Events in accordance with Section 4(c) below, and (ii) to use and occupy the CPGA Offices. All Community Events that require the use of the baseball playing surface (including grass and infield) shall be subject to the prior written consent of NFPB, which consent shall not be unreasonably withheld. Any damage to the Multi-Use Facility or playing surface occurring during Community Events, whether or not such damage is caused by CPGA, its designated user, or any other party other than NFPB, shall be immediately repaired at CPGA's sole cost and expense in order to return the Multi-Use Facility to the condition it was in prior to Community Event, as determined in good faith by NFPB and CPGA.

(c) Scheduling of Club Home Games, NFPB Events, and Community Events. Within fifteen (15) days after NFPB receives approval from the League to release the schedule of Club Home Games for the upcoming season, NFPB and the CPGA Manager shall deliver such schedule to CPGA. Once the schedule of Club Home Games has been delivered to CPGA, NFPB shall be deemed to have reserved and shall have the exclusive right to use and occupy the Multi-Use Facility to play Club Home Games on those dates. In addition, NFPB and CPGA Manager shall meet from time to time to schedule and coordinate Community Events and NFPB Events on days other than days of Club Home Games, subject to the following limitations and restrictions: (i) NFPB shall have the right to reserve the Multi-Use Facility for NFPB Events for any time during the calendar year other than days of Club Home Games so long as such dates were not previously reserved for Community Events; (ii) no Community Event may be scheduled on the date of a Club Home Game, (iii) no Community Event that would require use of the baseball field may be scheduled during the twenty-four (24) hour period immediately preceding a scheduled Club Home Game or during the twenty-four (24) hour period immediately following a scheduled Club Home Game, in each case without the prior written consent of NFPB, which consent may be withheld in NFPB's sole and absolute discretion, (iv) no Community Event may be scheduled during the post-season time period in which playoff games may occur in the League unless and until it has been determined with certainty that no Club Home Games will be played during such period, and (v) no concert or other activity that may reasonably be expected to interfere with baseball games, the broadcasting of Club Home Games, or the ability of fans attending a Club Home Game to hear the public address system in the Multi-Use Facility shall be scheduled or occur in other areas of the Park (including, but not limited to, in and around the adjacent amphitheater) during Club Home Games.

## 5. MULTI-USE FACILITY DEVELOPMENT.

(a) Approved Plans. CPGA agrees to construct the Multi-Use Facility at its sole cost and expense. The Multi-Use Facility will be built in accordance with the plans and specifications heretofore approved by NFPB (the "Approved Plans"), subject to changes or revisions approved by NFPB, said approval shall not be unreasonably withheld. Prior to the Beneficial Use Date, NFPB shall have the right to conduct an inspection and participate in the development of a "punch list" and in the approval and resolution of such punch list items including any applicable time periods to complete "punch list" work required.

(b) Certificate of Occupancy. NFPB shall have no obligation to comply with its obligations under this Agreement until both (i) completion of the Multi-Use Facility and appurtenant improvements in accordance with the Approved Plans such that the Multi-Use Facility can be used for its intended purpose hereunder, and (ii) evidence of such completion

In the form of a certificate of occupancy and a certificate of substantial completion from the architect of record has been delivered to NFPB.

(c) Use Deadline Date. CMPA's completion of the Multi-Use Facility on or before March 1, 2012 (the "Use Deadline Date"), is a material condition to NFPB's obligation to use the Multi-Use Facility. On or before December 31, 2011, CMPA shall deliver a written notice to NFPB stating whether or not the Multi-Use Facility will be completed by the Use Deadline Date and if not, the estimated date of such completion (the "Completion Notice").

(d) Delivery Date. If CMPA fails to deliver the Multi-Use Facility to the NFPB on or before the Use Deadline Date, then NFPB shall have the right to provide written Notice of Default to the CMPA and demand such default be cured by delivering the Multi-Use Facility no later than March 31, 2012. If delivery does not occur on or before March 31, 2012, the CMPA shall have the option of keeping the Agreement in effect by agreeing to pay NFPB its actual damages incurred as a result of the failure to deliver. Should the CMPA elect not to undertake that obligation, the NFPB shall have the right to terminate the Agreement. NFPB shall exercise its right to terminate this Agreement by providing CMPA written notice of such termination within forty-five (45) days after the Use Deadline Date. Failure of the NFPB to provide written notice of its election to terminate this Agreement within such forty-five (45) days after the Use Deadline Date shall be a waiver of the NFPB's right to terminate for failure of CMPA to deliver on or before the Use Deadline Date. If the Multi-Use Facility is not completed on or before the Use Deadline Date and NFPB elects not to terminate this Agreement, NFPB and the CMPA agree to work in good faith to reach an agreement that would mitigate any potential damages, and keep the Agreement in effect under such modified terms and conditions as may be agreed to by the parties. Should the parties, despite these good faith negotiations, be unable to reach an agreement, the NFPB's sole remedy for breach shall be termination.

(e) CMPA agrees to provide the NFPB reasonable access, to be coordinated with the Design-Build, to the Multi-Use Facility prior to March 1, 2012. The playing field will be made available to NFPB by February 15, 2012. The CMPA has coordinated earlier deadlines with the Design-Build, has provided incentives to the Design-Build to expedite construction, and will use its best efforts to deliver access and use of the Multi-Use Facility before the deadlines listed above.

## 6. USE FEE AND SURCHARGES.

(a) Use Fee. NFPB shall pay CMPA an annual use fee during the Term in the amount equal to the sum of (i) One Hundred Seventy Five Thousand and 00/100 Dollars (\$175,000.00) per year (the "Use Fee"). The Use Fee shall be payable in six (6) equal monthly installments on the first day of April, May, June, July, August, and September during each calendar year, with the first such payment being due on the later of (i) April 1, 2012, or (ii) the first day of the first calendar month following the Beneficial Use Date (the "Use Fee Commencement Date"); provided, however, that if the Use Fee Commencement Date is after April 1, 2012, the first installment shall be prorated to exclude the time periods between April 1, 2012 and the actual Use Fee Commencement Date. NFPB shall pay sales and use taxes applicable to the Use Fee.

No later than every three years, the parties agree to meet and review the sufficiency of the Use Fee. The parties agree to use their best efforts to amend said Use Fee as necessary and mutually agreeable.

(b) Variable Ticket Sales Surcharge. NFPB shall collect on behalf of and shall pay CMPA during the Term a surcharge of fifty cents (\$0.50) per Club Home Game ticket sold for all games, EXCLUDING, HOWEVER (a) all tickets sold for regular, exhibition, playoff or post-season games to active duty military and their families and youth under the age of 12, and (b) complimentary tickets given away by NFPB (the "Variable Ticket Sales Surcharge"). The cumulative Variable Ticket Sales Surcharge for each Baseball Season shall

listed on the ticket as a "City/CMPA Surcharge" and shall be paid to CMPA within sixty (60) days after the end of such Baseball Season. The Variable Ticket Sales Surcharge may, in NFPB's discretion, be separately charged and identified on each ticket as a "surcharge," "facilities surcharge," or other identifying language. A Variable Ticket Sales Surcharge will be assessed on all other ticket sales for Community Events or other events which take place within the Multi-Use Facility or other areas of the surrounding Community Maritme.

No later than every three years, the parties agree to meet and review the sufficiency of the Variable Ticket Sales Surcharge in meeting the CMPA's Capital Maintenance Fund needs. The parties agree to use their best efforts to amend said Variable Ticket Sales Surcharge as necessary and mutually agreeable.

(c) Variable Attendance Surcharge. NFPB shall collect on behalf of, and pay to CMPA during the Term a surcharge based on "actual paid attendance" at certain Club Home Games (the "Variable Attendance Surcharge"). The Variable Attendance Surcharge shall be based on "actual paid attendance" at regular season Club Home Games, EXCLUDING, HOWEVER (a) Club Home Game attendees for exhibition games, (b) all season ticket attendees for regular, exhibition, playoff or post-season games for the first year of play at the Multi-Use Facility. The Variable Attendance Surcharge shall be as follows:

(i) No Variable Attendance Surcharge for the first 20,000 attendees.

(ii) A Variable Attendance Surcharge of fifty cents (\$0.50) per attendee for the next 100,000 attendees.

(iii) A Variable Attendance Surcharge of one dollar (\$1.00) per attendee for the next 100,000 attendees.

(iv) A Variable Attendance Surcharge of two dollars (\$2.00) per attendee in excess of 220,000 attendees.

The Variable Attendance Surcharge for each Baseball Season shall be paid to CMPA within sixty (60) days after the end of such Baseball Season. The Variable Attendance Surcharge may, in NFPB's discretion, be separately charged and identified on each ticket as a "City/CMPA--surcharge," "attendance surcharge," or other identifying language. In no event shall the total Variable Attendance Surcharge due the CMPA be less than \$125,000.00 in any of the first ten (10) years of the term of this Agreement.

NFPB shall provide attendance and ticket sales reports to CMPA monthly or less frequently in order to coincide with the delivery of such information to the League.

No later than every three years, the parties agree to meet and review the sufficiency of the Variable Attendance Surcharge. The parties agree to use their best efforts to amend said Variable Attendance Surcharge as necessary and mutually agreeable.

## 7. PARKING.

(a) NFPB Reserved Spaces. During the Baseball Season, CMPA shall provide to NFPB at no cost (i) up to One Hundred (100) "best location" parking spaces adjacent to the Multi-Use Facility inside the Park for the Players/Coaches and their Families, Front Office Staff, Media, Scouts, Professional Baseball Officials, Team Guests, and the Visiting Team; plus up to an additional fifty (50) spaces for Event Staff located within the park or within the parking lot of Pensacola City Hall--these parking spaces are not subject to re-sale by NFPB, (ii) a minimum of Sixty (60) "best location" parking spaces within the Park, and adjacent to the Multi-Use Facility; or within the parking lot of Pensacola City Hall, on days where there is not a Club Home Game--these parking spaces are not subject to re-sale by NFPB. During the Off-Season, and at all times when the NFPB staff is present at the Multi-Use Facility CMPA shall provide to NFPB at no cost a minimum of Thirty (30) "best location" parking spaces in the Park adjacent to the Multi-Use Facility--these parking spaces are not subject to re-sale by NFPB. The foregoing spaces are referred to herein as the "NFPB Reserved Parking Spaces." CMPA hereby grants to NFPB an exclusive license and right to use such NFPB Reserved Parking Spaces during the term of this Agreement. NFPB shall have the right to use, and license or otherwise authorize others (including, but not limited to, its employees, baseball players, guests, ticket holders and other Multi-Use Facility attendees, and other invitees) to use, the NFPB Reserved Parking Spaces. In no event shall the spaces allocated to NFPB impede or encumber any spaces set aside for handicapped, disabled, or physically challenged individuals.

(b) Other Parking. On non-Club Home Games days during the Baseball Season, the CMPA shall provide parking spaces at no cost to NFPB sufficient for its employees and players; however, from day to day, such spaces may not be in as close proximity to the Multi-Use Facility if other Community Events are scheduled at the Park.

(c) General Public Parking. Subject to the additional requirements of Section 11(a)(ii) below, CMPA shall provide a parking plan for general public parking for all Club Home Games on a 3:1 seats (1 space for every three seats)(including lawn seating and based on Multi-Use Facility capacity) to spaces ratio (or such other amount as may be required per League rules or applicable laws) within a ten (10) minute walk of the primary Multi-Use Facility entrance. Such parking that is located within the Park is hereinafter referred to as the "General Public Parking Spaces." CMPA and or its agents shall be solely responsible for the cost of constructing, maintaining, and repairing all parking lots (including, but not limited to, the cost of any liability insurance relating thereto) and for all traffic control of public streets ancillary thereto.

