

PITT SLIP MARINA LEASE AGREEMENT

THIS LEASE AGREEMENT entered into this the 18th day of September, 1985, by and between the CITY OF PENSACOLA, FLORIDA, a municipal corporation of Florida, hereinafter called the "Lessor," and FLORIDA SUN INTERNATIONAL, INC., a Florida corporation, hereinafter called the "Lessee," whose address is 2828 Edgewater Drive, Post Office Box 7717A, Orlando, Florida 32854.

WITNESSETH:

WHEREAS, the Lessor owns title to certain submerged and upland lands located on the waterfront of Pensacola, Escambia County, Florida, commonly referred to as "Pitt Slip" (hereinafter referred to as the "subject property"), which is more fully described on Exhibit A attached hereto; and

WHEREAS, the Lessee has been selected by the City Council as the top ranked marina firm and City Council has authorized the City Manager to negotiate a Lease Agreement for the construction of a marina at Pitt Slip; and

WHEREAS, the Lessee is desirous of leasing from the Lessor certain submerged and uplands in the waters of Pensacola Bay, Pitt Slip, on a long term basis for the purpose of constructing and operating a marina and docking facility, harbor master office, ships store and related parking; and

WHEREAS, the Lessor is desirous of leasing to the Lessee that certain submerged and uplands in the waters of Pensacola Bay, Pitt Slip, on a long term basis; now therefore,

THE PARTIES HERETO agree as follows:

I. THE PROPERTY

Subject to the terms and conditions set forth herein:

A. The Lessor leases to the Lessee, and the Lessee leases from the Lessor, Parcels I and III, as described on Exhibit A attached hereto.

B. The Lessor subleases to the Lessee, and the Lessee subleases from the Lessor, Parcel IA (owned by the State of Florida), as described on Exhibit A attached hereto.

II. LEASE TERMS

A. The term of this lease for Parcels I and III shall be for a period of thirty (30) years, commencing on the date of this agreement first written above.

B. This Lease Agreement may be renewed and extended for an additional thirty (30) years on the terms and conditions contained herein. To renew and extend this lease, Lessee shall give written notice to Lessor at least one (1) year prior to the expiration of the initial thirty (30) year lease term of its desire to renew and extend the term of this lease.

C. The term of this Lease/Sublease for Parcel 1A shall be for a period of thirty (30) years, commencing from the date that the State of Florida (through the Governor, Cabinet and Trustees of the Internal Improvement Fund) approves the sublease from the Lessor to the Lessee. Upon expiration of the thirty (30) year term, the Lease/Sublease may be renewed in successive five (5) year increments subject to the Lessee, as the sublessee, complying with all terms and conditions during the preceding lease period and upon payment of a lease fee from the Lessee to the Lessor equal to the appraised rental value as established by a fee appraisal conducted during the last year of the preceding lease term as charged to the Lessor by the State of Florida under its Lease Agreement. The Lessor and the Lessee agree to cooperate in securing renewals of the State lease.

III. LEASE PAYMENTS

Lessee shall pay rent to the Lessor in the amounts and manner set forth herein:

A. Commencing with the date of this Lease Agreement, Lessee shall pay ground rent on a monthly basis in advance at the annual rate of ten (10) cents per square foot of submerged and upland leased property in marina related use. Failure to pay rent within fifteen (15) days of the due date shall constitute a default of this Lease Agreement.

B. In addition to the ground rent payments provided for in paragraph III.A. above, the Lessee shall pay to the Lessor: (a) five percent (5%) of "gross sales," as hereinafter defined, from business

enterprises operated by the Lessee, except that the percentage attributable to marina fuel shall be four-tenth of one percent (0.4%) of sales up to one hundred and fifty thousand (150,000) gallons and one-half of one percent (0.5%) of sales exceeding one hundred fifty thousand (150,000) gallons; and (b) five percent (5%) of "gross rentals," as hereinafter defined, received from sublessees, except that the percentage attributable to office rent shall be two and one-half percent (2.5%).

Commencing with the first anniversary date of this Lease Agreement, the Lessee shall pay to the Lessor the amounts required under both paragraph III.A. above and this paragraph III.B. for the previous year; however, any amount paid by the Lessee as "ground rent" under paragraph III.A. above shall be applied to and shall reduce any amounts due under this paragraph III.B. (Example: If the Lessee owed the Lessor the sum of \$12,000.00 as "ground rent" during any given year, and the above-stated percentages of gross sales would require during that year the payment of \$15,000.00 from the Lessee to the Lessor, then the total amount paid to the Lessor by the Lessee for both "ground rent" and applicable percentages of gross sales would be the sum of \$15,000.00.)

In order to define, calculate and verify the amounts due the Lessor under this paragraph III.B., the following definitions and procedures shall apply:

1. Definitions of Gross Rentals and Gross Sales:

(a) As used herein, the term "gross rentals" shall mean all rents or other monies actually received by the Lessee from all business enterprises (sublessee or tenants -- including any business enterprises operated by the Lessee) within the project, including origination or renewal bonuses, but excluding deposits for damages or performance, and any sums collected and paid out for any sales, excise or other tax.

(b) As used herein, the term "gross sales" shall mean, all monies received by the Lessee, whether wholly or partially for cash or on credit, of all merchandise and services sold and all other receipts by sale or otherwise of all business conducted on or from the subject property by Lessee, its subsidiaries or business

combinations, including without limiting the foregoing, all sales to subsidiaries, business combinations, employees or agents of Lessee, all orders taken in or from the premises by Lessee, its employees or agents, although said orders may be received by telephone or mail, or filed elsewhere, or procured from the premises by house-to-house or other canvassing, and all rentals of boat slips and dry storage areas. Sales to customers on a lay-away basis shall be recognized as "gross sales" within ninety (90) days of the lay-away transaction and in any event must be fully recognized when the merchandise leaves the premises.

