

DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) has been made and entered into as of the ____ day of _____, 2008 (the “Effective Date”) between the CITY OF SANDUSKY, OHIO (the “City”), a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, and SANDUSKY MARINA DISTRICT DEVELOPMENT, LLC, or its permitted assigns (the “Developer”), a limited liability company duly organized and validly existing under the laws of the State of Ohio.

WITNESSETH:

WHEREAS, to enhance the availability of adequate housing, and to create jobs and employment opportunities and to improve the economic welfare of the people of the City, the City desires to provide for the development of real property located in the City and to enter into this Agreement to provide for (a) the redevelopment of a portion of the property described in **Exhibit A** attached hereto (such portion, the “Property”), which Property shall consist of two development parcels separately described as parcel 1 and parcel 3 on **Exhibit B** and **Exhibit D** respectively, (each, a “Parcel”) and (b) the construction on those Parcels of the retail, commercial and residential structures and facilities and all related improvements described in Section 1.6 and Section 3.6 hereof (collectively, the “Private Improvements”); and

WHEREAS, the City’s conveyance of Parcel 1 (as defined below) is contingent upon the approvals of the Ohio Department of Natural Resources and the National Park Service, as further described in Section 1.5 hereof; and

WHEREAS, the City’s conveyance of Parcel 3 (as defined below) is contingent upon the City obtaining property for the relocation of City operations currently conducted on Parcel 3 at a cost determined by the City to be reasonable; and

WHEREAS, the City has obtained and delivered to the Developer, and the Developer has accepted, a Phase I Environmental Assessment for the Property; and

WHEREAS, to promote the safe and efficient flow of vehicular and pedestrian traffic in and around the Property and to improve public spaces and to provide recreational opportunities in the City, and subject to financing and other conditions described herein, the City intends to construct or cause the construction of right of way improvements, pathway improvements and park improvements described in Section 5.1 hereof (the “Public Improvements”); and

WHEREAS, the City and the Developer intend that all of the costs of the construction of the Public Improvements will be paid from the proceeds of bonds to be issued by a port authority, which bonds will not be a debt of the City, but would be payable from payments in lieu of taxes collected by the City pursuant to one or more tax increment financing programs relating to improvements to the Property and other additional security provided by the Developer; and

WHEREAS, the City has determined that the Developer has the ability to perform or cause the performance of this Agreement, and that (a) the redevelopment by the Developer of the Property with the Private Improvements, (b) the construction of the Public Improvements, and (c) the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties set forth in this Agreement, each of them does hereby covenant and agree as follows:

SECTION 1
SANDUSKY BAY PAVILION SITE

Section 1.1. Sale and Sublease of Property Interests; Purchase Price; Term

(a) **Sale of Fee Simple Interest/Sublease of Submerged Lands Leases** –

Subject to and conditioned upon the conditions described in Section 1.2 and subject to the City obtaining from the State of Ohio one or more extensions and/or amendments of its current submerged land leases for the relevant portions of the real property identified by the shaded area in **Exhibit B** attached hereto, the City agrees to sell its fee simple interest and sublease its submerged land leases (the “Subleases”, and each, a “Sublease”) in the portions of such real property that the City determines is not needed for the Public Improvements and not including any existing right of way (such portion hereinafter referred to as “Parcel 1”), and the Developer agrees to accept Parcel 1 in exchange for payment of the purchase price as described in Section 1.1(b). The boundaries of Parcel 1 is expected to contain between 2.2 acres and 2.59 acres, but ultimately shall be determined by the City after consultation with the Developer, taking into account the acreage and other necessary factors to provide adequate real property for the Private Improvements to be constructed on Parcel 1 and for public parks, public parking and other public spaces. Such public parks and public spaces shall be developed following extensive input by citizens of the City and the City’s Planning Commission and the City’s Recreation Board. Notwithstanding the foregoing, Parcel 1 shall contain no more than 2.6 acres unless otherwise agreed to in writing by the City and the Developer.

(b) **Purchase Price** – The purchase price for Parcel 1 shall be an amount equal to \$10.11 per square foot of property conveyed. Based on the expected area of real property to be conveyed, the purchase price is estimated to be not less than \$968,861 and not

more than \$1,145,018. The purchase price for Parcel 1 shall be paid on the Parcel 1 Closing Date as defined in Section 1.2.

(c) **Term** – The terms of each Sublease will depend on the planned use for each portion of Parcel 1 to which the Sublease relates. The term of each Sublease must be 50 years for property to be used for commercial facilities and must be 99 years renewable forever for property to be used for residential facilities, if agreed to by the State of Ohio.