## 8. REVENUE STREAMS.

8.1 Club Home Games and NFPB Events. NFPB shall be entitled to all revenue streams, now known or hereafter devised, in connection with its use and operation of the Multi-Use Facility for Club Home Games and NFPB Events except as otherwise provided herein. Without limiting the foregoing, the following provisions more specifically address certain revenue streams:

### (a) Ticket Sales.

(i) Tickets. NFPB, in its sole discretion, shall set ticket prices and entry fees for all Club Home Games and NFPB Events, including, without limitation, all season tickets and Special Seating tickets. NFPB shall be entitled to receive all revenue collected for all tickets for all such events except as otherwise provided

herein. NFPB shall also be entitled to charge admission, participation and related fees and charges in connection with the operation of any other activities at the Multi-Use Facility related to Club Home Games and NFPB Events. NFPB shall have the sole and exclusive jurisdiction to provide complimentary tickets and Special Seating and related benefits to third parties, as well as to utilize tickets and Special Seating and related benefits for its own business, League and management use.

(II) Special Seating. For all Club Home Games and NFPB Events, NFPB may license, sub-lease or grant other use rights with respect to Special Seating for a term not to exceed the Term of this Agreement, and any options to renew, or extensions thereof must coincide with any renewals exercised by NFPB under the Agreement. NFPB, in its sole discretion, shall set prices for the license, sub-lease, or use of all Special Seating, including but not limited to Special Seating for all Club Home Games and NFPB events at the Multi-Use Facility. NFPB shall be entitled to receive and retain one hundred percent (100%) of all revenues from the license, sub-lease or other use rights of such Special Seating. CMPA shall have the right, in its sole discretion, to set prices and receive revenues for the license, sub-lease, or use of all Special Seating at Community Events.

(b) Concessions. NFPB shall have the exclusive right to retain all revenues derived from all concession items sold during Club Home Games and NFPB Events, including, but not limited to, all foods, beverages (alcoholic and non-alcoholic), scorecards, programs, yearbooks, hats, jerseys, t-shirts, souvenirs, other apparel and merchandise, as well as any interactive games, video games, batting or pitching cages and other entertainment oriented retail or food service item, including any event-related activities scheduled by NFPB. NFPB agrees to set aside space within its retail facilities for CMPA/City of Pensacola related souvenirs, apparel and merchandise with NFPB remitting the sales proceeds (net applicable sales tax) of any such merchandise to CMPA.

(c) Advertising/Signage. Except in connection with advertising, signage, promotions or sponsorships sold in connection with a particular Community Event in accordance with Section 8.2(d) below, NFPB shall have the exclusive right to retain all revenues from all sources and all events derived from advertising, signage, promotions or sponsorships in or on the Multi-Use Facility, whether such advertising, signage, promotions or sponsorships include and apply to the Baseball Season and/or the Off-Season. For advertising and signage relating to the Multi-Use Facility that is located outside of the Multi-Use Facility, whether in other areas of the Park or outside of the Park altogether, NFPB retain eighty percent (80%) of all revenues and CMPA shall retain twenty percent (20%) of all revenues from all sources related to such advertising and signage.

(d) Media Rights. NFPB shall have the exclusive right to exploit all radio and television broadcast, telecast, webcast, cablecast, video on demand and all other forms of media and distribution rights whatsoever of all Club Home Games and NFPB Events and shall have the exclusive right to retain all revenues which may be generated thereby. NFPB shall exercise its right to distribute such events via all forms of media at such times and in such a manner as it shall consider appropriate.

(e) Rental Space. NFPB shall have the exclusive right to retain all revenues derived from the leasing, subleasing, or licensing of permanent Rental Space within the exterior drip line of the Multi-Use Facility as well as any temporary kiosks maintained from time to time during Club Home Games and NFPB Events. NFPB is responsible for the final build out of the two permanent Rental Spaces accessible from the

exterior of the Multi-Use Facility.

(f) All Other Revenues. NFPB shall be entitled to any other monies or revenues generated pursuant to other revenue streams not described above derived from the use of the Multi-Use Facility for Club Home Games and NFPB Events except as otherwise provided herein.

8.2 Community Events - Revenues. Except as provided in Sections 8.2 (a), (b) and (c) below, CMPA shall be entitled to all revenue streams, now known or hereafter devised, in connection with its use and operation of the Multi-Use Facility for Community Events. Without limiting the foregoing, the following provisions more specifically address certain revenue streams:

(a) Ticket Sales. CMPA, acting through the CMPA Manager, shall set ticket prices and entry fees for all Community Events organized and planned by CMPA. CMPA shall be entitled to receive all revenue collected for all tickets for Community Events organized and planned by CMPA. CMPA shall also be entitled to charge admission, participation and related fees and charges in connection with the operation of any other activities at the Multi-Use Facility related to Community Events organized and planned by CMPA. CMPA shall have the sole and exclusive jurisdiction to provide complimentary tickets and Special Seating and related benefits to third-parties for Community Events organized and planned by CMPA, as well as to utilize tickets and Special Seating and related benefits for its own during Community Events organized and planned by CMPA. CMPA shall also charge the Variable Ticket Sales Surcharge on the sale of each ticket for a Community Event. In addition, NFPB or its contractor, as the manager of ticket sales, shall be entitled to charge a reasonable ticket surcharge for each ticket sold.

(b) Parking. CMPA shall retain one hundred percent (100%) of all gross revenues derived from the license or other use of General Public Parking Spaces in connection with Club Home Games, NFPB Events, and Community Events.

(c) Concessions. As provided in Section 11(a)(e) below NFPB shall be responsible for contracting with a concessionaire for all events at the Multi-Use Facility, including Community Events. Any such contract shall provide that CMPA shall be entitled to receive (i) twenty-five percent 25% of all gross revenues collected for food and beverage concessions (including alcoholic and non-alcoholic drinks) for Community Events, less a deduction for applicable taxes; and (ii) in the event CMPA engages its own concessionaire for non-food and beverage concessions (such as programs, yearbooks, hats, jerseys, t-shirts, souvenirs, other apparel and merchandise) for Community Events, CMPA shall be entitled to retain one hundred percent (100%) of all gross revenues collected for non-food and beverage concessions during such Community Events. On days other than Club Home Games and NFPB Events, CMPA may utilize third-party concessionaires or temporary "food trucks" to service Community Events (i.e., festivals, concerts, etc.) and/or park activities.

(d) Advertising/Signage. CMPA shall be entitled to receive all revenues from the sale of advertising, signage, promotions or sponsorships applicable to a specific Community Event. It is expressly understood and agreed, however, that, pursuant to Section 11(a)(f) below, NFPB is the exclusive manager and operator of advertising, signage, promotions or sponsorships for the Multi-Use Facility and, accordingly, has the exclusive right to accept or deny any proposed advertising, signage, promotions or sponsorships for a specific Community Event. Denial may be based on, among other things, conflicts with exclusive advertising rights granted to advertisers by NFPB. Approval of such advertising shall not be unreasonably withheld by NFPB.

(e) Media Rights. CMPA shall have the exclusive right to exploit all radio and television broadcast, telecast, webcast, cablecast, video on demand and all other forms of media and distribution rights whatsoever of all Community Events and shall retain all revenues which may be generated thereby. CMPA shall exercise its right to distribute such events via all forms of media at such times and in such a manner as it shall consider appropriate.

(f) Temporary Rental Space. CMPA shall have the exclusive right to retain all revenues derived from the leasing, subleasing, or licensing of temporary non-food service kiosks maintained from time to time during Community Events.

(g) All Other Revenues. CMPA shall be entitled to any other monies or revenues generated pursuant to other revenue streams not described above derived from the use of the Multi-Use Facility for Community Events.

8.3 Naming Rights. NFPB shall have the exclusive power and authority from time to time during the Term to designate the official name and/or designate a naming sponsor of the Multi-Use Facility as well as the Baseball Field, subject to CMPA's prior review and approval, which approval shall not be unreasonably withheld (the "Naming Rights"). NFPB shall apply community standards to such Naming Rights. NFPB may sell or license such Naming Rights to a third-party purchaser thereof (a "Naming Rights Purchaser"). After payment to NFPB for the NFPB Actual costs and Contribution to any package sold to a Naming Rights Purchaser, fifty percent (50%) of all revenues generated from the Naming Rights shall be retained by NFPB and fifty percent (50%) of all revenues generated from the Naming Rights shall be retained by CMPA. NFPB and CMPA acknowledge and agree the first priority of the Naming Rights to all other sponsorship and advertising relationships. NFPB agrees to reasonably cooperate with CMPA regarding NFPB's sale of the Naming Rights to a Naming Rights Purchaser, including the packaging of inventory as hereinafter defined for the Naming Rights Purchaser to maximize the value of such Naming Rights, utilize the name of the Naming Rights Purchaser where permitted and required, and the parties further agree to immediately implement the provisions in this Section 8.3. NFPB agrees to offer the Naming Rights Purchaser all additional rights and privileges at rates and terms no less favorable than those offered to other sponsors and advertisers pursuant to NFPB's established rates schedule. The elements to be provided by NFPB to the Naming Rights Purchaser shall include but not be limited to (subject to availability not to be unreasonably withheld), event advertising, letterhead, business cards, website, media releases, broadcasts and PA announcements, stadium personnel uniforms or name badges, sales materials, brochures, newsletters, game tickets, programs, parking passes, and pocket schedules. Certain commercial rights inventories shall be included in the Naming Rights package as offered by NFPB as to be provided by NFPB. NFPB shall make available to Naming Rights Purchaser the inventory items or, if not available because of pre-sale or other purchaser request requirements, an equivalent amount of agreed upon alternative inventory, i.e. advertising, signage or promotion vehicles. All inventory shall be priced at the standard, average price NFPB receives for each inventory component as advertised in NFPB's then current rate schedules and deducted from the proceeds paid by any Naming Rights Purchaser before any distributions of Naming Rights Revenue to NFPB or CMPA.

(a) Category Exclusivity. In the event the parties elect to sell any Naming Rights to a category competitive firm thereby requiring NFPB to terminate a sponsorship or advertising relationship, the parties shall proportionally share any actual loss sustained by NFPB including all losses sustained by NFPB as a result of consequential legal actions

Including reasonable legal fees. This provision shall include any equipment or other expenditure or investments that were made in accordance with the cancelled advertising agreement.

Certain Items of NFPB Inventory may be required to be packaged for a Naming Rights Purchaser in connection with the sale of such Naming Rights. It is understood that any Items Included in a Naming Rights sale shall be deemed a cost to NFPB and therefore reimbursed to NFPB at standard rates before distribution of any Naming Rights revenue. NFPB shall fully cooperate with CMPA as to restrictions, exclusivity requirements, and all other components of the Naming Rights package.

9. **EQUIPMENT.** CMPA shall at its sole cost and expense purchase, keep at the Multi-Use Facility, and allow NFPB and its agents, contractors, or designees to use (i) such mowing, landscaping, and other equipment as is necessary maintain the baseball playing surface in the Multi-Use Facility in accordance with League standards and to otherwise maintain the landscaped areas of the Multi-Use Facility, (ii) ovens, refrigerators, and other kitchen equipment as is necessary to operate the concession areas necessary to service Club Home Games and NFPB Events, and (iii) such other items of furniture, fixtures and equipment listed on Exhibit C attached hereto and incorporated herein.

