

**AREA REINVESTMENT AGREEMENT**  
**(\_\_\_\_\_ PROJECT)**

**THIS AREA REINVESTMENT AGREEMENT** (\_\_\_\_\_ **PROJECT**) (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the **CITY OF PENSACOLA, FLORIDA**, a municipal corporation with a principal place of business at \_\_\_\_\_ (the "City"); and the **PENSACOLA COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of Florida created pursuant to Part III, Chapter 163, Florida Statutes, with a principal place of business at \_\_\_\_\_ (the "Agency"); and \_\_\_\_\_, a \_\_\_\_\_ limited liability company with a principal place of business at \_\_\_\_\_ (the "Developer").

**WITNESSETH:**

**WHEREAS**, pursuant to Resolution No. 54-80 adopted by the City Council on September 25, 1980, and as confirmed and ratified pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council found and determined that an area designated therein as the "Pensacola Inner City" is a blighted area as therein described, that a combination of rehabilitation, conservation and redevelopment of the Pensacola Inner City is necessary, that there exists a need for a community redevelopment agency to function in the City to carry out community redevelopment purposes pursuant to Part III, Chapter 163, Florida Statutes (the "Act"), and that the Pensacola Inner City is appropriate for community redevelopment projects and is thereby designated a community redevelopment area; and

**WHEREAS**, pursuant to Resolution No. 55-80 adopted by the City Council on September 25, 1980, and as readopted and reaffirmed pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council declared itself to be the "Community Redevelopment Agency" in the City and vested all rights, powers,

duties, privileges and immunities vested in a community redevelopment agency pursuant to Part III, Chapter 163, Florida Statutes, in the City Council; and

**WHEREAS**, pursuant to Resolution 65-81 adopted by the City Council on September 22, 1981, the City Council designated the boundaries and found and determined that an area designated therein as the "Urban Core Community Redevelopment Area" (the "Redevelopment Area") is a blighted area as therein described and that the rehabilitation, conservation and redevelopment is necessary and in the public interest; and

**WHEREAS**, pursuant to Ordinance No. 13-84 enacted by the City Council on March 8, 1984, the Urban Core Community Redevelopment Trust Fund (the "Trust Fund") was established into which the tax increment paid by each taxing authority each year is deposited in accordance with section 163.387, Florida Statutes, for the purpose of financing community redevelopment in the Redevelopment Area (the "Tax Increment"); and

**WHEREAS**, on January 14, 2010, the City Council adopted Resolution No. 02-10 approving an "Urban Core Community Redevelopment Plan 2010" for the Redevelopment Area (as may be further amended from time to time, the "Redevelopment Plan"); and

**WHEREAS**, the City, the Agency and Developer have entered into that certain [Master Agreement/Ground Lease/Etc.] (the "Master Agreement") concurrently with this Area Reinvestment Agreement; and

**WHEREAS**, capitalized terms not otherwise defined herein shall have the meanings set forth in the Master Agreement; and

**WHEREAS**, the Redevelopment Plan describes the need for [describe project: mixed use/hotel/convention] facilities in the Redevelopment Area and finds that such facilities are required if the Redevelopment Area is to achieve significant rehabilitation; and

**WHEREAS**, the Act and the Redevelopment Plan contemplate and encourage private sector investment in achieving the redevelopment objectives set forth in the plan for the Redevelopment Area; and

**WHEREAS**, the Developer has proposed development of \_\_\_\_\_ (collectively, the "Project"), to be constructed on the real property described in Exhibit 1 hereto located in the Redevelopment Area (the "Project Site"), consistent with the objectives of the Redevelopment Plan; and

**WHEREAS**, the Master Agreement sets forth the terms by which the Developer will redevelop the Project Site located within the Redevelopment Area to include the Project; and

**WHEREAS**, the Developer intends to make a capital investment in real property improvements for the Project within the Redevelopment Area of approximately \$\_\_\_\_\_, including all hard and soft costs (excluding personal property) associated with the design, permitting, remediation, construction and development of the Project and related parking improvements; and

**WHEREAS**, the Developer has represented to the City and the Agency that but for financial and other assistance from the City and the Agency as described herein, the Project is not financially feasible and the Developer will not proceed; and

**WHEREAS**, the Agency is authorized by the Act to effectuate community redevelopment in the Redevelopment Area through expenditure of the Tax Increment deposited by affected taxing authorities into the Trust Fund; and

**WHEREAS**, the Agency has determined that the expenditures provided for in this Agreement are for a valid public purpose, and the Agency has further determined that such expenditures are consistent with the Act and the Redevelopment Plan; and

**WHEREAS**, the Agency has determined that the Project satisfies the application criteria set forth in the Agency's Area Reinvestment Agreement Policy for the West Main District dated April 2020; and

**WHEREAS**, the parties acknowledge that redevelopment activities in the Redevelopment Area must be coordinated to insure their compliance and consistency

with the Act and the Redevelopment Plan, and the parties mutually agree to cooperate to achieve such coordination.

