

Attachment F

**Lease Between
City of Benton Harbor and
Harbor Shores Community
Redevelopment, Inc.**

HARBOR SHORES LEASE AGREEMENT

This Harbor Shores Lease Agreement (this "**Lease**") is entered into by and between the City of Benton Harbor, a Michigan municipal corporation, whose principal business address is 200 East Wall Street, Post Office Box 648, Benton Harbor, Michigan 49023-0648, and Harbor Shores Community Redevelopment Inc. ("**Harbor Shores**"), a Michigan non-profit corporation, whose principal business address is 400 Riverview Drive, Suite 420, Benton Harbor, Michigan 49022. The Parties (as hereinafter defined) hereby amend and restate the terms and conditions on which the City of Benton Harbor will lease to Harbor Shores portions of Jean Klock Park (as defined below) and portions of property contiguous to Jean Klock Park commonly known as Parcel 8A (as defined below) for development of three (3) golf holes that will be included in a public golf course that is part of the Harbor Shores Project (as defined in Section 1.01(k) below). The City of Benton Harbor and Harbor Shores shall be collectively referred to in this Lease as the "**Parties**."

Recitals

On May 4, 1917, J.N. Klock and Carrie E. Klock (collectively, the "**Klocks**") executed a deed ("**Deed**") conveying certain property to the City of Benton Harbor "and to its assigns." Also, on June 18, 1947, Judge Edward Westin of the Berrien County Circuit Court entered a decree ("**Decree**") reforming the Deed by eliminating that portion of the property that the Klocks granted to the City of Benton Harbor without warranty. As a result, the City of Benton Harbor owns in fee simple the remaining property commonly known as "Jean Klock Park."

On November 3, 2005, the City of Benton Harbor and Harbor Shores entered into a Development Cooperation Agreement ("**Act 425 Agreement**") by and among the City of Benton Harbor, St. Joseph, and Harbor Shores. The subject of the Act 425 Agreement is an economic development Project (as defined in Section 1.01(k) below) to be located in the City of Benton Harbor, Benton Township, and St. Joseph, Michigan. Also, on April 13, 2006, the City of Benton Harbor and Harbor Shores entered into a Memorandum of Understanding, as amended, regarding the Project ("**Memorandum of Understanding**"). The Memorandum of Understanding provides for sale of certain City of Benton Harbor-owned land (not including any portion of Jean Klock Park) for the Project and sets forth additional terms regarding community benefits, parks and recreation, and zoning. Additionally, Harbor Shores and the City of Benton Harbor entered into a Rezoning Agreement relating to the Project ("**Rezoning Agreement**").

Pursuant to the foregoing agreements, the City of Benton Harbor and Harbor Shores entered into the Harbor Shores Golf Course Agreement, dated effective January 22, 2007 ("**Prior Agreement**") to expand and improve Jean Klock Park as part of the Project, to provide for the maintenance and operation of Jean Klock Park, Parcel 8A and the Park Expansion Property (as defined in the Prior Agreement) and to lease certain interior portions of Jean Klock Park and portions of Parcel 8A to Harbor Shores for construction and operation of three (3) holes of a public golf course, contingent upon approval by the Michigan Department of Natural Resources ("**MDNR**"), Michigan Natural Resources Trust Fund ("**MNRTF**") Board, and National Park Service ("**NPS**"), and based on the terms and conditions set forth in the Prior Agreement.

Based upon comments from the NPS and MDNR, and pursuant to Section 7.27 of the Prior Agreement, which requires the Parties to execute any additional documents reasonably requested by the other party to carry out the intent of the Prior Agreement, the Parties have agreed to separate the Prior Agreement by entering into this Lease and a separate Park Improvements and Maintenance Agreement ("**Park Improvements and Maintenance Agreement**") to modify the terms of the Prior Agreement to the extent necessary to satisfy the requirements of the NPS and MDNR. The Parties agree that this Lease and the Park Improvements and Maintenance Agreement shall replace and supersede the Prior Agreement in its entirety and upon the effective date of this Lease and the Park Improvements and Maintenance Agreement, the Prior Agreement shall automatically and immediately terminate. In the event of any conflict or inconsistency between the terms and conditions of this Lease and the terms and conditions of the Park Improvements and Maintenance Agreement, the terms and conditions of this Lease shall control.

The Parties hereby acknowledge that Harbor Shores intends to provide an initial capital expenditure of at least Eighteen Million and no/100 Dollars (\$18,000,000.00) for a public golf course to be partially located within portions of Jean Klock Park. The Parties also hereby acknowledge that Harbor Shores will not receive a monetary return from the golf course operations or otherwise. Additionally, the Leased Premises (as defined below) do not include any portion of the Lake Michigan beach.

Terms and Conditions

The City of Benton Harbor and Harbor Shores agree as follows:

Article I

Section 1.01. Definitions. In addition to terms defined elsewhere in this Lease, terms used in this Lease shall have the following meanings:

(a) "**City Commission**" means the City Commission of the City of Benton Harbor, its legislative body.

(b) "**City Manager**" means the City Manager of the City of Benton Harbor and his/her designee.

(c) "**Day**" means a calendar day.

(d) "**Golf Course Oversight Panel**" means a five-member panel created by the City of Benton Harbor to be comprised of (i) a member of the City Commission who is the head of the City of Benton Harbor's Parks and Recreation Committee; (ii) another member of the City Commission nominated by the City of Benton Harbor's Mayor and approved by the City Commission; (iii) a representative from the Management Firm (as defined below), who does not have a vote on the panel; (iv) a City of Benton Harbor employee nominated by the City of Benton Harbor's Mayor and approved by the City Commission to serve for the period of time during each Mayor's term; and (v) a City of Benton Harbor resident that is a certified public

accountant (or professional equivalent) selected by the City of Benton Harbor, who does not have a vote on the panel. The authority and duties of the Golf Course Oversight Panel are set forth in Section 2.06 of this Lease. All meetings of the Golf Course Oversight Panel shall comply with the requirements of the Open Meetings Act. Additionally, the Golf Course Oversight Panel shall comply with the requirements of the Freedom of Information Act.

(e) "**Jean Klock Park**" means the real property commonly known as Jean Klock Park, as depicted and legally described on **Exhibit A** hereto.

(f) "**Golf Course Improvements**" means the improvements to be constructed by Harbor Shores necessary to maintain and operate three (3) golf holes of a public golf course on the Leased Premises according to the standards set forth in the Park Improvements and Maintenance Agreement (as defined below).

(f) "**Leased Premises**" means portions of real property within Jean Klock Park and portions of real property within Parcel 8A, totaling approximately 30.16 acres in size, and acknowledged to be owned in fee simple by the City of Benton Harbor, as collectively depicted and legally described in **Exhibit B** to this Lease. The Leased Premises are comprised of approximately 22.11 acres of Jean Klock Park and 8.05 acres of Parcel 8A.

(g) "**Parcel 8A**" means the real property commonly known as Parcel 8A, as depicted and legally described on **Exhibit C** hereto.

(h) "**Park Improvements and Maintenance Agreement**" means the Park Improvements and Maintenance Agreement entered into at the same time as this Lease regarding such items including the expansion of, improvements to, operation of, and maintenance of Jean Klock Park, Parcel 8A and the park expansion property (as described in such agreement).

(i) "**Permitted Use**" means a public golf course and related uses that are necessary to construct, maintain, and operate a public golf course. The City of Benton Harbor and members of the general public shall be permitted, during the non-golfing season, to use the Leased Premises for non-motorized winter activities (including, without limitation, cross country skiing) as long as such activities do not impede on the golf course operations or damage the golf course, as reasonably determined by the City of Benton Harbor. The City of Benton Harbor, with input from Harbor Shores and the Management Firm, shall make and adopt reasonable rules and regulations for the use of the Leased Premises by the public for such winter activities. Such rules and regulations shall ensure that such activities do not impede on the golf course operations or damage the golf course. During the non-golfing season, the City of Benton Harbor and members of the general public shall not use the greens, tee boxes and sand traps to be located within the Leased Premises. Sledding shall not be permitted on the portion of the golf course within the Leased Premises at any time. For purposes of this Subsection, "**non-golfing season**" shall mean the extended period of time during the winter months when the golf course is no longer open for members of the public to play golf and will not be open for golf.

(j) **"Person"** means any individual, corporation, limited liability company, partnership, association, joint venture, trust or government agency, division or political subdivision.

(k) **"Project"** means the planning, development, construction, financing, ownership and sale of the "Harbor Shores Development Project," which is a mixed use development project that may consist of commercial and retail buildings, residential homes, hotel(s), a public golf course, marina(s) and other recreational uses to be located in the City of Benton Harbor, Benton Township, and St. Joseph, Michigan. The Leased Premises will be used for the construction, maintenance and operation of three (3) golf holes within a public golf course along with appropriate golf safety zones, all of which are part of the "Project."

(l) **"State"** means the State of Michigan.

Section 1.02. Exhibits. All Exhibits attached to this Lease shall be operative parts of this Lease and incorporated by reference where mentioned in this Lease, except that in the event of any conflict between any Exhibit and the terms and conditions of this Lease, the terms and conditions of this Lease shall control. Capitalized terms in the Exhibits to this Lease shall be given the same meaning as in this Lease, unless otherwise indicated. In the event of any conflict or inconsistency between the terms and conditions of this Lease and the terms and conditions of the Park Improvements and Maintenance Agreement, the terms and conditions of this Lease shall control. From and after the Effective Date, this Lease and the Park Improvements and Maintenance Agreement shall amend and restate the Prior Agreement in its entirety. Reference to supplemental agreements, approvals, certificates, consents, notices, requests and the like means that such shall be in writing whether or not a writing is specifically mentioned.