(a) Repair and Replacement. CMPA agrees to repair and replace any fixtures to the facility. NFPB shall bear the responsibility to repair and replace equipment and furniture that it is permitted to utilize per this Agreement. The parties agree that the total budget for acquisition of all items listed on Exhibit C shall be \$2,150,000.00 and that CMPA shall acquire NFPB's approval of FF&E purchases to ensure such items are appropriate for the intended use and comports with all League specifications. CMPA shall have no obligation to fund FF&E purchases beyond \$2,150,000.00.

10. **UTILITIES.** CMPA shall provide or cause to be provided to the Multi-Use Facility hot and cold domestic water, electricity, gas, sewage, field and grounds irrigation and drainage, and similar services, and other utilities necessary for the use, operation, and management of the Multi-Use Facility as contemplated herein (including, without limitation, such utilities for lighting, scoreboard, and equipment for night baseball games). CMPA shall pay all of the invoices for all utilities except telephone, cable and Internet service, when and as they become due. NFPB shall pay all of the invoices for telephone, cable and Internet service.

#### 11. MANAGEMENT AND MAINTENANCE OF THE MULTI-USE FACILITY

(a) Management of the Multi-Use Facility by NFPB. As additional consideration for its non-exclusive use of the Multi-Use Facility, NFPB shall have the right and obligation to operate and manage the Multi-Use Facility, on the following terms and conditions:

(b) Tickets. NFPB and/or its agents, contractors, or designees shall have the exclusive right to operate the ticket office for all events at the Multi-Use Facility, including Club Home Games, NFPB Events, and Community Events. For each Community Event, NFPB shall upon request provide to CMPA a cost schedule for NFPB to furnish and provide ticket services for such Community Event, which cost schedule shall include the actual variable cost of such services. CMPA shall pay NFPB for the costs associated with each Community Event within thirty (30) days of delivery of an invoice therefor. In the event that CMPA fails to timely pay such invoice, NFPB shall have the right to offset the

amount due against the Use Fee due hereunder by deducting such amount from the next and any subsequent Installment(s) of Use Fee until such amount has been paid in full.

(c) Parking. CMPA shall at its sole cost and expense maintain, repair, replace and operate the NFPB Reserved Parking and the General Public Parking Spaces. CMPA shall open and operate the parking facilities for Club Home Games and NFPB Events at least one and one-half (1.5) hours prior to the starting time of the applicable event and shall be kept open and staffed with an adequate number of parking lot attendants for at least one (1) hour after each such event has been concluded. The following shall be applicable for Club Home Games and NFPB Events:

(d) Parking Attendants. CMPA shall at its sole cost and expense retain, employ, manage, and compensate a suitable number of parking lot attendants to facilitate (i) the orderly parking of cars; (ii) handling security in the lots; (iii) safe pedestrian traffic to and from the Multi-Use Facility; and, (iv) the orderly departure of vehicles from the parking lot at the conclusion of the event.

(e) Concessions. NFPB and/or its agents, contractors, or designees shall be the exclusive food and beverage (including alcoholic and non-alcoholic drinks) concessionaires at all events held in and at the Multi-Use Facility, including Club Home Games, NFPB Events, and Community Events. NFPB and/or its agents, contractors, or designees shall also be the exclusive concessionaires at all Club Home Games and NFPB Events for other concession items, including, but not be limited to, in NFPB's sole discretion, all scorecards, programs, yearbooks, hats, jerseys, t-shirts, souvenirs, other apparel and merchandise, as well as any interactive games, video games, batting or pitching cages and other entertainment oriented retail or food service item, including any event-related activities scheduled by NFPB. NFPB shall consult with CMPA regarding its concessions and concession pricing for all Community Events and CMPA must review and approve the menu of concessions for Community Events; however, such approval shall not be unreasonably withheld. CMPA and/or its agents, contractors, or designees shall be the exclusive concessionaires at all Community Events for non-food and non-beverage concession items, including, but not be limited to, programs, yearbooks, hats, jerseys, t-shirts, souvenirs, other apparel and merchandise. NFPB's rights hereunder shall include, without limitation, the exclusive right to vend concession and novelty items from permanent units located at the Multi-Use Facility. Unless otherwise agreed to by NFPB, CMPA agrees to deny any other person or entity the right to sell concessions, novelty, food and beverage, and retail items (a) in the Multi-Use Facility, and (b) in the other public areas of the Park outside the dripline of the Multi-Use Facility with respect to sales by or from independent vendors, trucks, push and motorized carts, and other temporary vendors on all Club Home Game days and NFPB Event days. Unless otherwise agreed to by the parties, CMPA and Team mutually agree that this prohibition does not apply to permanent private development on the Maritime Park property and previously scheduled events in the park or amphitheatre, including, but not limited to festivals and concerts. NFPB may utilize other public areas of the Park for temporary concessions during its Club Home Games and NFPB Events as mutually agreed upon. NFPB may assign any or all of its exclusive rights to sell concessions to third parties as NFPB determine in its sole discretion.

(f) Advertising/Signage. NFPB and/or its agents, contractors, or designees shall have the exclusive right and obligation to manage and operate commercial, signage, advertising and sponsorship material, banners, and the related items, both temporary and permanent, on or in the Multi-Use Facility, including, without limitation, on

the outfield fences, interior and exterior walls, NFPB Reserved Parking Spaces, marquee or matrix signs, and Multi-Use Facility grounds and fencing, billboards, pedestrian walkways, entrances, exits, pavilions and other public gathering places, as well as any electronic or other advertising and signage relating to the Multi-Use Facility that is located on or inside of the Multi-Use Facility, for the purpose of (a) promoting NFPB, the Club, Club Home Games and NFPB Events and/or the Multi-Use Facility, (b) advertising, marketing and promoting third party products and services, (c) designating or associating certain areas of the Multi-Use Facility with third party products and services, and/or (d) decorating or otherwise enhancing the Multi-Use Facility. NFPB shall have the right to include any third party advertising, marketing and promotion in and on any publications (including programs and scorecards) which may be sold at the Multi-Use Facility. Subject to the written consent of NFPB, which consent shall not be unreasonably withheld, CMPA shall have the right to install and display temporary signage, advertising and sponsorship material, banners, and the related items, for specific Community Events on the day of such Community Event, provided that (i) in no event shall any of the signage, advertising and sponsorship material, banners, and the related items installed by NFPB be removed, obstructed, or damaged, and (ii) CMPA shall remove its temporary signage, advertising and sponsorship material, banners, and the related items immediately following the conclusion of the Community Event. NFPB agrees that no signage and/or advertising affixed to the Multi-Use Facility shall advertise, promote, contain, depict or suggest illegal activity, sexually suggestive conduct and/or obscene or pornographic materials, or otherwise be inconsistent with the best interests of the residents of the City as reasonably determined by CMPA. All advertising shall conform to all laws, including without limitation City Ordinances regulating advertising.

(g) Media. NFPB shall have the exclusive right and obligation to manage and operate the scoreboard, audio-visual equipment, sound equipment, security equipment, and other electronic equipment within the Multi-Use Facility. For each Community Event, NFPB shall upon request provide to CMPA a cost schedule for NFPB to furnish and provide these services for Community Events, which cost schedule shall include the actual variable cost of such services. CMPA shall pay NFPB for the costs associated with each Community Event within thirty (30) days of delivery of an invoice therefor. In the event that CMPA fails to timely pay such invoice, NFPB shall have the right to offset the amount due against the Use Fee due hereunder by deducting such amount from the next and any subsequent installment(s) of Use Fee until such amount has been paid in full.

(h) Security/Usher Services/Traffic Control. NFPB shall have the exclusive right and obligation to manage and operate security and ushering services sufficient to control pedestrian traffic within the Multi-Use Facility for Club Home Games and NFPB Events. For Community Events, NFPB shall upon request provide to CMPA a cost schedule for NFPB to furnish and provide these services for Community Events, which cost schedule shall include the actual variable cost of such services. CMPA shall pay NFPB for the costs associated with each Community Event within thirty (30) days of delivery of an invoice therefor. In the event that CMPA fails to timely pay such invoice, NFPB shall have the right to offset the amount due against the Use Fee due hereunder by deducting such amount from the next and any subsequent installment(s) of Use Fee until such amount has been paid in full. CMPA shall have the exclusive right and obligation, at its sole cost and expense, to manage and operate security and traffic control services sufficient to control vehicular and pedestrian traffic outside of the dripline of the Multi-Use Facility, both in other areas of the Park (including, but not limited to, with respect to the NFPB Reserved Parking Spaces and the General Public Parking Spaces) and outside of the Park, for Club Home Games, NFPB Events, and Community Events.

(i) Set-Up and Clean-Up for Club Home Games. NFPB shall have the exclusive right and obligation to manage and operate and shall, at its sole cost and expense, clean, the Multi-Use Facility and keep it in an orderly condition before and after each Club Home Game and NFPB Event, including: (a) providing personnel and supplies for cleanup of field, seating, concession stands, grounds and parking, (b) cleaning and routine maintenance of the seats, (c) removing refuse from the field, (d) removal and disposal of rubbish, trash, and garbage within the Multi-Use Facility, (d) keeping public lavatories and other restroom fixtures clean and adequately supplied, (e) cleaning and routine maintenance of the NFPB Offices, Special Seating areas, retail areas, ticket and concessions areas, clubhouses and locker rooms.

(j) Set-Up and Clean-Up for Community Events. At the request of the CMPA, NFPB may manage and operate and clean the Multi-Use Facility and keep it in an orderly condition before and after each Community Event, including: (a) providing personnel and supplies for cleanup of field, seating, concession stands, grounds and parking, (b) cleaning and routine maintenance of the seats, (c) removing refuse from the field, (d) removal and disposal of rubbish, trash, and garbage within the Multi-Use Facility, and (e) keeping public lavatories and other restroom fixtures clean and adequately supplied. NFPB shall upon request provide to CMPA a cost schedule for NFPB to furnish and provide these services for Community Events, which cost schedule shall include the actual variable cost of such services. CMPA shall pay NFPB for the costs associated with each Community Event within thirty (30) days of delivery of an invoice therefor. In the event that CMPA fails to timely pay such invoice, NFPB shall have the right to offset the amount due against the Use Fee due hereunder by deducting such amount from the next and any subsequent installment(s) of Use Fee until such amount has been paid in full.

(k) Rental Space. NFPB shall have the exclusive right and obligation to manage and the permanent Rental Spaces including, but not limited to, locating prospective tenants, negotiating and executing leases, subleases, and licensing agreements in its name, and funding any build-out improvements or other concessions in accordance with any leases, subleases, and licensing agreements.

(l) Routine Maintenance by NFPB. In addition to NFPB's obligations under Section 11(a) above, during both the Baseball Season and the Off-Season, NFPB shall be responsible at its sole cost and expense (including, but not limited to, providing personnel, supplies, and equipment) for all routine maintenance of the Multi-Use Facility, including, but not limited to:

(i) Mowing, fertilizing, seeding, reseeding, watering, removing refuse, and otherwise maintaining the baseball playing surface in accordance with League standards;

(ii) Cleanup of seating, concession areas and NFPB Reserved Parking Spaces, removal and disposal of rubbish, trash, and garbage within the Multi-Use Facility, and routine maintenance of seats in the Multi-Use Facility in accordance with League standards;

(iii) Regular and routine maintenance of the HVAC, plumbing, electrical, water, sewage, and field drainage systems in accordance with League standards;

(iv) Replace interior light bulbs as they burn out or need replacement;

(v) Repair and maintain all equipment related to concessions and landscaping at the Multi-Use Facility in accordance with League standards; and

(vi) Keep public lavatories and other restroom fixtures clean and adequately supplied in accordance with League standards.

(vii) Keep and maintain the scoreboard and A/V system in good working order in accordance with League standards.

(viii) Keep, maintain, repair and replace any and all televisions installed throughout the facility in accordance with League standards.