The term "gross sales" shall also include, without limitation, all deposits not refunded to purchasers, all service charges for lay-away sales, and all commissions received from vending and game machines on the premises for use by the general public, and other cash receipts resulting from sales transactions on the premises.

There shall be excluded from "gross sales" any sum collected and paid out for any sales, excise or other tax based upon all taxable sales in this definition of "gross sales" as required by law, whether now or thereafter in force. The term "gross sales" shall not include the exchange or transfer of merchandise between the stores of any tenant of Lessee where such exchanges or transfers of merchandise are made solely for the convenient operation of the business of any tenant of Lessee, and not for the purpose of consummating a sale made in, from or upon the premises; the amount of returns to shippers or manufacturers, nor the amount of any cash credit refunds upon any sale where the merchandise sold, or some part thereof, is transferred, returned by the purchaser to and accepted by any tenant; nor sales of fixtures.

There shall also be excluded from the term "gross sales" all fees or service charges for delivery fees and C.O.D. fees. The term "gross sales" shall also exclude finance charges resulting from a tenant's accounts receivable.

2. Verification and Accounting: The Lessee agrees to keep accurate and permanent records of all transactions and make same available for inspection and auditing by the Lessor. The Lessee

further agrees to require in all subleases that tenants maintain the same records and likewise make those available to the Lessor for inspection and auditing.

Within one hundred twenty (120) days after the end of each year during which percentage payments to the Lessor are due hereunder, the Lessee shall provide the Lessor with tax information and other financial data on the results of operations of Lessee from the leased premises, as the Lessor may request. Said data shall show the gross sales as defined herein and shall be accompanied by payment. The Lessor reserves the right to require audited statements if in the Lessor's opinion the tax statements and other financial data are insufficient for purposes of verification and accounting for results of operations from the Leased Premises. In the event the Lessor requests an audited statement and the results indicate that the percentage payments made to Lessor are equal to or greater than 97% of the amount due, Lessor shall be required to bear the cost of the audit.

Such information as Lessee deems confidential to its operation shall be kept confidential by the Lessor; provided, however, that the Lessor may make public disclosure of such information using gross amounts summarizing operations of the entire project and not disclosing results of operations of individual tenants.

C. Lessee shall pay Lessor interest from the date when due on all rent payments that are made by Lessee to Lessor more than fifteen (15) days after the date that same become due and payable. The interest to be paid Lessee shall be the announced commercial prime rate of interest charged by Chemical Bank of New York, or its successor, as that rate may change from day to day.

IV. AUTHORITY TO LEASE PROPERTY

A. By the execution hereof, the parties understand and agree that the Lessor will receive from the Governor and Cabinet of the State of Florida final approval of a lease from the State to the Lessor covering parcel IA and that said lease will contain a provision whereby the Lessor may sublease said parcel to the Lessee

under the terms and conditions set forth herein. This Lease Agreement shall become effective on the date that the Governor and Cabinet give final approval to the sublease.

B. The Lessor has furnished the Lessee with a current survey of the property.

C. The parties understand that a portion of the property described is subject to an existing lease in favor of Southern Chemical Storage & Transit Company and further that certain improvements and storage tanks associated with said lease are located upon the subject property. Lessee, nonetheless, enters into this Lease Agreement notwithstanding the foregoing; however, in the event that Lessee's predecessor in possession of the property upon which said improvements and storage tanks are located abandons the property without having made provision for the removal of said improvements and storage tanks or other material necessary to make the site useable, and should it become necessary for the Lessee to remove same at Lessee's own expense, the Lessor shall offset and reduce lease payments due to it under the terms hereof by an amount equal to the costs incurred by the Lessee in making the site useable. The manner and terms upon which said offset in lease payments shall occur shall be subject to further negotiation between the parties.

The Lessor shall provide the Lessee exclusive possession of Gimble Street and that part of the premises southerly thereof at such time as the current lease with Southern Chemical Storage & Transit Company terminates in January, 1986, or at such earlier date as the Lessor acquires possession of the premises, with the consent of the current Lessee, and the Lessor vacates Gimble Street. Prior to the vacation of Gimble Street, the Lessee may use it for parking purposes, provided that the Lessee provides a reasonable means of ingress and egress for Southern Chemical Storage & Transit Company.

V. USE OF LEASED PROPERTY AND COMMENCEMENT
AND COMPLETION OF CONSTRUCTION

The leased property shall be developed by Lessee as a marina complex of approximately 94 slips and include a harbor master facility, ships store and fuel facilities and related parking. Lessee may use portions of the leased property for restaurants,

lounges or other ancillary, compatible marina uses upon approval by the Lessor's City Council as part of the final Site Specific Development Plan.

Lessee shall commence construction of the planned improvements after Lessor has completed the site work funded through the State of Florida's Department of Natural Resources, Florida Recreation Development Assistance Program Grant. Lessee shall complete construction of the improvements within six (6) months of the date of this Lease Agreement, provided that Lessee may request a reasonable extension of time for the commencement and completion of construction of said improvements, and Lessor agrees not to unreasonably withhold its approval of such request.

**VI. CONSTRUCTION OF IMPROVEMENTS
AND CONSTRUCTION PLANS**

A. Plans and specifications for the development of the leased property, and the parking areas and Lessee's construction of all improvements shall be in conformity with the Redevelopment Plan, the final Site Specific Development Plan submitted and approved by the City Council in accordance with the Site Specific Development Zoning Ordinance, this Lease agreement and all applicable state and local laws and regulations.