Section 1.03. Contingencies. This Lease shall not be executed by the Parties until they receive prior written approval of it from the NPS. This Lease is contingent upon execution of the Park Improvements and Maintenance Agreement. In the event that this contingency is not satisfied, this Lease shall terminate upon written notice from a party to this Lease to the other party to this Lease, and neither party to this Lease shall have any further liability to the other party.

Article II

Section 2.01. Leased Premises. Subject to the conditions set forth in this Lease, the City of Benton Harbor hereby leases and demises to Harbor Shores and Harbor Shores hereby hires and leases from the City of Benton Harbor the Leased Premises. Harbor Shores acknowledges that it has had the opportunity to inspect the Leased Premises and that as of the date of this Lease and except as otherwise provided in this Lease, Harbor Shores shall accept the lease of such property "AS IS" and "WHERE IS" without representation or warranty as to the condition of the premises by the City of Benton Harbor or any of its representatives. Simultaneous with the entry of this Lease, the parties will also enter into the Park Improvements and Maintenance Agreement to set forth terms and conditions regarding Harbor Shores' access rights to Jean Klock Park and Parcel 8A (other than the Leased Premises), and the park expansion property (as described in the Park Improvements and Maintenance Agreement) to

carry out the agreed-upon plans for expanding and improving Jean Klock Park as part of the Project. Harbor Shores acknowledges that its Permitted Use of the Leased Premises shall not be deemed an ownership interest, which remains with the City of Benton Harbor, but rather a leasehold estate in the Leased Premises for a specified term in consideration of Harbor Shores' agreement to provide consideration to the City of Benton Harbor as further provided in this Lease and in the Park Improvements and Maintenance Agreement.

Notwithstanding anything to the contrary herein, the City of Benton Harbor represents and warrants to Harbor Shores that, to the best of the City of Benton Harbor's knowledge, Harbor Shores' Permitted Use of the Leased Premises does not violate any City of Benton Harbor law or ordinance, including, but not limited to, zoning ordinances. The City of Benton Harbor shall indemnify, defend and hold Harbor Shores harmless from any breach of the foregoing representations and warranties only to the extent permitted by applicable law. If approval from the City of Benton Harbor of any land division under the Michigan Land Division Act, which is Michigan Act No. 288 of the Public Act of 1967, as amended, shall be required in connection with this Lease, the City of Benton Harbor shall hereby be deemed to have granted its approval.

The City of Benton Harbor shall work with, join, and support Harbor Shores in any actions, causes of action, claims, and suits arising out of or in connection with a violation of any building restrictions, restrictive covenants, the Consent Judgment (as defined below) governing Jean Klock Park, the Deed, laws, ordinances, or other requirements solely arising out of a challenge to Harbor Shores' Permitted Use of the Leased Premises under this Lease. All expenses, legal fees associated with the City of Benton Harbor's support of Harbor Shores as provided in the preceding sentence and all expenses, legal fees, settlements and judgments incurred by the City of Benton Harbor should the City of Benton Harbor be named in any action, causes of action, claim, or suit challenging the Permitted Use of the Leased Premises shall be paid for by Harbor Shores. For any other legal challenges to this Lease, the Parties agree to work in good faith to defend such challenges.

Harbor Shores shall work with, join, and support the City of Benton Harbor in any actions, causes of action, claims, and suits arising out of or in connection with a violation of any building restrictions, restrictive covenants, the Consent Judgment, laws, ordinances, or other requirements solely arising out of a challenge to Harbor Shores Permitted Use of the Leased Premises under this Lease.

Section 2.02. Term. The initial term of this Lease shall be for thirty five (35) years, which began at 12:00 a.m. on January 22, 2007, and ends at 11:59 p.m. on January 22, 2042 ("**Initial Term**"). Provided that Harbor Shores is not in default as to any material term of this Lease at the time of any renewal, as reasonably determined by the City of Benton Harbor, this Lease shall automatically renew for two (2) additional thirty five (35) year terms on and subject to the same terms, covenants and conditions as set forth herein, unless Harbor Shores notifies the City of Benton Harbor of its intent not to renew this Lease no later than one hundred eighty (180) days prior to the end of the current lease term or applicable renewal term. Notwithstanding the foregoing, the Parties acknowledge that the Consideration (as defined in Section 2.03 below) to be paid under this Lease shall be reviewed and negotiated at each, separate renewal period (i.e., at the end of the first thirty-five (35) year term in calendar year 2042 and at the end of the second

thirty-five (35) year term in calendar year 2077) consistent with the Consideration Negotiation Process outlined in Section 2.03 below.

Section 2.03. Consideration.

(a) **Rent.** In consideration of the leasehold estate of the Leased Premises granted to Harbor Shores and the covenants of the City of Benton Harbor provided in this Lease, Harbor Shores shall pay to the City of Benton Harbor annual installments of rent ("**Rent**") for each year of the initial thirty-five (35) year term and each year of all renewal terms. Except for the first installment of Rent, each annual installment of Rent shall be payable on the first day of the applicable year of the term. The first installment of Rent for the first year of the term shall be payable upon commencement of construction of the golf course or by June 30, 2007, whichever is earlier. For the first year of the term, Rent shall be Thirty Thousand and No/100 Dollars (\$30,000.00). For each succeeding year thereafter during the Initial Term, Rent shall be increased by one percent (1%) annually over the Rent for the previous year. Following each such adjustment, the term "Rent," as used in the Lease, shall mean Rent as most recently adjusted.

(b) **Additional Rent.** Additionally, in consideration of the leasehold estate of the Leased Premises granted to Harbor Shores in this Lease, during the Initial Term of this Lease Harbor Shores shall provide the following which shall be considered "**Additional Rent**":

(i) Harbor Shores' fee simple conveyance of the park expansion property as defined and described in the Park Improvements and Maintenance Agreement. This consideration has a total estimated value of Nine Hundred Ninety Nine Thousand Five Hundred and no/100 Dollars (\$999,500.00) and has previously been conveyed to the City of Benton Harbor under the terms and conditions of the Prior Agreement;

(ii) Harbor Shores' construction and conveyance of the park improvements for Jean Klock Park and Parcel 8A as described in the Park Improvements and Maintenance Agreement. This consideration has a total estimated value of One Million and no/100 Dollars (\$1,000,000.00);

(iii) Harbor Shores' construction and improvement of West Klock Road pursuant to the letter from Jeffrey Noel to Pete Mitchell attached as **Exhibit D** to this Lease, contingent upon the proceeds of the applicable MDOT Grant in the amount of Five Hundred Forty Four Thousand Five Hundred Fifty and no/100 Dollars (\$544,550.00) being utilized for the improvement of West Klock Road. The total cost of the West Klock Road project is One Million Eight Hundred Eighty-Five Thousand Four Hundred Twenty-Two and no/100 Dollars (\$1,885,422.00). Harbor Shores will pay One Million Three Hundred Forty Thousand Eight Hundred Seventy Two and no/100 Dollars (\$1,340,872.00) towards the West Klock Road project;

(iv) Harbor Shores' construction and improvement of East Klock Road pursuant to the letter from Jeffrey Noel to Pete Mitchell attached as **Exhibit D** to this Lease,

contingent upon the proceeds of the applicable MDOT Grant in the amount of Four Hundred Ninety Eight Thousand Three Hundred and no/100 Dollars (\$498,300.00) being utilized for the improvement of East Klock Road. The total cost of the East Klock Road project is Eight Hundred Seventy-Three Thousand Nine Hundred Fifty-Four and no/100 Dollars (\$873,954.00). Harbor Shores will pay Three Hundred Seventy Five Thousand Six Hundred Fifty Four and no/100 Dollars (\$375,654.00) towards the East Klock Road project;

(v) Harbor Shores' construction and improvement of Graham Avenue pursuant to the letter from Jeffrey Noel to Pete Mitchell attached as **Exhibit D** to this Lease, contingent upon the proceeds of the applicable MDOT Grant in the amount of One Million Nine Hundred Ninety Thousand Eight Hundred and no/100 Dollars (\$1,990,800.00) being utilized for the improvement of Graham Avenue. The total cost of the Graham Avenue project is Three Million One Hundred Thousand Five Hundred Sixty-Six and no/100 Dollars (\$3,100,566.00). Harbor Shores will pay One Million One Hundred Nine Thousand Seven Hundred Sixty Six and no/100 Dollars (\$1,109,766.00) towards the Graham Avenue project;

(vi) Harbor Shores' construction and conveyance of the park expansion improvements as described in the Park Improvements and Maintenance Agreement. This consideration has a total estimated value of Five Hundred Thousand Eight Hundred Fifty and no/100 Dollars (\$500,850.00);

(vii) Harbor Shores' maintenance, as described in Sections 3.03(a) of the Park Improvements and Maintenance Agreement, of Jean Klock Park and Parcel 8A (but not including the Leased Premises), and the park expansion property (as defined in the Park Improvements and Maintenance Agreement), which includes, but is not limited to, the following: sand and dune maintenance; trash removal; cleaning of public restrooms; grass mowing and related landscaping trimming and maintenance; and other customary park maintenance items. Notwithstanding the foregoing, Harbor Shores' maintenance obligations under this Subsection (vii) do not include maintenance as the result of special events or public road maintenance or repair or replacement of any of the non-golf course related infrastructure located within Jean Klock Park, Parcel 8A or the park expansion property as described in the Park Improvements and Maintenance Agreement. The Parties acknowledge that the consideration under this Subsection (vii) has a total estimated value of One Hundred Fifteen Thousand and no/100 Dollars (\$115,000.00) annually (based on 2006 dollars); and