Section 1.2. Conditions to Closing; Closing

Title to the portions of Parcel 1 that the City holds a fee simple interest shall be conveyed to the Developer, and the submerged lands leases to Parcel 1, in form satisfactory to the City, the Developer, and approved by the State of Ohio, shall be assigned to the Developer, upon receipt of the Purchase Price, subject to and conditioned upon, and on a mutually acceptable date within 30 days after the date on which all of the following events have occurred with respect to Parcel 1 (the “Parcel 1 Closing Date”):

- (1) the receipt by the City of the deposit described in Section 4.3 hereof;
- (2) the zoning classification for the Property has received all required City approvals and has been changed to PUD;
- (3) the approval of the Developer’s Improvement Plans as defined in Section 4.1 hereof;
- (4) the receipt by the City of evidence reasonably satisfactory to the City that the Developer has obtained refundable deposits for the pre-sale of at least 80 residential units in the condominium tower to be constructed on Parcel 1, or such lesser amount required by the bank providing the financing referred to in item (5) below;

(5) the receipt by the City of evidence reasonably satisfactory to the City that (i) the Developer has obtained all necessary commitments to finance the construction of the Private Improvements on Parcel 1 and (ii) that the Developer has the ability to satisfy any conditions to such financing commitments;

(6) the issuance of bonds, as described in Section 5.3, to pay the costs of constructing all of the Public Improvements that the City determines are necessary or related to the development of Parcel 1, together with any school district or other governmental approvals that may be conditions to the issuance of bonds;

(7) all other federal, state and local permits or approvals have been obtained for the construction of the Private Improvements;

(8) the City has obtained amended submerged lands leases for Parcel 1;

(9) the City has obtained the necessary governmental approvals as described in Section 1.5;

(10) the City Commission has held a public hearing and made a finding that Parcel 1 is no longer need for public use;

(11) delivery of the title insurance commitment and policy in accordance with Section 1.3 and Section 1.4.

Section 1.3. Title, Permitted Exceptions, Etc.

The City shall convey to the Developer title to Parcel 1 by quit claim deed (the “Deed”). The City shall convey to the Developer good, marketable and insurable legal title to Parcel 1, and all of the City’s right, title and interest therein, free and clear of all liens, leasehold interests, restrictions, encumbrances, reservations, conditions or other exceptions, except for (1) real property taxes and assessments not then due and payable; (2) zoning and building laws,

ordinances and regulations; (3) such permanent easements or restrictions as the City may require for the construction, operation, inspection, maintenance, repair, improvement and replacement of any part of the Public Improvements; (4) the City grant of temporary construction easements, or permanent easements agreed to by the Parties, to the Developer for the construction of the Private Improvements; (5) legal dedicated public streets and right-of-ways; (6) such other title exceptions as are permitted by this Agreement or approved by the Developer and the City in writing; and (7) matters disclosed by a survey that do not adversely affect, in any material respects, the use of Parcel 1 by the Developer (collectively, the "Permitted Exceptions"). The City shall convey Parcel 1 and all existing structures and improvements on Parcel 1 as provided above in "as is where is" condition subject to the Parcel 1 closing conditions contained in Section 1.2.

Section 1.4. Cooperation and Closing

The City and the Developer each shall proceed diligently to carry out its activities described herein, and the City and Developer shall work cooperatively and use good faith efforts to satisfy the conditions of closing within each of their control and to accomplish the requirements of the closing at the earliest practicable time. The City shall not be required to sublease its lease interests in Parcel 1 to the Developer if the Developer has breached any material obligations under this Agreement. If no closing has occurred with respect to Parcel 1 by December 31, 2009, then this Agreement shall terminate with respect to Parcel 1 unless otherwise extended in writing by the parties hereto, and the termination of this Agreement with respect to Parcel 1 shall be the parties' sole remedy with respect thereto, other than the City's retention of the good faith deposit described in Section 4.3. The Developer acknowledges that following its purchase of Parcel 1, its failure to develop Parcel 1 in accordance with this

Agreement, including the timing requirements and any extensions of time agreed to by the City, would constitute a material breach under this Agreement and the City may proceed in accordance with Section 7 hereof.

