

**TAB 2**

**POINT PAPER**  
**Regatta Pointe Sublease Amendment**  
**November 3, 2008**

**PROBLEM:**

Certain language within the sublease agreement between the City and VanDerNoord Partners needs to be modified to ensure consistency with the Amended and Restated and Modified Submerged Land Lease No. 41-43874 between the City and the Department of Environmental Protection (DEP).

**BACKGROUND:** In January of 2006 the City renewed the submerged land lease with the Department of Environmental protection for the area known as Regatta Pointe Marina. As part of the renewal process, the legal description was changed to more accurately reflect the area being leased. More specifically, the breakwaters were added to the leased area. In addition, the lease amount for the renewal term was updated based on the most current calculation methods per Florida Administrative Code. This amendment also allows the restaurant facility to be used as a banquet hall on the 2<sup>nd</sup> and 3<sup>rd</sup> floors. The attached amendment is being brought forward to ensure the sublease agreement between the City and VanDerNoord Partners is consistent with the changes mentioned above. The amendment essentially addresses two areas as follows:

1. Clarifies and confirms the legal description to ensure consistency between the sublease agreement (City and VanDerNoord Partners) and the submerged land lease (DEP and the City).
2. Clarifies responsibilities pertaining to the calculation and payment of compensation for the submerged land lease. Essentially, it states that VanDerNoord Partners shall comply with applicable laws, rules and regulations governing payment to the DEP during the renewal term in the same manner that the City is required to comply with such authority.
3. Allows the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the restaurant facility to be used as a banquet hall.

Staff has also confirmed that VanDerNoord Partners, a Florida general partnership, and Regatta Pointe Investments, LLC, a Florida limited liability company have leasehold interests in the Uplands, Marina, and Island parcels. A copy of the title policy is available upon request.

**ALTERNATIVE:**

#1 Do nothing.

#2 Approve and authorize the Mayor to sign the second amendment to Agreement of Sublease between the City of Palmetto and VanDerNoord Partners, and Regatta Pointe Investments, LLC.

**RECOMMENDATION:** Staff recommends #2

**BUDGET IMPACT:** There is no budget impact associated with this amendment.

This Instrument Prepared by:

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## SECOND AMENDMENT TO AGREEMENT OF SUBLEASE

**THIS SECOND AMENDMENT TO AGREEMENT OF SUBLEASE** (hereinafter the "Second Amendment") is made as of the \_\_\_ day of \_\_\_\_\_, 2008, by and between **The City of Palmetto**, a municipal corporation existing under the laws of the State of Florida ("City"), and **VanDerNoord Partners**, a Florida general partnership, and **Regatta Pointe Investments, LLC**, a Florida limited liability company (hereinafter collectively referred to as "VanDerNoord").

### RECITALS:

**WHEREAS**, City and VanDerNoord (by virtue of various mense assignments recorded in the Public Records of Manatee County, Florida) are the current parties to that certain Agreement Of Sublease (the "Sublease") recorded in Official Records Book 1042, Page 186, of the Public Records of Manatee County, Florida, which Sublease was amended by First Amendment thereto, dated April 7, 2006; and

**WHEREAS**, a portion of the lands subleased from the City to VanDerNoord under the Sublease include certain submerged lands leased to the City by the Board of Trustees of the Internal Improvement Trust Fund of The State Of Florida (the "Board"), all as more fully set forth in the Sublease; and

**WHEREAS**, the City and the Board amended and clarified the legal description of such submerged lands by the execution and delivery of that certain Amended and Restated and Modified Submerged Sovereignty Land Lease No. 41-43874, as recorded in Official Records Book 2097, Page 2401 of the Public Records of Manatee County, Florida (the "Revised Submerged Land Lease"); and

**WHEREAS**, City and VanDerNoord desire to clarify and confirm (i) the legal description of the submerged lands leased to VanDerNoord by City under the Sublease, all as more fully set forth in this Second Amendment; and (ii) the use of a portion of the Restaurant Facility described in the Sublease as a banquet hall ;and

**WHEREAS**, the Revised Submerged Land Lease and Chapter 18-21, Florida Administrative Code, place certain obligations upon the City pertaining to the calculation and payment of compensation to the Board during the renewal term: and

**WHEREAS**, the City and VanDerNoord wish to clarify the responsibilities of the City and VanDerNoord with respect to said obligations,

**NOW THEREFORE**, for and in consideration of the premises and for other good and valuable considerations, the City and VanDerNoord , for itself and its respective legal representatives, successors and assigns, hereby amends, modifies and clarifies the Sublease as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein.
2. **Legal Description.** The legal description of the submerged lands described in Schedule 1 of the Sublease shall be amended, modified, and clarified to be and include all of the submerged lands leased by the Board to the City as described in the Revised Submerged Land Lease.

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3. **Sublessee Responsibilities.** VanDerNoord shall comply with applicable laws, rules and regulations governing the payment of compensation to the Board during the renewal term in the same manner that the City is required to comply with such authority. Where the City is required to provide information, remit payment, or take specific action by a date certain, VanDerNoord agrees to provide said information or payment, or take or facilitate such action in a timely manner. In the event that the City is subject to late fees, interest or other monetary penalties resulting from VanDerNoord's failure to act in a timely manner, VanDerNoord shall be responsible for the payment of said fees, interest or penalties.

4. **Banquet Hall.** The Sublease is hereby amended to permit the development and use of the second and third floors of Restaurant Facility as a banquet hall. For the purposes of this amendment, "banquet hall" shall mean an establishment which rents space, providing tables, chairs, decor, sound systems and other services for clubs, associations or individuals for the purpose of having a banquet, meeting, party, celebration, wedding, birthday, ball, anniversary or other such activity. This authorization applies to the second and third floors of the Restaurant Facility only and does not affect any other existing leases or uses of areas outside such second and third floors and within the scope of the Sublease. Notwithstanding anything herein to the contrary, the right to use of a banquet hall as provided for herein shall terminate immediately in the event that it is determined to be inconsistent with the Revised Submerged Land Lease, or any amendments thereto.

5. **No Further Modification.** Except to the extent specifically modified herein, the Sublease shall remain unmodified and otherwise in full force and effect according to its terms.

**IN WITNESS WHEREOF**, the parties hereunto set their hands and seals the day and year first above written.

(Signature Pages to Follow)

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Signed, sealed and delivered  
in the presence of:

**VanDerNoord Partners  
Regatta Pointe Investments, LLC**

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

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

Harry VanDerNoord, its General Partner and  
Manager

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

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2008,  
by Harry VanDerNoord, as general partner of VanDerNoord Partners, a Florida general partnership, and as  
Manager of Regatta Pointe Investments, LLC, a Florida limited liability company

\_\_\_\_ who is personally known to me  
\_\_\_\_ who produced \_\_\_\_\_ as  
identification, and who acknowledged before me that he/she executed the same freely and voluntarily for  
the purposes therein expressed under authority duly vested in him/her by said entities.

My Commission Expires:

\_\_\_\_\_  
Signature

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Printed Name

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**City of Palmetto**

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

By: \_\_\_\_\_  
Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Print Title \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, as

\_\_\_\_\_  
of The City of Palmetto, a municipal corporation of the State of Florida  
\_\_\_\_ who is personally known to me  
\_\_\_\_ who produced \_\_\_\_\_ as  
identification, and who acknowledged before me that he/she executed the same freely and voluntarily for  
the purposes therein expressed under authority duly vested in him/her by said corporation.  
My Commission Expires:

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name

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