

## OPTION AGREEMENT

This **OPTION AGREEMENT** (this "**Agreement**"), dated as of \_\_\_\_\_, 2018 (the "**Effective Date**"), is entered into between **CITY OF PENSACOLA**, a Florida municipal corporation ("**Optionor**"), and **Studer Properties, LLP**, a Florida limited liability partnership ("**Optionee**"). Optionor, and Optionee, their successors, and assigns, are each a "Party," and collectively referred to herein as the "Parties".

### RECITALS

WHEREAS, Optionor is the owner of that certain vacant parcels of land more particularly described on the attached **Exhibit "A"** (the "Lots" described in the description on Exhibit "A" are referred to hereinafter individually as a "Parcel", and collectively as the "Parcels" or the "Property"); and

WHEREAS, Optionor wishes to grant to Optionee, and Optionee wishes to obtain from Optionor, an irrevocable and exclusive option to sublease the Property, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the Option Payment and the other mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Grant of Option. Subject to Optionee's timely payment of the Option Payment (defined below), Optionor hereby grants to Optionee an irrevocable and exclusive option (the "**Option**") to sublease the Property.

2. Option Term. The term of the Option ("**Option Term**") shall commence on the Effective Date and automatically expire at midnight on \_\_\_\_\_, 2020 (such date being 18 months from the Effective Date) (the "**Option Termination Date**"), unless duly extended, exercised or sooner terminated as provided below in this Option Agreement.

3. Option Consideration.

a. Option Payment. The Option is granted in consideration of Optionee's payment to Optionor of the amount of TWO HUNDRED SEVENTY-ONE THOUSAND SIX HUNDRED FIFTY-NINE AND 60/100 DOLLARS (\$271,659.60) ("**Option Payment**") payable in monthly installments by Optionee's certified check or official bank check. The Option Payment equals 20% of the sum of the monthly base rent for all Parcels as stated in the most recent real estate listing prepared by NAI Pensacola (Optionor's real estate broker) over the Option Term. A table setting forth the calculation of the Option Payment payable over the Option Term is attached hereto as **Exhibit "B"**. Each Parcel has a defined dollar amount representing a proportionate percentage of the Option Payment. If Optionee exercises the Option, and the Parties enter into a definitive ground sublease(s) for one, or more Parcels, the Option Payment paid to date for the Parcel(s) identified in an Exercise Notice (as that term is defined hereinbelow) will be credited towards the Optionee's base rent under such corresponding ground sublease(s).

b. Option Payment Earned Upon Delivery. Optionee acknowledges and agrees that

the Option Payment constitutes consideration to Optionor for Optionor's agreement to (i) enter into this Agreement with Optionee, (ii) not sell nor lease the Property to another purchaser, lessee, nor tenant while this Agreement is in effect, and (iii) lease the Property to Optionee on certain terms and conditions to be more particularly defined in a definitive ground sublease agreement, provided that Optionee has exercised the Option in the manner provided in Section 5 below. The Option Payment shall be fully earned by Optionor, and due and owing by Optionee, upon the Parties' execution of this Agreement, and shall be non-refundable to Optionee except for (A) a default by Optionor giving Optionee the right to terminate this Agreement, or (B) a termination of this Agreement pursuant to Section 6 below.

4. Sublease Agreement. As of the Effective Date, Optionor has presented a proposed form of Ground Sublease Agreement, a copy of which is attached hereto as **Exhibit "D"** (the "**Template Sublease Agreement**"). The Parties agree to use the Template Sublease Agreement as a template for negotiations of a definitive ground sublease agreement, and the Template Sublease Agreement will be modified as the parties mutually agree so as to meet the specifics of Optionee's or its assigns' intended use of any Parcel. The Parties do expressly agree as of the Effective date that the "Base Rent" (as that term is defined in the Template Sublease Agreement) under any ground sublease agreement for any Parcel entered into after an Exercise Notice will be the dollar amounts identified in the column identified as Monthly Rent on the attached **Exhibit "B"**, with any increase to such initial Base Rent limited to adjustments based on the Consumer Price Index, using the formula and methodology set forth in the Template Sublease Agreement. Optionor and Optionee expressly agree that all other terms and conditions of any definitive ground sublease agreement for any Parcel will be negotiated using commercially reasonable terms and conditions taking into consideration the specific use of any Parcel as proposed by Optionee or its assigns. The Parties will consider in good faith, any revisions, deletions, and modifications to the final form of any ground sublease agreement in working towards a mutually agreeable definitive ground sublease agreement.

5. Exercise of Option. At any time during the Option Term, Optionee may exercise the Option by timely sending Optionor a written notice of Optionee's intention to exercise the Option ("**Exercise Notice**"). Optionee is expressly permitted to send multiple Exercise Notices to sublease Parcels at different time periods during the Option Term. The exercise of an Option to sublease any individual Parcel shall not affect the continuing rights granted to Optionee under this Agreement as to any Parcels not identified in an Exercise Notice. The Parties agree to work diligently in good faith to enter into a commercially reasonable ground sublease agreement(s) after Optionee's Exercise Notice(s). If Optionee does not timely exercise the Option in the manner described herein on or before the Option Termination Date, the Optionor shall have the right to terminate this Agreement and retain the Option Payment. Thereafter, neither party shall have any further obligations hereunder except for those that expressly survive termination of this Agreement.

6. Damage or Destruction. If the Property is totally or partially damaged or destroyed by fire, earthquake, accident or other casualty prior to exercise of the Option through no fault of Optionee, Optionee may cancel this Agreement by giving written notice to Optionor and shall be entitled to the return of the Option Payment. However, Optionee shall have no right to cancel this Agreement if, before Optionee gives notice of cancellation to Optionor, the Property has been repaired or replaced so that it is in substantially the same condition as it was on the Effective Date.

7. Obligation to Maintain/Restrictions. During the Option Term, Optionor will maintain the Property in its existing condition and will not make any major removals, alterations or changes thereto, except as may be required by law, and shall affect no changes to the Property's zoning classification, land

use, boundary lines or physical topography unless Optionee, in its sole absolute discretion, consents thereto in writing. City shall keep the Property free of all liens and encumbrances, except for those in effect on even date herewith and identified in a title commitment obtained by Optionee, and delivered to Optionor on or before the Effective Date.

8. Default by Optionee. In addition to Optionor's rights in the event that Optionee does not exercise the Option in the manner described in Section 5 before the Option Termination Date, if Optionee fails to perform any of its obligations under this Option Agreement and such failure continues for more than ten (10) days after notice from Optionor, then Optionor may terminate this Option Agreement and retain all Option Payments paid by Optionee and Optionor thereafter shall have no further liability or obligations hereunder. Notwithstanding the foregoing, if a nonmonetary obligation of Optionee is not capable of being performed within such ten (10) day period, Optionee shall be permitted a reasonable period of time to cure such failure, but in no instance will such time extend beyond sixty (60) days after receipt of notice from Optionor.

9. Default by Optionor. If Optionor fails to perform any of its obligations or is otherwise in default hereunder, Optionee shall have the right to terminate this Option Agreement, obtain a refund of the Option Payment, and/or to seek such other relief Optionee may have at law or in equity, including, without limitation, seeking injunctive relief to prevent a lease, sublease, or sale of the Property to a party other than Optionee and the filing of an action for specific performance.

10. Assignment of Option. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs or successors and permitted assigns. Optionee may not assign its interest under this Agreement without the prior consent of Optionor, which consent will not be unreasonable withheld, provided however, Option will be permitted to assign this Agreement without the consent of the Optionor, if (a) Optionee gives Optionor written notice of such assignment at least five (5) days prior to such assignment, and (b) the assignee is a corporation, limited liability company, partnership, other entity, or joint venture of which Quinton D. Studer and Mary P. Studer remain an owner or principal thereof, and (c) Optionee's assignee executes an instrument in form reasonably satisfactory to Optionor agreeing to be bound by all the terms and conditions of this Agreement. Upon any assignment of Optionee's entire interest under this Agreement, Optionee shall be relieved of all further liability under this Agreement.

11. Memorandum of Option. Concurrently with the execution and delivery of this Agreement, Optionor and Optionee will execute and acknowledge a Memorandum of Option in the form of that attached as **Exhibit "C"**, which Optionee, at its sole cost and expense, is authorized to file and record in the public records of Escambia County, Florida.

12. Notices. Unless specifically stated otherwise in this Agreement, all notices shall be in writing and delivered by one the following methods: (a) personal delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier, (c) registered or certified mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service, or (d) electronic transmission (facsimile or electronic mail) provided that such transmission is completed no later than 5:00 pm on a business day and the original is also sent by personal delivery, overnight delivery or by mail for receipt the next business day, in the manner previously described, whereby delivery is deemed to have occurred at the end of the business day on which the electronic transmission is complete. The address for the aforesaid notice is as follows:



Optionor: City of Pensacola  
Attn: \_\_\_\_\_  
222 West Main Street, 7<sup>th</sup> Floor  
Pensacola, Florida 32502  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

With copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Optionee: Studer Properties, LLP  
Attn: Andrew Rothfeder  
321 N. Devilliers Street, Suite 103  
Pensacola, Florida 32501  
Email: [andrew@studercdg.com](mailto:andrew@studercdg.com)  
Telephone: (850) 232-3003

With copy to: Clark Partington  
Attn: Charles F. James  
125 East Intendencia Street, 4<sup>th</sup> Floor  
Pensacola, Florida 32502  
Email: [cjames@clarkpartington.com](mailto:cjames@clarkpartington.com)  
Telephone: (850) 434-9200

13. Attorneys Fees and Costs. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred including reasonable attorney's fees for services rendered in connection with any enforcement of breach of contract, including appellate proceedings and post judgment proceedings. All legal actions arising out of or connected with this Agreement must be instituted solely in the Circuit Court of Escambia County, Florida, or in the Federal District Court for the First District of Florida, and all Parties hereto do hereby agree to submit to the exclusive personal jurisdiction of such courts.

14. Real Estate Broker Commissions. Certain negotiations relative to the option and sublease of the Property, as contemplated by and provided for in this Agreement, have been conducted by and between Optionor with the services of NAI Pensacola, f/k/a NAI Halford (the "**Optionor's Broker**") pursuant to separate listing agreement(s). Optionor shall pay Optionor's Broker any and all commissions owed (if any) arising under this Agreement, with all such other commissions being due and payable only in the event of execution of definitive ground sublease agreement(s) for the Property. Optionee warrants and represents to Optionor that it has not engaged any real estate broker in connection with this Agreement.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

16. Time of Essence. Optionor and Optionee hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party



will constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

OPTIONOR:

**CITY OF PENSACOLA**

a Florida municipal corporation

By: \_\_\_\_\_  
Ashton J. Hayward, III - Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved As To Form

By: \_\_\_\_\_  
Lysia Bowling, City Attorney

[Signature page to Option to Lease between City and Studer Properties, LLP.]

OPTIONEE:

**STUDER PROPERTIES, LLP**

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

By: \_\_\_\_\_

Print name: \_\_\_\_\_

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

Its: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of STUDER PROPERTIES, LLP, a Florida limited liability partnership, who ( ) is personally known to me or ( ) has produced a driver's license as identification.