The closing of Parcel 1 shall take place at the office of the Southern Title Company which shall also serve as escrow agent (“Escrow Agent”) for the closing. The City shall furnish and pay for an owner’s title insurance commitment and policy in the amount of the purchase price, which shall be certified to within twenty (20) days prior to closing with endorsements not before 8:00 am on the business day prior to closing, all in accordance with the standards of the local bar association and shall show in Developer marketable title in fee simple or as holder of a submerged land lease free and clear of all liens and encumbrances except for the Permitted Exceptions identified in Section 1.3. The Parties agree that they shall each pay one-half of the costs of the services of the Escrow Agent and all real property conveyance fees, if any. The Developer agrees to pay for the costs of recording each Sublease and each Deed. The Developer shall promptly file each conveyance document for recording in the Official Records of Erie County. Any real estate taxes and special assessments shall be prorated as of the date of recording of the Subleases and Deeds, based upon the last available real property tax duplicate, provided that if the last available real property tax duplicate relates to real property identified by the shaded area in **Exhibit B**, such proration shall be made by acreage between the portions retained by the City and the portion consisting of Parcel 1. The parties shall place all funds and documents necessary for the completion of the closing with the Escrow Agent three (3) business days before the Parcel 1 Closing Date.

As of the date of the Parcel 1 Closing Date, the City shall pay or credit on the Purchase Price for Parcel 1, all delinquent taxes attributable to Parcel 1 together with penalties

and interest thereon, municipal service fees, and all assessments, including agricultural recoupments, that are a lien thereon on the Parcel 1 Closing Date. The City shall also pay or credit on the Purchase Price all unpaid real estate taxes, assessments and municipal service fees incurred but not yet due for years prior to the closing and a portion of such taxes and assessments for the year of the closing, prorated through the Parcel 1 Closing Date. The proration of undetermined taxes shall be based on a 365-day year and on the most recently available information on tax rate and valuation. The amounts so computed and adjusted shall be recomputed after the closing when the tax bills are received and the appropriate party will pay the other party the amount of any adjustment, if any.

Section 1.5. Governmental Approvals

The parties hereby acknowledge that the existing facilities on Parcel 1 were constructed, in part, from the proceeds of a National Park Service (the “NPS”) grant administered by the Ohio Department of Natural Resources (the “ODNR”). Under the terms of that grant, the use of the property on which the facilities were constructed is regulated by the ODNR. The terms of the grant require that the area funded with the grant be continually maintained in public recreation use, unless the NPS approves reasonably equivalent substitution property. The parties hereby agree that the sale of Parcel 1 is contingent upon the City’s receipt of the required approvals from the ODNR and the NPS regarding substitution property on or before March 15, 2009, unless such date is extended in writing by the parties hereto. The parties further agree that the determination of the sufficiency of the required approvals is solely at the discretion of the City.

Section 1.6. Agreement to Construct Private Improvements - Surf's Up Redevelopment

Subject to the terms hereof, the Developer agrees to construct the Private Improvements on Parcel 1, consisting of a mixed use building containing approximately 100 - 120 residential units in one residential tower, along with related commercial lease space of approximately 26,000 square feet, and a parking facility for the residential units. The minimum total cost of construction (i.e. labor and materials only) of the Private Improvements on Parcel 1 shall be \$33,000,000. The Private Improvements shall be constructed as approved by the City and in accordance with the requirements of the approved Improvement Plan as provided in Section 4.1 hereof.

Section 1.7. Timing for Construction of Private Improvements

Subject to the terms of this Agreement, the Developer agrees to commence construction of the Private Improvements on Parcel 1 pursuant to the following schedule:

The Developer shall commence the construction activities for the Private Improvement on Parcel 1 within 3 months following the Parcel 1 Closing Date. The Developer shall obtain a Certificate of Occupancy within 24 months following the commencement of the construction activities, unless extended in accordance with Section 7.2 due to force majeure or otherwise extended in writing by the City and the Developer. This shall not include any tenant improvements for lease space not completed by the Developer, or any custom interior build outs for any modified residential units.

The Developer shall proceed diligently to complete each of the Private Improvements in accordance with this schedule at its sole cost and expense. Completion of the Private Improvements shall be evidenced by a certificate of completion issued by the City in accordance with the terms of Section 4.4 hereof.