(viii) Beginning with the first year of the term of this Lease, Harbor Shores' annual payment to the City of Benton Harbor Community Benefits Program (as defined below) which will be used by the City of Benton Harbor for the City of Benton Harbor Community Benefit Program to be developed by the City of Benton Harbor with input from the Golf Course Oversight Panel solely to support activities directly related to the City of Benton Harbor Community Benefits Program (as defined below). For purposes of this Lease, the annual amount that Harbor Shores must pay to the City of Benton Harbor Community Benefits Program shall be the greater of: (i) Five Thousand and no/100 Dollars (\$5,000.00), or (ii) the amount determined pursuant to the following formula: twenty percent (20%) of the "**Annual Net Operating Income**", which will be defined as all golf course gross income (including greens fees, pro shop fees, range and lesson fees, as well as golf course facility rental fees,

food/beverage/alcohol fees), less: (1) golf course operation expenses, (2) prior operation deficits or shortfalls, (3) annual Rent payments made to the City of Benton Harbor (as defined above), (4) the actual cost of Harbor Shores' maintenance obligations set forth in Subsection (vii) above, (5) annual booked capital improvements, clubhouse lease and equipment leases, and (6) appropriate annual booked reserves necessary to fund the operation and maintenance of the public golf course in accordance with the operation and maintenance standards set forth in the Park Improvements and Maintenance Agreement ("**Annual Community Benefits Payment**"). The Annual Community Benefits Payment shall be reasonably estimated by Harbor Shores by March 31 of each year during the term of this Lease and such estimation shall be provided to the Golf Course Oversight Panel at that time. Harbor Shores will make payment of this amount to the City of Benton Harbor semi-annually with one-half of the payment made approximately at the halfway point of the current year of this Lease (July 22) and the remaining one-half balance of the payment to be made on the last day of the current year of this Lease (January 21).

(c) **Community Benefits Program.** In addition to the foregoing, Harbor Shores will apply all of the remaining eighty percent (80%) of the Annual Net Operating Income (as determined pursuant to the formula set forth above) to a community benefits program that will (1) be established and operated by Harbor Shores, and (2) benefit residents of the City of Benton Harbor, St. Joseph and Berrien County (the "**Harbor Shores Community Benefits Program**").

(d) **Annual Statement.** For each year during the term of the Lease, Harbor Shores shall provide the City of Benton Harbor with an itemized statement of the Annual Community Benefits Payment before March 1 of the following year. If the total of Harbor Shores estimated payments in any year exceeds the total of the calculated Annual Community Benefits Payment due for such year, then the City of Benton Harbor shall credit Harbor Shores for the difference against the Annual Community Benefits Payment due from Harbor Shores for the next year of this Lease. If the total of Harbor Shores estimated payments in any year are less than the total of the Annual Community Benefits Payment for such year, then Harbor Shores shall pay the difference to the City of Benton Harbor Community Benefits Program within forty five (45) days of such determination. Any amounts owed to Harbor Shores or the City of Benton Harbor Community Benefits Program under this Section shall be calculated on a prorated basis for the last year encompassed by the term of this Lease, if this Lease does not expire at the end of a year encompassed by the term of this Lease.

(e) **Audit.** Harbor Shores shall maintain at its offices complete records of the Annual Net Operating Income and Annual Community Benefits Payment formula and payment calculations for eighteen (18) months following the applicable calendar year. At any time during the eighteen (18) month period referenced above, the City of Benton Harbor may audit the applicable Harbor Shores records, including, without limitation, inspecting invoices and records, and Harbor Shores shall reasonably cooperate with the City of Benton Harbor in such audit. If such audit shows that the itemized statement caused Harbor Shores to under fund the City of Benton Harbor Community Benefits Program, Harbor Shores shall pay such deficiency to the City of Benton Harbor Community Benefits Program within forty five (45) days of such determination. If such audit shows that the itemized statement caused Harbor Shores to over fund the City of Benton Harbor Community Benefits Program, then the City of Benton Harbor

shall credit Harbor Shores for the difference against the Annual Community Benefits Payment due from Harbor Shores for the next year of this Lease.

(f) **Definition.** For purposes of this Lease, "**City of Benton Harbor Community Benefits Program**" shall mean the contribution of funds by the City of Benton Harbor to any and all community benefits plans that include, but are not limited to, a local business consortium, a community ventures development consortium, an arts and culture consortium, programs for literacy, programs for workforce development, programs for improved housing, small business development, adult education, housing and community ventures programs, programs for local business development, minority contractor programs, the establishment and operation of a transportation program for residents to encourage the use of Jean Klock Park during the summer months, and community and youth special events to be held at the public golf course, including, but not limited to, First Tee special events and local high school athletic events.

(g) **Negotiation Process.** For any applicable renewal term, Rent and Additional Rent (collectively, "**Consideration**") shall be established according to the following process ("**Consideration Negotiation Process**"). Twenty four (24) months prior to the expiration of the Initial Term or any renewal term, the Parties shall begin to negotiate the Consideration for the respective renewal term. The Parties will negotiate Consideration that is reasonably appropriate for the applicable renewal term and will agree to review all of the Consideration terms set forth in this Lease (except as otherwise provided below) as a guide for negotiations for any renewal term of this Lease. The Parties will use the same methodology used to calculate the Consideration for the Initial Term (except as otherwise provided below) and specifically review the terms set forth in this Section 2.03 (including the Rent paragraph and subsections (b) (vii) and (b) (viii) above. The Parties will also review needed improvements for Jean Klock Park, the park expansion properties as described in the Park Improvements and Maintenance Agreement and Parcel 8A, and will conduct market evaluations to help determine the appropriate Consideration to be paid during any applicable renewal terms, which evaluations shall recognize the value added to the property owned by the City of Benton Harbor by Harbor Shores' improvement of such property. Harbor Shores shall not pay increased Consideration as a result of its added value to the property owned by the City of Benton Harbor under this Lease. Notwithstanding anything to the contrary contained in this Lease, the Parties agree that the Consideration for any applicable renewal term shall be an amount that permits the golf course to be operated and maintained by Harbor Shores according to the operation and maintenance standards set forth in this Lease and the Park Improvements and Maintenance Agreement, including appropriate reserves, and permits the golf course to be operated and maintained with a positive Annual Net Operating Income (as defined above). Notwithstanding anything to the contrary contained in this Lease, the Parties agree that the Consideration shall include the Annual Community Benefits Payment exactly as provided above and that the items provided by Harbor Shores in subsections (b)(i), (b)(ii), (b)(iii), (b)(iv), (b)(v) and (b)(vi) in this Section 2.03 above are one time capital improvements made by Harbor Shores which are not required to be repeated during any renewal term. The Parties acknowledge that they may mutually decide to include capital improvements as Consideration for any applicable renewal term. It is the intent of the Parties to continue the Annual Community Benefits Payment as provided above as Consideration for applicable renewal terms. If the Parties are unable to mutually agree upon Consideration for the next succeeding renewal term prior to eighteen (18) months of the expiration of the Initial

Term or renewal term, whichever is applicable, then Consideration for such renewal term shall be established pursuant to Section 7.12 of this Lease, subject to the criteria established under this subsection. Notwithstanding anything to the contrary herein, the operation of the public golf course shall not be disrupted for any reason during the Consideration Negotiation Process. The Consideration Negotiation Process shall not affect the automatic nature of the renewal terms as provided in Section 2.02 above. The Parties will negotiate Consideration that is reasonably appropriate for the applicable renewal term and will agree to review all of the Consideration terms set forth in this Lease and the provisions of this Section 2.03 as a guide for negotiations for any renewal term of this Lease.

Section 2.04. Use of Leased Premises. Harbor Shores shall use the Leased Premises for the Permitted Use only and shall not use, allow, or cause the Leased Premises to be used for any other purpose without the prior written consent of the City of Benton Harbor, except for those uses by the City of Benton Harbor and members of the general public as permitted under Subsection 1.01(i). During the term of this Lease, Harbor Shores shall be solely responsible for all costs relating to the Leased Premises, including all costs to construct, maintain, and operate the golf course and related activities that comprise a Permitted Use under this Lease. Harbor Shores shall not use, allow, or cause the Leased Premises to be used in any way that may commit waste to the Leased Premises, result in a public or private nuisance, violate any law, rule, or regulation, or, with respect to the portion of the Leased Premises located on Jean Klock Park, the Consent Judgment dated January 27, 2004, and recorded June 30, 2004, at Liber 2476, Page 1365, with the Berrien County Register of Deeds ("**Consent Judgment**"). Harbor Shores and the City of Benton Harbor shall not use, allow, or cause the portion of the Leased Premises located on Jean Klock Park to violate the terms of the Deed, including, without limitation, that such portions of the Leased Premises shall be used for bathing beach, park purposes, or other public purposes; and at all times be open for the use and benefit of the public, subject only to such rules and regulations as the City of Benton Harbor may make and adopt. Harbor Shores shall not allow, suffer, or permit any intoxicating liquors or drinks to be manufactured, sold, or given away upon Jean Klock Park.

For avoidance of doubt, the Leased Premises, which will be utilized for a public golf course, shall not include any portion of the Lake Michigan beach or any portion of the dunes within Jean Klock Park that are to the west of the western boundary of the Leased Premises, and the public golf course shall be minimally invasive to the portion of the dunes within the Leased Premises (i.e., only to the extent necessary for grading, other construction, and maintenance).