12. CAPITAL MAINTENANCE AND REPAIR. Except as expressly provided in Section 11(b) above, CMPA shall be responsible at its sole cost and expense to maintain, repair, restore, and replace all aspects of the Multi-Use Facility ("Capital Maintenance and Repair"). Without limiting the generality of the foregoing, CMPA's responsibilities for Capital Maintenance and Repair shall include, without limitation, the structure, structural members, foundations, footings, roof, balconies, floors, subfloors, piers, columns, steps, ramps, doors, windows, walls, columns, towers, poles, wires, conduits, seats, seating areas, concession areas, restaurant areas, decks and other Special Seating, hallways, playing field (exclusive of routine maintenance), pest control (under an annual or periodic contract), elevators and escalators (including, but not limited to, the cost of annual or periodic maintenance contracts), boilers, air conditioning, ventilating and heating systems (HVAC) (including, but not limited to, the cost of annual or periodic maintenance contracts), water and plumbing systems (including lavatories and restroom fixtures), electrical systems and electrical lighting (including light standards but excluding light bulb replacement), scoreboard, transformers, water, sewer and gas connections, pipes and mains, plaza, grounds, sidewalks, fencing, loading areas, parking surfaces (including paving, sealing, striping and lighting), all fixtures (other than concession equipment), the scoreboard, sound system, public address system, video boards and all integral components of the foregoing. Such maintenance and repair responsibilities of CMPA shall apply whether the maintenance or repair is ordinary or extraordinary, foreseen or unforeseen, necessitated by wear, tear, obsolescence, or any other cause except that damage requiring repair that is caused by the intentional acts or gross negligence of NFPB. Examples of Capital Maintenance and Repair for which CMPA shall be responsible include, without limitation, the following:

(a) Replace and/or refurbish and/or overhaul of HVAC, plumbing, electrical, water and sewerage, security (fire and theft) systems (including, without limitation, fire pumps and motors, wet and dry sprinkler distribution piping and sprinkler heads and alarm systems), and all concessions fixtures and equipment provided by CMPA (including but not limited to: exhaust vents, electrical hook-ups, counters, countertops, roll-down doors, plumbing and sinks, and lighting).

(b) Repair and/or replace cracked and/or disintegrated concrete spalling, traffic coatings, broken pipes floor drains, traps and associated piping and/or leaking roofs and/or ceilings and/or sections thereof.

(c) Replace both isolated and entire sections of seats and seat standards, filligrees and cup holders, and integral components thereof including all replacement parts.

(d) Paint and reapply all paint and/or protective materials on all surfaces of the Multi-Use Facility, including, without limitation, restrooms and any other areas to

which the public has access, as well as the recoating and repainting of all portions of the exposed steel structure as needed.

(e) Repair and replace all walls and fencing, including the outfield wall, interior walls, and other exterior and perimeter chain link and other fencing exclusive of that portion of the fence or wall used for advertising purposes.

(f) Repair and replace the scoreboard.

(g) Repairs due to electrical failures or short circuits in risers, panels, disconnects, transformers, circuit boards, main switches and overload protection and control hardware.

(h) Maintain any asphalt, gravel and other automobile and footpath surfaces on the Multi-Use Facility.

(i) A periodic structural review of the Multi-Use Facility every five (5) years to ensure that the Multi-Use Facility maintains its structural integrity in compliance with all applicable laws, codes and regulations.

(j) Elevator operational, safety and performance upgrades required by code changes.

(k) Replacement of carpeting in the office and administrative areas as needed during the operation of the Multi-Use Facility. It is understood that NFPB shall be responsible for replacing carpet in the locker room and Team areas.

(l) Replace field lighting lamps and ballast.

13. PERFORMANCE OF CAPITAL MAINTENANCE AND REPAIRS. CMPA shall keep the structural, mechanical, electrical, and plumbing improvements of the Multi-Use Facility in reasonable repair. Such work may be performed by CMPA employees or other licensed contractors and subcontractors, it being the objective of the parties that such work be completed in an economical and efficient manner, consistent with the nature and quality of the Multi-Use Facility, and in accordance with all applicable federal, state and local laws, ordinances and regulations. NFPB shall not be responsible in any way for paying for any items involving Capital Maintenance and Repairs unless such repair is due to intentional acts or gross negligence of NFPB or its contractors, agents or invitees. Any Capital Maintenance and Repair necessitated by an Emergency shall not require prior approval of CMPA and NFPB may, at its option, undertake to make such Emergency Capital Maintenance and Repair; provided, however, that NFPB shall immediately contact CMPA in the event of an Emergency and provide CMPA with all pertinent information pertaining thereto that CMPA may reasonably request. CMPA shall reimburse NFPB for the necessary and reasonable cost and expense of any Emergency Capital Maintenance and Repairs. In the event that CMPA fails to timely pay such invoice, NFPB shall have the right to offset the amount due against the Use Fee due hereunder by deducting such amount from the next and any subsequent installment(s) of Use Fee until such amount has been paid in full.

#### 14. CAPITAL MAINTENANCE FUND.

(a) Funding. CMPA shall maintain a capital maintenance trust fund for Capital Maintenance and Repairs for the Multi-Use Facility and the Maritime Park. The

Capital Maintenance Fund shall be funded by the Variable Ticket Sale Surcharge (the "Capital Maintenance Fund"). The balance required herein for the Capital Maintenance Fund shall not be construed to be a limit of CMPA's financial obligation to provide for Capital Maintenance and Repairs necessary to maintain the Multi-Use Facility during the Term. The Capital Maintenance Fund shall be maintained as a separate fund by CMPA and the amounts in the Capital Maintenance Fund, including all earnings on such amounts, shall be disbursed from time to time solely for the purpose of financing Capital Maintenance and Repairs at the Maritime Park during the Term. Capital Maintenance and Repairs in excess of any funds accumulated in the Capital Maintenance Fund shall remain the responsibility of CMPA and nothing in this subsection shall be construed to relieve CMPA of its obligation to pay for all mutually agreed upon Capital Maintenance and Repairs. CMPA acknowledges that the maintenance of the Capital Maintenance Fund and the use thereof by the parties hereto to ensure that the Multi-Use Facility remains a high quality venue for NFPB baseball is a material inducement to NFPB's decision to enter into this Agreement. Expenditures from Capital Improvement Funds shall be pro-rated by virtue of a mutually agreed upon percentage respecting the Capital Needs of the Park.

(b) Procedure for Use of Capital Maintenance Fund. At least annually, NFPB and CMPA shall perform a walk-through inspection of the Multi-Use Facility in order to determine what Capital Maintenance and Repair items are necessary from time to time. In addition, NFPB may submit requests for expenditure of funds from the Capital Maintenance Fund to CMPA during the Term as necessary including, without limitation, after each periodic structural review as described in Section 12(j). Upon the presentation of supporting documentation for such expenses, CMPA shall approve the expenditure so long as it determines in good faith that the expenditure(s) is a Capital Maintenance and Repair.

#### 15. MULTI-USE FACILITY IMPROVEMENTS.

(a) Discretionary Improvements. Once the Multi-Use Facility is available for NFPB, NFPB shall have the right, from time to time, at its own expense, to make alterations and improvements to the Multi-Use Facility, as shall be reasonably necessary or appropriate, in NFPB's judgment, for NFPB conduct of its business, provided that prior to the commencement of any alteration of any improvement, NFPB shall have provided CMPA with written notice of its plans and specifications and CMPA shall have approved such plans in writing (such approval not to be unreasonably withheld or delayed), and further provided that such alterations or additions do not materially affect the structure or systems or the aesthetic appearance of the Multi-Use Facility or violate any laws, ordinances or regulations. Such alterations or improvements shall be performed in a good and workmanlike manner. Further, any maintenance and/or repairs relating to any such alterations and/or improvements shall remain the sole responsibility of NFPB unless otherwise agreed by CMPA.

16. TERMINATION OF USE. At the termination of this Agreement, NFPB agree to return the Multi-Use Facility to its original or subsequently improved condition, ordinary wear and tear excepted, and to return to CMPA all equipment and personal property owned by CMPA in good working condition, ordinary wear and tear excepted, in each case after inspection of the Multi-Use Facility, which inspection shall be made jointly by CMPA and NFPB. Promptly after such inspection at the termination of any occupancy, NFPB shall have the option to either (i) make any necessary repairs; or (ii) pay CMPA for any damages to the premises or to personal property, ordinary wear and tear excepted, except to the extent said damage was caused by the assigns, agents, affiliates, employees or officers of CMPA.

NFPB shall have the right upon termination of this Agreement, within sixty (60) days thereafter, to remove from the premises all movable property which is not permanently affixed to the structure and which is not owned by CMPA, whether or not such items are deemed movable and whether or not they are permanently affixed to the structure, provided that NFPB repair any damage caused by removal of such items to the reasonable satisfaction of CMPA.

17. TAXES.

(a) Ad Valorem Taxes. It is the understanding of the parties that the Multi-Use Facility (land and improvements) shall be exempt from any and all real property ad valorem taxes throughout the term of the Agreement. However, should all or any part or parts of the Multi-Use Facility become subject to any such taxes by virtue of this Agreement, then the CMPA shall be responsible for payment of the same.

(b) NFPB Taxes. NFPB shall be liable for, and shall indemnify, defend, and hold harmless the CMPA from, any state sales tax on rent and fees paid by NFPB pursuant to this Agreement, and any tangible or personal property taxes for NFPB, and any NFPB income, profit, excise, transfer, revenue, estate, inheritance, gift, devolution, succession or franchise taxes.

(c) Subsequent City Taxes/CMPA Fees. In the event after the Commencement date the City of Pensacola levies or adopts any new taxes, or increases any existing taxes, to which NFPB, its affiliates, or the Team, would be subject ("New City Taxes") or the CMPA creates any new maintenance fee or charge ("CMPA Fees") for which NFPB would be liable, then the Use Fee set forth in Section 6 shall be reduced on a dollar-for-dollar basis by the amount of the New City Taxes or CMPA Fees so paid.

18. OPERATING PERMITS. NFPB shall secure such permits, variances, and licenses as may be necessary or desirable to operate the Multi-Use Facility as is contemplated by this Agreement, and CMPA agrees to render such assistance in connection therewith as NFPB may request.

19. INSURANCE. Each of CMPA and NFPB shall, at all times during the Term, maintain insurance with one or more companies permitted to do business in the State of Florida, as follows:

(a) Workers Compensation. To the extent required by State law, CMPA and NFPB shall maintain Workers' Compensation and Employers Liability Insurance covering their respective employees at the Multi-Use Facility;

(b) General Liability: NFPB. NFPB shall maintain general liability insurance including, bodily injury and property damage coverage, which shall name both CMPA and City of Pensacola as an additional insured and shall have limits for injuries to, or death of, one or more person(s) in any one accident, and for property damage and products and completed operations in the amount of not less than \$1,000,000 per occurrence. Fire Legal Liability must be endorsed on this policy with limits of \$300,000.00 per occurrence. Coverage shall be written on an occurrence type basis.

(c) Umbrella Liability: NFPB. Umbrella Liability Insurance shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence type basis.

(d) General Liability: CMPA. CMPA shall maintain comprehensive general liability insurance including bodily injury and property damage coverage which shall name NFPB as an additional insured and shall have limits for injuries to, or death of, one or more person(s) in any one accident, and for property damage and products and completed operations in the amount of not less than \$1,000,000 per occurrence. Fire Legal Liability must be endorsed on this policy with limits of \$300,000.00 per occurrence. Coverage shall be written on an occurrence type basis.

(e) Umbrella Liability: CMPA. Umbrella Liability Insurance shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence type basis.

