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March 8, 2013

Ms. Stephanie Clark Tillery, Attorney
City Attorney's Office
City of Pensacola
P.O. Box 12910
Pensacola, Florida 32521

Dear Ms. Tillery:

This letter is in response to your request by email dated March 4, 2013, for our view as special counsel to the City on matters relating to New Markets Tax Credits, regarding certain legal issues raised in connection with a sublease to be entered into between the Young Men's Christian Association of Northwest Florida, Inc. (YMCA), as sublessee (the "Ground Sublease"), and Community Maritime Park Associates, Inc. (CMPA), as sublessor, to the effect enumerated below.

- 1) *The YMCA's refusal to incorporate the master documents as controlling. Also see paragraph 46 (added by YMCA) to the effect the sublease shall be superior in any conflict.*

We agree that paragraph 46 cannot be incorporated due to the fact that the Master Development Agreement, Master Lease and Omnibus Amendment, each by and between the City of Pensacola, Florida (the "City") and Community Maritime Park Associates, Inc. ("CMPA"), govern the use of the property for federal tax purposes; accordingly, the City-CMPA Agreements must control in case of any inconsistency with the Ground Sublease.

- 2) *The YMCA has also resisted identifying the CMPA "as agent," which we believe is the CMPA's restricted role under the Omnibus Agreement.*

Paragraph 4 of the Omnibus Amendment dated May 17, 2010, by and between the City and CMPA provides the following:

4. CMPA shall have no interest in the Private Improvements located on the Leased Property and, except as contemplated in the Site Improvement Project, shall not be responsible for any costs of development, construction, operation or maintenance, including taxes and insurance, with respect to the Private Improvements. [CMPA] shall, instead, act as agent of the City in making such portions available to

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developers of the Private Improvements on terms subject to approval by the City. All amounts paid by such developers or sublessees for use of the Private Improvements or the land on which they are situated shall be paid to the City. Except as provided in paragraph 8 below, nothing herein shall be deemed to prohibit CMPA from utilizing the proceeds of the QLICI Loans for the development of sites or building pads for the Private Improvements, of for any mixed-use projects on the Leased Property. [Paragraph 4 of Omnibus Amendment (emphasis added)].

However, by virtue of paragraph 6 of the Omnibus Amendment, “CMPA shall have the exclusive right to own, operate, manage, sublease, finance and otherwise deal with the Project, subject to the requirements of the QLICI Loans, but without any approvals or consents from the City.” [Paragraph 6 of Omnibus Amendment]. With respect to approvals required of the City, paragraph 6 conflicts with the underlined portion of paragraph 4 referenced above. Further, paragraph 6 references paragraph 10.01.04 of the Master Lease, but it does not reference, nor does it override, paragraph 10.01.03 of the Master Lease, requiring that “any Private Improvements Sub-Lease shall be subject the approval of Lessor [City] in its absolute discretion as a condition to execution of the lease by Lessee [CMPA].” [Sec. 10.01.03 of Master Lease].

Therefore, by virtue of Sections 10.01.03 and 10.01.04 of the Master Lease, as qualified by paragraphs 4 and 6 of the Omnibus Amendment, CMPA is the proper party for execution of any Private Improvements Sub-Lease, including the Ground Sublease with YMCA, but only upon approval of the City in its absolute discretion.

- 3) *Further, the City would like to receive confirmation from you as to any potential CMPA role in the approval of the sublease.*

As discussed above, CMPA must execute the Ground Sublease as sublessor upon the approval of the terms by the City; therefore, CMPA should properly authorize execution of the Ground Sublease, upon approval of the City in its absolute discretion.

- 4) *The purpose of the sublease is the construction and operation of a YMCA facility. Is this allowable? See Section 2.01(d) and Section 16.01 of the MDA.*

Yes, the use of the property by the YMCA would constitute “Private Improvements” under the Master Lease and Master Development Agreement as a component of either the Retail Project or the Office Project, and as such, is a permissible use of the property under the Master Development Agreement. “Private Improvements” are defined in the Master Lease as “improvements constructed on the Leased Property consisting of the Retail Project, the Hotel

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Project, the Residential Project, and the Office Project.” “Retail Project” is defined as “that portion or component of the Private Improvements consisting of the design, development, construction, completion and operation of those buildings, structures, facilities and other improvements to be constructed and installed on the Leased Property, which are to be used for commercial retail purposes, which may consist in whole or in part of retail uses in other parts of the Private Improvements.” “Office Project” is defined as “that part or component of the Private Improvements consisting of the office building(s) to be constructed on one or more Parcels by a Developer pursuant to a Sub-Lease . . .”

- 5) *The City Attorney believes the City should receive the CAM fees. The YMCA feels they belong to the CMPA.*

The CAM fees should be paid to the City. See paragraph 4 of the Omnibus Agreement quoted above.

- 6) *The term of the sublease, with an automatic renewal, will extend beyond the Master Lease. There is also a right of first refusal allowing sublessee to become lessee.*

We recommend limiting the term of the Ground Sublease to the term of the Master Lease unless there are compelling reasons to extend the term. If such justifiable reasons exist, then they must be submitted to the City for approval in connection with submission of the Ground Sublease for approval, and the Ground Sublease with YMCA must provide for the City to assume CMPA’s position under the Ground Sublease after termination of the Ground Sublease. Section 10.01 of the Master Lease provides the following language regarding the termination date of any sublease:

10.01 A Sub-Lease shall contain such terms and conditions as Lessee shall recommend are in the best interest of Lessee and Lessor, and consistent with the purposes of the Project and the Plan. All Sub-Leases shall have a termination date that ends on or before the end of the term of this Master Lease, subject to the following: if Lessee believes it in the best interest of the Project for the term of a Sub-Lease with a Developer to end after the end of the term of this Master Lease, then as part of its submission of the Sub-Lease for Lessor’s approval, Lessee shall justify to Lessor the reasons for its recommendation for such sublease term. If such Sub-Lease term is approved by Lessor, the Sub-Lease shall make provision for Lessor to assume Lessee’s position under the terms of the Sub-Lease after termination of this Master Lease.



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If you have any further questions in this regard, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in purple ink, appearing to read "Richard J. Miller".

Richard J. Miller

RJM/sg

Cc: Richard Barker, Jr., Chief Financial Officer/City of Pensacola
Steven Paul, Esq.
Sarah O'Dea, Esq.