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

[SEAL]

[Signature page to Option to Lease between City and Studer Properties, LLP.]



**EXHIBIT "A"**  
**to**  
**OPTION AGREEMENT**  
**BETWEEN**  
**CITY OF PENSACOLA AND STUDER PROPERTIES LLP, AND/OR ASSIGNS**

**PROPERTY**

The land referred to herein below is situated in the County of Escambia, State of Florida, and is described as follows:

Lots 3, 4, 5, 6, 7, 8 and 9 of VINCE WHIBBS SR. COMMUNITY MARITIME PARK, according to the Plat thereof as recorded in Plat Book 19, Page(s) 23 and 23A, of the Public Records of Escambia County, Florida.

**EXHIBIT "B"**  
**to**  
**OPTION AGREEMENT**  
**BETWEEN**  
**CITY OF PENSACOLA AND STUDER PROPERTIES LLP, AND/OR ASSIGNS**

**Option Payment**

Maritime Park Parcels  
(Rent Calculations per NAI Pensacola listing 08/10/2018)

<b>Lot</b>	<b>Monthly Rent "Base Rent"</b>	<b>20% of Monthly Rent. Optionee's monthly installment of Option Payment</b>	<b>18 months (Option Payment)</b>
3	\$2,066.00	\$413.20	\$7,437.60
4	\$21,048.00	\$4,209.60	\$75,772.80
5	\$13,769.00	\$2,753.80	\$49,568.40
6	\$6,632.00	\$1,326.40	\$23,875.20
7	\$13,269.00	\$2,653.80	\$47,768.40
8	\$15,563.00	\$3,112.60	\$56,026.80
9	\$3,114.00	\$622.80	\$11,210.40
<b>TOTAL</b>	<b>\$75,461.00</b>	<b>\$15,092.20</b>	<b>\$271,659.60</b>

**EXHIBIT "C"**  
**to**  
**OPTION AGREEMENT**  
**BETWEEN**  
**CITY OF PENSACOLA AND STUDER PROPERTIES LLP, AND/OR ASSIGNS**

**Memorandum to Option Agreement**



This Instrument Prepared by and  
when recorded return to:  
Charles F. James, Esq.  
CLARK PARTINGTON  
125 E Intendencia St, 4<sup>th</sup> Floor  
Pensacola, Florida 32502

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

**MEMORANDUM TO OPTION AGREEMENT**

The Memorandum of Option Agreement is made as of \_\_\_\_\_, 2018.

The name of the Optionor in the Option Agreement is **CITY OF PENSACOLA**, a Florida municipal corporation (the "City").

The name of the Optionee in the Option Agreement is **Studer Properties, LLP**, a Florida limited liability partnership ("Studer").

The address of the City is:       City of Pensacola  
  222 West Main Street, 7<sup>th</sup> Floor  
  Pensacola, Florida 32502

The address of Studer is:       Studer Properties, LLP  
  321 N. Devilliers Street, Suite 103  
  Pensacola, Florida 32501

City is the owner of that certain real property located at 300 Blk, West Main Street, Pensacola, Florida, 32502 more particularly described on **Exhibit "A"** attached to this Memorandum (the "Property").

City and Studer have entered into an Option Agreement dated \_\_\_\_\_, 2018 (the "Option Agreement") pursuant to which City grants to Studer the exclusive right to sublease the Property, on all terms and conditions of the Option Agreement, as more particularly described in the Option Agreement.

The Option Term (as defined in the Option Agreement) commenced on \_\_\_\_\_, 2018 and shall terminate at midnight on \_\_\_\_\_ 2020 [18 months] as specified in the Option Agreement.

This Memorandum of Option Agreement is executed and delivered by City and Studer solely for the purpose of recording, in the Public Records of Escambia, County, Florida, notice of the existence of the Option Agreement, and, consequently, nothing contained in this Memorandum shall be construed to change or alter the terms, conditions or provisions of the Option Agreement and reference shall be made to the Option Agreement itself for its terms, conditions, and provisions and the intent of City and Studer regarding the leasing of the Property demised by the Option Agreement. In the event of any inconsistency between the terms of this Memorandum of Option Agreement and the terms of the Option Agreement, the terms of the Option Agreement shall control.

On the expiration or sooner termination of the Option Term, City and Studer shall execute a notice of termination in recordable form stating that the Option Agreement is of no further force or effect. Should Studer be unavailable or unwilling to execute the notice of termination, City is authorized to execute and record a notice of termination on behalf of Studer as Studer's duly authorized, irrevocable agent and attorney-in-fact, it being agreed that such power is one coupled with an interest.

This Memorandum of Option Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

*(This space intentionally left blank. Signatures follow on subsequent pages.)*

IN WITNESS WHEREOF, City and Studer have caused this Memorandum of Option Agreement to be duly executed as of the date set forth above.

**CITY:**

**CITY OF PENSACOLA**

a Florida municipal corporation

By: \_\_\_\_\_  
Ashton J. Hayward, III - Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved As To Form

By: \_\_\_\_\_  
Lysia Bowling, City Attorney

[Signature page to Memorandum of Option Agreement between City and Studer]



**STUDER:**

**STUDER PROPERTIES, LLP**  
a Florida limited liability partnership

\_\_\_\_\_  
[Signature of Witness]

\_\_\_\_\_  
[Printed Name of Witness]

\_\_\_\_\_  
[Signature of Witness]

\_\_\_\_\_  
[Printed Name of Witness]

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018,  
by \_\_\_\_\_, the \_\_\_\_\_ of STUDER PROPERTIES, LLP, a Florida  
limited liability partnership, who ( ) is personally known to me or ( ) has produced a driver's license as  
identification.

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

[SEAL] \_\_\_\_\_

[Signature page to Memorandum of Option Agreement between City and Studer]



**Exhibit "A"**  
**To**  
**Memorandum of Option Agreement**

**PROPERTY**

The land referred to herein below is situated in the County of Escambia, State of Florida, and is described as follows:

Lots 3, 4, 5, 6, 7, 8 and 9 of VINCE WHIBBS SR. COMMUNITY MARITIME PARK, according to the Plat thereof as recorded in Plat Book 19, Page(s) 23 and 23A, of the Public Records of Escambia County, Florida.



**EXHIBIT "D"**  
**to**  
**OPTION AGREEMENT**  
**BETWEEN**  
**CITY OF PENSACOLA AND STUDER PROPERTIES LLP, AND/OR ASSIGNS**

**Template Ground Sublease Agreement**

STATE OF FLORIDA  
COUNTY OF ESCAMBIA

**GROUND SUBLEASE**  
**(Maritime Park Parcel )**

THIS GROUND SUBLEASE (this "Sublease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Sublease Effective Date") by and between the CITY OF PENSACOLA, a Florida municipal corporation ("Sublessor") and \_\_\_\_\_, a \_\_\_\_\_ ("Sublessee"), whose address is \_\_\_\_\_. Sublessor and Sublessee are collectively referred to herein as the "Parties".

W I T N E S S E T H:

WHEREAS, the City of Pensacola owns that property commonly referred to as the "Vince J. Whibbs, Sr. Community Maritime Park" located in downtown Pensacola on the shore of Pensacola Bay and south of Main Street, in Pensacola, Florida (the "Park Property"); and

WHEREAS, the City of Pensacola, as lessor, leased the Park Property to Community Maritime Park Associates, Inc. ("CMPA"), as lessee, for a term of sixty (60) years commencing on May 28, 2009 and expiring on May 28, 2069, pursuant to that certain Master Lease dated March 27, 2006 between the City of Pensacola, as lessor, and CMPA, as lessee, recorded in Official Records Book 5886, Page 1303, public records of Escambia County, Florida (the "Master Lease"); and

WHEREAS, effective June 1, 2017, the CMPA assigned all of its right, title, interest and leasehold estate in, to and under the Master Lease to the City of Pensacola pursuant to that certain Assignment of Master Lease ("Assignment") dated June 1, 2017, and recorded in Official Records Book 7722, Page 866, public records of Escambia County, Florida; and

WHEREAS, pursuant to Section 3 of the Assignment and Section 41 of the Master Lease, the assignment of the Master Lease by the CMPA to the City of Pensacola did not result in a merger of the Master Lease and the leasehold estate created thereby with the fee simple estate of the City of Pensacola in the Park Property; and

WHEREAS, as a result of the Assignment and the non-merger of title, the Master Lease remains in full force and effect, the City of Pensacola is both the lessor and the

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Option Agreement (A3153987-6xA3759)

lessee under the Master Lease, and the City of Pensacola is the Sublessor under this Sublease; and

WHEREAS, Sublessee desires to lease from Sublessor the Leased Premises (as hereinafter defined) for the construction and operation of a certain building and other improvements as more particularly described hereinbelow; and

WHEREAS, Sublessor is willing to lease the Leased Premises to Sublessee, and Sublessee is willing to lease the Leased Premises from Sublessor, for the purposes, upon the terms and subject to the conditions set forth in this Sublease;

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

1. LEASED PREMISES. Sublessor hereby leases to Sublessee, and Sublessee hereby rents and takes from the Sublessor, that certain unimproved parcel of land described as Lot \_\_\_\_\_ of Vince Whibbs, Sr. Community Maritime Park, according to the map or plat thereof recorded in Plat Book 19, Pages 23 and 23A, of the Public Records of Escambia County, Florida (the "Leased Premises"), upon the terms and subject to the conditions of this Sublease. Notwithstanding anything in this Sublease to the contrary, the Leased Premises are leased subject to the following exceptions:

- (a) All terms, covenants, conditions and provisions of the Master Lease;
- (b) All matters appearing in the public records of Escambia County, Florida;
- (c) Any state of facts which an accurate survey or physical inspection of the Leased Premises would show;
- (d) All zoning laws, ordinances, resolutions, restrictions, rules and regulations, building and use restrictions and other laws, rules and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction;
- (e) Easements hereby reserved by the City of Pensacola for sidewalks, roads, drives and utilities, if any, located on, over, under or across the Leased Premises or Park Property; and
- (f) All the terms, covenants, conditions and other provisions of this Sublease.



2. USE OF PREMISES. Sublessee shall use the Leased Premises solely for \_\_\_\_\_ and for no other use or purpose without the prior written consent of the Sublessor, which consent may be given, withheld or conditioned in the Sublessor's sole and absolute discretion. In no event shall Sublessee use the Leased Premises in violation of any exclusive use granted prior to the Sublease Effective Date to any other licensee, lessee or sublessee of any portion of the Park Property or in any other way or manner contrary to any of the terms and provisions of the Master Lease. Further, in no event shall Sublessee use, or suffer or permit any other person or entity to use, the Leased Premises or any portion thereof (i) as Residential Rental Property (hereinafter defined); or (ii) for any trade or business consisting of or including, in whole or in part, a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a sun tan facility, a racetrack or other facility used for gambling or a store principally selling alcoholic beverages for off-premises consumption. As used herein, the term "Residential Rental Property" means any building or structure if eighty percent (80%) or more of the gross rental income from such building or structure for a taxable year is rental income from dwelling units (as defined in Section 168(e)(2)(A)(ii) of the Internal Revenue Code of 1986, as amended. Sublessee shall indemnify, defend and hold harmless Sublessor against all costs, expenses, damages, liability, or loss caused by any violation hereof of any provision of this Section by Sublessee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this Section 2 shall be exercisable only by the Pensacola City Council.