Section 2.05. Open to the Public; Fee Schedule. Harbor Shores shall assure the City of Benton Harbor that the golf course to be partly located on the Leased Premises shall at all times be open for the use and benefit of the public, subject only to such rules and regulations as the City of Benton Harbor may make and adopt. Once the golf course is open to the public for play, Harbor Shores shall furnish the Golf Course Oversight Panel with a fee schedule, including the normal rates and discounted rates for the public golf course and the effective times of such rates ("**Fee Schedule**") on or before March 1 of each calendar year, which fee schedule shall become effective upon the approval of the Golf Course Oversight Panel, which approval shall not be unreasonably withheld, delayed or conditioned. The Golf Course Oversight Panel shall either approve or reject such Fee Schedule on or before March 31 of the same calendar year. In the

event the Golf Course Oversight Panel fails to respond in writing to the proposed Fee Schedule within such period, the Golf Course Oversight Panel shall be deemed to have given its approval of such Fee Schedule. In the event that there is a dispute regarding the Fee Schedule, such dispute shall be resolved pursuant to Section 7.12 of this Lease and the golf course shall operate using the prior year's Fee Schedule. The Fee Schedule shall be prepared by the Management Firm (as defined below). Notwithstanding anything to the contrary herein, the Fee Schedule shall be set at rates that are reasonably calculated to fund the operation and maintenance of the Golf Course in accordance with the operation and maintenance standards set forth in Subsection 2.06(c) and Section 3.03 below, permit the additional public access in accordance with the standards set forth in Subsection 2.06(e) below, and maximize proceeds available to the Harbor Shores Community Benefits Program (as defined in Section 2.03(c) of this Lease) in accordance with the provisions of Section 2.03 to this Lease; provided, however, the Fee Schedule shall include discounted rates provided to Berrien County residents. The discounted rates shall be calculated to ensure that the golf course is open for the use and benefit of Berrien County residents according to the terms of this Lease. In order to provide for a lower discounted rate to Berrien County residents, discounted rates shall be calculated so that the discounted rates charged to Berrien County residents do not generate surplus funds payable as proceeds to the Harbor Shores Community Benefits Program. Harbor Shores shall also furnish the Fee Schedule to the administrator of the MNRTE and the Land and Water Conservation Fund programs within the MDNR or state department currently administering these programs upon a written request from such party.

Section 2.06. Authority and Duties of Golf Course Oversight Panel. The Golf Course Oversight Panel shall determine whether Harbor Shores and the golf course management company engaged to manage the public golf course ("**Management Firm**") comply with the following requirements:

(a) The golf course and related facilities, including, but not limited to, the practice range and golf buildings built for the Project (collectively, for purposes of this Section referred to as the "**Golf Course**") shall be equally available to all members of the public without discrimination.

(b) The Golf Course shall be open for play during dates and times as reasonably customary for public golf courses of a similar character.

(c) The Golf Course shall be operated and maintained by Harbor Shores and the Management Firm according to the standards detailed under this Lease and the Park Improvements and Maintenance Agreement. Harbor Shores and the Management Firm shall permit members of the Golf Course Oversight Panel reasonable access to inspect the Golf Course to determine compliance with these operation and maintenance standards.

(d) Once the Golf Course is open to the public for play, the Fee Schedule for the Golf Course shall be established, with approval by the Golf Course Oversight Panel on an annual basis as provided in Section 2.05 above.

(e) The Golf Course and/or golf range shall:

(i) Be made available for play by Berrien County residents at a discounted rate in accordance with Section 2.05 above;

(ii) Be made available for at least two (2) high school athletic invitational competitions sponsored by both the City of Benton Harbor and the City of St. Joseph's public schools in conjunction with the golf course operator (one competition shall be a girls event and one shall be a boys event), and in accordance with the operation and maintenance standards set forth Subsection (c) above; and

(iii) Be made available to the Boys and Girls Club First Tee program seven (7) to ten (10) days annually.

The Golf Course Oversight Panel shall also provide suggestions and comments regarding the transportation program that Harbor Shores will provide to area youth and area residents to encourage them to use Jean Klock Park. In the event that the Golf Course Oversight Panel determines there has been any failure to comply with the requirements set forth in this Section, the Golf Course Oversight Panel shall notify the City and Harbor Shores of the determination in writing, and the matter shall be resolved pursuant to the dispute resolution provisions set forth in Section 7.12 of this Lease. The Golf Course Oversight Panel shall from time to time make and adopt rules, regulations and procedures to carry out its duties under this Lease, including approving the Fee Schedule. In the event that a member of the Golf Course Oversight Panel resigns, the remaining members of the Golf Course Oversight Panel shall continue to operate the Golf Course Oversight Panel and a new member shall be appointed in accordance with the membership requirements set forth in Section 1.01(d) of this Lease.

Harbor Shores shall maintain at its offices complete records of the operating income and expenses of the golf course operations for three (3) years following the applicable calendar year. At any time during the three (3) year period referenced above, the Golf Course Oversight Panel may audit or review the applicable Harbor Shores records, including, without limitation, inspecting invoices and records, and Harbor Shores shall reasonably cooperate with the Golf Course Oversight Panel in such audit.

Section 2.07. Approval by the MDNR, the MNRTF Board and the NPS. The Parties acknowledge that Jean Klock Park is subject to the following agreements ("**Grant Agreements**") previously entered into by the City of Benton Harbor: (a) Development Project Agreement - Land and Water Conservation Fund, Project Number 26-00568; (b) Development Project Agreement - Michigan Natural Resources Trust Fund, Project Number TF89-114; (c) Development Project Agreement - Michigan Department of Natural Resources Recreation Bond Program, Project Number BF 92-327; and (d) Development Project Agreement - Clean Michigan Initiative Recreation Bond Program, Project Number CM99-203. The Parties further acknowledge that the Parties have sought and obtained approval of the Project from the MDNR, MNRTF Board, and the NPS. The MNRTF Board approval is subject to the conditions as detailed in its final approval, including, without limitation, a review and approval of this Lease. The Parties shall use their best efforts to assist and cooperate fully with each other with regard to meeting any conditions imposed by the MDNR, MNRTF Board, the NPS and any other

appropriate and/or required governmental bodies necessarily required for the development, construction, operation, maintenance and use of the portion of the public golf course on the Leased Premises or for the performance of this Lease by the Parties. Application and approval costs, including reasonable attorney fees, appraisal expenses, environmental reports, and mitigation sites, shall be borne by Harbor Shores.

Section 2.08. Utilities. This Lease is subject to all utility easements pertaining to the Leased Premises, whether or not of record. Harbor Shores, or its agents, at their sole cost and expense, may lay pipes and cables and do all things reasonably necessary to utilize, tap and tie into, and to construct, extend and enlarge, install, repair and maintain all utility services or systems now or hereafter to be located on Jean Klock Park and Parcel 8A (not including any utilities located on any portion of the Lake Michigan beach or any portion of the dunes within Jean Klock Park that are to the west of the western boundary of the Leased Premises) to service all or any portion of the Leased Premises as is reasonably necessary for the Permitted Use, including, without limitation, electrical and water. Notwithstanding the foregoing, in the event that Harbor Shores utilizes any utilities provided by the City of Benton Harbor, it must do so in accordance with all applicable City of Benton Harbor ordinances and specifications, including, without limitation, having the City of Benton Harbor tap and tie into such utilities on Harbor Shores' behalf. In connection with any such activities, Harbor Shores shall promptly repair any damages caused as a consequence of such activities, at its sole cost and expense, and shall act reasonably to minimize interference with the use and enjoyment of Jean Klock Park by the general public. The City of Benton Harbor shall not unreasonably interfere with any utilities used or to be used by Harbor Shores under this Lease. Harbor Shores shall, at its expense, pay for all utility services for the Leased Premises before such amounts become delinquent. Prior to the commencement of the construction or installation of any new utilities, Harbor Shores shall submit a written request to the City of Benton Harbor regarding the location of such utilities and shall obtain the written consent of the City of Benton Harbor for the location of any such utilities, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that Harbor Shores does not receive a written response from the City of Benton Harbor to its proposed location of such utilities within sixty (60) days of its initial written request, the consent of the City of Benton Harbor shall be deemed to have been given. The City of Benton Harbor shall not be responsible for any installation, construction, maintenance, repair or replacement of any utilities serving the Leased Premises.

Section 2.09. Taxes and Assessments. During the term of this Lease, the Parties acknowledge and agree that Harbor Shores shall pay any and all ad valorem taxes and assessments with respect to the Leased Premises and Golf Course Improvements that become due and payable, if any. Such taxes shall be paid before delinquency, directly to the applicable taxing authority. Taxes due and payable for any partial calendar year shall be prorated on a calendar year basis, with Harbor Shores paying only for taxes related to the term of this Lease.

Article III

Section 3.01. Park Jurisdiction. The City of Benton Harbor, as fee simple owner of Jean Klock Park and Parcel 8A, through its representatives, shall remain in charge of the operation and maintenance of all portions of Jean Klock Park and Parcel 8A not encompassed by

the Leased Premises, consistent with the Park Improvements and Maintenance Agreement and this Lease. Harbor Shores, through its representatives, shall be in charge of the operation and maintenance of all portions of the Leased Premises and the Golf Course Improvements during the term of this Lease consistent with the Park Improvements and Maintenance Agreement and this Lease.

Section 3.02. Improvements. The Park Improvements and Maintenance Agreement sets forth a detailed list of the park improvements which shall be completed by Harbor Shores in conjunction with this Lease. The Parties acknowledge that Harbor Shores intends to complete at least One Million and no/100 Dollars (\$1,000,000.00) in capital improvements for such park improvements as detailed in the Park Improvements and Maintenance Agreement for Jean Klock Park and Parcel 8A and at least Five Hundred Thousand Eight Hundred Fifty and no/100 Dollars (\$500,850.00) in capital improvements for the park expansion property as described in the Park Improvements and Maintenance Agreement. The Parties further acknowledge that Harbor Shores intends to provide an initial capital expenditure of at least Eighteen Million and no/100 Dollars (\$18,000,000.00) for the public golf course, which amount Harbor Shores will not receive in return from the golf course operations or otherwise.