SECTION 2
[RESERVED]

SECTION 3
CITY HALL BUILDING AND SITE

Section 3.1. Sale and Sublease of Property Interests; Purchase Price; Term

(a) **Sale of Fee Simple Interest/Sublease of Submerged Lands Leases** –

Subject to and conditioned upon the conditions described in Section 3.2 and subject to the City obtaining from the State of Ohio one or more extensions and/or amendments of its current submerged land leases for the relevant portions of the real property identified by the shaded area in **Exhibit D** attached hereto, the City agrees to sell its fee simple interest and sublease its submerged land leases (the “Subleases”, and each, an “Sublease”) in the portions of such real property that the City determines are not needed for the Public Improvements and not including any existing right of way (such portion hereinafter referred to as “Parcel 3”), and the Developer agrees to accept Parcel 3 in exchange for the payment of the purchase price as described in Section 3.1(b). The boundaries of Parcel 3 is expected to contain between _____ and _____ acres but ultimately shall be determined by the City after consultation with the Developer, taking into account the acreage and other necessary factors to provide adequate real property for the Private Improvements to be constructed on Parcel 3 and for public parks, public parking and other public spaces. Such public parks and/or public spaces shall be developed following extensive input by citizens of the City and the City’s Planning Commission and the City’s Recreation Board.

(b) **Purchase Price** – The purchase price for Parcel 3, and all related structures that are currently located on Parcel 3 shall be \$2,500,000. The purchase price for Parcel 3 shall be paid on the Parcel 3 Closing Date.

(c) **Term** – The terms of each Sublease will depend on the planned use for each portion of Parcel 3 to which the Sublease relates. The term of each Sublease must be 50

years for property to be used for commercial facilities and must be 99 years for property to be used for residential facilities, if agreed to by the State of Ohio.

Section 3.2. Conditions to Closing; Closing

Title to the portions of Parcel 3 that the City holds a fee simple interest shall be conveyed to the Developer, and the submerged lands leases to Parcel 3 in form satisfactory to the City, the Developer, and approved by the State of Ohio, shall be assigned to the Developer, upon receipt of the Purchase Price, subject to and conditioned upon, and on a mutually acceptable date within 30 days after the date on which all of the following events have occurred with respect to Parcel 3 (the “Parcel 3 Closing Date”):

- (1) the receipt by the City of the deposit described in Section 4.3 hereof;
- (2) the zoning classification for Parcel 3 has received all required City approvals and has been changed to PUD;
- (3) the approval of the Developer’s Improvement Plans as defined in Section 4.1 hereof;
- (4) the receipt by the City of evidence reasonably satisfactory to the City that the Developer has obtained a commitment from a regional or national hotel chain satisfactory to the City for the construction and operation of a hotel and conference facility satisfying the conditions of Section 3.6 hereof;
- (5) the receipt by the City of evidence reasonably satisfactory to the City that
 - (i) the Developer has obtained all necessary commitments to finance the construction of the Private Improvements on Parcel 3 and
 - (ii) that the Developer has the ability to satisfy any conditions to such financing;

(6) the issuance of bonds, as described in Section 5.3, to pay the costs of constructing all of the Public Improvements that the City determines are necessary or related to the development of Parcel 3, together with any school district or other governmental approvals that may be conditions to the issuance of bonds;

(7) all other federal, state and local permits or approvals have been obtained for the construction of the Private Improvements on Parcel 3;

(8) the City has obtained amended submerged lands leases for Parcel 3;

(9) the City has found property to which the City Hall facility can be relocated at a cost determined by the City to be reasonable, and the City has determined it will be able to vacate the City Hall facility within a time period agreed to by the City and the Developer (the “City Hall Relocation Date”);

(10) the City Commission has held a public hearing and made a finding that Parcel 3 is no longer need for public use;

(11) delivery of the title insurance commitment and policy in accordance with Section 3.3 and Section 3.4;

(12) the Developer has received satisfactory test results in accordance with Section 3.5.

Section 3.3. Title, Permitted Exceptions, Etc.

The City shall convey to the Developer title to Parcel 3 by quit claim deed (the “Deed”). The City shall convey to the Developer good, marketable and insurable legal title to Parcel 3, and all of the City’s right, title and interest therein, free and clear of all liens, leasehold interests, restrictions, encumbrances, reservations, conditions or other exceptions, except for (1) real property taxes and assessments not then due and payable; (2) zoning and building laws,

ordinances and regulations; (3) such permanent easements or restrictions as the City may require for the construction, operation, inspection, maintenance, repair, improvement and replacement of any part of the Public Improvements; (4) the City grant of temporary construction easements, or permanent easements agreed to by the Parties, to the Developer for the construction of the Private Improvements; (5) legal streets and right-of-ways; (6) such other title exceptions as are permitted by this Agreement or approved by the Developer or the City in writing; and (7) matters disclosed by a survey that do not adversely affect, in any material respects, the use of Parcel 3 by the Developer (collectively, the “Permitted Exceptions”). The City shall convey Parcel 3 and all existing structures and improvements on Parcel 3 as provided above in “as is where is” condition, subject to the closing conditions contained in Section 3.2.