3. DUE DILIGENCE PERIOD. Commencing on the Sublease Effective Date, Sublessee shall have a period of sixty (60) days to perform its due diligence on the Leased Premises (the "Due Diligence Period"). During the Due Diligence Period, Sublessee, at its sole cost and expense, may conduct on the Leased Premises such surveys, inspections and other tests as Sublessee may reasonably desire; provided that no destructive testing, excavation or drilling shall be conducted without the prior written approval of the Sublessor. Such activities may be conducted only during normal business hours and shall not damage the Leased Premises or any other portion of the Park Property. Upon the expiration or termination of the Due Diligence Period, Sublessee shall promptly repair any damage to the Leased Premises or any other portion of the Park Property resulting from such activities. Sublessee shall indemnify, defend and hold Sublessor harmless from and against any construction or mechanics liens and all claims, liabilities, injuries and damages to persons and property (including without limitation the Leased Premises and the Park Property) suffered or incurred by Sublessor as a result of such activities or the acts or omissions of anyone undertaking such activities for or on behalf of Sublessee. Sublessee may terminate this Sublease at any time during the Due Diligence Period by providing written notice of termination to Sublessor on or before the expiration of the Due Diligence Period. If Sublessee terminates this Sublease pursuant to the preceding sentence, then all materials, inspection reports, environmental site assessments, surveys, title reports, site plans, drawings and all other documents in the possession or control of Sublessee relating to

the Leased Premises shall become the property of the Sublessor and shall be provided by Sublessee to the Sublessor within ten (10) days after the date of termination of this Sublease. Sublessee's obligations under this Section shall survive the termination or expiration of this Sublease.

#### 4. IMPROVEMENTS.

(a) Prior to the end of the Construction Period (hereinafter defined) Sublessee shall, at its sole cost and expense, complete construction of the following described improvements on the Leased Premises, to-wit: \_\_\_\_\_, as more particularly described by the plans and specifications approved by the Sublessor pursuant to this Section 4 (collectively, the "Initial Improvements"). The Construction Period shall commence on the first day after the end of the Due Diligence Period, and shall expire \_\_\_\_\_ days thereafter (the "Construction Period"); provided that the Construction Period may be extended if and to the extent that the completion of the Initial Improvements is delayed solely due to Force Majeure (as defined in Section 17 below), but in no event shall the Construction Period be so extended by more than sixty (60) days. The Sublessee must commence construction of the Initial Improvements on or before thirty (30) days after commencement of the Construction Period, diligently and continuously prosecute such construction, and complete such construction not later than the last day of the Construction Period. For purposes of this Sublease, construction shall be deemed to have commenced upon the pouring of the footers or the sinking of pilings, as the case may be, for the foundation of the Initial Improvements, and construction shall be deemed to have been completed upon the full completion of all of the Initial Improvements in accordance with the plans and specifications approved by the Sublessor (subject only to normal punch list items) and the issuance of all final governmental permits and unconditional certificates of occupancy required for the full and lawful use and occupancy of the Improvements for the purposes permitted by Section 2 above.

(b) The Initial Improvements and all other buildings and improvements (including without limitation landscaping and signage) constructed or placed on the Leased Premises at any time and from time to time during the Term of this Sublease are referred to in this Sublease as the "Improvements". Sublessee shall not construct, alter, remove or demolish any Improvements, in whole or in part, without first having obtained the written approval of Sublessor, which approvals shall not be unreasonably withheld, conditioned or delayed; provided, however, that any alterations to the interior of any building that do not involve or affect the exterior appearance, roof or structural components of the building do not require such approval by Sublessor. No Improvements shall be constructed, altered, removed or demolished except in strict accordance with architectural design, site plan, construction contracts, construction budget, construction schedule and plans and specifications approved in writing by



Sublessor prior to commencement of such work, such approvals not to be unreasonably withheld, conditioned or delayed; provided, however, that the approval of Sublessor required by this paragraph shall not be deemed to be any acknowledgement by the Sublessor that such plans and specifications, other approved items or the proposed Improvements or other work complies or will comply with applicable laws, codes, ordinances and regulations and shall not relieve Sublessee from obtaining all governmental authorizations, permits and approvals required by applicable laws, codes, ordinances and regulations, all of which shall be obtained prior to commencement of construction, alteration, removal or demolition of any Improvements. Without limiting the generality of the foregoing, the materials, architectural design and plans and specifications of any Improvements shall conform with the published design criteria of the Park Property in effect from time to time and shall be compatible with the materials and architecture of other then-existing buildings and improvements within the Park Property; the approval of Sublessor required by this Section 4 shall be conditioned upon the provision of payment and performance bonds in favor of and satisfactory to Sublessor in accordance with paragraph (d) below; and all Improvements shall comply with the federal Americans with Disabilities Act and all regulations thereunder.

(c) Sublessee shall be solely responsible for payment of all hard and soft costs of construction, alteration, removal and demolition of any Improvements and, prior to commencement of any work on Improvements, Sublessee shall provide Sublessor with reasonably satisfactory evidence of Sublessee's ability to pay the costs of such work as and when due. Sublessee shall cause all work and Improvements on the Leased Premises to be performed and constructed with new materials and in a good and workmanlike manner, pursuant to valid building permits and in conformance with this Sublease, all applicable federal, state, county and municipal laws, rules and regulations, and Sublessor's reasonable construction rules and regulations. Sublessee shall indemnify, defend and hold Sublessor free and harmless from all liens and claims of lien, and all other liability, claims and demands arising out of any work done or material supplied to the Leased Premises by or at the request of Sublessee. All Improvements (expressly excluding, however, movable office furniture and trade fixtures, and trade equipment) shall be deemed to be a part of the real estate and shall remain upon and be surrendered with the Leased Premises upon the termination of this Sublease. Except to the extent otherwise provided in paragraph (a) above with respect to the Initial Improvements, upon commencement of any permitted construction, alteration, removal or demolition, Sublessee shall thereafter diligently and continuously prosecute such work to completion within a reasonable time.

(d) Prior to commencement of any work on Improvements, Sublessee shall provide to the Sublessor payment and performance bonds obtained by each general contractor of Sublessee ensuring performance of that general contractor's obligations under the prime construction contract between that general contractor and the Sublessee and payment of that contractor's subcontractors and suppliers with respect to the construction, alteration, removal or demolition of Improvements. Each of the

bonds must (i) be issued by a Qualified Surety (hereinafter defined), (ii) be in form and substance satisfactory to the Sublessor, (iii) run in favor of the Sublessor, and (iv) be in the amount of the total cost of constructing, altering, removing or demolishing, as the case may be, the Improvements as approved by the Sublessor, as such cost is stipulated in the construction contract between the Sublessee and its general contractor. A "Qualified Surety" is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Florida and possessing a rating of A/VIII or better in A.M. Best's Insurance Reports.

(e) Notwithstanding the foregoing or any other provision of this Sublease, Sublessor's interest in the Leased Premises, Improvements or Park Property shall not be subject to any lien, statutory or otherwise, by reason of any Improvements constructed or altered upon, removed from or demolished on the Leased Premises or work, labor, services or materials performed upon or supplied to the Leased Premises by or upon the order or request of Sublessee or its employees or contractors or anyone acting by, through or under Sublessee, and Sublessee shall include notice of the foregoing in all contracts for the furnishing of labor, services or materials to or on the Leased Premises. All persons performing labor or service or furnishing materials to the Leased Premises on the order of Sublessee must look solely to Sublessee for payment. Sublessee shall keep the Leased Premises, Improvements and Park Property free from any construction liens, mechanics liens, vendors liens or any other liens or claims arising out of any work performed, materials furnished or obligations incurred by Sublessee, all of which liens and claims are hereby expressly prohibited, and Sublessee shall defend, indemnify and hold Sublessor harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable attorneys' fees and costs incurred by Sublessor in connection with any such lien, claim or action. Before commencing any work of alteration, addition, demolition or improvement to the Leased Premises, Sublessee shall give Sublessor at least ten (10) business days' written notice of the proposed commencement of such work (to afford Sublessor an opportunity to post appropriate notices of non-responsibility). In the event that there shall be recorded against the Leased Premises, Improvements or Park Property any claim or lien arising out of any such work performed, materials furnished or obligations incurred by Sublessee and such claim or lien shall not be removed or discharged within thirty (30) days of filing, Sublessor shall have the right but not the obligation to pay and discharge said lien without regard to whether such lien shall be lawful or correct, or to require that Sublessee promptly deposit with Sublessor in cash, lawful money of the United States, one hundred fifty percent (150%) of the amount of such claim, which sum may be retained by Sublessor until such claim shall have been removed of record or until judgment shall have been rendered on such claim and such judgment shall have become final, at which time Sublessor shall have the right to apply such deposit in discharge of the judgment on said claim and any costs, including reasonable attorneys' fees and costs incurred by Sublessor, and shall remit the balance thereof to Sublessee. Sublessor shall have the right to execute and record in the public records of Escambia



County, Florida, a notice of provisions of this paragraph, meeting the requirements of Section 713.10, Florida Statutes.

5. **RENT COMMENCEMENT DATE.** As used in this Sublease, the Rent Commencement Date shall mean the earliest of (a) the date the Initial Improvements are occupied and used for the purposes permitted by Section 2 above, (b) the date the Initial Improvements are completed in accordance with Section 4(a) above, or (c) 180 days after the Sublease Effective Date.

6. **TERM.** The term of this Sublease (the "Term") shall commence on the Sublease Effective Date and shall end \_\_\_\_\_ years after the Rent Commencement Date. Promptly after the occurrence of the Rent Commencement Date, the Parties shall enter into an amendment to this Sublease confirming the Rent Commencement Date and the expiration date of the Term.

7. **RENT; CAM CHARGES; AND BROKER'S COMMISSION.**

(a) Base Rent. Beginning on the Rent Commencement Date and continuing during the remainder of the Term, and as compensation for the use of the Leased Premises, Sublessee shall pay the Sublessor annual base rent in the amount of \$\_\_\_\_\_ (the "Base Rent"), payable in twelve (12) equal monthly installments in accordance with paragraph (b) below (each such monthly installment being referred to herein as a "Monthly Rent Payment"), subject to adjustment as provided in paragraphs (c) and (d) below. Prepayment of Base Rent may be permitted upon such terms and conditions as the Parties shall mutually agree, in the sole and absolute discretion of each Party, if, but only if, such agreement is set forth in a written instrument duly executed by all Parties.

(b) Base Rent Payment Terms. Each Monthly Rent Payment shall be due and payable in advance, without invoicing, notice, demand, deduction or set-off, on the first (1st) day of each calendar month beginning on the Rent Commencement Date and continuing during the remainder of the Term; provided that the first Monthly Rent Payment shall be pro-rated according to the Rent Commencement Date and the number of days remaining in the month in which the Rent Commencement Date occurs, and shall be due and paid by Sublessee to the Sublessor on the Commencement Date.