Section 3.03. Maintenance and Operation. Harbor Shores shall, at its cost, perform and pay for or cause to be performed and paid for all maintenance, operations, wages and fees, repair and replacement reasonably necessary to keep the Leased Premises clean, sanitary, presentable, safe and in good order, condition and repair consistent with a Jack Nicklaus Signature Golf Course, and in compliance with all applicable laws, ordinances, rules and regulations during the term of this Lease.

Section 3.04. Community Benefits. The Parties agree to consider the use of locally owned and operated businesses in the design and construction of the Project. Further, Harbor Shores commits to use its best efforts in selecting locally owned and operated businesses in the design and construction of the Project where appropriate and reasonable. Harbor Shores also agrees that at least forty percent (40%) of the employees that will maintain Jean Klock Park and the golf course shall be City of Benton Harbor residents. Additionally, Harbor Shores agrees to use a good faith effort in hiring the City of Benton Harbor residents in an amount of at least ten percent (10%) of the employees for construction of the golf course, including, but not limited to, demolition and site clearing work. Finally, Harbor Shores agrees to provide funding for the City of Benton Harbor to contribute to a community benefits program as detailed and described in Section 2.03.

Section 3.05. Access. The City of Benton Harbor hereby grants to Harbor Shores reasonable access over and across Jean Klock Park, Parcel 8A and the park expansion property (as described in the Park Improvements and Maintenance Agreement) for the purpose of allowing the construction installation, replacement, repair, improvement, maintenance, and removal of the Golf Course Improvements, for the purpose of ingress to and egress from the Leased Premises, and for the purpose of performing its maintenance obligations as detailed in **Section 3.03** above ("**Golf Course Access Rights**"). Notwithstanding the foregoing, Harbor Shores shall not have access under this Lease to any portion of the Lake Michigan beach or any portion of the dunes within Jean Klock Park that are to the west of the western boundary of the

Leased Premises. Notwithstanding anything to the contrary herein, in all instances, the public's right to use all areas of Jean Klock Park and Parcel 8A (other than the Leased Premises), and the Park Expansion Property shall be dominant compared to Harbor Shores' use of all such areas under this Agreement; and, the City of Benton Harbor shall, as may be required from time to time, with input from Harbor Shores and MDNR staff, make and adopt reasonable rules and regulations regarding Jean Klock Park uses by Harbor Shores consistent with the terms of this Lease to minimize and resolve any conflicts between Harbor Shores' use and all other uses in such a way that promotes the public's use of Jean Klock Park. The Golf Course Access Rights shall be for the use of Harbor Shores and its agents. However, the City of Benton Harbor hereby reserves the right of ingress and egress over and across the Leased Premises for the purpose of inspection, replacement, repair, maintenance and improvement of any currently existing public or private utilities therein (the "**City of Benton Harbor Reservation**"). The City of Benton Harbor Reservation may only be exercised by the City of Benton Harbor upon reasonable notice to the local representatives of the Management Firm operating the public golf course. The City of Benton Harbor shall use its commercially reasonable best efforts to minimize interference with the operation of the public golf course in exercising its rights under the City of Benton Harbor Reservation. Harbor Shores acknowledges that Jean Klock Park and Parcel 8A have state-listed threatened plants species and that Harbor Shores shall reasonably comply with necessary and appropriate design and construction measures so that such threatened plants species are not threatened or adversely impacted.

Article IV

Section 4.01. Harbor Shores' Representations. Harbor Shores represents and warrants that:

(a) It is a Michigan nonprofit corporation duly organized, validly existing, and qualified to do business in the State, with the right, power, and authority to enter into, execute, deliver, and perform this Lease;

(b) The entry, execution, delivery, and performance by Harbor Shores of this Lease has been duly authorized by all necessary action, and does not and will not violate its Articles of Incorporation and Bylaws, both as amended and supplemented, any material applicable provision of law, or constitute a material breach of, material default under, or require any consent under any other material agreement or instrument to which Harbor Shores is now a party or by which it may become bound, other than ongoing compliance with the Consent Judgment, subject to any approval process required by applicable law;

(c) There are no actions or proceedings by or before any court, governmental body, board, or any administrative agency pending or, to the best of its knowledge, threatened that would materially impair its ability to perform under this Lease; and

(d) To the best of its knowledge, after due inquiry, there is no default by Harbor Shores or any other party under any material agreement, contract, instrument, lease, option, or commitment to which it is a party or by which it or its properties is bound and which would have a material adverse impact upon Harbor Shores' ability to perform under this Lease.

Section 4.02. The City of Benton Harbor Representations. The City of Benton Harbor represents and warrants that:

(a) It is a municipal corporation under the laws of the State with the power and authority to enter into, execute, deliver, and perform this Lease;

(b) The entry, execution, delivery, and performance by the City of Benton Harbor of this Lease has been duly authorized by all necessary action, and does not and will not violate its city charter, both as amended and supplemented, any material applicable provision of law, or constitute a material breach of, material default under, or require any consent under any other material agreement or instrument to which the City of Benton Harbor is now a party or by which it may become bound, other than ongoing compliance with the Consent Judgment, and subject to any approval process required by applicable law;

(c) There are no actions or proceedings by or before any court, governmental body, board, or any administrative agency pending or, to the best of its knowledge, threatened that would impair its ability to perform under this Lease; and

(d) To the best of its knowledge, after due inquiry, there is no default by the City of Benton Harbor or any other party under any material agreement, contract, instrument, lease, option, or commitment to which it is a party or by which it or its properties is bound and which would have a material adverse impact upon the City of Benton Harbor's ability to perform under this Lease.

Section 4.03. Survival of Representations and Warranties. All representations and warranties set forth in this Lease shall be true, accurate, and complete at the time of the Effective Date (as defined below) of this Lease and remain in effect until termination of this Lease unless specifically provided otherwise in this Lease.

Article V

Section 5.01. Harbor Shores' Covenants. Harbor Shores agrees and covenants as follows:

(a) Harbor Shores shall pay all costs and expenses incurred in designing, constructing, operating, maintaining, and repairing the Leased Premises, Golf Course Improvements and the Project during the term of this Lease;

(b) All actions of the Board of Trustees of Harbor Shores required to be taken to authorize execution and performance of this Lease shall be validly and duly taken and a representative shall be duly authorized to execute this Lease for and on behalf of Harbor Shores; and

(c) Harbor Shores shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations under this Lease. Harbor Shores shall

immediately notify the City of Benton Harbor of any event or action which may materially affect the ability of Harbor Shores to perform its obligations under this Lease.

Section 5.02. The City of Benton Harbor's Covenants. The City of Benton Harbor agrees and covenants as follows:

(a) All actions of the City Commission required to be taken to authorize execution of this Lease shall be validly and duly taken and the Mayor of the City of Benton Harbor, City Manager, City Clerk of the City of Benton Harbor, or the City of Benton Harbor counsel shall be duly authorized to execute this Lease for and on behalf of the City of Benton Harbor; and

(b) The City of Benton Harbor shall not enter into any contractual transaction that would materially and adversely affect its ability to perform its obligations under this Lease. The City of Benton Harbor shall immediately notify Harbor Shores of any event or action which may materially affect the ability of the City of Benton Harbor to perform its obligations under this Lease.

Article VI

Section 6.01. All Risk Insurance. During the term of this Lease, Harbor Shores shall, at its own expense, cause the Project to be insured against loss or damage by fire, windstorm, hail, explosion, and civil commotion, smoke damage, and such other risks as are from time to time included in "extended coverage" endorsements (including, during construction, builder's risk insurance) in an amount and form so that the proceeds are sufficient to provide for actual replacement of the Golf Course Improvements. Said policy of insurance shall, if reasonably available, provide for waivers of subrogation and shall name the City of Benton Harbor as an additional insured. Harbor Shores further agrees to provide on an annual basis to the City of Benton Harbor a current declarations sheet for this coverage.

Section 6.02. General Liability Insurance. During the term of this Lease, Harbor Shores shall, at its own expense, maintain or cause to be maintained general liability insurance against claims for personal injury or death and property damage occurring upon, or in the Leased Premises and the Project with coverage in an amount not less than Two Million Dollars (\$2,000,000) with respect to injury or death to one or more persons arising out of any one occurrence and in an amount of not less than One Million Dollars (\$1,000,000) with respect to damage to property per occurrence. Said policy of insurance shall, if reasonably available, provide for waivers of subrogation and shall name the City of Benton Harbor as an additional insured. Harbor Shores further agrees to provide on an annual basis to the City of Benton Harbor a current declarations sheet for this coverage. The amounts of coverage under said policy of insurance shall increase during the term of this Lease to be equal to coverage that is normal and customary in the insurance industry for similarly situated properties.

Section 6.03. Indemnification by Harbor Shores. Harbor Shores agrees that during the term of this Lease and all extension periods of this Lease, Harbor Shores shall defend, indemnify and hold the City of Benton Harbor, its officers, commissioners, employees, agents, invitees or licensees ("**City of Benton Harbor Indemnified Parties**") harmless from and against

any actions, causes of action, claims, costs, damages, liabilities, suits, settlements, judgments and expenses (including, without limitation, reasonable attorney fees) incurred by the City of Benton Harbor Indemnified Parties arising from or in connection with (a) the use of the Leased Premises by Harbor Shores, its invitees, agents, employees or contractors, (b) the use of the "Southwest Park Corridor" (as defined in the Park Improvements and Maintenance Agreement) by Harbor Shores, its invitees, agents, employees, or contractors, (c) the development, construction, use and work performed by Harbor Shores, its agents, employees, or contractors related to the Leased Premises or Golf Course Improvements or under this Lease, (d) a material misrepresentation of Harbor Shores in this Lease or in any information Harbor Shores is required to provide to the City of Benton Harbor pursuant to this Lease, (e) the failure of Harbor Shores to promptly cure or otherwise correct any material misrepresentations or omissions of Harbor Shores in this Lease or any other agreement related to this Lease, or (f) any Environmental Violation (as defined below) resulting from Harbor Shores' or its invitees', agents', employees' or contractors' use of and actions on the Leased Premises. Notwithstanding the foregoing, such obligations to defend, indemnify and hold the City of Benton Harbor harmless by Harbor Shores shall not include those which shall result, in whole or in part, directly or indirectly, from the default, negligence, or willful misconduct of the City of Benton Harbor Indemnified Parties.