**WHEREAS**, the Project is reasonably expected to generate substantial ad valorem and sales tax revenues through the term of the Redevelopment Plan and beyond; and

**WHEREAS**, the Project is expected to act as a catalyst for additional high quality redevelopment in the Redevelopment Area, thus significantly benefiting the City's economy and its citizens and significantly advancing the community redevelopment objectives set forth in the Act and the Redevelopment Plan; and

**WHEREAS**, the construction phase of the Project is expected to create local jobs stemming from construction related activities, and upon completion, the Project is expected to create local jobs related to operation of the residential and commercial uses; and

**WHEREAS**, construction and operation of the Project is further expected to stimulate economic development in the City and to materially benefit the City, the taxing authorities which contribute Tax Increment and their respective residents for many reasons, including but not limited to the increased direct and indirect funds that will be received from ad valorem tax revenue, sales tax revenue, utility revenue, and other revenues; and

**WHEREAS**, the City and Agency therefore have an interest in the diverse economic benefits which would be created through construction of the Project and redevelopment of the Project Site; and

**WHEREAS**, the City and Agency desire to facilitate the successful construction of the Project in order to realize the public and community redevelopment benefits identified herein; and

**WHEREAS**, provision of the Project is a valid and important public purpose in light of the need to redevelop the land within the Redevelopment Area, and the City and the Agency are authorized by the Act to expend Tax Increment proceeds in

furtherance of the community redevelopment objectives of remedying blight and preserving and enhancing the tax base; and

**WHEREAS**, the City and Agency hereby determine that the economic incentives and contributions contemplated herein are an advantageous means of inducing construction of the Project and which will serve a valid and paramount public purpose in that: (1) construction of the Project will directly promote redevelopment in the Redevelopment Area, as well as the overall economy of the City; (2) the Project will further the development of residential and commercial activities in the Redevelopment Area, thereby achieving essential objectives of the Redevelopment Plan and providing a more balanced and stable area economy and increased opportunities for gainful employment; (3) construction of the Project will stimulate and promote redevelopment in the Redevelopment Area as a whole; and (4) all economic incentives will be used for the public purposes described herein; and

**WHEREAS**, the parties now desire to enter into this Agreement in order to provide for installation and construction of the Project in furtherance of meeting the redevelopment goals and objectives set forth in the Redevelopment Plan; and

**WHEREAS**, this Agreement is neither a general obligation of the City, nor is it backed by the full faith and credit of the City.

**NOW THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Agency and the Developer agree as follows:

**Section 1. Recitals; Definitions.**

(A) The foregoing recitals are true and correct and are incorporated into and made part of this Agreement as if fully set forth herein.

(B) As used herein, the following terms shall be defined as follows, unless the context clearly indicates to the contrary:

"Executive Director" means the Executive Director of the Agency.

"Grant Period" means the term that shall begin on the first day of the tax year immediately following the Completion Date and shall continue for nine (9) tax years thereafter for a total of ten (10) consecutive tax years during which period the Tax Increment Recapture is paid to the Developer pursuant to the terms and conditions of this Agreement.

"Project Site" or "Property" means the real property described in the attached Exhibit "1", located within the Redevelopment Area.

"Tax Increment Recapture" means a yearly grant payment made by the Agency to the Developer for each eligible tax year during the Grant Period in the amount equal to a portion of the Tax Increment generated by the Project Site.

## **Section 2. Grant.**

(A) Section 163.387 of the Act authorizes "area reinvestment agreements" between a community redevelopment agency and private parties pursuant to which the increment computed for a specific area is reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area. It is the express intent of the parties hereto that this Agreement shall constitute and be construed as an area reinvestment agreement within the meaning of the Act.