(c) Automatic Periodic Adjustments to Base Rent. The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive months. The first (1<sup>st</sup>) Lease Year shall begin on the Rent Commencement Date if the Rent Commencement Date is the first (1<sup>st</sup>) day of a month; otherwise, the first (1<sup>st</sup>) Lease Year shall commence upon the first (1<sup>st</sup>) day of the following month. Each succeeding Lease Year shall commence on the next day after the last day of the immediately preceding Lease Year. Effective annually on each anniversary of the first day of the first Lease Year, the annual Base Rent shall be increased in direct proportion to the increase, if any, of the



CPI (hereinafter defined) for the third month prior to such anniversary (the "New CPI") over the CPI for the same month one year earlier (the "Base CPI") as follows: The Base Rent for the Lease Year immediately preceding such anniversary shall be multiplied by a fraction, the numerator of which shall be the New CPI and the denominator of which shall be the Base CPI. The product of such multiplication shall be the new annual Base Rent for the new Lease Year that commences on such anniversary date, and such adjusted Base Rent shall be in effect during the remainder of the Term, subject to further adjustments in accordance with this paragraph (c) and paragraph (d) below. In no event, however, shall the annual Base Rent for such new Lease Year be less than the annual Base Rent for the immediately preceding Lease Year. As used herein, "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the United States Department of Labor. If the Bureau of Labor Statistics of the United States Department of Labor ceases publishing the CPI or materially changes the method of its computation, components, base year, consumers whose experiences are included therein or other features thereof, a comparable index published by a governmental agency, responsible financial periodical, trade association or educational institution selected by the Sublessor, in its sole discretion, shall be substituted for the CPI and used in making the computations required herein.

(d) Market Rate Adjustments to Base Rent. At the conclusion of the \_\_\_\_\_ Lease Years *[note: time periods for market rate adjustments will vary according to length of sublease term]* the annual Base Rent shall be adjusted to an amount equal to the Market Rate Rent (as hereinafter defined), and such adjusted Base Rent shall be in effect during the remainder of the Term, subject to further adjustment as provided in paragraph (c) above and this paragraph (d); provided, however, that in no event shall such adjusted Base Rent be less than the Base Rent determined in accordance with paragraph (c) above. For the purposes of this Sublease, the "Market Rate Rent" shall mean the most probable ground rent, that the Leased Premises should bring in a competitive and open market reflecting all conditions and restrictions of this Sublease, including without limitation term, rental adjustment and revaluation, permitted uses, use restrictions and expense obligations, the sublessor and sublessee each acting prudently and knowledgeably, and assuming consummation of a sublease contract as of the date that is sixty (60) days prior to the date the adjusted Base Rent would become effective pursuant to this paragraph (the "Adjusted Rent Effective Date"), and assuming the passing of the subleasehold estate from sublessor to sublessee under conditions whereby:

- (1) Sublessor and sublessee are typically motivated.
- (2) Both parties are well informed or well advised, and acting in what they consider their best interests.

- (3) A reasonable time is allowed for exposure in the open market.
- (4) The rent payment is made in terms of case in United States dollars and is expressed as an amount per time period consistent with the payment schedule of this Sublease.
- (5) The rental amount represents the normal consideration for the Leased Premises unaffected by special fees or concessions granted anyone associated with the transaction.

During the time period between ninety (90) days and sixty five (65) days prior to the Adjusted Rent Effective Date, Sublessor and Sublessee shall negotiate in good faith to agree on the Market Rate Rent. If Sublessor agrees in writing on the Market Rate Rent (whether during the foregoing time period or thereafter), then such mutually agreed Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. If Sublessor and Sublessee fail to agree upon the Market Rate Rent during such time period, then the Market Rate Rent shall be determined by appraisers as follows:

Not less than sixty (60) days prior to the Adjusted Rent Effective Date, Sublessee shall retain, at its sole expense, an appraiser who shall prepare a written market rent appraisal report setting forth such appraiser's opinion of the Market Rate Rent and the rationale and data supporting such opinion. Sublessee shall deliver such appraisal report to Sublessor not less than thirty (30) days prior to the Adjusted Rent Effective Date. If the Sublessor disagrees with the Market Rate Rent as determined by such appraisal report, then not less than twenty (20) days prior to the Adjusted Rent Effective Date, Sublessor shall retain, at its sole expense, an appraiser who shall prepare a written market rent appraisal report setting forth such appraiser's opinion of the Market Rate Rent and the rationale and data supporting such opinion. Sublessor shall deliver such appraisal report to Sublessee not less than ten (10) days after the Adjusted Rent Effective Date. In the event the two (2) appraisers agree on the Market Rate Rent, their determination of the Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. In the event that the determination of the Market Rate Rent set forth in the two appraiser's determinations differ by ten percent (10%) or less, then the Market Rate Rent shall be equal to the average of the two determinations, and such Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. In the event that the two appraisers' respective determinations of Market Rate Rent differ by greater than 10%, then Sublessor and Sublessee shall cause their respective appraisers to designate a third appraiser not less than twenty (20) days after the Adjusted Rent Effective Date. Upon such designation of a third appraiser, Sublessor and Sublessee shall promptly jointly retain such third appraiser and furnish such third appraiser with the market rent appraisal reports prepared by the other two appraisers. The third appraiser shall evaluate such appraisal reports and their respective determinations of Market Rate Rent and shall determine the Market Rate Rent within twenty (20) days after his or her appointment, which determination shall be no lower or higher than the other two

determinations. The determination of the Market Rate Rent by such third appraiser shall be conclusively binding upon Sublessor and Sublessee.

Sublessor and Sublessee shall each pay the fee of the appraiser it retains, and the fees of the third appraiser (if any) shall be borne equally by Sublessor and Sublessee. All appraisers engaged pursuant to this paragraph (d) shall be M.A.I. certified appraisers with at least six (6) years full time commercial appraisal experience, (ii) shall have demonstrable substantial experience in market rent appraisals of properties comparable to the Leased Premises, and (iii) shall adhere to the parameters set forth in this paragraph (d). Once the Market Rate Rent is determined, the parties shall execute an amendment to this Sublease specifying the amount of the adjusted Base Rent.

If for any reason the Market Rate Rent shall not have been determined prior to the Adjusted Rent Effective Date, then, until the Market Rate Rent is finally determined, Sublessee shall pay the monthly Base Rent required by paragraph (c) above. Upon final determination of the Market Rate Rent, the adjusted Base Rent equal to such Market Rate Rent shall be deemed effective retroactively to the Adjusted Rent Effective Date, and Sublessee shall promptly pay to Sublessor any shortfall in the payment of Base Rent from the Adjusted Rent Effective Date to the date of such final determination.

(e) Percentage Rent. *[Include Percentage Rent provision if appropriate for permitted use]*

(1) Percentage Rent. In addition to the Base Rent provided for hereinabove, Sublessee shall pay the Sublessor percentage rent ("Percentage Rent") equal to \_\_\_\_\_ percent (\_\_\_\_%) of the excess of the annual Gross Sales (hereinafter defined) in each full Lease Year and the Final Partial Lease Year (hereinafter defined), if any, over the corresponding Base Amount (hereinafter defined). Percentage Rent for each full Lease Year and the Final Partial Lease Year if any, shall be due and payable on \_\_\_\_\_ *[month and day]* immediately following the last day of such year during the Term and on *[month and day]* after the termination of this Sublease.

(2) Definitions. As used in this Sublease, the term "Base Amount" with respect to any full Lease Year or the Final Partial Lease Year, as the case may be, shall mean the Fixed Annual Rental payable with respect to such time period divided by \_\_\_\_\_ *[percentage stated in paragraph 1, expressed as a decimal fraction]*. As used in this Sublease, the term "Gross Sales" shall mean the total amount in dollars of the aggregate actual sales price, whether for cash or on credit or partly for cash and partly on credit, of all sales of food, beverage, merchandise and services, including all gift and merchandise certificates, all credit charges and carrying charges and all other receipts of business conducted by the



Sublessee or anyone else in, from, upon, or in any way connected with the Leased Premises, including without limitation all sales to employees of Sublessee or anyone else; all mail, telephone and other sales and orders received or taken in or from the Leased Premises whether or not such sales and orders are filled elsewhere; all mail, telephone and other sales and orders filled at or from the Leased Premises whether or not such sales and orders are taken in or from the Leased Premises; receipts and sales through any vending machine or other coin-operated device; receipts and sales through any catering or similar service operated at, from or in any way connected with the Leased Premises; sales by any assignee, sub-sublessee, concessionaire, licensee or any other person or persons permitted by Sublessee to use the Leased Premises or any portion thereof; and all revenues and receipts of any kind or nature derived, generated or arising from or in connection with the Leased Premises or the operation or use thereof by the Sublessee or anyone else. Notwithstanding any contrary provision of the foregoing, however, Gross Sales shall not include any refunds to customers or any sums collected and paid out for any sales tax imposed by any duly constituted governmental authority if such tax is stated and collected separately from the price of the merchandise or service sold. As used in this Sublease, the term "Final Partial Lease Year" shall mean the period from the first day of the Lease Year in which this Sublease terminates through and including the date on which this Sublease terminates, but only if this Sublease terminates on a date other than the last day of such final Lease Year.

- (3) Survival of Percentage Rent Obligation. Notwithstanding any contrary provision in this Sublease or any contrary rule of law, Sublessee's obligation to pay Percentage Rent for the final Lease Year or Final Partial Lease Year, as the case may be, as well as all preceding Lease Years, shall survive the termination of this Sublease and shall continue in effect until all such Percentage Rent has been paid in full.
- (4) Reports. On or before the first day of each month during the Term, Sublessee shall submit to the Sublessor copies of the respective sale tax returns filed during the preceding month with the Florida Department of Revenue by Sublessee and all other persons having or deriving Gross Sales. Further, regardless of whether any Percentage Rent is actually due and payable, Sublessee shall submit to the Sublessor on or before *[month and day]* of each year during the Term and on or before *[month and day]* following the expiration of the Term, a written statement signed by Sublessee and all other persons having or deriving Gross Sales during the preceding Lease Year, and certified by Sublessee and all such other persons to be true and correct, showing in reasonable detail the amount of Gross Sales for the preceding Lease Year or Final Partial Lease Year, as

the case may be, together with copies of all sales tax returns filed by Sublessee and all such other persons with the Florida Department of Revenue with respect to sales during such time period. The statements referred to in this paragraph shall be in such form and substance and contain such detail and breakdown as the Sublessor may reasonably request.