An "**Environmental Violation**" under this Lease means any condition or situation that (a) constitutes a violation of any federal or State environmental law, regulation, or ordinance; (b) forms the basis of any public or private claim or cause of action for the cleanup or remediation as a result of the release, threatened release, migration, or the existence of any contaminants, pollutants, petroleum and petroleum byproducts, crude oil, chemicals, wastes, or other substance (including, without limitation, regulated substances, hazardous wastes, and hazardous substances as terms are commonly used and understood within the framework of existing federal and State laws); or (c) constitutes a release or a threatened release of hazardous wastes or hazardous substances under applicable law. Pursuant to Section 6.05, Harbor Shores acknowledges that it is leasing the Leased Premises in an "AS IS" condition from the City of Benton Harbor.

Section 6.04. Indemnification by the City of Benton Harbor. Only to the extent permitted by applicable law, the City of Benton Harbor agrees that during the term of this Lease and all extension periods of this Lease, the City of Benton Harbor shall defend, indemnify and hold Harbor Shores, its officers, directors, trustees, invitees, licensees, employees or agents ("**Harbor Shores Indemnified Parties**") harmless from and against any actions, causes of action, claims, costs, damages, liabilities, suits, settlements, judgments and expenses (including, without limitation, reasonable attorney fees) incurred by the Harbor Shores Indemnified Parties arising from or in connection with (a) the use and operation of portions of Jean Klock Park and Parcel 8A that do not include the Leased Premises, or the park expansion property set forth in the Park Improvements and Maintenance Agreement *by those other than the Harbor Shores Indemnified Parties*, (b) a material misrepresentation of the City of Benton Harbor in this Lease or in any information the City of Benton Harbor is required to provide to Harbor Shores pursuant to this Lease, (c) the failure of the City of Benton Harbor to promptly cure or otherwise correct any material misrepresentations or omissions of the City of Benton Harbor in this Lease or in any information the City of Benton Harbor is required to provide to Harbor Shores pursuant to this Lease; or (d) any Environmental Violation resulting from the City of Benton Harbor's use of and

actions on Jean Klock Park, Parcel 8A or the park expansion property, as set forth in the Park Improvements and Maintenance Agreement, after the Effective Date (as defined below) of this Lease. *Notwithstanding the foregoing, such obligations to defend, indemnify and hold Harbor Shores harmless by the City of Benton Harbor shall not include those which shall result, in whole or in part, directly or indirectly, from the default, negligence, or willful misconduct of the Harbor Shores Indemnified Parties.*

Section 6.05. Environmental. Except as otherwise provided herein, the City of Benton Harbor shall lease the Leased Premises to Harbor Shores in its "AS IS" condition. Notwithstanding the foregoing, the City of Benton Harbor and Harbor Shores hereby agree and acknowledge that because most of Jean Klock Park, Parcel 8A and the Park Expansion Property (as defined in the Park Improvements and Maintenance Agreement) is in an area which historically has been the home of heavy industry and landfilling, there may be environmental contamination that may need to be addressed before development of the Jean Klock Park, Parcel 8A or the Park Expansion Property can be undertaken as required by this Lease and the Park Improvements and Maintenance Agreement. Current analysis indicates that remediation activities are required to be performed on Park Mitigation Parcels D and F as described on **Exhibit B** to the Park Improvements and Maintenance Agreement ("**Remediation Parcels**") by Harbor Shores. Such response activities and measures are necessary to mitigate arsenic exposure on the Remediation Parcels as outlined on Part 4.0 of the Document of Compliance with the Part 10 Rules, dated November 7, 2007; such remediation includes, without limitation, mass excavation, disposal of soil, concrete debris and industrial waste, the bulk filling of areas of the Park Expansion Property, and the installation of an isolation zone on certain areas of the Park Expansion Property. Such response activities and measures shall begin within ninety (90) days of execution of this Lease and be completed within three (3) years of the execution of this Lease in accordance with the timeline as detailed in the City of Benton Harbor's Conversion Proposal, which was resubmitted to NPS on _____, 2008. The City of Benton Harbor agrees to cooperate with and assist Harbor Shores in accessing and obtaining funds for any such investigation and remediation of Jean Klock Park, Parcel 8A and the Park Expansion Property and any investigation, due care and remediation costs incurred in excess of those funds received shall be the responsibility of Harbor Shores and not the City of Benton Harbor. The City of Benton Harbor agrees that Harbor Shores shall be permitted to conduct environmental assessment(s) of Jean Klock Park, Parcel 8A and the Park Expansion Property, at its expense. The City of Benton Harbor shall provide access and information to, and otherwise cooperate with Harbor Shores in any environmental assessment(s) it conducts. Harbor Shores shall, at its expense, have the right to prepare and submit to the Michigan Department of Environmental Quality ("**MDEQ**") a "baseline environmental assessment," or "BEA" of Jean Klock Park, Parcel 8A and the Park Expansion Property, pursuant to MCL 324.20126. In the event that the BEA is not approved by the MDEQ and Harbor Shores does not attempt to resubmit a new BEA to the MDEQ within one hundred eighty (180) days of receipt of the disapproval letter for the original BEA, either party to this Lease may terminate this Lease by written notice to the other party. Such termination would also automatically terminate the Park Improvements and Maintenance Agreement. Harbor Shores may also, at its expense, prepare and submit to the MDEQ a plan to meet due care obligations at Jean Klock Park, Parcel 8A and the Park Expansion Property imposed under MCL 324.20107a. Notwithstanding anything to the contrary herein, if Harbor Shores' proposed due care/remediation plan is not accepted by the appropriate governmental

bodies, Harbor Shores, in its sole discretion, may review whether to proceed with or cease development of any portion of the Project, including the golf course and terminate this Lease and the Park Improvements and Maintenance Agreement without any further liability. Such determination shall be made by Harbor Shores within one hundred eighty (180) days of the disapproval of the due care/remediation plan. In the event that Harbor shores does not notify the City of Benton Harbor of its decision whether to terminate this Lease because of the disapproved due care/remediation plan within such one hundred eighty (180) day period, either party may terminate this Lease by written notice to the other party within sixty (60) days of the expiration of such one hundred eighty (180) day period.

Article VII

Section 7.01. Termination. This Lease will terminate at the end of the term identified above in Section 2.02 or upon the exercise of any termination right contained herein. Notwithstanding the foregoing or anything to the contrary contained herein, during the twelve (12) months after the Effective Date of this Lease, Harbor Shores may terminate this Agreement upon sixty (60) days prior written notice to the City of Benton Harbor in the event that Harbor Shores does not commence or complete construction of the portion of the public golf course within the Leased Premises or abandons the public golf course portion of the Project without any further liability under this Lease ("**Termination Right**"). Notwithstanding anything to the contrary herein, in the event that this Lease is terminated under the Termination Right in this Section or the termination right contained in Section 6.05 above, the following shall be the only termination penalties of Harbor Shores to the City of Benton Harbor under this Lease: (a) the already completed conveyance of the park expansion property (as described in the Park Improvements and Maintenance Agreement) to the City of Benton Harbor; provided, however, the City of Benton Harbor shall have the option to convey any of the park expansion property (as described in the Park Improvements and Maintenance Agreement) to Harbor Shores within ninety (90) days of such termination of this Lease by Harbor Shores; and (b) Harbor Shores must deliver the Leased Premises to the City of Benton Harbor in substantially the same condition as existed as of the date of execution of this Lease within ninety (90) days of exercising the Termination Right.

Section 7.02 Surrender of Possession. Except as otherwise stated in this Lease, upon the expiration or termination of this Lease, whether by lapse of time, operation of law or pursuant to the provisions of this Lease, Harbor Shores shall: (a) fill in the sand traps and remove the tee boxes and holes from the Leased Premises and reseed such areas with grass seed as reasonably appropriate, if requested to do so by the City of Benton Harbor; (b) restore the dunes within the Leased Premises to their original state as reasonably appropriate, if requested to do so by the City of Benton Harbor; and (c) surrender possession of the Leased Premises to the City of Benton Harbor.

Section 7.03. The City of Benton Harbor Default and Harbor Shores' Remedies. The City of Benton Harbor shall be deemed to be in default under this Lease if the City of Benton Harbor shall fail to perform any of its obligations required under this Lease or the Park Improvements and Maintenance Agreement within one hundred twenty (120) days after receipt of written notice to perform the same when required hereunder.

In the event the City of Benton Harbor shall be in default hereunder and shall not cure the same within any period allowed therefore by the terms of this Lease, Harbor Shores shall have the right to: (a) bring an action for specific performance or damages and/or cure the same for and on behalf of the City of Benton Harbor, at the City of Benton Harbor's expense; or (b) in the event of a failure to perform any material obligation, after providing the City of Benton Harbor with an additional notice of its default and a sixty (60) day period in which to cure such default and after following the Dispute Resolution Process under Section 7.12, terminate this Lease, in which event Harbor Shores shall immediately surrender the Leased Premises to the City of Benton Harbor as provided under Section 7.02 above. In connection with the exercise of Harbor Shores rights under this Section, the City of Benton Harbor shall reimburse Harbor Shores for any expenditures made by Harbor Shores in connection therewith plus interest thereon at the Prime Rate (as defined below) less two percent (2%) per year or the highest rate permitted by any applicable laws, whichever is lower ("**Interest Rate**"), within thirty (30) days after Harbor Shores' demand, or at Harbor Shores' option, Harbor Shores may deduct its charges from any amounts due to the City of Benton Harbor under this Lease for its expenses incurred. In no event shall such deduction be the basis of forfeiture of this Lease nor constitute a default in the provision of any consideration due hereunder by Harbor Shores unless Harbor Shores shall fail to pay the amount of such deduction within thirty (30) days after a final adjudication that such amount is owing to the City of Benton Harbor. For purposes of the Lease, the term "**Prime Rate**" shall mean a rate of interest, per annum, equal to the prime rate of interest as published from time to time by the *Wall Street Journal*.