(f) Casualty Insurance. The Multi-Use Facility shall at all times be insured by CMPA against loss or damage by fire, lightning, wind, flood, and all other casualties and risks in an amount equal to the full replacement value of the Multi-Use Facility and all other improvements in the Multi-Use Facility. NFPB is responsible for insuring its contents and trade fixtures.

(g) Subrogation. CMPA and NFPB waive all rights of subrogation against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this section or any other property insurance purchased by either party. The parties agreed that for any and all claims arising from the NFPB's use of the multi-use facility, that its insurance coverage shall be primary, and that for any and all claims arising from the use of the facility by others, that the CMPA's insurance shall be primary.

(h) Third-Parties. In the event any third-party or organization utilizes the Multi-Use Facility for any event not otherwise contemplated herein, such third-party and/or organization shall maintain liability insurance in an amount agreed upon by CMPA and NFPB, and any such policy of insurance shall include CMPA and NFPB as additional insureds.

(i) Liquor Liability. NFPB shall maintain or cause its vendor(s) to maintain Liquor Liability Insurance including coverage for bodily injury and property damage arising out of the furnishing of alcoholic beverages. Minimum limits for this coverage are \$1,000,000 each common cause and in the aggregate. The CMPA and the City of Pensacola shall be listed as an Additional Insured.

(j) Insurance Limits. CMPA and NFPB understand and agree that the limits of insurance required herein may become inadequate during the term of this Agreement and may be increased by \$1,000,000 per occurrence at the end of each three-year term of the Agreement by mutual agreement of the parties. CMPA and NFPB agree that the minimum limits for Commercial General Liability shall be increased to a total of \$3,000,000 per occurrence at the end of the first ten-year term of the Agreement, whether such minimum limits previously had been required to have been increased or not.

## 20. INDEMNIFICATION.

(a) NFPB Indemnification Obligations. To the fullest extent permitted by law, NFPB shall indemnify, defend and hold harmless CMPA and the City from and against any and all claims, damages, liabilities, losses or expenses, including without limitation court costs and reasonable attorneys' fees, caused by, resulting from or arising out of (i) the performance of the duties and obligations of NFPB pursuant to this Agreement; (ii) any negligent or grossly negligent action, inaction, omission or intentional misconduct by NFPB;

(iii) any conduct or activities of NFPB which violates any applicable state or local law, rule, regulation or ordinance; and/or (iv) any misrepresentation, breach or alleged breach of any of obligations, representations or warranties contained in this Agreement by NFPB. Notwithstanding any language to the contrary, this Indemnification is limited in scope and dollar limits to the insurance coverage actually maintained by the NFPB provided that the NFPB maintains at least the minimum coverages required by this Agreement and names the CMPA as an additional insured.

(b) CMPA Indemnification Obligations. To the fullest extent permitted by law, CMPA shall indemnify, defend and hold harmless NFPB from and against any and all claims, damages, liabilities, losses or expenses, including without limitation court costs and reasonable attorneys' fees, caused by, resulting from or arising out of (i) the performance of the duties and obligations of CMPA pursuant to this Agreement; (ii) any negligent or grossly negligent action, inaction, omission or intentional misconduct by CMPA; (iii) any conduct or activities of CMPA which violates any applicable state or local law, rule, regulation or ordinance; and/or (iv) any misrepresentation, breach or alleged breach of any of obligations, representations or warranties contained in this Agreement by CMPA. Notwithstanding any language to the contrary, this Indemnification is limited in scope and dollar limits to the insurance coverage actually maintained by the CMPA provided that the CMPA maintains at least the minimum coverages required by this Agreement and names the NFPB as an additional insured. The CMPA shall have the option of self insuring under the City's Insurance program and, in such event, the limitations of this paragraph shall remain the same as if a third-party insurance policy was in force.

21. LIMITATION OF LIABILITY. Except for the indemnification obligations of each party listed in Section 20 above, in no event shall any party be liable for incidental, special, consequential or punitive damages suffered by a party and each party shall in all events seek to mitigate its damages to the extent required by law.

22. DEFAULT; REMEDIES.

(a) Default. If any party hereto (the "Defaulting Party") shall breach or fail to perform any of its obligations under this Agreement, then the party not in default (the "Non-Defaulting Party") shall provide written notice of such failure or breach to the Defaulting Party and afford the Defaulting Party a grace period to cure said breach or failure, as follows:

(b) Grace Period. Where a grace period is specifically provided for in any Section of this Agreement, then the specific grace period shall apply.

(c) Cure Period. Where a grace period is not specifically provided for in any other Section of this Agreement, the Defaulting Party shall afford the Non-Defaulting Party a grace period of: (i) five (5) business days to cure any monetary failure or breach; and (ii) thirty (30) days to cure any non-monetary failure or breach; provided, however, that if any non-monetary failure or breach cannot be cured within such thirty (30) day period, the Defaulting Party shall be afforded such additional time as shall be reasonably required to cure such failure or breach, so long as the Defaulting Party has commenced the appropriate cure within said initial thirty (30) day period and thereafter proceeds with reasonable diligence to cure said breach or failure to completion. Notwithstanding the foregoing, the Defaulting Party must complete the cure of a non-monetary breach or failure within one hundred fifty (150) days.

(d) Failure to Cure. If any breach or failure to perform shall not have been cured by the expiration of the applicable grace period set forth above, then a "Default" shall be deemed to have occurred and the Non-Defaulting Party shall have the rights and remedies set forth herein.

(e) Non-Defaulting Party's Rights and Remedies. If a Default shall occur, the Non-Defaulting Party shall have the following remedies and rights (but not the obligation), including but not limited to:

(f) Right to Cure. To cure such Default on behalf of the Defaulting Party (whether by entry onto the Multi-Use Facility, performance of the required act, or the payment of monies due), in which event the Defaulting Party shall immediately reimburse the Non-Defaulting Party for all sums paid by it to effect such cure, together with interest thereon at the rate of 12% per annum; and

(g) Suit for Damages. An action to recover monies then due and owing from the Defaulting party, together with interest thereon at the Florida statutory rate of interest from the date on which such monies were due; and

(h) Actual Losses. An action for recovery of all actual losses incurred by the Non-Defaulting Party in connection with the Default; and

(i) Termination of Agreement. Termination of this Agreement, in which event all sums due through the remainder of the Term from the Defaulting Party may be accelerated and due and payable to the Non-Defaulting Party; and

(j) Available Remedies. Any other rights or remedies available at law or equity.

(k) Cumulative Rights. The remedies heretofore described in this Section 22 shall be in addition to any other rights or remedies the Non-Defaulting Party may have in this Agreement, at law, equity, or otherwise in the event of a Default, and the exercise of one or more rights or remedies shall not be deemed to exclude or waive the right to exercise any other right or remedy.

23. TIME IS OF THE ESSENCE. In all matters concerning or affecting this Agreement, time is of the essence.

24. QUIET USE AND ENJOYMENT/BUILDING RESTRICTIONS. During NFPB's use and occupancy of the Multi-Use Facility under this Agreement, NFPB shall have and be entitled to the quiet enjoyment with respect to the use and occupancy of the Multi-Use Facility and the privileges herein granted without interruption or interference by any person including, specifically, CMPA, and CMPA shall defend NFPB in such peaceful and quiet use and possession against the claims of all persons claiming by, through or under CMPA, except to the extent that certain rights to use the Multi-Use Facility, or any portion of it, may be reserved to CMPA for Community Events in accordance with this Agreement. There shall be no use of personal property owned or controlled by NFPB without NFPB prior written consent.

25. FUTURE ACTION. Should the City or any other governmental entity adopt any laws or ordinances that would prevent the Multi-Use Facility from being used by NFPB for its intended purpose; i.e., operating of a AA baseball team, the NFPB shall have the right, upon

the giving of 90 days written notice, to cancel this Agreement without further liability if the ordinance is not rescinded within the first 60 days of that 90 day notice.

26. NUISANCE. NFPB shall not commit or permit any waste on or about the Multi-Use Facility during the term of this Agreement, nor shall to maintain, commit or permit the maintenance or commission of any nuisance inside the dripline of the Multi-Use Facility or use such facilities and improvements for any lawful purposes.

27. DESTRUCTION OF MULTI-USE FACILITY.

(a) Substantial Destruction. In the event the Multi-Use Facility is substantially or totally damaged or destroyed by fire, lightning, flood, wind, or other cause so as to be unfit for occupancy or use by NFPB as contemplated herein, then CMPA shall promptly commence and thereafter diligently proceed to repair and rebuild the Multi-Use Facility (excluding NFPB's personal property) to its condition immediately prior to such substantial damage or destruction, so long as such damage or destruction was not caused by NFPB or its agents, employees, or invitees; provided, however, that if such substantial damage or destruction occurs less than three (3) years prior to the end of the Term, CMPA may elect to terminate this Agreement unless NFPB agrees to extend the Term (whether by renewal or amendment or otherwise) for an additional ten (10) years on the same terms and conditions contained herein. The parties hereto shall find a temporary alternative site acceptable to NFPB and the League that may be utilized until the Multi-Use Facility is repaired or rebuilt, with the cost of using such alternative site being borne solely by CMPA. CMPA shall not be liable to NFPB for any losses arising from such damage or destruction and NFPB shall be responsible for payment of and obtaining any business interruption insurance to protect NFPB against lost revenues in the event the Multi-Use Facility is unavailable due to damage or destruction. During such time as the Multi-Use Facility is unavailable as described in this Section, this Agreement shall be suspended and the obligations of the parties abated until CMPA reconstructs the Multi-Use Facility as provided herein.

(b) Partial Destruction. In the event the Multi-Use Facility is partially damaged or destroyed by fire, lightning, flood, wind, or other cause so as to be unfit for occupancy or use by NFPB as contemplated herein, then CMPA shall promptly commence and thereafter diligently proceed to repair and rebuild the Multi-Use Facility (excluding NFPB's personal property) to its condition immediately prior to such substantial damage or destruction, so long as such damage or destruction was not caused by NFPB or its agents, employees, or invitees. The Use Fee otherwise due and payable to CMPA during the period for which the Multi-Use Facility is untenable shall be reduced on a pro rata and equitable basis, taking into account all relevant factors (including but not limited to the timing of the partial destruction and projected lost revenues). If CMPA fails to substantially complete the necessary repairs or rebuilding within one-hundred eighty (180) days of such partial destruction, NFPB shall have the right, at its election, to either (i) terminate this Agreement by delivering written notice to CMPA, whereupon all rights and obligations under this Agreement shall terminate and be of no further force or effect, or (ii) undertake to make the necessary repairs or rebuilding and deduct the cost thereof (together with interest on amounts advanced at the rate of 12% per annum) from future payments of Use Fees, Variable Ticket Sales Surcharges, and Variable Attendance Surcharges, with CMPA being obligated to reimburse NFPB for any amounts that remain unpaid at the expiration or earlier termination of this Agreement.

28. CONDEMNATION.

(a) Total Taking. In the event the entire Multi-Use Facility is appropriated or taken by any State of Florida or United States public authority pursuant to the power of eminent domain, or sold under threat thereof, then this Agreement shall terminate as of the date the public authority takes title or possession, whichever first occurs. NFPB shall have no claim to the award in condemnation for CMPA's Interest in the Multi-Use Facility; provided, however, that NFPB shall have a claim to the portion of the award that represents compensation for the taking of the Interest of NFPB under this Agreement as well as a claim for disruption or relocation of NFPB's business and for NFPB's property located on the premises.