(B) In order to attract the Project to the Redevelopment Area and as an incentive and support to the Developer to locate the Project within the Redevelopment Area, the Agency has agreed to award the Developer an annual grant consisting of a portion of the Tax Increment generated by the Project for a period of ten (10) years. The purpose of this Agreement is to further the redevelopment objectives in the Redevelopment Plan, create new jobs within the City and to improve the general economic environment of the Redevelopment Area.

(C) The Agency shall pay the Developer the Tax Increment Recapture described in Section 4 subject to the terms and conditions of this Agreement, including but not limited to, the Qualifying Conditions set forth in Section 5 and the Annual Payment Conditions set forth in Section 6.

**Section 3. Term.** The term of this Agreement shall commence, if at all, upon the date the Project is completed and shall continue for a period of ten (10) tax years unless earlier terminated.

**Section 4. Tax Increment Recapture.**

(A) The Agency will make an annual grant payment to the Developer for each tax year during the Grant Period in an amount equal to a portion of the Tax Increment generated by the Property, as determined below.

1. For the first three (3) tax years following the Completion Date, the Tax Increment Recapture payment to the Developer shall equal \_\_\_\_\_ percent (\_\_\_%) of the Tax Increment (exclusive of debt service millage) generated and actually paid by or on behalf of the Property.

2. Thereafter, through the remainder of the Grant Period, the Tax Increment Recapture payment to the Developer shall equal \_\_\_\_\_ percent (\_\_\_%) of the Tax Increment (exclusive of debt service millage) generated and actually paid by or on behalf of the Property.

3. The Tax Increment for the Property shall be confirmed annually by the Executive Director based on a reasonable application of the following formula: the difference between (i) the amount of ad valorem taxes levied each year on the Property by each taxing authority which contributes Tax Increment to the Trust Fund, exclusive of any amount from any debt service millage; and (ii) the amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each such taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the Property as shown upon the assessment roll for the year of the Completion Date.

4. The amount of the annual Tax Increment Recapture will be based on ad valorem real property tax revenue received by the Agency each year by March 15 and deposited into the Trust Fund.

5. The annual Tax Increment Recapture will not exceed the annual Tax Increment (exclusive of debt service millage) generated by the Project.

6. By entering into this Agreement, the Developer agrees and acknowledges that the Agency's obligation to pay the annual Tax Increment Recapture shall be subject to any bond covenants or contractual obligations which are secured by a first lien on the Tax Increment.

**Section 5. Qualifying Conditions.**

A. The Developer, the Agency and the City understand and agree that the Developer qualifying for payment of the Tax Increment Recapture is conditioned upon all of the following: (i) the Developer completing the Project on or before the Completion Date as defined in the Master Agreement; and (ii) the Developer has completed any Off-Site Improvements contemplated by the Master Agreement, and (iii) no event of default by the Developer of the Master Agreement, after proper notice is delivered to the Developer, is continuing beyond all applicable cure periods (collectively, the "Qualifying Conditions").

B. The Developer, the Agency and the City understand and agree that the payment of the Tax Increment Recapture is conditioned upon Developer completing construction of the Project on or before the Completion Date and pursuant to the terms and conditions of the Master Agreement. The intent of this requirement is to provide for the Project improvements to be eligible for and reflected for the 20\_\_ ad valorem property tax roll at the latest. The Developer shall prove eligibility for the 20\_\_ ad valorem property tax roll or sooner tax year if the Project is completed sooner by submitting to the Agency copies of Certificates of Occupancy and Certificates of Completion for the Project indicating completion prior to \_\_\_\_\_, 20\_\_. Failure of the Developer to complete construction of the Project on or before the Completion Date, as the same may be extended pursuant to the terms of the Master Agreement, shall be deemed a material breach of this Agreement such that neither the City nor the Agency shall be required to pay the Tax Increment Recapture to the Developer.