B. Within thirty (30) days after the effective date of this Lease Agreement, Lessee shall submit to Lessor, for its review and approval, development concept plans for the construction of the improvements on the leased property, and the parking areas. Within sixty (60) days after the date of the approval of the development concept plans, Lessee shall submit to Lessor, for its review and approval Site Specific Development Plans for the construction of the improvements on the leased property, and the parking areas. Within ninety (90) days after approval by City Council of the final Site Specific Development Plan, Lessee shall submit to Lessor, for its review and approval, plans for the construction of the improvements on the leased property. Should Lessee's architect determine that additional time is required to secure environmental permit modifications and/or complete the construction plans, Lessee may request a reasonable extension of time for the completion of such

plans, and Lessor agrees not to unreasonably withhold its approval of such request. Nothing in the above or this paragraph shall prohibit the Lessee from submitting construction plans for site improvements on an incremental basis, provided the last such submittal shall be made prior to 1 December, 1985. For example, the Lessee may desire to submit for marina, shoreline protection, environmental permitting requirements, bulkhead or foundation permits separately in order to expedite construction, utilize state grants or meet tenant deadlines. In these instances the Lessor shall review the plans and furnish Lessee written approval or disapproval of the plans within thirty (30) days of submission of said plans by the Lessee, as long as the site improvements requested to be permitted have been approved by City Council as part of the Pitt Slip Land Use Plan in the case of the shoreline protection, environmental permit requirements and bulkheading and approved by City Council as part of the Site Specific Development Plan approval in case of the marina, marina supporting facilities and foundation permits.

All reference made to plans for the construction of improvements or construction plans are intended by the parties to include Site Development Plans for the construction of the marina, marina support facilities, street and site utilities, and the construction of all breakwaters, riprap and bulkhead systems, as well as the architectural working drawings for the construction of the improvements, i.e., the proposed buildings on the site.

C. If Lessor rejects any construction plans in whole or in part, as not being in conformity with the Redevelopment Plan, the final Site Specific Development Plan, this Lease Agreement or any applicable state and local laws and regulations, Lessor shall notify Lessee of such rejection in writing specifically setting forth the grounds for such rejection. Lessee shall submit new or corrected construction plans which so conform, within thirty (30) days from written notification to Lessee of the rejection. Lessor shall furnish Lessee written approval or disapproval of corrected plans by Lessee. Failure of Lessor and Lessee to reach agreement on approval of construction plans or new or corrected construction plans within

one hundred and twenty (120) days of the date of submission of the construction plans or new or corrected construction plans shall render this Lease Agreement terminable at the option of either Lessor or Lessee. Lessor shall not unreasonably withhold its approval of Lessee's plans.

d. If an extension of time is granted for the securing of environmental permit modifications and/or submission of construction plans, and/or if the construction plans are rejected by Lessor and Lessee must submit new or corrected construction plans, then the dates and periods set forth in this Lease Agreement for the commencement and completion of construction shall be extended by the period required for the submission of construction plans or new or corrected construction plans.

e. All work with respect to the improvements to be constructed or provided by Lessee on the leased property, shall be in conformity with the construction plans as finally approved by the Lessor. The term "improvements," as used in this Lease Agreement means the improvements indicated in the construction plans as finally approved. f. In the event, Lessee proposes to make any substantial change in the improvements to be erected on the leased property which change or affect the basic character and nature of the development design from that shown on the final Site Specific Development Plan and construction plans and specifications as approved by Lessor, hereinafter called "design concept changes," it is agreed by Lessee that no such design concept changes will be permitted without Lessor's written approval thereof. Lessee will submit the proposed design concept changes to Lessor for review and approval. Lessor shall furnish Lessee written approval or disapproval of such proposed design concept changes within thirty (30) days of submission of said changes by Lessee.

g. Notwithstanding any provision or implication in this Lease Agreement to the contrary, this Lease Agreement shall be null and void if Lessee does not commence construction of the improvements on the leased property no later than 1 December, 1985, unless Lessee's inability to do so is caused by an act or omission of Lessor or circumstances referred to in paragraph d. above.

D. That the Lessor shall retain a perpetual easement over the private street systems for the purpose of access, maintenance, upkeep, and repair of the Lessor's spoil site located within the private street system of the project.

C. That the Lessor shall retain a perpetual easement to be set forth in an appropriate instrument in recordable form for ingress, egress, and right-of-way on and over private street systems and pedestrian paths to be constructed by the Lessee in the project for the purpose of access to the public marina and other public facilities contained in the project.

B. That all utility distribution lines shall be placed underground.
A. That the leased property shall be devoted only to and in accordance with the uses specified in the adopted Site Development Plan.

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successors in interest to the leased property, or any part thereof; Lessee, and the successors and assigns of the parties, and all other covenants running with the land, and shall be binding on Lessor, Lessor and Lessee agree that the following restrictions shall be

IX. COVENANTS AND RESTRICTIONS

the construction of improvements thereon. including inspection of all work being performed in connection with times deemed necessary for the purpose of this Lease Agreement, access to the leased property and licensed area at all reasonable extension hereof, Lessee shall permit the representatives of Lessor During the term of this Lease Agreement and any renewal or

VIII. ACCESS TO PROPERTY

from the leased property. shall have no right to remove such fixed and permanent improvements any renewal or extension hereof, and Lessee acknowledges that it shall vest in Lessor upon the termination of this Lease Agreement or character that shall be placed upon the leased property by Lessee Title to any building or other improvements of a permanent

VII. TITLE TO IMPROVEMENTS

X. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

A. The Lessee shall defend and indemnify the Lessor and save it harmless from any and all claims, suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or about the leased premises or any part thereof, or occasioned wholly or in part by any act or omission of the Lessee, its agents, contractors, employees, servants, invitees, licensees or concessionaires.

B. Any subleases to be entered into by and between Lessee and its sublessees shall contain an indemnification and hold harmless clause under the terms of which the said sublessees shall also agree to defend and indemnify Lessor and save it harmless from any and all claims, suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or about the sublessee's subleased portion of the leased property or any part thereof occasioned wholly or in part by any act or omission of said sublessee, its invitees or licensees.