Section 3.4. Cooperation and Closing

The City and the Developer each shall proceed diligently to carry out its activities described herein, and the City and Developer shall work cooperatively and use good faith efforts to satisfy the conditions of closing within each of their control and to accomplish the requirements of the closing at the earliest practicable time. The City shall not be required to sublease its lease interests in Parcel 3 to the Developer if the Developer has breached any material obligations under this Agreement. If no closing has occurred with respect to Parcel 3 by December 31, 2009, then this Agreement shall terminate with respect to Parcel 3 unless otherwise extended in writing by the parties hereto, and the termination of this Agreement with respect to Parcel 3 shall be the parties’ sole remedy with respect thereto, other than the City’s retention of the good faith deposit described in Section 4.3. The Developer acknowledges that following its purchase of Parcel 3, its failure to develop Parcel 3 in accordance with this Agreement, including the timing requirements and any extensions of time agreed to by the City,

would constitute a material breach under this Agreement and the City may proceed in accordance with Section 7 hereof.

The closing of Parcel 3 shall take place at the office of the Southern Title Company which shall also serve as escrow agent (“Escrow Agent”) for the closing. The City shall furnish and pay for an owner’s title insurance commitment and policy in the amount of the purchase price, which shall be certified to within twenty (20) days prior to closing with endorsements not before 8:00 am on the business day prior to closing, all in accordance with the standards of the local bar association and shall show in Developer marketable title in fee simple or as holder of a submerged land lease free and clear of all liens and encumbrances except for the Permitted Exceptions identified in Section 3.3. The Parties agree that they shall each pay one-half of the costs of the services of the Escrow Agent and all real property conveyance fees, if any. The Developer agrees to pay for the costs of recording each Sublease and each Deed. The Developer shall promptly file each conveyance document for recording in the Official Records of Erie County. Any real estate taxes and special assessments shall be prorated as of the date of recording of the Subleases and Deeds, based upon the last available real property tax duplicate, provided that if the last available real property tax duplicate relates to the real property identified by the shaded area in **Exhibit D** attached hereto, such proration shall be made by acreage between the portions retained by the City and the portion consisting of Parcel 3. The parties shall place all funds and documents necessary for the completion of the closing with the Escrow Agent three (3) business days before the Parcel 3 Closing Date.

As of the Parcel 3 Closing Date, the City shall pay or credit on the Purchase Price for Parcel 3, all delinquent taxes attributable to Parcel 3 together with penalties and interest thereon, municipal service fees, and all assessments, including agricultural recoupments, that are

a lien thereon on the Parcel 3 Closing Date. The City shall also pay or credit on the Purchase Price all unpaid real estate taxes, assessments and municipal service fees incurred but not yet due for years prior to the closing and a portion of such taxes and assessments for the year of the closing, prorated through the Parcel 3 Closing Date. The proration of undetermined taxes shall be based on a 365-day year and on the most recently available information on tax rate and valuation. The amounts so computed and adjusted shall be recomputed after the closing when the tax bills are received and the appropriate party will pay the other party the amount of any adjustment, if any.

Section 3.5 Asbestos Testing

The City hereby grants the Developer a temporary license during regular business hours Monday through Friday to conduct any asbestos testing necessary to determine the feasibility of the Private Improvements on Parcel 3, upon receipt by the City of advance reasonable notice of the time and date of such testing. Notwithstanding this license, under no circumstances shall the Developer be permitted to cause any damage to the building or property.

All such testing shall be completed and results received within 180 days following the Effective Date of this Agreement, unless such date is extended by the City, and the Developer shall notify the City in writing by no later than 30 days following such testing if the test results are not satisfactory. Upon receipt of such notice, this Agreement shall terminate with respect to Parcel 3. If no notice is received, the test results shall be deemed satisfactory and the condition to closing identified as item (11) in Section 3.2 shall be deemed satisfied.