C. To qualify for Tax Increment Recapture, by April 30 of the year following the Completion Date, the Developer must timely submit "sufficient documentation" of proof of compliance with the Qualifying Conditions to the Executive Director for consideration. The Executive Director, in his or her sole but reasonable discretion, shall determine whether the Developer has satisfied the Qualifying Conditions. "Sufficient documentation" of proof of compliance with the Qualifying Conditions shall be as,



follows: (i) for the completion of the Project, a copy of the certificates of occupancy or certificates of completion, as applicable, issued by the City; (ii) documentation that all of the obligations of Developer under the Master Agreement have been met; and (iii) for any letters of default issued to the Developer by the City as of December 31st of the year of completion of the Project, the Developer shall provide proof that any such events of default have been cured within all applicable cure periods. The Executive Director shall provide the Developer with a written determination as to whether the Developer has satisfied the Qualifying Conditions within thirty (30) days after receipt of the Developer's submittal of the sufficient documentation for the same. In the event the Executive Director determines that the Developer has not satisfied the Qualifying Conditions, the Executive Director shall provide the Developer with a written explanation of how the Developer has not satisfied the Qualifying Conditions, and the Developer shall have until April 30th of the year following the completion of the Project to submit or supplement its submittal to the City with additional "sufficient documentation" that confirms the Developer has satisfied the Qualifying Conditions as of the Completion Date, subject to all applicable cure periods.

**Section 6. Annual Payment Conditions.**

A. As a condition to receiving the annual Tax Increment Recapture, for each applicable tax year, the Developer shall comply with all of the following payment conditions:

- (i) The Project was in operation on the Project Site within the Redevelopment Area for the applicable tax year.
- (ii) Ad valorem property taxes due and owing on the Project Site are paid in full as required by law.
- (iii) No event of default of this Agreement for which the Developer has received a written notice thereof from the City or the Agency continues beyond all applicable cure periods.
- (iv) \_\_\_\_\_ (\_\_) full-time equivalent employees are employed to work at the Project on the Property, minimally supported by a certificate of compliance of employment executed by the Developer.

- (v) Developer complies with the payment request procedure set forth in this Section 6.
- (vi) The Property generates a Tax Increment (exclusive of debt service millage).
- (vii) The Trust Fund itself is in effect and not subject to any sunset provisions that have already come into effect as provided for by the Redevelopment Plan, as amended from time to time, or made applicable by amendment or repeal of any provision of the Act.
- (viii) The Developer is not in default, beyond any applicable cure periods, of any material obligations arising under the Master Agreement which expressly survived the completion of the Project, as evidenced by Developer having received a notice of default from the City. If the Developer is in default of a material obligation in the Master Agreement for which it has received written notice of, the Agency shall retain the Tax Increment Recapture payment for that year for use in furtherance of the redevelopment objectives set forth in the Redevelopment Plan.
- (ix) Sufficient Tax Increment exists, after payment of any bonds or other debt obligations of the Agency secured by a first lien on the Tax Increment.

(collectively, the "Annual Payment Conditions").

B. The Executive Director will determine in his or her sole but reasonable discretion whether the Project has satisfied the Annual Payment Conditions and will confirm the amount of the annual Tax Increment Recapture to be paid to the Developer pursuant to the formula set forth above in Section 4 above.

C. For any tax year that one or more of these Annual Payment Conditions is not met, the Developer shall lose its eligibility for a Tax Increment Recapture for that year, but may be eligible to receive a subsequent year's Tax Increment Recapture at a later date provided the applicable thresholds are met and the request for a subsequent

year's Tax Increment Recapture is submitted pursuant to this Section 6 and provided this Agreement is not terminated as provided for below.

D. Annual procedure for payment.

1. In order to be eligible for an annual payment of Tax Increment Recapture for a particular tax year, the Developer must timely submit to the Executive Director for consideration a request for payment by April 30th following the applicable tax year and such submittal shall be supported by "sufficient documentation of proof of compliance" with the Annual Payment Conditions. The Executive Director may in its sole discretion reject submittals after April 30 of the tax year in question. For purposes of this Section 6, the following will constitute "sufficient documentation of proof of compliance" with the Annual Payment Conditions: (i) for Subsection 6A.(i) Developer must certify that the Project has been in operation for the applicable tax year and any dates and reasons for any "Force Majeure Closure", "Partial Closure" or a "Substantial Closure" and shall certify the number of hotel rooms taken out of inventory for such closures for that tax year in question, (ii) for Subsection 6A.ii., the Developer must provide a paid receipt from the tax collector, (iii) for Subsection 6A.(iii), (vii), (viii) and (ix), Developer shall certify that it has not received a written notice of default under any of those agreements, or if it has, Developer shall provide a copy of such notice of default with a certification that the default was cured within all applicable cure periods. In the event Developer has appealed the value of the ad valorem real property taxes that the County has assessed relative to the Property, no Tax Increment Recapture will be due until after any such appeal has been completed and the full amount of the ad valorem property taxes have been paid by Developer.