(b) Partial Taking. In the event that only a portion of the Multi-Use Facility is appropriated or taken by any State of Florida or United States public authority pursuant to the power of eminent domain, or sold under threat thereof, then this Agreement shall terminate as to the part so taken of the date the public authority takes title or possession, whichever first occurs; provided, however, that if so much of the Multi-Use Facility is taken as would materially, substantially, and adversely affect Club Home Games, NFPB shall have the option, to be exercised in writing within sixty (60) days after CMPA shall have given NFPB written notice of the condemnation (or in the absence of such notice, within sixty (60) days after the condemning authority shall have taken possession), to terminate this Agreement as of the date the condemning authority takes possession. If NFPB does not give timely notice to terminate, this Agreement shall remain in full force and effect as to the remainder of the Multi-Use Facility that is suitable for the use then being made of the Multi-Use Facility by NFPB. Whether this Agreement terminates or continues in full force and effect, NFPB shall have no claim to the award in condemnation for CMPA's Interest in the Multi-Use Facility; provided, however, that NFPB shall have a claim to the portion of the award that represents compensation for the taking of the Interest of NFPB under this Agreement as well as a claim for disruption or relocation of NFPB's business and for NFPB's property located on the premises.

29. CLUB NAME/AFFILIATION. During the Term of this Agreement, NFPB shall have the right to name and, from time to time, change the name of the Club, all without CMPA's consent or approval, and all uniforms, programs, scorecards, novelty items, advertising, tickets, and similar items may use the name. CMPA and, by approval of this Agreement, the City, hereby consents to and approves the Club's use of the proper noun "Pensacola" as a part of the Club's name. NFPB shall have the right to obtain such copyright, trademark, and service mark protection for the name of the Club and all derivations thereof for its own account, all of which shall thereupon be the exclusive property of NFPB. NFPB shall have the right to change the affiliation of the Club, the league in which the Club plays, and/or substitute a different baseball team for the Club so long as such new team is affiliated with a Major League or Minor League baseball franchise of the equivalent of AA affiliation or higher.

30. NOTICES. Any and all notices required or permitted to be given hereunder shall be deemed given when actually received, if delivered personally, or upon receipt, if deposited with the U.S. Postal Service, first class postage prepaid, certified or registered mail, return receipt requested and addressed as follows (or at such other place as the party shall designate from time to time in writing):

(a) If to NFPB:

Northwest Florida Professional Baseball, LLC  
41 North Jefferson Street, Suite 300  
Pensacola, Florida 32502

With a copy to: Clark, Partington, Hart, Larry, Bond & Stackhouse  
Attention: Scott A. Remington, Esq.  
Attention: Robert D. Hart, Jr., Esq.  
125 West Roman Street, Suite 800  
Pensacola, Florida 32502

(b) If to CMPA: Community Maritime Park Associates, Inc.  
Attention: Edward E. Spears  
c/o City of Pensacola  
222 West Main Street  
Pensacola, Florida 32502

With a copy to: McDonald, Fleming & Moorehead  
Attn. Edward P. Fleming, Esq.  
25 West Government Street  
Pensacola, Florida 32502

With a copy to: City of Pensacola  
Attn. Pensacola City Attorney  
222 West Main Street  
Pensacola, Florida 32502

31. ASSIGNMENT. Except as hereafter provided, NFPB may not assign, convey, or transfer this Agreement without the written consent of CMPA. Notwithstanding the foregoing, NFPB's interest in this Agreement may be assigned, conveyed, or transferred without the prior consent of CMPA if (i) the Club is sold or ownership is transferred, and such sale, conveyance, or transfer is approved by the League, and a third party purchaser that is awarded the franchise of the Club or of the majority interest therein obligates itself in writing to this Agreement in exactly the same manner as NFPB is obligated by this Agreement, and the use of the Multi-Use Facility shall remain a baseball facility affiliated with a Major League or Minor League baseball franchise, in which case such purchaser shall have all of the rights and obligations of NFPB hereunder and NFPB shall have no further obligations or liability hereunder; or (ii) such assignment, conveyance or transfer is made to any person, entity, or firm controlled by, controlling, or under common control of NFPB, and such person, entity, or firm obligates itself hereunder.

CMPA shall not assign this Agreement without the written consent of NFPB. Notwithstanding the foregoing, the CMPA's interest in this Agreement may be assigned, conveyed, or transferred without the prior consent of NFPB if (i) such assignment, conveyance and transfer is to the City of Pensacola, or an instrumentality thereof, and said Assignee obligates itself in writing to this Agreement in exactly the same manner as CMPA is obligated by this Agreement.

32. BINDING EFFECT. This Agreement shall inure to the benefit of and remain fully binding upon the parties hereto and their respective successors and permitted assigns.

33. STATUS OF PARTIES. The parties hereto shall be deemed and construed as independent contractors for all purposes and not as the agent, employee, representative or servant of the other.

34. NO WAIVER OR BREACH. No failure of either party to insist upon exact compliance with the terms and, provisions herein contained shall be deemed or construed as a waiver of any subsequent breach of this Agreement.

35. SEVERABILITY. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect unless so construing the Agreement would produce an inequitable result.

36. GOVERNING LAW AND JURISDICTION. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. The parties hereby submit to the jurisdiction of the United States District Court for the Northern District of Florida or of any Florida state court sitting in Escambia County, Florida, for the purposes of all legal proceedings arising out of or relating to this Agreement and the parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such proceeding which is brought in such a court.

37. MULTIPLE COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be original and all of which shall constitute one and the same instrument.

38. ENTIRE AGREEMENT. This Agreement and its Exhibits shall constitute the entire agreement between the parties hereto with respect to the subject matter herein contained. There are no agreements or understandings between the parties hereto, whether oral or written, regarding the subject matter hereof, which have not been embodied herein or incorporated herein by reference.

39. LEAGUE APPROVALS. This Agreement shall be subject to the prior and ongoing approval of the League, Minor League Baseball and Major League Baseball and in all respects shall be subject to the then current rules and regulations of the League, Minor League Baseball and Major League Baseball.

40. IRREVOCABLE LETTER OF CREDIT. During initial term of this Agreement, NFPB agrees to provide the CMPA with an irrevocable stand-by Letter of Credit from a financial institution reasonably acceptable to the CMPA, in the amount of \$300,000.00 payable upon the occurrence of the following two conditions: (1) the death of Quint Studer; and (2) a default by NFPB of any financial covenant of this Agreement.

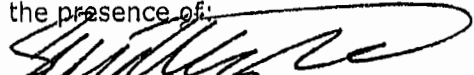
41. RADON GAS. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon gas that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

42. ATTORNEYS FEES. In the event either party to this action is required to take legal action to enforce the rights and remedies created herein, the prevailing party shall be entitled to recovery of attorneys' fees and costs, including without limitation fees and costs incurred in finalizing a fee and cost award.

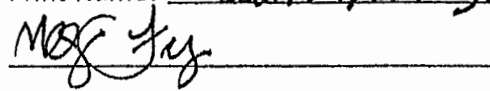
[signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized officers of NFPB and duly authorized officials of CMPA, each of whom hereby represents and warrants that he has the full power and authority to execute this Agreement in such capacity, all as of the day and year first above written.

Executed and delivered in  
the presence of:

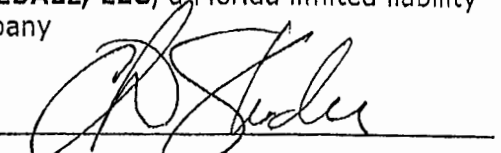


Print Name: Scott A. Remington



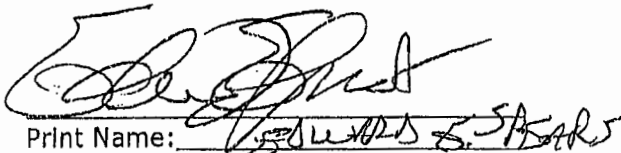
Print Name: Megan F. Fry

**NORTHWEST FLORIDA PROFESSIONAL  
BASEBALL, LLC**, a Florida limited liability  
company

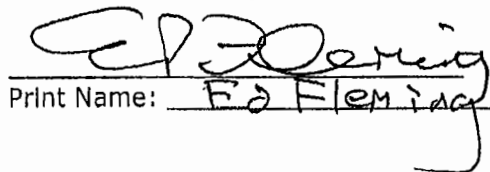
By: 

Name: Quinton D. Studer

Title: Managing Member

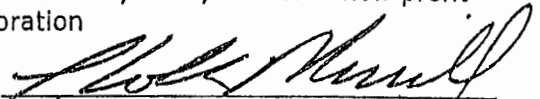


Print Name: Edward S. Sparks



Print Name: Ed Fleming

**COMMUNITY MARITIME PARK  
ASSOCIATES, INC.**, a Florida non-profit  
corporation

By: 

Name: Collier Merrill

Title: Chairman

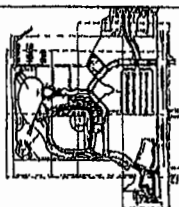
EXHIBIT A

Multi-Use Facility



Rank	Date:	Description:	Ety:
1			
2			
3			
4			
5			

KEY MAP: nls.



VIRGO J. WARREN SR. COMMUNITY  
**Maritime Park**  
PENSACOLA, FL

PROGRESS PRINT FOR REVIEW/ PURPOSES - DRAWINGS  
CONVEY DESIGN INTENT AND SUBJECT TO CHANGE

EDSA

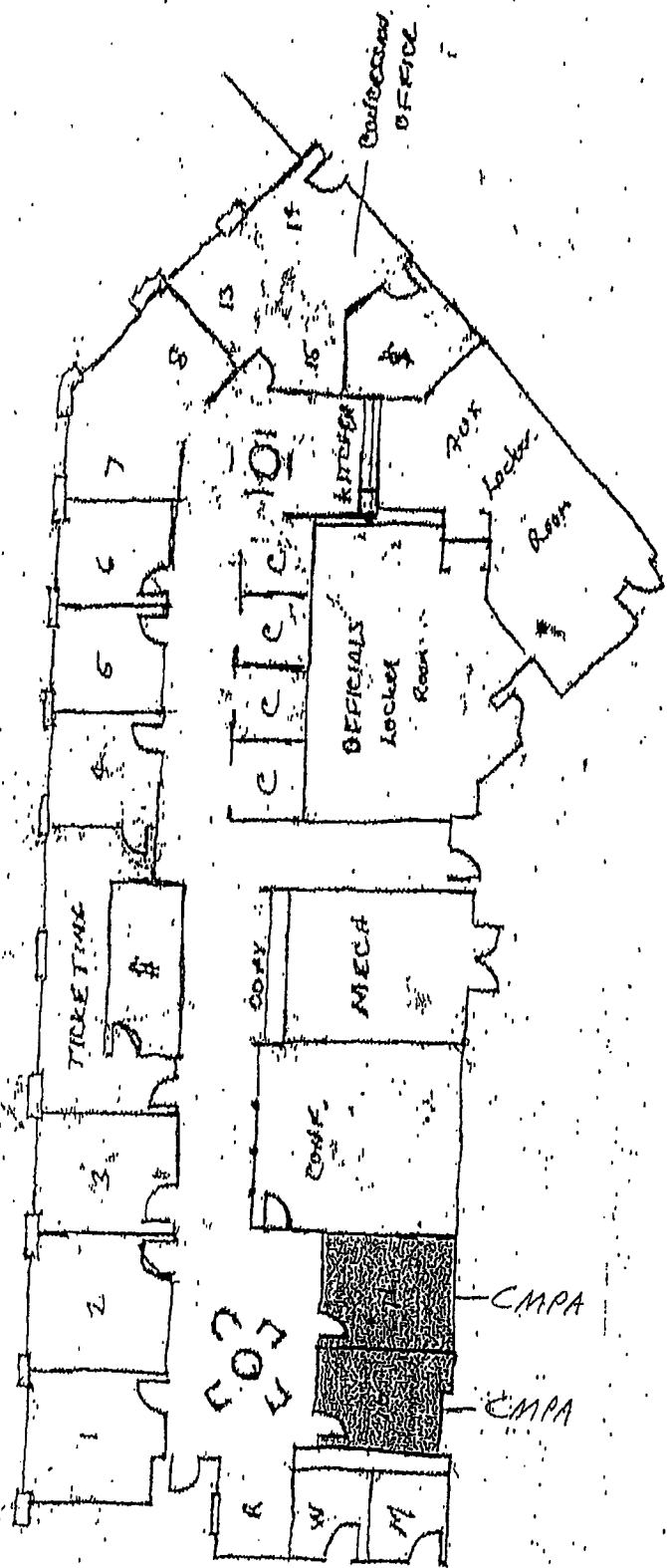
THE LITERATURE OF THE 19TH CENTURY  
AND THE 20TH CENTURY  
AND THE 21ST CENTURY