Section 7.04. Harbor Shores' Default and City's Remedies. Harbor Shores shall be deemed to be in default under this Lease if Harbor Shores:

(a) Fails to perform any of its obligations required under this Lease or the Park Improvements and Maintenance Agreement within one hundred twenty (120) days after receipt of written notice to perform the same when required hereunder.

(b) Fails to commence construction of the public golf course within five (5) years of the Effective Date; or

(c) Fails to complete the park improvements that Harbor Shores is required to complete under the Park Improvements and Maintenance Agreement within five (5) years of the Effective Date.

In the event that Harbor Shores shall be in default under subsections (b) or (c) above, this Lease shall terminate and Harbor Shores shall become immediately liable for the early termination penalties set forth as follows in addition to the already completed conveyance of the park expansion property (as described in the Park Improvements and Maintenance Agreement); provided, however, the City of Benton Harbor shall have the option to convey any of the park expansion property (as described in the Park Improvements and Maintenance Agreement) to Harbor Shores within ninety (90) days of such termination; and Harbor Shores shall have no further liability to the City of Benton Harbor under this Lease:

(i) In the event that the construction of the portions of the golf course within the Leased Premises is not commenced, deliver the Leased Premises to the City of Benton Harbor in its condition as of the execution of this Lease, reasonable wear and tear and casualty excepted; or

(ii) In the event that the construction of the portions of the golf course within the Leased Premises has commenced, surrender the Leased Premises to the City of Benton Harbor as provided in Section 7.02 above.

In the event that Harbor Shores shall be in default under subsection (a) above and shall not cure the same within any period allowed therefore by the terms of this Lease, the City of Benton Harbor shall have the right to: (a) bring an action for specific performance or damages and/or cure the same for and on behalf of Harbor Shores, at Harbor Shores' expense; or (b) in the event of a failure to perform any material obligation, after providing Harbor Shores with an additional notice of its default and a sixty (60) day period in which to cure such default and after following the Dispute Resolution Process under Section 7.12, terminate this Lease, in which event Harbor Shores shall immediately surrender the Leased Premises to the City of Benton Harbor as provided in Section 7.02 above. In connection with the exercise of the City of Benton Harbor's rights under this paragraph, Harbor Shores shall reimburse the City of Benton Harbor for any expenditures made by the City of Benton Harbor in connection therewith plus interest thereon at the Prime Rate (as defined below) less two percent (2%) per year or the highest rate permitted by any applicable laws, whichever is lower ("**Interest Rate**"), within thirty (30) days after the City of Benton Harbor's demand, or at the City of Benton Harbor's option, the City of Benton Harbor may deduct its charges from any amounts due to Harbor Shores under this Lease for its expenses incurred. In no event shall such deduction be the basis of forfeiture of this Lease nor constitute a default in the provision of any consideration due hereunder by the City of Benton Harbor unless the City of Benton Harbor shall fail to pay the amount of such deduction within thirty (30) days after a final adjudication that such amount is owing to Harbor Shores. For purposes of the Lease, the term "**Prime Rate**" shall mean a rate of interest, per annum, equal to the prime rate of interest as published from time to time by the *Wall Street Journal*.

Section 7.05. Assignment Requirements. This Lease may not be assigned by Harbor Shores without the prior written consent of the City of Benton Harbor, which consent shall not be unreasonably withheld, delayed or conditioned. Harbor Shores shall provide the City of Benton Harbor with sixty (60) days prior written notice of the material details of such assignment and its request to consent to such assignment. In the event that the City of Benton Harbor does not respond in writing to such request during such sixty (60) day period, the City of Benton Harbor's consent shall be deemed given. Additionally, should Harbor Shores propose to assign, convey, sell or otherwise transfer a majority of its ownership and/or management interest in Harbor Shores, Harbor Shores must provide the City of Benton Harbor with written notice of the material details of Harbor Shores' proposal to assign said interest and the City of Benton Harbor shall have sixty (60) days to approve the proposal; provided, however that the City of Benton Harbor acknowledges that Harbor Shores intends to partner with one or more parties in connection with the Project and that those partnerships shall not constitute assignments even if one or more partner(s) assume overall responsibility for a particular aspect of the Project.

Regarding the selection of and entering into agreements with reputable golf course management companies, Harbor Shores, in its sole discretion, shall select reputable companies for the design, construction, maintenance, and operation of the golf course to be partially operated on the Leased Premises. Harbor Shores shall provide the Golf Course Oversight Panel with sixty (60) days' prior written notice of a proposed change in management with regard to the golf course following its initial selection. During such sixty (60) day notice period, the Golf Course Oversight Panel shall review the proposed change in management and provide Harbor Shores with reasonable input regarding the selection of any new management company.

Section 7.06. Time of Essence. Time is of essence with respect to this Lease. All dates and terms shall be strictly adhered to unless waived in writing by the parties.

Section 7.07. Non-Discrimination and Affirmative Action. Harbor Shores agrees not to discriminate against any employee or applicant for employment to be employed in the performance of services under this Lease with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, handicap or marital status. Breach of this covenant may be regarded as a material breach of this Lease as provided for in Act 453 of the Public Acts of Michigan of 1976, as amended, entitled "Michigan Civil Rights Act." Harbor Shores agrees to take affirmative action in hiring, training and promoting minority group persons and women to bring about reasonable representative integration of its employees. For purposes of this Lease, a "minority" is a person who is a citizen or lawful resident of the United States who is:

- (a) **Black.** A person having origin in any of the black racial groups of Africa;
- (b) **Hispanic.** A person of Spanish or Portuguese culture, with origins in Mexico, Central America or the Caribbean Islands;
- (c) **Asian American.** A person having origin in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or
- (d) **Native American.** A person having origin in any of the original peoples of North America.

Harbor Shores further agrees to review or examine with the City of Benton Harbor staff relevant employment data and other information pertaining to its hiring practices and, additionally, Harbor Shores agrees that it will require similar non-discrimination and affirmative action covenants from the golf course management company selected by Harbor Shores under this Lease.

Section 7.08. Binding Effect. This Lease, including all referenced Exhibits, shall bind the parties hereto and their successors and permitted assigns.

Section 7.09. Rights and Remedies. Except to the extent expressly limited herein, both of the Parties to this Lease shall have the right to avail itself of any equitable or legal right or remedy to enforce the provisions of this Lease.

Section 7.10. Remedies Are Cumulative. The remedies available to the Parties hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of the other remedies of such party unless specifically so provided herein.

Section 7.11. Amendment. Except as may otherwise be expressly permitted in this Lease, this Lease and the Exhibits attached hereto may not be amended except by way of a written document signed by the Parties after providing the Attorney General of the State of Michigan and the head of the Charitable Trust Section of the Attorney General of the State of Michigan sixty (60) days advance written notice of any such amendment.

Section 7.12. Dispute Resolution. Any dispute, controversy or claim arising under or in connection with this Lease ("**Dispute**") shall be settled exclusively as set forth in this Section (the "**Dispute Resolution Process**"). Initially, a Dispute shall be referred to the Parties to negotiate a resolution. If the Parties are unable to resolve, or do not anticipate resolving a Dispute within thirty (30) days after written notice of such Dispute provided from one party to this Lease to the other party, then either party may submit the Dispute to non-binding facilitative mediation. If the Parties are unable to resolve, or do not anticipate resolving a Dispute within sixty (60) days after submission to non-binding facilitative mediation, if applicable, the Dispute may be submitted to arbitration upon the election and written consent of all the parties to such Dispute.

Such arbitration shall be conducted before one (1) arbitrator in a mutually convenient location, in accordance with the rules of the American Arbitration Association ("**Association**") then in effect. The arbitrator shall be selected in accordance with the rules of the Association. The decision of the arbitrator shall be final and binding upon the City of Benton Harbor and Harbor Shores and judgment thereon may be entered in any court having jurisdiction. Unless otherwise provided by the rules of the Association, the arbitrator shall, in his or her award, allocate between the City of Benton Harbor and Harbor Shores the costs of arbitration, which shall include reasonable attorney fees and expenses of the City of Benton Harbor and Harbor Shores, as well as the arbitrator fees and expenses, in such proportions as the arbitrator determines is reasonably appropriate under the circumstances.

In the absence of election and written consent of the parties to submit the Dispute to arbitration as provided above, neither Harbor Shores nor the City of Benton Harbor shall be precluded from petitioning the courts to resolve a Dispute. During the Dispute Resolution Process, each Parties' representatives shall negotiate in good faith. Except as otherwise provided herein, each party to this Lease agrees that it shall not commence litigation or such other remedies prior to the conclusion of the Dispute Resolution Process, unless a party to this Lease may suffer irreparable harm due to such delay.