- (5) Books, Records and Accounts. Sublessee, during the Term, shall maintain and keep, or cause to be maintained and kept by all persons having or deriving Gross Sales, at the address of Sublessee set forth on page 1 hereof, complete and accurate books, records and accounts of all Gross Sales, inventories of merchandise and all sums of money paid or payable for or on account of or arising out of the business transactions conducted in, at or from the Leased Premises, and only the Leased Premises, by or for the account of Sublessee and all assignees, sub-sublessees, concessionaires, licensees and other persons conducting business in, at or from the Leased Premises, for each day of the Term, and such books, records, and accounts and all supporting records shall be open to inspection and audit at the Leased Premises by the Sublessor and its duly authorized agents and representatives during ordinary business hours. Sublessee shall keep and preserve or cause to be kept and preserved such books, records and accounts for not less than five (5) years after the due date and payment of the Percentage Rent based thereon and due under the terms of this Sublease. Sublessee hereby authorizes all tax collectors and appropriate governmental authorities to disclose to the Sublessor all sales and excise tax returns filed by Sublessee with such tax collectors and governmental authorities with respect to time periods during the Term, and Sublessee hereby expressly releases such tax collectors and governmental authorities from any and all liability arising out of any such disclosure made at the written request of the Sublessor. Further, Sublessee shall contractually require all assignees, sub-sublessees, concessionaires, licensees and other persons conducting business in, at or from the Leased Premises during the Term to authorize all tax collectors and appropriate governmental authorities to disclose to the Sublessor all sales and excise tax returns filed by them and each of them with such tax collectors and governmental authorities with respect to time periods during the Term, and to expressly release such tax collectors and governmental authorities from any and all liability arising out of any such disclosure made at the written request of the Sublessor. The acceptance by the Sublessor of payments of Percentage Rent shall be without prejudice to the Sublessor's right to examine all books, records and accounts relating to Gross Sales and inventories of merchandise in order to verify the amount of Gross Sales made in, at or from the Leased Premises or in any way related to the Leased Premises.



- (6) Audit. At its option at any reasonable time upon seven (7) days prior written notice to Sublessee, the Sublessor may cause a complete audit to be made of Sublessee's business affairs and records relating to the Leased Premises for any period of time during the Term, which period of time shall be stated in the written notice delivered to Sublessee, and Sublessee shall cooperate fully in such audit and make available to the auditor all books, records, accounts and other information requested by such auditor. In addition, Sublessee shall contractually require all assignees, sub-sublessees, concessionaires, licensees and other persons conducting business in, at or from the Leased Premises during the Term to permit the Sublessor to cause a complete audit to be made of each such person's business affairs and records relating to the Leased Premises for any period of time during the Term, which period of time shall be stated in the written notice delivered to such person, and to cooperate fully in such audit and make available to the auditor all books, records, accounts and other information requested by such auditor. Any deficiency in Percentage Rent for such period of time disclosed by such audit or audits shall be promptly paid by Sublessee to the Sublessor upon demand. In addition, if such audit or audits disclose a liability for Percentage Rent three percent (3%) or more in excess of the Percentage Rent theretofore paid by Sublessee for such period of time, Sublessee shall promptly pay to the Sublessor the cost of said audit; otherwise, the Sublessor shall be solely responsible for the cost of said audit. If such audit or audits disclose that Sublessee has overpaid Percentage Rent for such period of time, the Sublessor shall promptly refund such overpayment to Sublessee upon demand. Any information obtained by the Sublessor as a result of such audit or audits shall be held in strict confidence by the Sublessor. The Sublessor may cause any audits authorized hereunder to be made by any auditor acceptable to the Sublessor, including without limitation the agents and employees of the Sublessor, and the reasonable costs of the audit shall be paid as herein provided regardless of the auditor selected.

(f) CAM Charges. Effective upon the Rent Commencement Date, Sublessee shall pay to Sublessor \_\_\_\_\_% (Sublessee's Share) of the annual expenses incurred and reserves funded by Sublessor for the operation and maintenance of the common areas and facilities of the Park Property ("CAM Charges"). Such CAM Charges shall include, without limitation, the reserves, costs and expenses itemized in Exhibit "A" attached hereto and incorporated herein by reference. Sublessee shall pay Sublessee's Share of CAM Charges in equal monthly installments, commencing on the Rent Commencement Date and continuing on the first day of each month thereafter during the Term of this Sublease, based upon Sublessor's estimated CAM Charges for its then current fiscal year. No later than ninety (90) days after the end of each fiscal

year of Sublessor during the Term, Sublessor shall provide Sublessee with an itemized list of the actual CAM Charges for the preceding fiscal year, together with such supporting data and information as Sublessee shall reasonably request. In the event that Sublessee's Share of the actual CAM Charges is greater than Sublessee's Share of the estimated CAM Charges actually paid by Sublessee during such preceding fiscal year, Sublessee shall pay such difference to Sublessor within thirty (30) days after receipt of Sublessor's written request. In the event that Sublessee's Share of the actual CAM Charges for the preceding calendar year is less than the Sublessee's Share of the estimated CAM Charges actually paid by Sublessee during such preceding fiscal year, Sublessor shall credit such difference to the next installment(s) of Sublessee's CAM Charges due from Sublessee. Not more than once each Lease Year, Sublessee shall be entitled to cause a reputable certified public accounting firm to audit Sublessor's books and records supporting the computation of Sublessee's Share of CAM Charges. If Sublessor has overstated the actual CAM Charges for the fiscal year in question by more than ten percent (10%), Sublessor shall reimburse Sublessee for the cost of such audit, in addition to crediting any excess payment of CAM Charges to the next installment(s) of Sublessee's CAM Charges due from Sublessee.

(g) General. The term "Rent" when used in this Sublease shall include Base Rent, Percentage Rent (if any), Sublessee's Share of CAM Charges, and all other amounts payable by Sublessee to or on behalf of Sublessor under this Sublease.

(h) Sales Tax. Sublessee shall pay all sales and use taxes imposed by Florida Statutes Section 212.031 and any future amendments thereto or other applicable Florida law in effect from time to time (the "Sales Tax") on the Base Rent due under this Sublease and on all other payments required by this Sublease to be made by the Sublessee which are taxable under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Base Rent or other payment with respect to which such tax is required to be paid.

(i) Late Charges and Interest. If Rent or any other charge due under this Sublease by Sublessee to Sublessor is not paid within five (5) calendar days after such Rent or other charge became due, a late charge of five percent (5%) of the amount due shall be due and payable to Sublessor to compensate Sublessor for its added expenses due to said late payment. Further, any Rent or other charge due under this Sublease that is not paid on the date due shall bear interest at fifteen percent (15%) per annum, or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

(j) Broker's Commission. Concurrently with the execution of this Sublease, Sublessee has deposited in escrow with Sublessor's attorney, Beggs & Lane, RLLP ("Escrow Agent"), the sum of \$\_\_\_\_\_ [i.e., 4% of total Base Rent due during the Term, not to exceed 20 years, excluding rent escalations] ("Broker's Fee"), which amount is the broker's fee that will become due and payable to NAI Halford with



respect to this Sublease upon the expiration of the Due Diligence Period without this Sublease having been duly terminated in accordance with Section 3 above. If this Sublease is duly terminated in accordance with Section 3 above, Escrow Agent shall refund the Broker's Fee to Sublessee within five (5) days after such termination. If the Due Diligence Period expires without this Sublease having been duly terminated in accordance with Section 3 above, Escrow Agent shall disburse the Broker's Fee to Broker within five (5) days after the expiration of the Due Diligence Period. Thereafter, each payment of Base Rent paid Sublessee shall be discounted by four percent (4%) until such aggregate discounts in Base Rent equal the amount of the Broker's Fee paid by Sublessee. Sublessee shall not be entitled to any refund of the Broker's Fee or any portion thereof in the event that this Sublease is terminated in accordance with its terms before such aggregate discounts equal the amount of the Broker's Fee. Concurrently with the execution of this Sublease, Sublessor, Sublessee and Escrow Agent have entered into a mutually agreeable Escrow Agreement consistent with the requirements of this paragraph.

8. TAXES. Sublessor and Sublessee shall cause the Leased Premises to be separately assessed for Taxes (hereinafter defined). Commencing on the Sublease Effective Date, Sublessee shall directly pay, prior to delinquency, all Taxes imposed against or with respect to the Leased Premises or improvements thereon with respect to any time period during the Term. As used herein the term "Taxes" shall mean all ad valorem and non-ad valorem taxes, fees, assessments and special assessments (including interest and penalties thereon), including without limitation real property ad valorem taxes and stormwater fees and assessments, which are, at any time and from time to time during the Term, assessed or imposed against any legal or equitable interest of Sublessor or Sublessee in the Leased Premises or in any improvements now or hereafter situated thereon by the City of Pensacola, Escambia County or State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County Tax Collector (or comparable agency), together with any tax imposed in addition to or in substitution of, partially or totally, any such tax, fee or assessment. If at any time during the Term all or any part of the Leased Premises or any improvements thereon are deemed exempt and not subject to Taxes, in whole or in part, Sublessee, upon Sublessor's request, shall pay to the Community Redevelopment Agency of the City of Pensacola ("CRA") (or to the Sublessor itself if the CRA is not then in existence) amounts equivalent to the Taxes that would have otherwise been due and payable to the City of Pensacola and/or the CRA in the absence of such exemption.

#### 9. ASSIGNMENT AND SUB-SUBLEASE.

(a) Assignment. The Sublessee shall not assign this Sublease (in whole or in part) or the Sublessee's interest in or to the Leased Premises or any part thereof without first having obtained the Sublessor's prior written consent which consent may be given,



withheld or conditioned in the Sublessor's sole and absolute discretion. Without limiting the foregoing, it is a precondition to Sublessor review and approval of a requested assignment that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default. Further, the Sublessor may, in its sole and absolute discretion, condition its consent to any such assignment upon changes in any terms or conditions of this Sublease, including but not limited to changes in the Rent and other charges payable by the Sublessee hereunder, and may also condition its consent to any such assignment upon the Sublessee's payment to the Sublessor of an assignment approval fee (either in a lump sum or in installments) acceptable to the Sublessor in its sole and absolute discretion, determined on the basis of such factors as the Sublessor deems relevant in its sole and absolute discretion, which factors may include, without limitation, the Sublessor's estimate of the financial and economic consideration payable to the Sublessee in respect of such assignment. In the event that the Sublessee requests permission to assign this Sublease, in whole or in part, the request shall be submitted to the Sublessor not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement and of all agreements collateral thereto, together with the following information and any other information requested by the Sublessor: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Sublease, a statement of the entire consideration to be received by the Sublessee by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and history and financial information of the Assignee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (a) shall be exercisable only by the Pensacola City Council.

(b) Sub-sublease. The Sublessee shall not sub-sublease the Leased Premises or any part thereof without having first obtained the Sublessor's prior written consent, which consent may be given, withheld or conditioned in the Sublessor's sole and absolute discretion. Without limiting the generality of the foregoing, it is a precondition to Sublessor review and approval of a proposed sub-sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default. Further, the Sublessor may, in its sole and absolute discretion, condition its consent to any such sub-sublease upon changes in any terms or conditions of this Lease, including but not limited to changes in the Base Rent and other charges payable by the Sublessee hereunder, and may also condition its consent to any such sub-sublease upon the Sublessee's payment to the Sublessor of (i) a portion, acceptable to the Sublessor, of the amount of the excess of the rent and other charges payable from time to time by the sub-sublessee to the Sublessee over the Rent and other charges payable from time to time by the Sublessee to the Sublessor under this Sublease, as determined by the Sublessor in its sole and absolute discretion, and (ii) a sublease approval fee acceptable to the Sublessor in its sole and absolute discretion, determined

on the basis of such factors as the Sublessor deems relevant in its sole and absolute discretion, which factors may include, without limitation, the Sublessor's estimate of the financial and economic consideration payable to the Sublessee in respect of such sub-sublease. In the event that the Sublessee requests permission to sub-sublease the Leased Premises in whole or in part, the request shall be submitted to the Sublessor not less than sixty (60) days prior to the proposed effective date of the sub-sublease requested, and shall be accompanied by a copy of the proposed sub-sublease agreement and of all agreements collateral thereto, together with the following information and any other information requested by the Sublessor: the identity and contact information of the sub-sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Sublessee by reason of such sub-sublease (including but not limited to sub-sublease rent and other charges payable by the sub-sublessee), the type of business to be conducted on sub-subleased premises by the sub-sublessee, and history and financial information of the sub-sublessee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (b) shall be exercisable only by the Pensacola City Council.