2. Promptly following receipt of a completed submittal from the Developer, the Executive Director shall make a reasonable determination that Developer has complied with the Qualifying Conditions and the Annual Payment Conditions. The Executive Director shall provide the Developer with a written determination as to whether the Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions and an estimate of the amount of the Tax Increment Recapture within thirty (30) days after receipt of the Developer's submittal of the sufficient documentation for the same. In the event the Executive Director determines that the Developer has not satisfied the Qualifying Conditions or the Annual Payment Conditions, the Executive Director shall provide the Developer with a written

explanation of how the Developer has not satisfied the Qualifying Conditions or the Annual Payment Conditions, and the Developer shall have until April 30th of the year following the tax year in question to submit or supplement its payment application with additional "sufficient documentation" confirming that Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions within all applicable cure periods. If the Executive Director determines that the Developer has satisfied the Qualifying Conditions and the Annual Payment Conditions, the Executive Director shall process the annual Tax Increment Recapture within ninety (90) days following the receipt by the City of the taxes paid on the Project Site for the subject tax year, which taxes, once paid by the property owner to the Brevard County Tax Collector, are disbursed to the City by the Brevard County Tax Collector pursuant to the laws of the State of Florida. The payment of the Tax Increment Recapture shall be from the Agency to the Developer by wire transfer pursuant to wiring instructions provided by the Developer.

#### **Section 7. Default; Termination.**

A. This Agreement may be terminated by the City and/or Agency prior to funding the entire Grant Period upon the occurrence of any of the following events of default: (i) the Developer fails to satisfy the Qualifying Conditions; (ii) ad valorem taxes on the Project Site are unpaid in any given year, except if a tax assessment challenge has been timely filed and is pending (iii) Developer fails to complete the Project by the Completion Date, as the same may be extended pursuant to the Master Agreement, (iv) The Trust Fund expires subject to any sunset provisions as provided for by the Redevelopment Plan, as amended from time to time, or made applicable by amendment or repeal of any provision of the Act; (v) Developer fails to be in compliance with any obligation of Developer in the Master Agreement; (vi) Developer (or its affiliate(s) designated to own and operate the Project ("Designee")) becomes insolvent or there is commenced a voluntary or involuntary proceeding under federal bankruptcy laws or any other insolvency or similar laws by or against Developer or its Designee which is not dismissed within ninety (90) days thereafter if an involuntary proceeding; (vii) Developer or its Designee becomes subject to the appointment of or taking of possession by a receiver, trustee, custodian (or similar official) of any substantial part of Developer's or its Designee's property, or (viii) any assignment for the benefit of

creditors of Developer's or Designee is made by Developer or its Designee, without prior permission granted by the Agency.

B. The City and/or Agency may terminate this Agreement as a result of a material default by Developer under Section 7A or another material provision of the Master Agreement which expressly permits the City and/or Agency to terminate this Agreement.

**Section 8. Approvals; Consents.**

A. All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

B. Unless expressly provided otherwise, all consents and approvals which may be given by a party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed, or conditioned by such party and shall be given or denied within a reasonable time.

C. Unless expressly provided otherwise, where this Agreement requires approval by the City or the Agency, the Executive Director of the City is authorized to grant or deny such requests.

D. Except to the extent set forth in Section 7.14 of the Master Agreement, any amendments to this Agreement will require the approval of the City Council for the City and the governing body of the Agency.

**Section 9. Recordkeeping.**

A. Developer, for itself and its successors and assigns, agrees and grants permission to the City and/or Agency, or its designated agent, upon at least five (5) business days prior notice, to conduct on-site visits of the Project during normal business hours to verify compliance with this Agreement. Developer, for itself and its successors and assigns, agrees to provide the City and/or Agency, or its designated

agent, upon at least twenty-one (21) days prior notice, business records to verify compliance with this Agreement, including employment and wage records. City and/or Agency shall maintain such records as confidential to the extent permitted by Chapter 119, Florida Statutes. Such inspections and disclosure of records shall not be unreasonably withheld when required in order to verify compliance with the terms of this Agreement. Notwithstanding the foregoing, if the City's request for records is in response to a public records request that was filed with the City pursuant to Chapter 119, Florida Statutes, Developer shall respond to the City with the records so requested with all deliberate speed.