XI. INSURANCE REQUIRED

Lessee shall maintain insurance and provide Lessor with certificates of insurance in accordance with Exhibit B attached hereto during the life of this Lease Agreement. The Lessee will not take possession of the property or commence construction activities on the premises until certificates have been approved by the Lessor's Department of Risk Management. The Lessor shall have the right to make reasonable increases to the minimum required limits of liability on Exhibit B during the life of this Lease Agreement.

XII. SPECIAL PROVISIONS

A. The Lessee may assign its interest in this Lease Agreement, provided that the Lessee obtains the prior written consent of the Lessor to such assignments, which consent shall not be unreasonably withheld. The Lessee may assign its interest in the Lease Agreement

subject property would have been had the Lessee been required to pay amount equivalent to what the ad valorem real property taxes on the event, the Lessee shall pay to the Lessor on an annual basis, an other than ad valorem real property taxation, then, and in that renewal thereof, taxed as intangible personal property or any method property is, at any time during the lease term or any extension or same. Provided, further, that in the event that the subject subject property would have been had the Lessee been required to pay amount equivalent to what the ad valorem real property taxes on the event, the Lessee shall pay to the Lessor on an annual basis, an is imposed in lieu of such ad valorem taxation, then, and in that required to be paid on the subject property and no tax or other levy court is altered so that no ad valorem real property taxes are interpretation of the law of Florida by an appropriate appellate time during the period of this Lease, the law of Florida or during the term of this Lease Agreement. In the event that at any taxes or other taxes that may be levied against the subject property C. The Lessee shall pay any and all ad valorem real property

mortgagor to operate the marina complex. operation and approval of the firm or entity contemplated by the marina complex subject to approval by the Lessor of the method of Lease Agreement, to allow the Lessee's mortgagor to operate the provision. The Lessor agrees, in case of Lessee's default on the of the project shall contain language incorporating the foregoing executed in obtaining financing for the construction and development financing arrangement. The Lessee agrees that any mortgage is Agreement and the Lessor shall otherwise be protected in any this Lease Agreement. There shall be no subordination of this Lease under the leasehold mortgage shall be subject to all the terms of the subject property; provided, however, that all rights acquired B. The Lessee shall have the right to mortgage its interest in

in writing prior thereto. terms hereof and provided that Lessor is notified of such assignment Lessee remain liable for the lease payments to the Lessor under the partnership or other form of business association, provided that the without the prior written consent of the Lessor to a limited

thereon and that each contract, sublease or agreement with respect thereto shall specifically contain the following provision:

"EQUAL OPPORTUNITY PROVISION:

1. In the construction and operation of the improvements, neither the lessee nor any contractor or manager employed by Lessee shall discriminate against any employee or applicant for employment because of race, color, religion, age, sex or national origin, and they shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, age, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Lessee setting forth the provisions of this Equal Opportunity Clause, and to cause any contractor, subcontractor or manager to do likewise.

2. The Lessee, its sublessees and any contractor or manager shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex or national origin. They shall send to each labor union or representative of workers with which they, or any of them, have a collective bargaining agreement or other contract or understanding, a notice, to be provided by Lessee, advising the labor union or workers' representative of their commitments under this Equal Opportunity Clause, and shall post copies of the notice in conspicuous places available to employees and

applicants for employment. Any sublessee, contractor or subcontractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor and shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by Lessee and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders."

Lessee certifies it does not maintain or provide for its employees any segregated facilities at any of its establishments and it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Lessee certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. Lessee further agrees that it will obtain identical certificates from proposed sublessees, contractors, subcontractors and managers prior to the award of any contracts or subleases, and that it will retain such certificates in its files.

H. The Lessee agrees to provide the Lessor with annual attendance reports at such time as the marina is opened for use by the general public. Said attendance reports shall be submitted to

the Lessor during the month of July of each year and shall provide marina occupancy for a one-year period beginning on July 1 and ending on June 30 of the previous year, such period constituting one fiscal year.

I. The Lessee shall reserve a perpetual easement and right-of-way over and upon the public marina together with all improvements constructed thereon, including all piers, docks and boat slips, subject to the right of the Lessor to close down the public marina for reasonable periods of time for necessary maintenance dredging which shall not be considered an infringement of the said easement. In addition, the Lessee shall grant a perpetual easement to the Lessor of ingress and egress to the public marina. The Lessor shall retain all rights in adjacent waters, which shall include the right to construct additional piers, docks, boat slips and the like.

J. The Lessor and the Lessee agree to assist each other in securing such further permits as may be necessary to construct additional piers, docks, boat slips and the like.

K. The Lessee, its transferees, grantees, successors and assigns, shall irrevocably release the Lessor, its agents or assigns, from any and all claims for damages of whatever nature resulting from any dredging by the Lessee including the incidental depositing of dredged materials resulting from dredging, bulkheading, and/or riprapping, and other incidental damage resulting from any dredging operations and the like which might occur. The Lessor and the Lessee, their successors and assigns, agree to cooperate with each other in connection with the securing of periodic dredging of the marina, and in this connection, agree to execute such applications, releases and other documents necessary or incidental to the approval of the U.S. Army Corps of Engineers, or other public agency, to undertake and execute such dredging as shall be requested by either party. The Lessor and the Lessee, their successors and assigns, further release each other from any and all claims for damage occasioned or arising from any disturbance of the Bay bottom, which results as a natural consequence, from normal periodic maintenance, bulkheading, riprapping or dredging by their

party, either in the maintenance and repair of the marina or the use, maintenance and employment of the rights of the marina waterways. It shall be the Lessee's responsibility to provide maintenance dredging within the leased boundaries of the marina as deemed necessary for the operation of the public marina. The Lessee shall dredge only to depths permitted by the DFR and ACR permits. It shall be the Lessor's responsibility to provide maintenance dredging of the Bay approach to the leased boundaries of the marina in accordance with maintenance schedules of the Port of Pensacola, or as otherwise necessary to maintain navigable access to the marina facility. The Lessor's responsibility to maintain navigable access to the marina shall be governed by permits issued for such work.