(c) Consummation of Assignment or Sub-sublease. The Sublessor's consent for the assignment or sub-sublease for which the Sublessor's consent is required and for which such consent has been given shall be by written instrument, in a form satisfactory to the Sublessor and the Sublessor's legal counsel, and shall be executed by the assignee or sub-sublessee who shall agree, in writing, for the benefit of the Sublessor, to be bound by and to perform all the terms, covenants, and conditions of this Sublease. Failure either to obtain the Sublessor's prior written consent or to comply with the provisions of this Sublease shall serve to prevent any such transfer, assignment, or sublease from becoming effective. The Sublessee agrees and acknowledges that it shall remain fully and primarily liable for all obligations of sublessee under this Sublease, notwithstanding any full or partial assignment of this Sublease or any sub-sublease of all or any portion of the Leased Premises. Receipt by Sublessor of Rent or any other payment from an assignee, sub-sublessee, or occupant of the Leased Premises shall not be deemed a waiver of any covenant in this Sublease against assignment and subletting or as acceptance of the assignee, sub-sublessee, or occupant as a tenant or a release of the Sublessee from further observance or performance of the covenants contained in this Sublease. No provision of this Sublease shall be deemed to have been waived by the Sublessor, unless such waiver is in writing, signed by the Sublessor. Further, by applying for consent to an assignment or sub-sublease, the Sublessee agrees to reimburse the Sublessor for its out-of-pocket costs for consultants, attorneys, and experts to evaluate the request, to advise the Sublessor with respect thereto and to prepare or review appropriate documents. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (c) shall be exercisable only by the Pensacola City Council.

10. IMPROVEMENTS. This Sublease represents a ground lease only. During the Term, Sublessee shall own all improvements constructed on the Leased Premises. Upon the expiration or termination of this Sublease for any reason, the Improvements on the Leased Premises shall automatically be and become the sole property of Sublessor, and Sublessee shall have no further right, title or interest therein.

11. CONDITION OF PREMISES. SUBLESSEE HEREBY ACKNOWLEDGES AND AGREES THAT THE SUBLESSOR SUBLEASES THE LEASED PREMISES AND SUBLESSEE ACCEPTS THE LEASED PREMISES "AS/IS, WHERE IS AND WITH ALL FAULTS" WITHOUT ANY REPRESENTATION OR WARRANTY OF THE SUBLESSOR, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER. SUBLESSEE ACKNOWLEDGES THAT THE SUBLESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OF THE LEASED PREMISES FOR ANY PARTICULAR USE OR PURPOSE (INCLUDING WITHOUT LIMITATION THE USE SET FORTH IN SECTION 2 ABOVE) AND THAT THE SUBLESSOR SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES OR PARK PROPERTY EXCEPT AS EXPRESSLY SET FORTH IN THIS SUBLEASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SUBLESSOR SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE LEASED PREMISES OR PARK PROPERTY, AND THE SUBLESSOR SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO SUBLESSEE FOR ANY LOSS, DAMAGE OR EXPENSE INCURRED BY SUBLESSEE OCCASIONED BY THE CONDITION OR CHARACTERISTICS OF THE LEASED PREMISES OR PARK PROPERTY. FURTHER, SUBLESSOR HEREBY DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE CONDITION OF THE LEASED PREMISES AND THE PARK PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, HABITABILITY OR TENANTABILITY.

12. MAINTENANCE.

(a) Sublessor's Obligations. Sublessor, at its expense, but subject to Sublessee's payment of Sublessee's Share of CAM Charges as provided in Section 7 above, shall be solely responsible for maintaining the common areas and common use infrastructure serving the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter.

(b) Sublessee's Obligations. Sublessee, at Sublessee's sole cost and expense, shall keep and maintain the entire Leased Premises and the Improvements, and every part and component thereof, interior and exterior, including without limitation the grounds, landscaping and parking facilities, if any, on the Leased Premises, in first class condition, appearance and repair and shall promptly make all necessary repairs and replacements thereto, interior and exterior, structural and non-structural, ordinary as



well as extraordinary, and foreseen as well as unforeseen, and Sublessee shall not do or suffer any waste, damage, disfigurement or injury to the Leased Premises, the Improvements or any portion thereof. Further, Sublessee shall at all times maintain the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter. Without limiting the generality of the foregoing, upon completion of the Initial Improvements, Sublessee shall not thereafter demolish, remove or materially alter the Initial Improvements or any portion thereof except pursuant to and in accordance with Section 4 above. Upon termination of this Sublease for any reason, Sublessee shall surrender to the Sublessor the Leased Premises and the Improvements in good condition, appearance and repair, excepting only such ordinary wear and tear as could not have been prevented by reasonable routine maintenance and preventive maintenance. Notwithstanding the foregoing, however, if requested by the Sublessor in writing, within ninety (90) days after termination of this Sublease for any reason, Sublessee shall demolish and remove the Improvements and all trash and debris, grade the Leased Premises and deliver the Leased Premises to the Sublessor in a neat, clean, graded, level and safe condition. Sublessee's obligations under this Section shall survive the termination of this Sublease.

13. **PAYMENT OF UTILITIES.** Sublessee shall arrange for direct billing with all appropriate utility providers and shall pay when due all invoices for services rendered from time to time by such utility providers.

14. **TRASH COLLECTION.** Sublessee shall, at its sole expense, cause all trash and garbage to be removed from the Leased Premises and Improvements on a regular basis, not less than weekly. Sublessor shall not have any obligation to provide a dumpster on Park Property for use of Sublessee.

15. **DAMAGE AND DESTRUCTION.** In the event that the Improvements or any portion thereof shall be damaged or destroyed by fire or other casualty, Sublessee shall give immediate notice thereof to Sublessor and the same shall be repaired, restored and/or rebuilt by Sublessee at its sole cost and expense, to the condition at least equal to that which existed prior to its damage or destruction and in compliance with all laws and regulations applicable at the time of repair and/or restoration of any improvements constructed thereon, and in accordance with and subject to all terms and conditions of paragraphs (b) through (e) of Section 4 above. Any insurance proceeds payable with respect to such damage or destruction shall be deposited to and held in an escrow account (the "Insurance Escrow") with a financial institution designated by the Sublessor, which account shall be subject to the joint control of the Sublessor and Sublessee. Sublessee shall also promptly deposit the amount of any insurance deductible into the Insurance Escrow. Funds from the Insurance Escrow shall be used and disbursed only to pay for the reasonable costs of repair, restoration and rebuilding of the Improvements in accordance with the Sublessor-approved plans and specification in monthly draws based on the progress of construction. Any funds remaining in the Insurance Escrow after completion of such repairs, restoration and rebuilding shall be

disbursed to Sublessee provided that at such time there exists no Event of Default by Sublessee under this Sublease nor any circumstance which with the giving of notice or the lapse of time, or both, would constitute such an Event of Default. Notwithstanding the foregoing, no Insurance Escrow shall be required if the total insurance proceeds payable with respect to such damage or destruction is \$5,000.00 or less. Further, notwithstanding the foregoing, if the Improvements are "totally destroyed" (as hereinafter defined) during the last five (5) years of the Term, either the Sublessor or Sublessee may elect to terminate this Sublease by giving written notice of termination to the other Parties within ninety (90) days after the Improvements are "totally destroyed" (as hereinafter defined). Promptly upon such termination, Sublessor shall demolish any remaining Improvements, remove all debris, grade the Leased Premises and deliver the Leased Premises to the Sublessor in a neat, clean, graded, level and safe condition. Insurance proceeds payable with respect to total destruction shall be applied to pay the reasonable costs of such demolition, removal and grading and the outstanding indebtedness then secured by a Permitted Mortgage, but only if and to the extent such costs and indebtedness exceed the amount of the insurance deductible, and all remaining insurance proceeds shall be paid to the Sublessor. For the purposes of this paragraph the terms "totally destroyed" and "total destruction" shall mean that the total aggregate cost to repair or replace the damage to the Improvements exceeds fifty percent (50%) of the fair market value of the Improvements immediately prior to the occurrence of such damage. Absent termination of this Sublease there shall be no abatement of CAM Charges during any period that the Improvements are unusable, in whole or in part. If Sublessor or Sublessee elects to terminate this Sublease pursuant to the terms of this Section, all Parties shall be relieved of all further obligations owed under this Sublease, unless the survival of such obligation(s) is specifically provided for herein. The provisions of this Section shall survive the termination of this Sublease.

16. **STORMWATER MANAGEMENT.** Provided that Sublessee pays when due all stormwater fees and assessments levied from time to time by the City of Pensacola with respect to the Leased Premises, Sublessee shall have the right to utilize the existing storm water retention facilities on the Park Property serving the Leased Premises (the "Retention Facilities"), and the Sublessor shall be responsible for the operation, maintenance and repair of the Retention Facilities.

17. **CONDEMNATION.** If more than 50% of the gross area of the Improvements shall be taken by eminent domain, condemnation or in any other manner for public or quasi-public use or purpose (a "taking") (other than for temporary use or occupancy), the term of this Sublease shall, at the option Sublessee or the Sublessor, terminate as of the date of vesting of title and upon such termination no further Rent shall be due hereunder or a pro-rata refund of Rent paid after such taking shall be made. If this Sublease is not terminated pursuant to the preceding sentence, the Parties shall enter into good faith negotiations to modify, alter, or amend this Sublease such that the remainder of the Leased Premises and Improvements remain tenantable for the uses permitted pursuant to Section 2 above. Sublessor and Sublessee shall



have the right to participate in any condemnation proceedings. Each shall notify the other promptly of any contemplated or threatened condemnation proceeding of which it shall become aware and shall keep the other informed of developments with respect thereto.

18. **FORCE MAJEURE.** Except as otherwise provided in Section 4(a) above and except for Sublessee's obligations to pay Rent and other sums of money pursuant to the terms of this Sublease, each party's obligations under this Sublease shall be abated or excused when performance of such obligations is rendered impossible or impracticable for a period of more than 30 days by reason of strikes, riots, acts of God, shortages of labor or materials, theft, fire, public enemy, injunction, insurrection, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the control of the Parties hereto (each a "Force Majeure Event"), until such Force Majeure Event is eliminated or ceases to exist; provided however, that each responsible party shall use all due diligence to eliminate or mitigate such Force Majeure Event or the effects thereof as soon as possible.

19. **PARKING.** Sublessee, at its sole cost and expense, shall construct vehicular parking on the Leased Premises and/or secure off-premises vehicular parking that is adequate for the permitted use of the Leased Premises by Sublessee and other occupants, if any, of the Leased Premises or Improvements and their respective agents, representatives, employees, contractors, guests and invitees, and is sufficient to meet applicable codes, ordinances and regulations. Without Sublessor's prior written consent in its sole discretion, Sublessee shall not cause, suffer or permit Sublessee or any other occupant of the Leased Premises or Improvements or their respective agents, representatives, employees, contractors, guests or invitees to park vehicles of any kind or description on any portion of the Park Property other than the Leased Premises.

20. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Sublessee, in the use and enjoyment of the Leased Premises, shall comply with all governmental regulations, statutes, ordinances, rules, ordinances and directives of any federal, state, county or municipal governmental units or agencies having jurisdiction over the Leased Premises or the business being conducted thereon and all rules and regulations now in effect or hereafter imposed by Sublessor; provided, however, any such rules and regulations imposed by Sublessor shall be imposed uniformly against all similar businesses located in the Park Property and shall not conflict in any material respect with the express provisions of this Sublease or unreasonably interfere with Sublessee's permitted use of the Leased Premises.

21. **ENVIRONMENTAL MATTERS.** Sublessee shall comply with all federal, state, municipal and county laws, statutes, ordinances, codes, administrative orders, rules and regulations and permits relating to environmental matters, storm water, and other pollution control applicable to the construction, alteration or demolition of the

Improvements or the occupancy, use or operation of the Leased Premises. Sublessee shall furnish to the Sublessor at the time same are filed, received, submitted or tendered, a copy of every permit application, permit, notice, order or other document sent to or received from any regulatory agency responsible for environmental matters, storm water, or other pollution control. Sublessee is prohibited from allowing, causing, condoning, licensing, permitting or sanctioning any activities, conduct or operations that enable or result in any pollutants, contaminants, hazardous materials or substances or other waste to be accumulated, deposited, placed, released, spilled, stored or used upon or under any portion of the Leased Premises or Park Property or adjacent waters contrary to or in violation of any of said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. In the event Sublessee violates this prohibition, Sublessee shall be solely responsible for any and all reporting, cleanup, remediation, fines and penalties in accordance with said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. Sublessee agrees to indemnify, defend and hold harmless Sublessor against any and all actions, claims, demands, judgments, penalties, liabilities, costs, damages and expenses, remediation costs and response costs, including court costs and attorney's fees incurred by Sublessor arising out of or in connection with contamination resulting from the construction, alteration or demolition of the Improvements or the occupancy, use or operation of the Leased Premises during the Term.. The terms of this Section shall survive the termination of this Sublease.

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

23. SURRENDER AND HOLDING OVER.

(a) With Sublessor's Consent. If Sublessee shall, with the written consent of the Sublessor, hold over after the expiration or sooner termination of the Term of this Sublease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis until such time as Sublessee shall surrender the Leased Premises (with sixty (60) days' prior written notice to Sublessor) or Sublessor shall re-enter the Leased Premises (with sixty (60) days' prior written notice to Sublessee.) During such month-to-month tenancy, Sublessee shall continue to pay Rent and other charges as established in accordance with the provisions of this Sublease, and shall be bound by all of the other provisions of this Sublease.

(b) Without Sublessor's Consents. If Sublessee shall, without the written consent of the Sublessor, hold over after the expiration or sooner termination of the Term of this Sublease, the resulting tenancy privilege shall, unless otherwise mutually agreed, be a tenancy at sufferance. During such tenancy at sufferance, Sublessee shall pay Rent equal to one hundred fifty percent (150%) of the Rent in effect at the time of



expiration or termination, and shall be bound by all of the other provisions of this Sublease.

24. CORPORATE TENANCY. If Sublessee is not a natural person, the undersigned representative of Sublessee hereby warrants and certifies that Sublessee is an entity in good standing and is authorized to do business in the State of Florida. The undersigned representative of Sublessee hereby further warrants and certifies that he or she, as such representative, is authorized and empowered to bind the entity to the terms of this Sublease by his or her signature thereto. Sublessor, before it accepts and delivers this Sublease, may require Sublessee to supply it with a certified copy of the entity resolution or such other document authorizing the execution of this Sublease by Sublessee.

25. INTEGRATION, MERGER AND AMENDMENT. This Sublease contains the entire agreement of the Parties with respect to the subject matter of this Sublease, and fully substitutes, replaces, and supersedes any prior letter of intent, memorandum of understanding and all other prior negotiations, agreements and understandings with respect thereto. This Sublease may not be altered, changed or amended, except by written instrument signed by all Parties hereto and executed in the same formality as this Sublease.

26. NO WAIVER. No provision of this Sublease shall be deemed waived by Sublessor by any act, omission, conduct or course of dealing by Sublessor. Rather, a provision of this Sublease may be waived by Sublessor only by a written instrument duly authorized and executed by Sublessor which specifically identifies the provision being waived. The terms, provisions, covenants, and conditions contained in this Sublease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise expressly provided herein and except that Sublessor shall have no liability to Sublessee under this Sublease except as otherwise expressly stated herein.

27. INSURANCE. Sublessee shall procure and maintain at all times during the term of this Sublease, insurance of the types and to the limits specified herein issued by insurer(s) qualified to do business in Florida whose business reputation, financial stability and claims payment reputation is reasonably satisfactory to Sublessor.

Sublessee acknowledges and agrees that the types and minimum limits of insurance herein required may become inadequate following during the Term of this Sublease, and, therefore agrees that the minimum limits may be increased to commercially reasonable limits and/or additional types of insurance may be required by the Sublessor from time to time during the Term of this Sublease, but in no event more than once every five (5) Lease Years.



Unless otherwise agreed by the Sublessor in writing, the amounts, form and type of insurance shall conform to the following minimum requirements:

#### WORKER'S COMPENSATION

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

#### COMMERCIAL GENERAL LIABILITY COVERAGE

Sublessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability forms filed by the Insurance Services Office. Sublessor shall not be considered liable for premium payment or entitled to any premium return or dividend or be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. Coverage must be provided for bodily injury and property damage liability for premises and operations. Fire Legal Liability shall be endorsed onto this policy in an amount of at least \$300,000 per occurrence. The coverage shall be written on occurrence-type basis and the Sublessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

#### BUSINESS AUTOMOBILE POLICY

Sublessee shall purchase and maintain coverage with minimum limits of \$1,000,000 per accident combined single limits covering bodily injury and property damage liability arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. The coverage shall be written on occurrence-type basis and the Sublessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

#### BUILDER'S RISK

Sublessee shall require any contractor constructing, altering, removing or demolishing Improvements of the Leased Premises to provide builder's risk insurance

on an Inland Marine "All Risk" type form which includes, without limitation, collapse coverage and windstorm coverage. The amount of such insurance shall be 100% of the completed value of the work being done by such contractor. Such builder's risk policy shall contain a "Waiver of Subrogation" clause in favor of Sublessor. The Sublessor must be listed as an additional insured.

## PROPERTY INSURANCE

Sublessee shall maintain in force at all times, property insurance coverage which insures any Improvements on the Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage, together with coverages or endorsements for ordinance or law, vandalism, malicious mischief, earthquake, windstorm, hail and storm surge and flood. Sublessor shall be named as an additional insured and loss payee, as its interest may appear, under all such policies of insurance. The amount of coverage will be 100% of the replacement cost. The deductibles under such policies shall be subject to the prior written approval of Sublessor, such approval not to be unreasonably withheld. Such policy shall contain a "Waiver of Subrogation" clause in favor of Sublessor.

## CERTIFICATES OF INSURANCE

Sublessee's required insurance shall be documented in Certificates of Insurance furnished to Sublessor that list this Sublease and provide that Sublessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. If requested by Sublessor, Sublessee shall furnish copies of Sublessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form reasonably acceptable to the Sublessor. Sublessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies reasonably acceptable to Sublessor and shall file with Sublessor Certificates of Insurance under the new policies at least fifteen (15) days prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner reasonably acceptable to Sublessor, Sublessee shall, upon instructions of Sublessor, cease all operations on the Leased Premises under this Sublease until authorized by Sublessor, in writing, to resume operations.

## REQUIRED INSURANCE PRIMARY

The insurance coverage required of Sublessee shall be considered primary, and all other insurance shall be considered as excess, over and above the Sublessee's required coverage.

## LOSS CONTROL AND SAFETY

Sublessee shall retain control over its employees, agents, servants and contractors, as well as control over its guests and invitees, and its activities on and about the Leased Premises and the manner in which such activities shall be undertaken and to that end, Sublessee shall not be deemed to be an agent of Sublessor. Reasonable precaution shall be exercised at all times by Sublessee for the protection of all persons, including employees, and property.

## INDEMNITY

Sublessee shall indemnify and hold harmless Sublessor and its elected and appointed officials, officers, members, employees, volunteers, representatives and agents from any and all fines, claims, suits, actions, demands, losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees) in connection with any loss of life, bodily or personal injury, or damage to or loss of property arising from or out of any occurrence in, upon, at or about the Leased Premises; arising from or out of any occurrence in, upon at or about the Park Property or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act omission, negligence, misconduct or breach of this Sublease by Sublessee, its employees, agents, customers, clients, guests, invitees or by any other person entering the Park Property under express or implied invitation of Sublessee; or arising out of this Sublease or Sublessee's use of the Leased Premises; provided, however, that nothing contained herein shall be construed as a waiver, in whole or in part, of the sovereign immunity of the Sublessor under the Constitution, statutes and case law of the State of Florida, nor as a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Sublessor.

## LIMITATION OF SUBLESSOR LIABILITY

In not event shall Sublessor shall be liable or responsible to Sublessee for any loss or damage to any property or the death or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other licensee, occupant, user, sublessee or sub-sublessee of the Park Property or any portion thereof, or by any other matter beyond the control of Sublessor, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises, or failure to make repairs or from any cause whatsoever except the gross negligence or willful misconduct of Sublessor.

## 28. DEFAULT and REMEDIES.

(a) Events of Default. Each of the following events shall constitute a default by Sublessee under this Sublease (each, an "Event of Default"), to wit:

- (1) Sublessee's failure to pay when due any Monthly Rent Payment, Percentage Rent Payment, or CAM Charge and such failure continues for a period of five (5) days after the due date therefor;
- (2) Sublessee's failure to pay any other sum of money payable hereunder for a period of thirty (30) days after receipt of written notice by or invoice from Sublessor;
- (3) After completion of the Initial Improvements, Sublessee's abandonment of the Leased Premises or failure to substantially use and operate the Leased Premises for the uses and purposes permitted pursuant to Section 2 above for a period of thirty (30) consecutive days;
- (4) Sublessee's failure to observe keep or perform the terms, covenants, agreements and conditions of any of Sections 2, 4, 9, 27 or 45 of this Sublease;
- (5) Except as otherwise provided in clauses (1), (2), (3), (4), (6), (7), (8) or (9) of this paragraph (a), Sublessee's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Sublease for a period of thirty (30) days after receipt of written notice by Sublessor;
- (6) The filing of a voluntary petition in bankruptcy by Sublessee, or the filing of an involuntary petition in bankruptcy against Sublessee which involuntary petition is not dismissed with sixty (60) days after filing;
- (7) Sublessee making a voluntary assignment for the benefit of creditors;
- (8) A receiver or trustee being appointed for Sublessee or a substantial portion of Sublessee's assets;
- (9) Sublessee's interest under this Sublease being sold or transferred under execution or other legal process.