B. Developer shall provide access to all public records made or received by the Developer in conjunction with the Tax Increment Recapture payment(s) and this Agreement pursuant to the provisions of Chapter 119, Florida Statutes, except to the extent materials are deemed confidential by state or federal law.

#### Section 10. Other Provisions.

A. Enforcement of Agreement; Attorneys' Fees. Any party to this Agreement may at any time or from time to time proceed to protect and enforce all rights available to it under this Agreement by suit in equity, action at law, writ of mandamus, or by any other appropriate proceeding, whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations. In the event of any litigation arising out of this Agreement, each party shall be responsible for bearing its own attorneys' fees and costs.

B. Damage or Destruction/Insurance. The Developer will bear all risk of loss, whether from casualty, theft, or other events, to the Project contemplated by this Agreement prior to completion of the Project, and will be solely responsible for obtaining any insurance necessary to protect against such risk.

C. Governing Law and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue in case of any suit filed to enforce the provisions of this Agreement will be in the Middle District of Florida, if filed in federal court, and in the state courts in and for Brevard County, if filed in state court.

D. References. The captions of this Agreement are for the purpose of convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement. The use herein of the words "successors and assigns" or "successors or assigns" of City and Agency or Developer shall be deemed to include the heirs, legal representatives, and assigns of the parties. All references in this Agreement to the term, "herein," "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section, or Article within which such term is located.

E. Successors and Assigns. The agreements, terms, covenants, and conditions herein shall be binding upon, and inure to the benefit of the City, the Agency, the Developer, and their respective successors and assigns.

F. Disclaimer as to Governmental Authority. Nothing in this Agreement shall be construed, interpreted, or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City. The Developer is responsible at all times for complying with all applicable federal, state, and local laws.

G. Third Parties. This Agreement is solely for the benefit of the Developer, the Agency, and the City, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Developer, the Agency, and the City any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement. Nothing contained in this Agreement shall limit or impair the Developer's right to protect its rights from interference by a third party.

H. Assignment. No party hereto may assign, transfer or license all or any portion of its rights under this Agreement or any monies to become due hereunder without the prior written approval of the other parties, provided, however, the Developer shall have the right to collaterally assign this Agreement and all of its obligations and rights hereunder to its lender for the Project without the prior written consent of the City or the Agency. After the completion of the Project, the Developer shall also have the right but not the obligation to assign this Agreement to a successor-in-title of the Project with the prior written consent of the Executive Director, which

consent shall not be unreasonably withheld, conditioned or delayed. The Executive Director shall approve or deny the assignment of this Agreement within thirty (30) days after Developer's written request for approval of such assignment. So long as the successor-in-title to the Project is of the same or comparable financial stability as Developer and has the same or comparable experience in owning or managing a hotel facility of the same caliber as the Project, the Executive Director shall approve any such Developer request for assignment thereto. In the event the Executive Director denies the requested assignment, the Developer shall have the right to seek approval of such assignment directly by City Council. In the event this Agreement is assigned to a successor-in-title to the Project, the Parking Agreement shall also be assigned to the same party. Any assignment of this Agreement must be to the owner of the Project Site and must include assignment of all unperformed obligations of the Master Agreement. In no event shall this Agreement be assigned separate and apart from the Master Agreement.

I. Waiver of Jury Trial. Each party hereto waives all right to trial by jury in any claim, action, proceeding or counterclaim the party may have against the other parties hereto regarding any matters arising out of or in any way connected with this Agreement.

J. Severability. If any portion of any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent determined by law.

K. Time of Essence. Time is of the essence in each and every instance hereunder with respect to the covenants, undertakings, and conditions to be performed hereunder by the parties.



L. Effective Date. This Agreement shall be effective upon the date first above written.

Each party is signing this Area Reinvestment Agreement on the date stated opposite that party's signature.

**CITY OF PENSACOLA, FLORIDA**

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

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

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

Attest:

\_\_\_\_\_

City Clerk

**PENSACOLA COMMUNITY  
REDEVELOPMENT AGENCY**

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

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

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

Attest:

\_\_\_\_\_

City Clerk

**[DEVELOPER]**

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

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

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

Exhibit

Exhibit 1 — Legal description of the "Project Site"

## EXHIBIT 1

### LEGAL DESCRIPTION OF THE PROJECT SITE