L. The Lessee shall be responsible for the installation of all underground utilities, including electrical, gas, sewer and water systems for the development project, at its sole cost and expense, within the boundaries of the development project. The Lessor shall furnish the Lessee with adequate gas and garbage collection services at the Lessee's expense.

M. The Lessor agrees to assist the Lessee in securing the financing necessary for the construction and permanent financing of the project through presentations to financial institutions, and the Lessor agrees to enter into an application for industrial revenue bond financing of the subject property.

N. The Lessor shall cooperate in every respect with the Lessee in securing all required municipal permits and approvals in accord with the Lessor's adopted regulations and procedures.

O. The parties shall participate in all news releases and other presentations to the media for the project. The CRA shall include this project in its public relations program for the overall downtown redevelopment effort.

P. The Lessee shall have the sole discretion over tenant selections and the marketing program, subject only to the Lessor's zoning regulations. The Lessee and the Lessor agree to incorporate public marina guidelines (on a publicly advertised first-come, first-served basis) as an addendum, Exhibit C, to this Lease Agreement

prior to the start of marina construction. The Lessee and the Lessor agree that the public marina guidelines will reserve a reasonable number of slips for transient, commercial and special public purpose vessel berthing.

Q. The Lessee agrees that it shall provide to the Lessor the local matching contribution, in the amount of Seventy-One Thousand Dollars (\$71,000.00), required for the Lessor to receive the 1984 Florida Department of Natural Resources, Florida Recreation Development Assistance Program Grant, Contract No. C1376, Project No. 1-01-10, for the project known as Pitt Slip Marina. Since it is a requirement of the Lessor to expend the sum of Seventy-One Thousand Dollars (\$71,000.00) as its required program matching contribution, the Lessee shall furnish the Lessor the sum of Seventy-One Thousand Dollars (\$71,000.00) upon completion of the planned site improvements, but in no event later than December 1, 1985.

R. The Lessee agrees that it shall comply, on behalf of the Lessor, with conditions E and G of the modified Department of the Army Permit 79E-1089 dated August 14, 1984, and all other conditions of this permit and any further modifications to this permit and the Lessee further agrees that it shall comply with the Department of Environmental Regulation Permit Modifications, Permit #170222359 contained in the DER letter dated August 3, 1984, for the project and any future modifications to this permit. The Lessee agrees that it shall be responsible for the cost of complying with the Department of the Army and DER permits and modifications for the Pitt Slip project. Lessee agrees to assist Lessor in its application for any planned or future modification of existing Department of Army or DER permits.

S. The parties have entered into this Lease Agreement recognizing the existence of a binding letter of interpretation between the Lessor and the State of Florida Department of Community Affairs, Division of Local Resource Management (the "Division") dated January 23, 1980, which fixes certain limitations upon the scope of the project.

T. Lessor agrees to give Lessee the first right of refusal on the portions of the subject property not already leased to Lessee for marina related uses subject to satisfactory performance by the Lessee on parcels already leased. The parties agree that satisfactory performance by Lessee for these purposes is defined as the completion of or satisfactory progress toward construction of the marina and related facilities as contained in the final approved Site Specific Development Plan. Parcel II is considered as a portion of the subject property for this purpose.

**XIII. ENFORCEMENT OF LEASE; FORFEITURE
DEFAULT; REMEDIES; NONWAIVER**

Lessor may enforce the performance of this Lease Agreement in any manner provided by law, and this Lease Agreement shall be void and shall be forfeited on a declaration of forfeiture by Lessor:

- A. If Lessee shall desert or vacate the leased property;
- B. If default shall be made by Lessee in the payment of the rent as specified in this agreement;
- C. If default shall be made by Lessee in the performance of any of the terms or conditions of this agreement that Lessee is to perform, including, but not limited to, the following:
 - (1) Lessee's obligation to timely submit evidence of its financing commitments to Lessor.
 - (2) Lessee's obligation to timely submit its construction plans to Lessor.
 - (3) Lessee's obligation to timely commence construction of the planned improvements on the leased property, the licensed area or the leased property.
 - (4) Lessee's obligation to timely complete construction of the planned improvements on the leased property.
- D. If Lessee shall fail to comply with any of the statutes, ordinances, rules or regulations of any governmental body governing or regulating the Lessee's business;
- E. If Lessee shall file a petition in bankruptcy, or make an assignment for the benefit of creditors, or be adjudicated a bankrupt, or take advantage of any insolvency act.

Lessor shall notify Lessee of any such default and of Lessor's intention to declare this Lease Agreement forfeited. The notice from Lessor shall be sent as specified in this Lease Agreement or may be delivered to Lessee personally, and unless Lessee shall have removed or cured the default or commenced taking action that will result in the default being removed or cured within ninety (90) days from the date of Lessor's notice of intention to declare the Lease Agreement forfeited (unless extended by written agreement of Lessor and Lessee), this Lease Agreement shall come to an end, as if the date established by notice of forfeiture were the day originally fixed herein for the expiration of the term of this Lease Agreement without any further notice from Lessor to Lessee. Lessor's agent or attorney shall have the right, without further notice or demand, to re-enter and remove Lessee and Lessee's property from the leased property without being deemed guilty of any trespass. In consideration of the substantial investment to be made by Lessee in improvements on the leased property, Lessor agrees that Lessee shall not be liable for any rent for the unexpired portion of the terms of this Lease Agreement if Lessor declares this Lease Agreement forfeited pursuant to the terms hereof, except for any rent and other payments which are currently due and payable. However, Lessee shall be liable to Lessor for any other damages suffered by Lessor on account of Lessee's default, including the expense of clearing any improvements which are damaged or destroyed and which Lessor elects to clear on account of Lessee's refusal or failure to repair or rebuild them as required hereinabove.

Notwithstanding the foregoing provisions of this Paragraph, if Lessee should default under the terms of this Lease Agreement and Lessor should declare this Lease Agreement forfeited, Lessor shall not disturb any sublessee's possession of any subleased premises if such sublessee pays rent to Lessor, in accordance with, and otherwise complies with the sublease agreement. Upon Lessor's entering into a lease agreement with a substitute Lessee for the leased property, the sublease shall be assigned to the substitute Lessee and the sublessee shall become a sublessee of the substitute Lessee and shall pay rent directly to the substitute Lessee.

The failure of Lessor to insist, in any one or more instances, on a strict performance of any of the terms or conditions of this Lease Agreement or to exercise any option set forth in this Lease Agreement shall not be construed as a future waiver or a relinquishment of the provision or option, but it shall continue and remain in full force and effect. The receipt by Lessor of rent, with knowledge of the breach of any term or condition hereof, shall not be deemed a waiver of the breach and no waiver by Lessor of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Lessor.

XIV. ATTORNEY'S FEES

If default be made by Lessor or Lessee in the performance of any of the terms, covenants, agreements or conditions set forth in this Lease Agreement so that it becomes necessary to place the enforcement of this Lease Agreement or any part of this Lease Agreement or the collection of any rent due or to become due hereunder or the recovery or possession of the leased property in the hands of an attorney or to file suit upon this Lease Agreement, the prevailing party shall be entitled to recover all the costs incurred in such action, including a reasonable attorney's fee.

XV. NOTICES

All notices provided in this Lease Agreement shall be deemed sufficient when sent to U.S. Certified Mail, Return Receipt Requested, postage prepaid, to the following addresses:

Lessor: CITY OF PENSACOLA
c/o City Manager
City Hall
Pensacola, Florida 32501

Lessee: Florida Sun International, Inc.
2828 Edgewater Drive
Post Office Box 7717A
Orlando, Florida 32854

XVI. PROVISIONS BINDING

The terms and provisions of this Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns, respectively.

approval shall not be deemed to waive or render unnecessary lessor to or of any action by Lessee requiring Lessor's consent or subsequent time of the same provisions. The consent or approval by this Lease Agreement by Lessor shall be construed as a waiver at any and agreed that no waiver at any time of any of the provisions of its rights under this Lease Agreement. Further, it is covenanted continue, shall never be deemed to be a waiver by Lessor of any of non-action on the part of Lessee, no matter how long it may failure on the part of Lessor to complain of any action or

XXI. WAIVER

Agreement. are cancelled and superseded by the provisions of this Lease nature with reference to the subject matter of this Lease Agreement contemporaneous oral or written agreement or representations of any and Lessee on the subject of this Lease Agreement and all prior or This instrument constitutes the entire agreement between Lessor

XX. ENTIRE AGREEMENT

provisions. construction or interpretation of this Lease Agreement or any of its convenience only and shall not be taken into consideration in any The paragraph headings in this Lease Agreement are intended for

XIX. PARAGRAPH HEADINGS

effect. provisions of this Lease Agreement shall continue in full force and provisions shall be considered severable and the remaining contravention of law or void as against public policy, such If any provision of this Lease Agreement shall be declared in

XVIII. SEVERABILITY

Council, signed by the parties hereto. This Lease Agreement may not be altered, changed or amended except by an instrument in writing approved by Lessor's City

XVII. AMENDMENT

Lessor's consent or approval to or of any subsequent similar act by Lessee.

XXII. TIME OF THE ESSENCE

Time is of the essence of each and every provision, covenant and condition of this Lease Agreement on the part of Lessor and Lessee to be done and performed.

XXIII. GOVERNING LAW

This Lease Agreement is subject to and shall be governed by the laws of the State of Florida.

EXECUTED in multiple original copies to be effective as of the day and year first above written.

CITY OF PENSACOLA,
a municipal corporation, Lessor

By: Rodney L. Kendig
City Manager

Attest:

Shirley F. Law
Asst. City Clerk

FLORIDA SUN INTERNATIONAL, INC.
a Florida corporation for profit
LESSEE

By: Pauline A. Johns (SEAL)
Executive Vice President

Attest:

Charles C. [Signature]
Assistant Secretary

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 18th day of September, 1985, by RODNEY L. KENDIG and PAULINE JOHNS, the City Manager and City Clerk, respectively, of the CITY OF PENSACOLA, a municipal corporation, for and on behalf of the City.

GIVEN under my hand and official seal this 18th day of September, 1985.

Estaine C. Magers
Notary Public
My Commission Expires: _____

FORM FOR NOTARY USE
BY: John A. [Signature]
Asst. City Secretary
Dated: 18 Sep 85

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Before the subscriber personally appeared William G. Hendrix, Jr. and Charles K. Garner, known to me to be the individuals described by said names, who executed the foregoing instrument, and to be the executive vice president and Assistant Secretary, and respectively, of FLORIDA SUN INTERNATIONAL, INC., a Florida corporation for profit, and acknowledged and declared that they as executive vice president and Assistant Secretary of said corporation and being duly authorized by it, signed its name and affixed its seal to and executed the said instrument for it and as its act and deed.

Given under my hand and official seal this 17th day of September, 1985.

O. J. J. Shaper
Notary Public
My Commission Expires October 29, 1985
My Commission Expires October 29, 1985

EXHIBIT "A"

PARCEL I

Begin at the Southwest corner of Block 8, Waterfront Grant, according to map of City of Pensacola by Thomas C. Watson, copyrighted in 1906, said point also being the intersection of the Easterly right-of-way line of Barracks Street (60' R/W) and the Northerly right-of-way line of Magnolia Street (60' R/W); thence go North 79 Degrees 25 Minutes 49 Seconds east along the aforesaid Northerly right-of-way line a distance of 175.00 feet; thence go North 10 Degrees 34 Minutes 11 Seconds West a distance of 280.00 feet; thence go North 79 Degrees 25 Minutes 49 Seconds east a distance of 135.00 feet; thence go north 10 Degrees 34 Minutes 11 Seconds West a distance of 30.00 feet; thence go North 79 Degrees 25 Minutes 49 Seconds East a distance of 827.08 feet; thence go South 10 Degrees 34 Minutes 11 Seconds East a distance of 310.00 feet; thence go South 59 Degrees 34 Minutes 30 Seconds West a distance of 191.38 feet; thence go South 79 Degrees 25 Minutes 49 Seconds West a distance of 347.08 feet; thence go South 10 Degrees 34 Minutes 11 Seconds East a distance of 95.00 feet; thence go South 79 Degrees 25 Minutes 49 Seconds West a distance of 123.00 feet; thence go North 10 Degrees 34 Minutes 11 Seconds West a distance of 100.00 feet; thence go South 79 Degrees 25 Minutes 49 Seconds West a distance of 487.00 feet to the Northwest corner of Block 17, Waterfront Grant, according to the aforesaid map of the City of Pensacola, said point also being the intersection of the Southerly right-of-way line of Magnolia Street (60' R/W) and the aforesaid easterly right-of-way line of Barracks Street; thence go North 10 Degrees 34 Minutes 11 Seconds west along the aforesaid Easterly right-of-way line a distance of 60.00 feet to the point of beginning, the above described parcel of land is situated in Section 46, Township 2 South, Range 30 West, Escambia County, Florida and contains 8.529 acres, Less and Except that portion of a Department of Transportation drainage easement in a portion of Cedar and Alcaniz Street.

PARCEL I-A

All of Lots 1-10, 21 and 22, and the West 20 feet of Lots 11-20, Block 8, Waterfront Grant, according to map of City of Pensacola by Thomas C. Watson, copyrighted in 1906. More particularly described as follows:

Begin at the Northwest corner Block 8, Waterfront Grant according to map of City of Pensacola by Thomas C. Watson copyrighted in 1906, said point also being the intersection of the Easterly right-of-way line of Barracks Street (60' R/W) and the South right-of-way line of Cedar Street (60' R/W); thence go North 79 Degrees 25 Minutes 49 Seconds East along the North line of the aforesaid Block 8 a distance of 175.00 feet; thence go South 10 Degrees 34 Minutes 11 Seconds East a distance of 250.00 feet to a point on the South line of the aforesaid Block 8; thence go South 79 Degrees 25 Minutes 49 Seconds West along the aforesaid South line a distance of 175.00 feet to a point on the aforesaid Easterly right-of-way line of Barracks Street; thence go North 10 Degrees 34 Minutes 11 Seconds West along the aforesaid Easterly right-of-way line a distance of 250.00 feet to the point of beginning. The above described parcel is situated in Section 46, Township 2 South, Range 30 West, Escambia County, Florida and contains 1.004 acres.

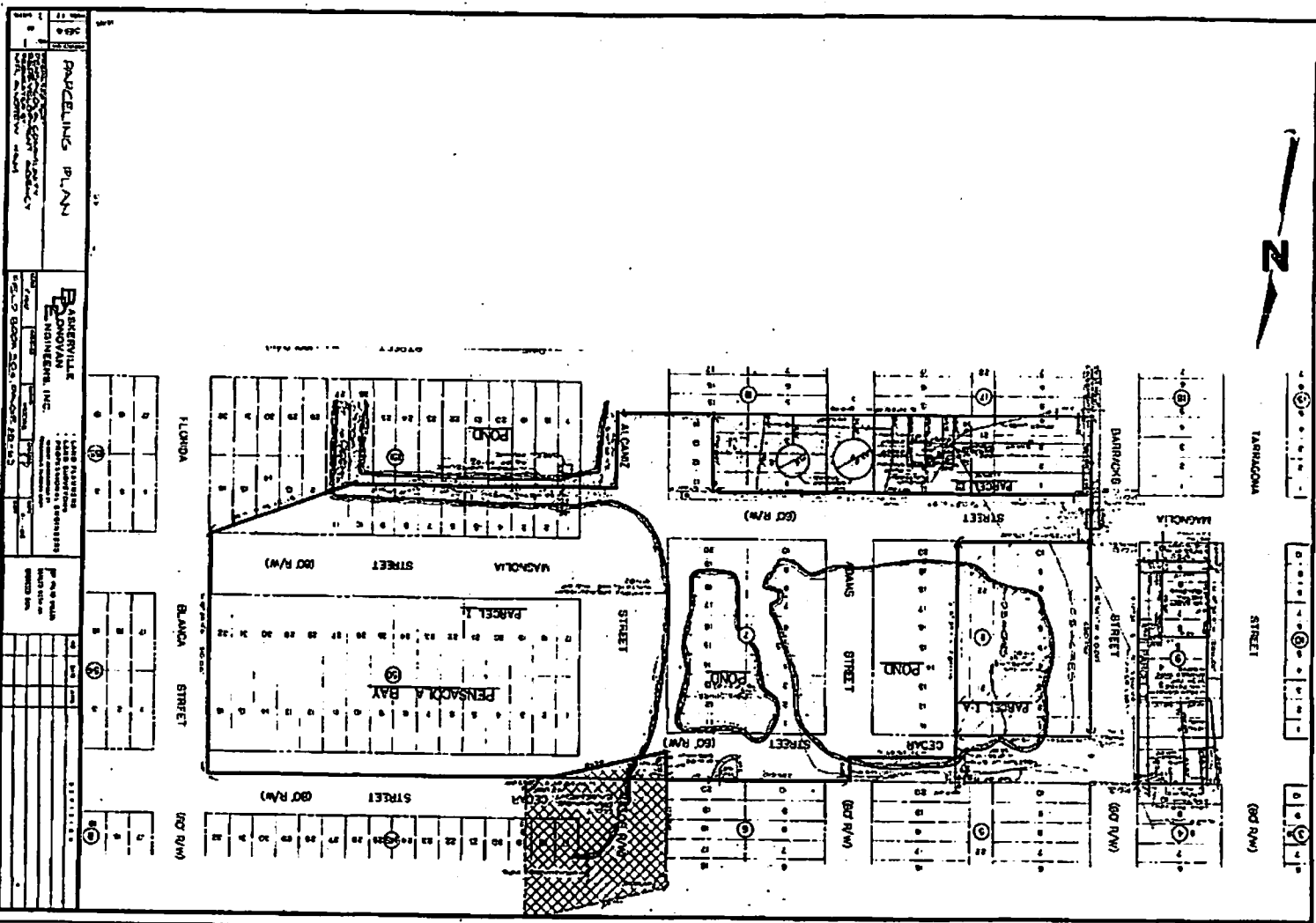
Parcel II

Begin at the Southeast corner of Block 4, Waterfront Grant, according to map of City of Pensacola by Thomas C. Watson copyrighted in 1906, said point also being the intersection of the Northerly right-of-way line of Cedar Street (60' R/W) and the Westerly right-of-way line of Barracks Street (60' R/W); thence go South 10 Degrees 34 Minutes 11 Seconds East along the aforesaid Westerly right-of-way line a distance of 286.00 feet; thence go South 79 Degrees 25 Minutes 49 Seconds West a distance of 91.00 feet; thence go North 10 Degrees 34 Minutes 11 Seconds West to a point on the aforesaid Northerly right-of-way line of Cedar Street a distance of 286.00 feet; thence go North 79 Degrees 25 Minutes 49 Seconds East along the aforesaid Northerly right-of-way line a distance of 91.00 feet to the point of beginning. The above-described parcel is situated in Section 46, Township 2 South, Range 30 West, Escambia County, Florida and contains 0.597 acres.

Parcel III

All of Lots 1-4, 11-14 and a portion of Lot 21, Block 17, all of Lots 1-4 and a portion of Lots 11-14, Block 18, and a portion of Adams Street, Waterfront Grant, according to map of City of Pensacola by Thomas C. Watson, copyrighted in 1906, more particularly described as follows:

Begin at the Northwest corner of Block 17, Waterfront Grant, according to map of City of Pensacola by Thomas C. Watson, copyrighted in 1906, said point also being the intersection of the Easterly right-of-way line of Barracks Street (60' R/W) and the Southerly right-of-way line of Magnolia Street (60' R/W); thence go North 79 Degrees 25 Minutes 49 Seconds East along the aforesaid Southerly right-of-way line of Magnolia Street (60' R/W) a distance of 487.00 feet; thence go South 10 Degrees 34 Minutes 11 Seconds East a distance of 100.00 feet; thence go South 79 Degrees 25 Minutes 49 Seconds West a distance of 487.00 feet to a point on the aforesaid Easterly right-of-way of Barracks Street (60' R/W); thence go North 10 Degrees 34 Minutes 11 Seconds west along the aforesaid Easterly right-of-way line of Barracks Street (60' R/W) a distance of 100.00 feet to the point of beginning. The above described parcel of land is situated in Section 46, Township 2 South, Range 30 West, Escambia County, Florida and contains 1.118 acres.



NO.	AREA	ACRES	REMARKS
1	FLORIDA STREET	1.00	
2	BLANCA STREET	1.00	
3	MANOCLIA STREET	1.00	
4	DARRICKS STREET	1.00	
5	CELAH STREET	1.00	
6	DANS STREET	1.00	
7	ALCANT	1.00	
8	POND	1.00	
9	PARCEL I	1.00	
10	PARCEL II	1.00	

PARCELS PLAN

BARRETTVILLE ENGINEERS, INC.
 1500 SOUTH 20th AVENUE
 TAMPA, FLORIDA 33606
 PHONE 813-288-7200

NO.	AREA	ACRES	REMARKS
11	FLORIDA STREET	1.00	
12	BLANCA STREET	1.00	
13	MANOCLIA STREET	1.00	
14	DARRICKS STREET	1.00	
15	CELAH STREET	1.00	
16	DANS STREET	1.00	
17	ALCANT	1.00	
18	POND	1.00	
19	PARCEL I	1.00	
20	PARCEL II	1.00	

MINIMUM INSURANCE REQUIREMENTS

1. Workers' Compensation - Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. In addition, the policy must include:

a) Employers' Liability with a limit of not less than \$500,000 each accident.

b) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation or material change.

c) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and Jones Act during any period of exposure.

2. Comprehensive General Liability - Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy filed by the Insurance Services Office and must include:

a) Minimum limits of \$5,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

b) Premises and Operations.

c) Independent Contractors.

d) Products and Completed Operations.

e) Liquor Liability.

f) XCU Coverage.

g) Broad Form Property Damage.

h) Broad Form Contractual Coverage applicable to this specific lease, including any hold harmless and/or indemnification agreement.

i) Marina operators.

2. Comprehensive General Liability - (continued)

- i) Additional Insured - The City of Pensacola is to be specifically included as an additional insured for all coverages. Except with regard to limits of liability, this insurance shall apply separately to the City. This insurance shall be primary and not contributory with the City's insurance.
- j) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation or material change.

3. Business Auto Policy - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:

- a) Minimum limits of \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- b) Owned Vehicles.
- c) Hired and Non-Owned Vehicles.
- d) Employee Non-Ownership.
- e) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation or material change.