OVERALL SITE  
PLAN

LO-0.01

EXHIBIT B

NFPB and CMPA Offices



STADIUM OFFICE PLAN

1" = 16'

### EXHIBIT C

#### Fixtures, Furniture & Equipment Provided by CMPA

- 1) State-of-the-art scoreboard with enhanced message center and video playback capabilities with appropriate video equipment. Scoreboard should be comparable to other scoreboards in new AA stadiums. The scoreboard will include all press box equipment necessary to operate the scoreboard including control boards, video cameras, and production equipment.
- 2) A distributed sound system reasonably suited for announcements, music, and other multi-media presentations consistent with a newly built class AA stadium. The sound system will also include all press box equipment, and remote equipment, necessary to operate the system including sound board, computer, software, remote microphones, etc.
- 3) Internal Television and radio for broadcast of games at different locations in the facility.
- 4) All Concession Equipment necessary & proper for operation of a Professional Baseball Stadium.
- 5) All Grounds & Maintenance equipment necessary & proper for operation of a Professional Baseball Stadium.
- 6) All Grooming and Lawn Maintenance equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 7) Ticket Office furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 8) Counting Room furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 9) Concessionaire Office furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 10) Team Office furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 11) Visiting Team furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 12) Laundry Room furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 13) Stadium Staff furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 14) Visiting Team Locker Room, Coaches Offices, Training Room & Lounge furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.

- 16) Officials Locker Room furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 17) Home Team Locker Room, Coaches Offices, Training Room & Lounge furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 18) Maintenance Shop furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 19) Batting Tunnel furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 20) Weight Room furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 21) Security Office furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 22) First Aid Station (Temporary or Permanent) furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 23) Party Area/Party Deck furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.
- 24) Press Box (Scoreboard, PA, Radio, TV & Print) furniture, fixtures and equipment necessary & proper for the operation of a Professional Baseball Stadium.

**Enclosure (3)**

# **New Stadium Agreement Good for CMPA**

November 20, 2011

PENSACOLA, Fla. - A newly crafted agreement between Pensacola's new baseball team and Community Maritime Park Associates is being hailed as ensuring that practice can begin March 1 and taxpayers will not have to subsidize park operations.

Mayor Ashton Hayward and his legal team last week completed six months of negotiations with team owners Quint and Rishy Studer, representing Northwest Florida Professional Baseball LLC, to get a new agreement ready for presentation to the CMPA board at its Wednesday meeting.

The CMPA had an agreement with the Pensacola Pelicans, but when that team was replaced by Studer's Double-A affiliate of the Cincinnati Reds, the Pensacola Blue Wahoos, the two groups went back to the negotiating table.

Legal representatives for both sides, the CMPA and the Studers, agree that the new contract is considerably more to the benefit of the CMPA than to the Studers, especially compared to the old Pelicans contract.

The baseball team will give more money to the CMPA, and it will give money over a shorter period of time. The deadline for completion of the stadium is now Jan. 31 rather than the originally scheduled date of Dec. 31. The deadline for completion of the entire \$54 million public portion of the waterfront Maritime Park has been extended three months to April 1. The park's contractor, Magi Construction, agreed to the deadline extensions without increasing the cost of the work.

"After years of work, the Community Maritime Park is coming to fruition," Hayward said. "This use agreement is a good deal for the taxpayers and citizens of Pensacola and a real testament to the generosity and commitment of the Studers to our community." Hayward said the park's operations will be self-sustaining.

"This lease will protect the taxpayers from having to subsidize any of the facility's operations and leaves the stadium open to other events and entertainment on the days the Blue Wahoos aren't playing," he said. "This will truly be a multiuse stadium, and I'm thrilled about the impact this is going to have for our downtown and our community."

Studer said he and his wife are pleased with the new agreement, including the additional money going to the CMPA. "Rishy and I have been blessed by the Pensacola community, and we are happy to be a catalyst for its redevelopment," he said.

"The Community Maritime Park is a labor of love, and we want to make sure that it will be a true community park. That means ensuring that it is not a financial burden on the city, and

maximizing its availability to other activities when the baseball team isn't using it. I think this agreement does that, and I appreciate Mayor Hayward's work in putting this deal together."

**A 20-year agreement-** The agreement between the Wahoos and CMPA is potentially a 20-year deal. That's a 10-year agreement, with two five-year renewal options.

It's referred to as a nonexclusive use agreement rather than a lease agreement. With a use agreement, the public has the right to use the multiuse stadium when baseball is not being played there. With a lease, the team would have exclusive rights to use it.

**Concessions in the agreement that benefit the CMPA include:** The team has agreed to pay its \$175,000 annual stadium use fee over a six-month period, rather than one year, so the CMPA will have the money available sooner. The two sides now split naming-rights revenue, estimated at \$300,000 to \$500,000. That money previously was to be exclusive to the team.

The CMPA now receives 100 percent of parking revenues, which previously were to be split 50/50.

The team is now responsible for all operations and maintenance of the field and facility. A significant change to the Studers' advantage is that the terms of \$1.25 million in team profits that the team is pledging to the CMPA will change. Originally, the team agreed to pay \$250,000 a year over five years. It's now pledging a minimum of \$125,000 a year over 10 years.

"I believe this team probably will be paying the second-highest total use fee in the Southern League, probably after Montgomery, and perhaps the highest total use fee in the league when you look at it on a per-seat basis," Studer said.

The original stadium design also was to include suites, which would have been a bigger revenue producer for the team. The Studers agreed in February to also contribute \$2 million toward public enhancements to the stadium so it will accommodate Double-A baseball needs. CMPA Chairman Collier Merrill called the agreement a milestone in the development of the park.

"This agreement will put Pensacola in the top 90 cities in the country for professional baseball," he said. "I can't wait for opening day, and I'm excited about the energy that the team will bring to our downtown and our waterfront."

**Design decisions-** The park has gone through many changes since voters approved a referendum allowing for its construction. Some citizens even question the name of the park, considering the only remaining maritime element is the park's location on Pensacola Bay. It's questionable whether a key element of the park, the maritime museum, will be built, since the University of West Florida has withdrawn funding. When private development will occur on the site is undetermined because the CMPA fired its developer in January.

A number of elements proposed originally also have been removed, including a conference center, classroom space and a lighthouse. As a design-build project, it's still unknown whether

there will be other elements that will not survive in the end. What will survive will soon become more clear, as the park's design phase is nearing its end.

On Wednesday, the park board may have to make some tough decisions when it receives the bids for landscaping and hardscaping. The low bids for this part of the project total \$5.74 million, compared with the CMPA's \$5.5 million budget for the work.

The CMPA is going to have to make the budget match up with its best bids, which were submitted based on the CMPA's "ultimate desire," said CMPA Executive Director Ed Spears.

The CMPA staff will work with the contractor between now and Wednesday for a recommendation that comes within budget or scales back the scope of some of the work to ensure it comes within budget.

**Enclosure (4)**



## Legislation Details (With Text)

**File #:** 21-00529      **Version:** 2      **Name:**  
**Type:** Legislative Action Item      **Status:** Agenda Ready  
**File created:** 6/8/2021      **In control:** City Council  
**On agenda:** 7/15/2021      **Final action:**  
**Enactment date:**      **Enactment #:**  
**Title:** AMENDMENT NO. 5 TO THE USE AGREEMENT WITH NORTHWEST FLORIDA PROFESSIONAL BASEBALL FOR THE VINCE J. WHIBBS SR. COMMUNITY MARITIME PARK  
**Sponsors:** Grover C. Robinson, IV  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. 5th Amendment to NFPB Use Agreement at CMP - revised draft

Date	Ver.	Action By	Action	Result
7/12/2021	1	Agenda Conference	Placed on Regular Agenda	Pass

### **LEGISLATIVE ACTION ITEM**

**SPONSOR:** Grover C. Robinson, IV, Mayor

### **SUBJECT:**

AMENDMENT NO. 5 TO THE USE AGREEMENT WITH NORTHWEST FLORIDA PROFESSIONAL BASEBALL FOR THE VINCE J. WHIBBS SR. COMMUNITY MARITIME PARK

### **RECOMMENDATION:**

That City Council approve Amendment No. 5 to the Multi-Use Facility Non-Exclusive Use Agreement with Northwest Florida Professional Baseball LLC (NFPB) for the Vince J. Whibbs Sr. Community Maritime Park (CMP), renewing per the terms of the Agreement for two additional 5-year periods through March 30, 2032; and providing for the reimbursement to NFPB of various capital improvements for an amount not to exceed \$2,000,000. Further, that City Council authorize the Mayor to execute all necessary documents related to the implementation of this Amendment.

**HEARING REQUIRED:** No Hearing Required

### **SUMMARY:**

In July 2011, the Community Maritime Park Associates Inc. (CMPA) entered into a multi-use facility non-exclusive use agreement with Northwest Florida Professional Baseball LLC (NFPB) for the Pensacola Blue Wahoos to play baseball in the Community Maritime Park stadium. Sections 1 and 2 of the original Agreement state that the term actually commences on the beneficial use date, which is April 1, 2012, as determined from NFPB records. Section 12 of the original Agreement states that the CMPA (now City) is generally responsible for repairs, maintenance, and capital improvements to the

facility. This agreement was subordinated to the City with the sunseting of the CMPA in 2017.

NFPB wishes to exercise both extensions totaling ten (10) years contingent upon the construction and implementation of approximately \$2,000,000 in capital improvements at the stadium. The \$2,000,000 in improvements include replacing the natural grass playing surface with artificial turf and replacing the regular stadium lights with LED stadium lights, and other items in keeping with modernization of the facility.

Under the recent restructuring of the minor leagues by Major League Baseball (MLB), the number of teams were reduced and new requirements for modernized facilities were issued by MLB. Since the specifications of the artificial turf and LED lights must meet MLB requirements, NFPB will coordinate the purchase and installation of the capital improvements, with subsequent reimbursement by the City. The Pensacola Blue Wahoos are now the Double-A affiliate for the Miami Marlins team.

#### **PRIOR ACTION:**

July 20, 2011 - The CMPA and NFPB entered into the Multi-Use Facility Non-Exclusive Use Agreement for baseball at the Community Maritime Park.

July 2014 - The CMPA and NFPB entered into the 1<sup>st</sup> amendment to the Multi-Use Agreement whereby NFPB cancelled any indebtedness to the CMPA and in return CMPA provided NFPB with office space at no charge.

April 2, 2015 - The CMPA and NFPB entered into the 2<sup>nd</sup> amendment to the Multi-Use Agreement whereby the CMPA sold the naming rights for the stadium to NFPB for a total of \$787,500 to be paid in equal installments for seven years.

October 4, 2017 - The CMPA and NFPB entered into the 3<sup>rd</sup> amendment to the Multi-Use Agreement whereby the NFPB purchased a videoboard for \$100,000, and the CMPA agreed to reimburse them \$20,000 per year for five years.

March 14, 2019 - The City and NFPB entered into the 4<sup>th</sup> amendment to the Multi-Use Agreement whereby the Variable Attendance Surcharge was changed from a variable rate to a flat \$1.50 per ticket.

#### **FUNDING:**

Budget:	\$ 1,543,812	CRA Fund - Property acquisition and redevelopment
	220,235	CRA Fund - Complete streets - Main St
	115,623	CRA Fund - Property management - Baylen Slip
	120,330	CRA Fund - Complete streets - Unallocated
	<u>\$ 2,000,000</u>	Total

Actual:	<u>\$ 2,000,000</u>	Multi-Use Facility Improvements
	<u>\$ 2,000,000</u>	Total

#### **FINANCIAL IMPACT:**

To avoid funding penalties related to the use of the Urban Core Redevelopment Revenue Bonds, Series 2017 Project Funds, funding from the CRA Fund must be utilized to fund the improvements.

Funding from the CRA Fund will be re-allocated as outlined in the funding section of this item. However, allocations drawn from the property acquisition and redevelopment line item within the CRA Fund will be refunded through the Urban Core Redevelopment Revenue Bonds, Series 2017 Project Fund. Funding re-allocated within the Urban Core Redevelopment Revenue Bonds, Series 2017 Project Fund, will include remaining budgets for the Reus Streetscape Revitalization project and project savings from the DeVilliers Streetscape Revitalization and Ferry Landing projects which include:

\$ 992,476	Bond Fund - Reus Street
211,496	Bond Fund - Devilliers Street - project savings
<u>129,960</u>	Bond Fund - Ferry construction - project savings
<u>\$ 1,333,932</u>	Total

**LEGAL REVIEW ONLY BY CITY ATTORNEY:** Yes

7/1/2021

**STAFF CONTACT:**

Keith Wilkins, City Administrator  
Kerrith Fiddler, Deputy City Administrator - Community Development  
Amy Lovoy, Finance Director

**ATTACHMENTS:**

- 1) 5th Amendment to NFPB Use Agreement at CMP - revised draft

**PRESENTATION:** No

**FIFTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE  
AGREEMENT**

THIS FIFTH AMENDMENT TO MULTI-USE FACILITY NON-EXCLUSIVE USE AGREEMENT (this "Amendment") is made and entered into this day \_\_\_\_ of July, 2021 (the "Effective Date"), by and between CITY OF PENSACOLA, a Florida municipal corporation (the "City") and NORTHWEST FLORIDA PROFESSIONAL BASEBALL, LLC, a Florida limited liability company ("NFPB").

WITNESSETH:

WHEREAS, Community Maritime Park Associates, Inc. (the "CMPA") and NFPB entered into a certain Multi-Use Facility Non-Exclusive Use Agreement dated July 20, 2011, as amended by the First Amendment to Multi-Use Facility Non-Exclusive Use Agreement dated July , 2014, and the Second Amendment to Multi-Use Non-Exclusive Use Agreement dated April 2, 2015, and the Third Amendment to Multi-Use Non-Exclusive Use Agreement dated October 4, 2017, and the Fourth Amendment to Multi-Use Non-Exclusive Use Agreement dated March 25, 2019 (collectively, the "Use Agreement");

WHEREAS, pursuant to that certain Omnibus Bill of Sale, Assignment and Related Agreements between the CMPA and the City dated June 1, 2017 (the "Omnibus Agreement"), the CMPA assigned to the City all of its right, title and interest in, to and under the Use Agreement and transferred and conveyed to City all of its right, title and interest in and to all buildings, structures and improvements at the Vince Whibbs Sr. Community Maritime Park in Pensacola, Florida, which improvements include without limitation the Multi-Use Facility as such term is defined in the Use Agreement;

WHEREAS, pursuant to sections 1(d) and 2 of the July 20, 2011 Use Agreement between the Parties, the Parties agree upon the Beneficial Use Date of April 1, 2012, with this date representing the commencement of the original 10-year term of the Use Agreement;

WHEREAS, also pursuant to section 2 of the July 20, 2011 Use Agreement between the Parties, NFPB provided notice of their intention to extend the Use Agreement and exercises their option through March 31, 2032, utilizing both of the two 5-year renewal terms available under the terms of the Use Agreement, with the execution of this Amendment;

WHEREAS, NFPB desires to make certain capital improvements and repairs the Multi-Use Facility, as more particularly described in Section 2 below, and the City wishes to reimburse NFPB up to \$2,000,000 towards the total cost of the improvements and repairs;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Project Description. The project contemplates certain capital improvements and repairs at the Multi-Use Facility identified in Attachment A, incorporated herein by reference. Such improvements include, but are not limited to, the conversion of the Blue Wahoos Stadium baseball field from natural grass to synthetic turf and any irrigation changes needed to accommodate the conversion, the conversion of the Blue Wahoos Stadium lights to LED, the removal of existing bullpens and construction of new bullpens, the construction of new batting cages, the purchase of additional training tables, dishwashers and surveillance equipment, internet and phone upgrades, replacement of HWC chairs, painting, repairs to seats, flooring, electrical outlets and elevators. As used in this Amendment, the term "Improvements" refer to the project described in this section as more particularly delineated in Attachment A.
3. Partial Reimbursement by the City. NFPB will pay in full the cost of the Improvements and the City shall reimburse NFPB an amount up to \$2,000,000 for the Improvements upon receipt of invoice from NFPB and copies of vendor invoices and proof of payment.
4. Ownership of Improvements. The parties acknowledge and agree that the City is the sole and exclusive owner of the Improvements.
5. NFPB Consent. NFPB consents to Improvements and agrees that the Improvements comply with all requirements and standards of NFPB and the Major League Baseball. To maximize the City's contribution towards the Improvements, NFPB consents to prioritize the completion of the two major capital expenses of Attachment A, specifically, the installation of the artificial turf field and the installation of the new LED-lights. These two projects must be contracted and scheduled for completion in a timely manner before funds are reimbursed for any other line-item identified in Attachment A with an estimated cost over \$5,000.

6. City Consent. NFPB will submit to the City for written approval a detailed plan for the Improvements prior to engaging in any contracts for goods or services. Should such Improvements affect anything other than what is identified in Section 2 above, the City shall have the authority to reject the plan or modify the plan so as to minimize any negative effects on other elements of the Multi-Use Facility or Community Maritime Park.
7. Monitoring. The City shall have the right to monitor the replacement of the grass turf with artificial turf and NFPB shall coordinate with the City to ensure a City representative is onsite for the commencement of the turf replacement project.
8. Installation. NFPB shall be responsible for the installation of the Improvements. The installation of the Improvements shall be performed in a good and workmanlike manner.
9. Maintenance and Repair. NFPB shall be responsible, at its sole cost and expense, for all maintenance and repair of the Improvements. In addition, if the subsurface drainage and/or irrigation system is damaged during installation of the artificial turf field, NFPB shall be responsible for making the repairs. It is understood that the irrigation lines under the field will likely be removed and capped at the valves during installation of the field and such process shall not constitute "damage" under this provision. Subsequent to installation of the field, if the subsurface drainage or irrigation systems is damaged due to negligence by NFPB in fulfilling its maintenance obligation related to the artificial turf, then NFPB shall be responsible for making all repairs.
10. Limited Warranties. NFPB agrees to obtain warranties acceptable by the City for the improvements. NFPB and the City agree to cooperate with each other to enforce any warranties whenever appropriate and commercially reasonable.
11. Defined Terms. Unless otherwise defined in this Amendment, all capitalized terms in this Amendment shall have the meanings assigned to them in the Use Agreement.
12. Amendment to Use Agreement. The terms of this Amendment shall be, and hereby are, made a material part of the Use Agreement, and the Use Agreement is hereby amended to include the terms of this Amendment.
13. Entire Agreement. The Use Agreement as hereby amended contains the entire agreement and understanding between the parties concerning the Improvements, and all prior representations, negotiations, agreements and understandings concerning the replacement, whether verbal or written, and

whether by or between the CMPA, the City and/or NFPB, are hereby superseded.

14. No Amendment or Waiver. No amendment or waiver of any term or provision of this Amendment shall be effective unless set forth in a written document executed by both the City and NFPB.
15. Ratification of Use Agreement. The Use Agreement, as hereby amended, is hereby ratified and affirmed.
16. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Florida.
17. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument as of the Effective Date.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURES ON FOLLOWING PAGES.]*

CITY:

CITY OF PENSACOLA,  
a Florida municipal corporation

By: \_\_\_\_\_  
Grover C. Robinson, IV, Mayor

ATTEST:

\_\_\_\_\_  
Ericka L. Burnett, City Clerk

(AFFIX CITY SEAL)

WITNESS:

WITNESS:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

LEGAL IN FORM AND EXECUTION:

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2021 by Grover C. Robinson IV, Mayor of the City of Pensacola, a municipal corporation of the State of Florida, on behalf of said Municipal Corporation. Said person is personally known to me and/or produced a current Florida driver's license as identification.

\_\_\_\_\_  
NOTARY PUBLIC

(AFFIX NOTARY SEAL)

*Signature page to Fifth Amendment to Multi-Use Facility Non-Exclusive Use Agreement*

NFPB:

NORTHWEST FLORIDA  
PROFESSIONAL BASEBALL, LLC  
a Florida limited liability company

By: \_\_\_\_\_  
Quinton D. Studer, its Managing Member

WITNESS:

Print Name: \_\_\_\_\_

WITNESS:

Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2021 by  
Quinton D. Studer, the Managing Member of Northwest Florida Professional Baseball, LLC, a  
Florida limited liability company, on behalf of the company. Said person is personally known to  
me and/or produced a current Florida driver's license as identification.

NOTARY PUBLIC \_\_\_\_\_

(AFFIX NOTARY SEAL)

*Signature page to Fifth Amendment to Multi-Use Facility Non-Exclusive Use Agreement*

ATTACHMENT A

Summary of Capital Projects and Estimated Cost

	<u>Estimated Cost</u>
<b>Capital Expenses for Updated MLB Standards</b>	
1. Bullpens Moved to left field	\$ 270,000.00
2. Internet & Phones for MLB standards	12,500.00
3. Surveillance Equipment for a command post MLB required	10,000.00
4. Batting Cage MLB required 2	50,000.00
5. Additional training tables	1,000.00
6. Artificial Field	1,053,000.00
7. Irrigation for Field	4,000.00
8. Lights	515,000.00
9. (2) Dishwasher (other appliances on site)	1,000.00
<b>Subtotal Estimated Cost of Items need for MLB Standards</b>	<b><u>1,916,500.00</u></b>
<b>Other Upkeep &amp; Age related Repairs</b>	
10. HWC Chair Replacement (64)	25,600.00
11. Interior Painting	15,000.00
12. Regions Seating repair (73)	7,500.00
13. Flooring in Winn Dixie Deck	7,500.00
14. Water Accessing Electrical Outlets	1,000.00
15. Elevator Servicing (pre-season checkup)	1,000.00
16. Painting HWC Poles (not covered by insurance)	1,200.00
<b>Subtotal Estimated Cost of Stadium Upkeep and Agree Related Repairs</b>	<b><u>58,800.00</u></b>
<b>Total of Estimated Cost of Required Capital Improvements</b>	<b><u>\$ 1,975,300.00</u></b>