Section 7.13. Consent to Mortgage of Leasehold Interest. Harbor Shores may from time to time without further consent assign this Lease or any interest herein as collateral security or create a sublease by way of mortgage of Harbor Shores' leasehold interest, provided that such leasehold mortgage or sublease by way of mortgage is to an institutional lender, and upon execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to the City of Benton Harbor. Harbor Shores shall provide the Golf Course Oversight Panel with thirty (30) days' prior written notice of such proposed leasehold mortgage or sublease by way of mortgage. During such thirty (30) day period, the Golf Course Oversight Panel shall review the applicable proposal and provide Harbor Shores with reasonable input regarding such proposal. Any institutional lender acquiring the leasehold estate in consideration of the extinguishment of the debt secured by such mortgage or through the sale of the leasehold estate under a power of sale under such mortgage shall be liable to perform the obligations imposed on Harbor Shores by this Lease only during the period that such person has possession or ownership of the leasehold estate, subject to contrary provisions in any mortgage approved by the City of Benton Harbor; provided, however, that to the extent surplus funds are realized from any transfer permitted by this Section after payment of all amounts owing to the institutional lender under its leasehold mortgage, such funds shall be applied to the payment of all charges owing to the City of Benton Harbor hereunder. Any institutional lender shall not be required in such lender's own initial acquisition of the leasehold interest in this Lease to comply with the provisions of Section 7.05 above, but it and its successors shall be required to fully comply with those provisions in connection with any retransfer. Notwithstanding the foregoing, the Leased Premises shall not be subject to a mortgage foreclosure or similar relief or utilized for purposes of any type of sale of the underlying land constituting the Leased Premises. The rights granted to Harbor Shores under this Section are for the purpose of providing financing for the Project and Golf Course.

Section 7.14. Protection of Mortgage of Leasehold Interest. During the existence of any mortgage of leasehold interest herein of which the Golf Course Oversight Panel or the City of Benton Harbor has been given notice by Harbor Shores or the mortgagee, the City of Benton Harbor will not terminate this Lease because of any default by Harbor Shores hereunder, if, within a period of thirty (30) days after the City of Benton Harbor has mailed written notice of its intention to terminate this Lease for such cause to the mortgagee at its last known address, the mortgagee shall cure such default, or if such default cannot reasonably be cured within such thirty (30) day period, the mortgagee shall begin such performance within such thirty (30) day period and thereafter continue such performance in good faith with due diligence until such default has been cured.

Section 7.15. Quiet Enjoyment. The City of Benton Harbor covenants that, upon Harbor Shores providing the consideration outlined hereunder and performing all of the terms, covenants and conditions Harbor Shores is to perform hereunder, Harbor Shores shall peaceably and quietly enjoy the Leased Premises hereby demised, free of claims of paramount title or of any Person claiming under or through the City of Benton Harbor, and free and clear of all exceptions, reservations or encumbrances other than those set forth herein, and those Harbor Shores subsequently approves in writing.

The Parties acknowledge that this Section does not prohibit the City of Benton Harbor from holding any special events, including, but not limited to, public meetings and/or concerts, upon portions of Jean Klock Park or Parcel 8A that do not include the Leased Premises.

Section 7.16. Estoppel Certificate. At the request of Harbor Shores, the City of Benton Harbor shall within twenty (20) days deliver to Harbor Shores, or anyone designated by Harbor Shores, a certificate stating and certifying as of its date (a) the date to which all consideration and other charges under this Lease have been provided; (b) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof on the part of the City of Benton Harbor to be performed or complied with (and, if so, specifying the same); (c) if such be true, that this Lease is unmodified and in full force and effect and that Harbor Shores is not in default under any provision of this Lease (or if modified, setting forth all modifications, and if Harbor Shores is in default, setting forth the exact nature of such default); and (d) such other information as Harbor Shores may reasonably request in connection with the landlord-tenant relationship established by this Lease. The City of Benton Harbor acknowledges that any statement delivered pursuant to this Section may be relied upon by any purchaser or owner of Harbor Shores' interest under this Lease, or by any holder of a mortgage, or by an assignee of any mortgagee under any mortgage, or by anyone else to whom Harbor Shores delivers it. Upon the same terms and conditions as provided in this Section, Harbor Shores shall provide the City of Benton Harbor with a certificate within twenty (20) days of the City of Benton Harbor's request.

Section 7.17. Recording Memorandum of Lease. Neither party shall record this Lease without the prior written consent of the other party; however, upon the request of either party the other party shall join in the execution of a memorandum of this Lease for the purpose of recordation. The memorandum of this Lease shall describe the parties, the property, the term of this Lease, and shall incorporate this Lease by reference. The memorandum of lease may be recorded with the Berrien County Register of Deeds by the party requiring such memorandum at its sole cost.

Section 7.18. No Other Agreements. Except as may otherwise be expressly provided or referred to in this Lease and the Exhibits to this Lease, this Lease and the accompanying Park Improvements and Maintenance Agreement supersede all prior agreements, negotiations and discussions relative to the subject matter of this Lease and the Park Improvements and Maintenance Agreement, and represent the full understanding of the parties with respect to such subject matter. This Lease and the Park Improvements and Maintenance Agreement supersede the Prior Agreement in all respects. Notwithstanding the foregoing, the Parties acknowledge that they have entered into the Act 425 Agreement, Memorandum of Understanding and the Rezoning Agreement referenced above in the "Recitals" Section, which shall remain in full force and effect.

Section 7.19. Governing Law. This Lease shall be construed in accordance with the laws of the State without regard to such State's conflict of laws principles and any action brought in law or equity arising out of its construction or enforcement shall be filed in the Circuit Court for the 2d Judicial District of Michigan (Berrien County Circuit Court) or in the United States District Court for the Western District of Michigan, Southern Division.

Section 7.20. Notices. All notices, requests, consents and other communications under this Lease shall be in writing, shall be addressed to the receiving party's address set forth below or to any other address a party may designate by notice under this Lease, and shall be either (i) delivered by hand, (ii) sent by facsimile or electronic mail, and mailed promptly by first class mail, (iii) sent by nationally recognized overnight courier, or (iv) sent by certified mail, return receipt requested, postage prepaid:

If to the City of Benton Harbor:

City of Benton Harbor
City Hall
200 East Wall Street
Benton Harbor, Michigan 49023
Attention: City Manager
Facsimile: (269) 927-0270
Email: rmrsh@bhcity.org and igill@bhcity.org

If to the Developer:

Harbor Shores Community Redevelopment Inc.
400 Riverview Drive
Suite 420
Benton Harbor, Michigan 49022
Attention: Board of Trustees
Facsimile: 269.926.8088
Email: mhesemann@evgnmanagement.com and
D_Jeffrey_Noel@Whirlpool.com

All notices, requests, consents and other communications under this Lease shall be deemed to have been given either (i) if by hand, at the time of the delivery of the notice to the receiving party, (ii) if by facsimile or electronic mail, at the time that receipt of the facsimile or electronic mail has been acknowledged by electronic confirmation or otherwise, or if no confirmation is received, on the fifth (5th) day following the day a hard copy of the transmission is mailed by first-class mail, (iii) if by overnight courier, on the next business day following the day the notice is delivered to the courier service, or (iv) if by certified mail, on the fifth (5th) business day following the day of the mailing. Any party by notice to the other parties to this Lease, may designate additional or different addresses for subsequent notices or communications.

Section 7.21. Counterparts. This Lease may be executed by the Parties hereto in one or more counterparts, each of which shall be an original and both of which, when taken together, shall constitute a single agreement. Faxed signatures, or scanned and electronically transmitted signatures, on this Lease, shall be deemed to have the same legal effect as original signatures on this Lease.

Section 7.22. Successors and Assigns. The terms, conditions, covenants and restrictions of this Lease shall extend and apply to and bind the successors and permitted assigns of the City of Benton Harbor and Harbor Shores.

Section 7.23. Consent Not Unreasonably Withheld. Unless otherwise specifically provided in this Lease, the Parties agree that under this Lease, wherever there is a requirement for a party securing the consent of the other party, such consent shall not be unreasonably withheld, delayed or conditioned.

Section 7.24. Severability. The invalidity or enforceability of any provision, or part of any provision of this Lease, including the Exhibits to this Lease, shall not affect the other provisions or parts hereof, and this Lease shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted, provided, that the removal of such provisions or parts does not materially change the terms and provisions of this Lease and the intent of the parties hereto.

Section 7.25. Survival. All obligations arising prior to the termination of this Lease and all provisions of this Lease allocating responsibility or liability between the parties, including, without limitation, the indemnity provisions, shall survive the termination of this Lease. No obligation which survives the term of this Lease shall give Harbor Shores any possessory interest in the Leased Premises nor have the effect of extending the term of this Lease.

Section 7.26. No Partnership or Joint Venture. The City of Benton Harbor and Harbor Shores are not partners, fiduciaries or joint venturers, and nothing in this Lease creates or will create the relation of partners, fiduciaries or joint venturers between them. Without limiting the generality of the foregoing, the Parties are each acting independently, are each obligated to separately account for their respective activities and they each expressly disclaim any fiduciary duty to the other.

Section 7.27. No Third Party Beneficiaries. The terms, conditions, obligations, and benefits of this Lease are intended solely for the Parties and no other Person as a third party beneficiary or otherwise.

Section 7.28. Additional Documents and Good Faith. Each of the Parties hereto agrees to execute any additional documents reasonably requested by the other party to carry out the intent of this Lease. Further, after the execution of this Lease, each of the Parties hereto agrees to promptly work together in good faith to cure any discrepancies or errors in this Lease and the attached Exhibits, to resolve issues that develop with regard to this Lease and to cure any title defects or discrepancies with regard to the properties described in this Lease. The City of Benton Harbor hereby appoints and authorizes, for and on its behalf, the City Manager and the City of Benton Harbor City Clerk and the City of Benton Harbor Mayor (per the City of Benton Harbor Charter) to sign and deliver any other ancillary agreements, instruments, and documents with respect to this Lease, all containing such terms and conditions that are necessary to comply with the provisions of this Section.

Section 7.29. Construction. In the event an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease.