

GOOD NEIGHBOR AGREEMENT

BY AND BETWEEN

UNITED STATES OF AMERICA

THE NEW ORLEANS BUILDING CORPORATION

STATE OF LOUISIANA

AND

PARISH OF ORLEANS

THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION

BE IT KNOWN that on the dates set forth below, before me, the undersigned notary public, duly commissioned and qualified for the Parish and the State, and in the presence of the undersigned competent witnesses, personally came and appeared:

The City of New Orleans (the “City”), by and through the New Orleans Building Corporation (the “NOBC”), its successors, assignees and sublessees (TIN 72-1503187), duly organized and existing under the laws of the State of Louisiana, having a permanent mailing address at 2 Canal Street, Suite 1843, New Orleans, LA 70130 represented herein by C. Ray Nagin its President and Chairman;

and

The Faubourg Marigny Improvement Association (TIN _____) (the “Association”), a nonprofit corporation organized and existing under the laws of the State of Louisiana, represented herein by _____, its President;

who declare and acknowledge as follows:

WHEREAS, the City is a political subdivision of the State of Louisiana; and

WHEREAS, pursuant to the authority contained in Article 7, Section 14 of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the State of Louisiana and its political subdivisions may enter into agreements with each other, or with any public or private corporation or individual for a public purpose; and further, pursuant to Section 9-314 of the Home Rule Charter of the City of New Orleans, the City, its political subdivisions and related public benefit corporations, including the NOBC, may enter into cooperative endeavors with any public or private association, corporation or individual for activities in support of economic growth and other public purposes; and

WHEREAS, the City, by and through the NOBC pursuant to Article X, Section X.10 of the Cooperative Endeavor Agreement (“the CEA”) between the City and the Port of New Orleans dated 15 November 2006, is developing the Reinventing the Crescent Downriver Park (the “Project”), a major component and first phase of the overall Reinventing the Crescent Development Plan published 27 February 2008; and

WHEREAS, the Project will reconnect the city to its riverfront, provide linear access along the riverfront, offer compelling new architecture, and create places for recreation, civic gathering, cultural amenities and natural habitat; and

WHEREAS, with the Project, the City aspires to create greater prosperity and lasting economic growth by transforming its riverfront, and thereby fundamentally increasing the quality of life in proximate neighborhoods and throughout the city; and

WHEREAS, the Project includes the adaptive re-use of the Mandeville Wharf, over forty (40) acres of public open space including 1.4 miles of continuous linear pathway and gardens, and the adaptive re-use of the Piety Wharf. Each element incorporates customary park amenities such as seating, lighting, fencing, security systems and the like; and

WHEREAS, the Project includes all riparian parcels of immovable property, and wharves thereon, bounded by the downriver-most edge of Elysian Fields Avenue and the downriver-most edge of Mazant Street from the ordinary low stage of the Mississippi River to the waterside curb of South Peters Street between Elysian Fields Avenue and St. Ferdinand Street, to the floodwall between St. Ferdinand Street and Piety Street, and to the waterside curb of Chartres Street between Piety and Mazant, in which the City now holds

or hereafter acquires a leasehold or ownership interest, all pursuant to the CEA, in whole or in part (the "Property"); and

WHEREAS, the City Council initiated the rezoning of the Property from HMLI-Historic Marigny/Treme Light Industrial District and LI-Light Industrial to P-Park and Recreation with Motion No. 09-366 on 23 July 2009; and

WHEREAS, it is not the policy of the City to place regulations within the zoning of the Property that restrict use or operations beyond that which is codified in applicable City ordinances; and

WHEREAS, the Association is an officially recognized neighborhood association, as defined by its By-laws, dated _____, for the Faubourg Marigny Neighborhood, adjacent to a portion of the Project, attached hereto as Exhibit A; and

WHEREAS, the Association warrants to represent the sometimes divergent views of its constituents with respect to the City, the NOBC and the Project, and that the Bylaws of the Association provide for democratic elections by the general membership of a Board of Directors which Board members vote on official positions taken by the Association, and further certifies by the attached Resolution (Exhibit B) that the President, on behalf of the Board of Directors, is duly-authorized to enter into this Agreement; and

WHEREAS, the Association, interested neighbors and the NOBC have met multiple times throughout the Reinventing the Crescent design process, during which the Association and neighbors have expressed support for the Project as well as a desire to safeguard "quality of life" with regard to noise, vehicular circulation and automobile parking associated with the Project; and

WHEREAS, the NOBC has made good-faith efforts to thoughtfully address the Association's "quality of life" concerns; and

WHEREAS, with the Project, the NOBC and the Association mutually desire to preserve and enhance the "quality of life" citywide and in the adjacent neighborhoods,

NOW, THEREFORE, in consideration of the mutual benefits associated with the Project, the other covenants and agreements expressed herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the NOBC and the Association hereby establish, dedicate and impose the following additional regulations:

I. Noise

- a. The City's Noise Ordinance is defined by Chapter 66, Article IV, Section 66 of the City Code (Exhibit C). The NOBC agrees to diligently comply with the current municipal Noise Ordinance and further agrees that events or activities which emit noise, as measured at the Riverside curb of the nearest residence, which exceeds a level set at five (05) decibels less than the maximum provided for in the City's then current Noise Ordinance, shall end no later than 10:30 PM Central Time.

Comments:

As worded, this section limits the noise to 5 db lower than required and ends the event at 10:30 pm. If you look at the noise ordinance, specially 66-138 #4 & #5, special events which are permitted or sponsored by the city are exempt from the noise ordinance. Therefore, this offers no protection.

II. Parking

- a. P-Park and Recreation zoning, with regulations set forth in Article 10, Section 10.4 of the City's Comprehensive Zoning Ordinance (the "CZO"), does not require any parking spaces for daily use. Furthermore, Article 15 of the CZO No. 4264 M.C.S. as amended, provides regulations for off-street parking and does not establish any requirements for the daily use of an adjacent park. However, the NOBC agrees to use its best efforts to maintain a minimum of 180 proximate parking spaces, as more fully depicted in Exhibit D, a generous ratio of parking spaces as demonstrated by (i) the NOBC in its study of similar parks in the city and throughout the nation (Exhibit E) and (ii) Urban Systems, Inc's Parking evaluation (Exhibit F).

Comments:

This section treats the Mandeville Street Wharf as a park under the P-Park and Recreation zoning but the Mandeville Street Wharf will be an entertainment venue. As such, it should be held to the same standards as an entertainment venue or its most intense use.

- b. Neither the P-Park and Recreation zoning regulations, nor Article 15 of the CZO which governs off street parking, require parking provisions for special events. However, to accommodate parking associated with special events, the NOBC agrees to offer parking at proximate public facilities, currently providing over one thousand (1000) proximate spaces, as shown in Exhibit G, as well as to encourage ridership on means of public transportation, such as the riverfront streetcar and bus lines. It also agrees to diligently comply with applicable parking Ordinances and Programs then in effect. And, it further agrees to implement parking shuttle programs from off-site parking facilities, as reasonably necessary.

Comments:

This section offers parking in three areas that are already used as parking so they should not count all the spaces in the parking lot as useable. Also, many people will not pay for parking if they can park in the neighborhood. Additionally, the parking in the Bywater is almost a mile away. Most people will not park a mile away from a venue and walk if they can park closer.

III. Vehicular Circulation

- a. Although Urban Systems, Inc. concludes that the associated circulation of vehicles will not adversely impact the adjacent neighborhoods (Exhibit H), at the written request of the Association, the NOBC will support a Residential Parking Program if the residents in the affected area so desire, in accordance with the provisions set forth in City Code of Ordinances Chapter 154, Article VIII, Division 10 Residential Permit Parking Program.

Comments:

It is hard conceptualize how the influx of 3000+ people into the neighborhood for a special event will not have an adverse affect on circulation. The normal

traffic on weekends without a city wide event such as Mardi Gras already causes vehicular circulation issues. Adding an event that can hold 3000+ people will only add to this issue if not planned properly.

- b. Moreover, the NOBC agrees to also implement reasonable plans for the orderly egress of vehicles associated with periodic special events, causing peak traffic to flow onto larger streets such as North Peters Street and Elysian Fields Avenue.

IV. Security

- a. P-Park and Recreation zoning regulations do not require the provision of security. However, the NOBC shall provide security patrol on a 24-hour basis, as well as enhance and support the patrol with an electronic surveillance system. Periodic special events will require the presence of an officer from the New Orleans Police Department (NOPD) or other law enforcement organization, such as but not limited to the Louisiana State Police.

Comments:

Security is a necessary component of the park. It needs to be 24 hours a day, 7 days a week.

V. Special Events: Frequency, Size and Special Permission

- a. While P-Park and Recreation zoning permits special events and activities, it does not regulate these events and activities other than through City ordinances. Importantly too, special events are an important source of money that can fund repairs, maintenance and capital replacement. Thus, public or private events may be held on the Property provided, however, that the NOBC shall not allow more than three (03) events in any calendar month, at which the daily attendance is expected to exceed three thousand (3000) people.

Comments:

This as worded allows for 3, 3000+ person events a month (the wharf can hold 9000 people) plus the opportunity to hold events of 2999 people the other 27 days of the month. We certainly see the use of the Wharf for public events but the intensity of use is too much for the neighborhood to bear.

- b. If the NOBC desires to host more than three (03) events in a calendar month at which the attendance is expected to exceed three thousand (3000) people, then it shall be required to obtain prior written consent from the Association, which consent shall not be unreasonably withheld. If such written consent is required, the NOBC shall request permission from the Association's Board of Directors at least thirty (30) days before such event by providing written notice (the "Notice") to the Association containing the following information: (i) a general description of the event, (ii) the identity of the person(s) conducting the event, (iii) the anticipated number of attendees at the event, (iv) the anticipated hours of the event, (v) the date(s) of the event and (vi) its operational plan for how the event will address the issues of noise, parking and traffic circulation.

Comments:

What does "unreasonably withheld" mean and who determines this?

- c. The Association shall have ten (10) days from the date of Notice to deliver written notice of its approval or disapproval to the NOBC. The Association shall be deemed to have granted its consent unless NOBC shall have received a response from the Association to the NOBC's written notice within such ten (10) day period.
- d. Any notice, demand, approval or disapproval, or consent required hereunder (hereinafter, collectively, any "Notice") shall be in writing, and any such Notice shall be sent to the Association or the NOBC by registered or certified mail, return receipt requested, electronic mail, hand delivery, or by overnight delivery, postage prepaid, to the address in the United States of America as such party may designate from time to time by notice to the other or to the registered address of the party in the event no such address is provided. In the event such Notice is given or delivered by hand delivery, the date of actual delivery shall fix the time thereof. In the event Notice is given or

delivered by other means, it shall be deemed to have been provided on the earlier of (i) immediately after having been sent by electronic mail, (ii) forty-eight (48) hours after having been sent as certified or registered mail by the United States Postal Service, postage prepaid, return receipt requested, to the address of such party which is set forth hereinabove or to such other address in the United States of America as such party may designate from time to time by notice to the other, or (iii) twenty-four (24) hours after having been sent, delivery charges prepaid, via Federal Express or similar overnight delivery service to the address of such party which is set forth herein above, or to such other address in the United States of America as such party may designate from time to time by notice to the other.

- e. In the event that either party shall employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interests in any manner arising under this Agreement, the non-prevailing or defaulting party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable and documented costs, damages and expenses, including attorneys' fees, expended or incurred in connection therewith.

VI. General Provisions

- a. Headings. The description article and section headings of this Agreement are inserted for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement nor the meaning of any provision hereof.
- b. Notices. All notices, consents, waivers, or other communications provided for under this Agreement shall be addressed as follows:

If to the NOBC:

Chief Executive Officer
New Orleans Building
Corporation

2 Canal Street
Suite 1843
New Orleans, Louisiana
70130;

With Copy to:

City Attorney
City of New Orleans
City Hall, Room 5E03
1300 Perdido Street
New Orleans, Louisiana
70112;

And, If to the Association:

President
Faubourg Marigny
Improvement Association
Street Address
New Orleans, Louisiana
70117;

With copy to:

General Counsel
Street Address
New Orleans, Louisiana Zip.

- c. Severability. If any terms or provisions of this Agreement, or the application thereof to any circumstance, shall be invalid or unenforceable, the remainder of this Agreement or the application, term, provision or application to circumstances that is not held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- d. Interpretation of Agreement. This Agreement is deemed to be a jointly drafted document and is not to be construed against either the Association or the NOBC as the primary or sole drafter of the document.
- e. Entire Agreement. This Agreement embodies the entire agreement between the parties as to the subject matter hereof and supersedes all prior agreements and understandings, if any, and may be amended or supplemented only by a written instrument executed by the parties.
- f. Amendments, Supplements and Modifications. This Agreement may not be amended, supplemented or modified, except in writing and executed by the parties hereto.
- g. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
- h. NOBC as Agent of the City. The parties hereto acknowledge and agree that the Property subject to non-maritime use shall be managed on behalf of the City by the NOBC as its duly authorized agent or lessee.

THUS DONE, SIGNED AND PASSED by the City and the NOBC at New Orleans, Louisiana on the ___ day of _____, 2009 in the presence of the undersigned competent witnesses and me, notary, after due reading of the whole.

WITNESSES:

Print Name:_____

Print Name:_____

NOBC:

By:_____
Name: C. Ray Nagin
Title: President and Chairman

CITY OF NEW ORLEANS

By:_____
Name: C. Ray Nagin
Title: Mayor

NOTARY PUBLIC
Print Name:_____
Bar/Commission No._____
My Commission Expires_____
(Affix Seal)

THUS DONE, SIGNED AND PASSED by the Faubourg Marigny Improvement Association at New Orleans, Louisiana on the ___ day of _____, 2009 in the presence of the undersigned competent witnesses and me, notary, after due reading of the whole.

WITNESSES:

FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION:

Print Name:_____

By:_____
Name:
Title:

Print Name:_____

NOTARY PUBLIC
Print Name:_____
Bar/Commission No._____

**GOOD NEIGHBOR AGREEMENT
BY AND BETWEEN
THE NEW ORLEANS BUILDING CORPORATION
AND
THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

**EXHIBIT A
BY-LAWS OF THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

See attached

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BY AND BETWEEN
THE NEW ORLEANS BUILDING CORPORATION
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**EXHIBIT B
RESOLUTION OF THE BOARD OF DIRECTORS**

See attached

**GOOD NEIGHBOR AGREEMENT
BY AND BETWEEN
THE NEW ORLEANS BUILDING CORPORATION
AND
THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

**EXHIBIT C
CITY OF NEW ORLEANS NOISE ORDINANCE**

See attached

**GOOD NEIGHBOR AGREEMENT
BY AND BETWEEN
THE NEW ORLEANS BUILDING CORPORATION
AND
THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

**EXHIBIT D
PARKING PLAN FOR THE DOWNRIVER PARK**

See attached

**GOOD NEIGHBOR AGREEMENT
BY AND BETWEEN
THE NEW ORLEANS BUILDING CORPORATION
AND
THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

**EXHIBIT E
COMPARATIVE PARKING STUDY**

See attached

**GOOD NEIGHBOR AGREEMENT
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THE FAUBOURG MARIGNY IMPROVEMENT ASSOCIATION**

**EXHIBIT F
URBAN SYSTEMS PARKING STUDY**

See attached

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**EXHIBIT G
SPECIAL EVENTS PARKING PLAN**

See attached

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AND
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**EXHIBIT H
URBAN SYSTEMS TRAFFIC STUDY**

See attached