(b) Remedies. Following any Event of Default, Sublessor, in its sole discretion, may exercise any and all rights and remedies available under this Sublease, at law or in equity, and, without limiting the foregoing, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:



- (1) Terminate Sublessee's right to possession of the Leased Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Leased Premises and Improvements to the Sublessor. In such event the Sublessor shall be entitled to accelerate all Rent for the remainder of the Term of this Sublease and to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default, including but not limited to the cost of recovering possession of the Leased Premises and Improvements; expenses of re-letting, including necessary renovation and alteration of the Leased Premises and Improvements, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid Rent under this Sublease which had been earned at the time of termination, (ii) the unpaid Rent which would have been earned after termination until the time of award, and (iii) the amount of the unpaid Rent for the balance of the Term of this Sublease. The worth at the time of award of the sums referred to in clauses (i) and (ii) above, shall be computed by allowing interest from the due date at the legal rate applicable to money judgments entered by the courts of the State of Florida. The worth at the time of award of the amount referred to in clause (iii) above shall be computed by discounting such amount at a reasonable discount rate based upon the circumstances existing at the time of the award.
- (2) Without terminating this Sublease, enter and repossess the Leased Premises and Improvements, remove Sublessee's property and signs therefrom, and re-let the same for such rent and upon such terms as shall be satisfactory to the Sublessor without such re-entry and repossession working a forfeiture of the Rent and other charges to be paid and the covenants to be performed by the Sublessee during the remaining Term. For the purpose of such re-letting, the Sublessor shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises and/or Improvements that may be necessary or convenient, and the Sublessor shall be entitled to recover from the Sublessee the cost of such repairs, changes, alterations and additions; the expenses of such re-letting; and the difference in value between the rent which would be payable by Sublessee hereunder for the remainder of the Term and the value of the rent to be realized from such re-letting.

- (3) Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Leased Premises and Improvements. In such event the Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover Rent as it becomes due hereunder.
- (4) Perfect a lien on the Leased Premises and Improvements to secure amounts due and owing and to become due and owing by Sublessee under this Sublease, in accordance with the following:
- (a) The lien is effective from and shall relate back to recording of the original Memorandum of Lease. However, as to any Permitted Mortgage, the lien is effective from and after recording of a claim of lien in the public records of Escambia County.
- (b) Upon the occurrence of an Event of Default, the Sublessor may record a claim of lien that states the description of the Leased Premises and Improvements, the name of Sublessee, the name and address of the Sublessor, the amounts then due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Sublessor. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which Sublessor is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by Sublessee or any other person claiming an interest in the Leased Premises or Improvements. The claim of lien secures all unpaid Rent that is due at the time the claim of lien is recorded and Rent that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, all reasonable costs and attorney's fees incurred by Sublessor incident to the collection process, and all other amounts that is or becomes due and owing by Sublessee under this Sublease. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.
- (c) By recording a notice in substantially the following form, Sublessee or Sublessee's agent or attorney may require the Sublessor to enforce a recorded claim of lien against the Leased Premises and Improvements:

#### NOTICE OF CONTEST OF LIEN

TO: (Names and addresses of the Sublessor)

You are notified that the undersigned contests the claim of lien filed by you on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, and recorded in Official Records Book \_\_\_\_ at Page \_\_\_\_\_, of the public records of Escambia County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Signed: (Sublessee or Attorney)

After notice of contest of lien has been recorded, Sublessee shall mail a copy of the recorded notice to the Sublessor by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, Sublessor shall have 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien terminates, without prejudice to all other rights and remedies of Sublessor under this Sublease, at law or in equity. However, the 90-day period shall be extended for any length of time during which Sublessor is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by Sublessee or by any other person claiming an interest in the parcel.

(c) Rights Cumulative; No Waiver. The respective rights of Sublessor under this Sublease shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of Sublessor to exercise promptly any such rights afforded it shall not operate to forfeit any such rights. No forbearance by Sublessor of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Sublessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or Event of Default. Further, the acceptance by the Sublessor of Rent, CAM Charges or other charges or payments by the Sublessee for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the Sublessor arising or existing by reason of such Event of Default, whether or not Sublessor has or had knowledge of

such Event of Default. Legal actions to recover for loss or damage that Sublessor may suffer by reason of termination of this Sublease or the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by the Sublessor following repossession.

29. QUIET ENJOYMENT. Provided Sublessee has performed all of the terms, covenants, agreements and conditions of this Sublease, including the payment of Rent and all other sums due hereunder, Sublessee shall peaceably and quietly hold and enjoy the Leased Premises subject to the provisions and conditions of this Sublease.

30. NOTICES. Any notices required or permitted by this Sublease or by law to be sent to Sublessor shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Sublessor as follows:

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

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

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

33. ATTORNEY'S FEES. In the event that any Party to this Sublease fails to comply with and abide by any of the stipulations, agreements, covenants, and conditions of this Sublease, such Party shall pay all and singular the reasonable costs, charges, and expenses of collection and enforcement of this Sublease, including



without limitation reasonable attorneys' fees (including without limitation those in connection with any appeal or bankruptcy or insolvency proceeding) reasonably incurred or paid at any time by the other Party or Parties to this Sublease to enforce this Sublease or to collect any sums due and owing under this Sublease.

34. **MEMORANDUM OF LEASE.** Contemporaneously with the execution of this Sublease, the Parties shall execute a memorandum of this Sublease in recordable form, which shall be sufficient to give constructive notice of this Sublease and its material terms. Sublessee, at Sublessee's expense, shall record such memorandum in the official records of the Escambia County Clerk of Circuit Court.

35. **ESTOPPEL CERTIFICATES.** Within ten (10) business days after a written request from Sublessee, Sublessor shall certify, by a duly executed and acknowledged written instrument, to any mortgagee of Sublessee or proposed mortgagee or proposed sub-sublessee of the Leased Premises or any other person, firm or corporation specified by Sublessee, as to the validity and force and effect of this Sublease, the existence of any default on the part of any Party hereunder, and the existence of any offset, counterclaim or defense thereto on the part of Sublessor, as well as to any other matters as may be reasonably requested by Sublessee, up to but not more than three (3) times during any Lease Year. Sublessee shall pay the reasonable costs and attorney's fees incurred by the Sublessor in connection with each such estoppel certificate.

36. **NON-DISCRIMINATION.** Sublessee agrees that it will not discriminate upon the basis of race, creed, color, national origin, age, disability or sex in the construction, alteration or demolition of the Improvements or the use, occupancy, or operation of the Leased Premises or Improvements.

37. **SIGNAGE.** Except as otherwise permitted pursuant to Section 4 above, Sublessee shall not construct, operate or maintain any signage on the Leased Premises or Improvements or on any other portion of the Park Property without the prior the written approval of Sublessor in its sole and absolute discretion. Notwithstanding any such approval, all signage shall comply with applicable codes, ordinances and regulations imposed by the City of Pensacola.

38. **SUBLEASEHOLD MORTGAGES BY SUBLESSEE.** The Sublessee shall not mortgage or collaterally assign this Sublease (in whole or in part) or the Sublessee's interest in or to the Leased Premises or any part thereof without first having obtained the Sublessor's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed; provided that the Sublessor may, at its option, approve only a first priority mortgage or collateral assignment and provided further that the Sublessor shall not be obligated to subordinate its interest in this Sublease, the Master Lease or the Leased Premises to any subleasehold mortgage or collateral assignment.

39. MORTGAGES BY SUBLESSOR.

(a) In the event the City of Pensacola hereafter places one or more mortgages on its interest in the Leased Premises, this Sublease and Sublessee's rights and subleasehold estate hereunder shall be subject and subordinate to such mortgage(s), provided that the holder of such mortgage executes an subordination, non-disturbance and attornment agreement (SNDA) reasonably satisfactory to Sublessee whereby such holder agrees that in the event of foreclosure of such mortgage, Sublessee shall not be joined in such foreclosure suit and Sublessee's rights and leasehold estate under this Sublease shall not be disturbed so long as Sublessee is not in default under this Sublease. In consideration thereof, Sublessee shall execute such SNDA whereby Sublessee agrees to attorn to such holder or its successors or assigns and acknowledges that this Sublease and Sublessee's subleasehold estate in the Leased Premises are subject to and subordinate to such mortgage.

(d) Sublessee covenants to execute, within ten (10) days after written request from the Sublessor, such estoppel certificates, and otherwise provide such assurances regarding this Sublease, as Sublessor shall reasonably request in connection with any future mortgage; provided, however, that Sublessee shall be bound by this covenant only if all of the provisions of any such certificate or assurance are true and accurate. Each party shall be responsible for its own attorneys' fees in reviewing any SNDA, agreement or certificate provided for in this Section.

40. SUCCESSORS AND ASSIGNS. The terms and provisions of this Sublease are binding upon and shall inure to the benefit of the Sublessor and Sublessee, and their respective successors and assigns.

41. RECITALS; CONTRACT INTERPRETATION. The recitals set forth at the beginning of this Sublease are true and correct and are hereby incorporated herein by reference. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Sublease and shall not negate or invalidate any provision of this Sublease.

42. APPROVAL OF CITY; WHEN PENSACOLA CITY COUNCIL CONSENT REQUIRED.

(a) The City of Pensacola hereby approves this Sublease pursuant to Section 10 of the Master Lease.

(b) The consent of the Pensacola City Council shall be required for the matters requiring Sublessor consent or approval under Sections 2 and 9 of this Sublease. All other consents and approvals of the Sublessor required or permitted under the terms of this Sublease may be given, conditioned or withheld by the Mayor of the City of Pensacola or his or her designee.

43. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Any other provision of this Sublease to the contrary notwithstanding, in no event shall the Sublessor or Sublessee be liable to any other Party for any special or consequential damages by reason of any breach or default by it under this Sublease, including without limitation loss of income or profits, damage to reputation, or other loss or damages suffered by a Party arising from the interruption or cessation of the business conducted by such Party.

44. **NO WAIVER OF SOVEREIGN IMMUNITY.** Notwithstanding any contrary provision of this Sublease, except to the extent of the contractual obligations of Sublessor expressly set forth in this Sublease, nothing in this Sublease shall be construed as a waiver, in whole or in part, of the Sublessor's sovereign immunity under the Constitution, statutes and case law of the State of Florida, nor shall any provision of this Sublease be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Sublessor.

45. **FLORIDA PUBLIC RECORDS LAW.** The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by Sublessor will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Sublessee shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Sublessee. Notwithstanding any contrary provision in this Sublease, any failure by Sublessee to comply with the Florida Public Records Law, if and to the extent that it is applicable to Sublessee, that continues for seven (7) days after written notice from the Sublessor shall constitute an Event of Default by Sublessee.

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

Signed, sealed and delivered  
in the presence of:

**[SUBLESSEE NAME]**

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

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**CITY OF PENSACOLA**

a Florida municipal corporation

By: \_\_\_\_\_  
Ashton J. Hayward, Mayor

(AFFIX CITY SEAL)

Attest:

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

Signed, sealed and delivered in the presence of:

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

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

Legal in form and valid as drawn:

Approved as to content:

\_\_\_\_\_  
Lysia H. Bowling, City Attorney

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