Section 3.6. Agreement to Construct Private Improvements – City Hall site redevelopment

Subject to the terms hereof, the Developer agrees to construct the Private Improvements on Parcel 3, consisting of a hotel and conference facility with approximately 120 guest rooms and approximately 8,0000 square feet of conference space and related private parking facilities. The minimum total cost of construction (i.e. labor and materials only) of the Private Improvements on Parcel 3 shall be \$10,000,000. The Private Improvements shall be constructed in accordance with the time scheduled set forth in Section 3.7. The Private Improvements shall be constructed as approved by the City and in accordance with the requirements of the approved Improvement Plan, as provided in Section 4.1 hereof.

Section 3.7. Timing for Construction of Private Improvements

Subject to the terms of this Agreement, the Developer agrees to commence construction of the Private Improvements on Parcel 3 pursuant to the following schedule:

The Developer shall commence or cause the commencement of any demolition or environmental remediation work on Parcel 3 within 2 months following the City Hall Relocation Date and shall commence or cause the commencement of construction of the Private Improvements on Parcel 3 within 5 months following the City Hall Relocation Date.

The Developer shall obtain or cause to be obtained a Certificate of Occupancy as described in Section 4.4 for the Private Improvements on Parcel 3 within 24 months following the commencement of the construction activities, unless extended in accordance with Section 7.2 due to force majeure or otherwise extended in writing by the City and the Developer. This shall not include any tenant improvements for lease space not completed by the Developer.

The Developer shall proceed diligently to complete or cause the completion of each of the Private Improvements in accordance with this schedule at its sole cost and expense. Completion of the Private Improvements shall be evidenced by a Certificate of Occupancy issued by the City in accordance with the terms of Section 4.4 hereof.

SECTION 4
IMPROVEMENT PLANS AND COMPLETION

Section 4.1. Improvement Plans

As a condition precedent to the City's conveyance of its interest in any Parcel to Developer, the Developer agrees to prepare and submit to the City for review and approval such preliminary elevations, site plans, zoning variances required, construction drawings and specifications, and such additional plans and information, as is reasonably required by the City for both Parcels (collectively, the "Improvement Plans"). The Improvement Plans shall be consistent with the requirements of this Agreement, and the requirements of applicable federal, state and local laws. Such Improvement Plans shall also conform to the ordinances and regulations of the City and shall include reference to the areas of property to be utilized for the Public Improvements, which property shall not be included in any Sublease. The Developer shall submit its Improvement Plans within 120 days following the Effective Date. Upon completion of the reviews by the City and compliance with any revision requirements, the City shall evidence its approval of the Improvement Plans in writing. If the City disapproves any Improvement Plans in whole or in part, it shall notify the Developer in writing, setting forth the reasons for such disapproval. The provisions of this Section shall likewise apply to the submission of any revised Improvement Plans to the City for review and approval.

If the Developer desires to make any material change in any of the Improvement Plans, the Developer shall submit the proposed change to the City for review and approval by the City in accordance with the terms and procedures described above. Any disapproval of such change by the City shall be made in writing (setting forth details) to the Developer within 30 days after the date of initial receipt of such proposed change by the City.

The Developer shall submit the proposed change in any of the Improvement Plans to the City in sufficient time to enable the City to review and approve, or to enable the Developer to correct and obtain City approvals, prior to the time required by this Agreement for the Developer to commence constructing any of the Private Improvements.

The foregoing requirements for preparation, review and approval of the Improvement Plans are in addition to the City's usual requirements for obtaining building permits. Accordingly, promptly after the Improvement Plans have been approved by the City, the Developer will submit to the City Building Department such construction drawings and specifications as are required by applicable building code and zoning requirements for the purpose of obtaining a building permit or other construction permits for the construction of the Private Improvements on that Parcel, prior to purchase of the relevant Parcel, and prior to commencement of construction. Such construction drawings and specifications shall be in accordance with and consistent with the requirements of this Agreement, and with the Improvement Plans approved by the City.

Section 4.2. Competitive Bidding and Prevailing Wage

(1) The contracts for the construction of the Public Improvements shall be competitively bid in accordance with all competitive bidding requirements of the City and all contracts for the construction of the Public Improvements shall comply with the prevailing wage requirements applicable to City public improvements.

(2) The Developer shall seek to achieve a minimum of ten percent (10%) local minority participation and fifty percent (50%) local labor force for the construction of the Private Improvements. The term "local" shall include Erie County and the five (5) adjoining counties of Ottawa, Lorain, Huron, Sandusky, and Seneca. All contracts for the construction of the Private

Improvements shall comply with then-current commercial or residential prevailing wages rates, provided that at least 85% of the labor shall be paid at commercial prevailing wage rates.

(3) A committee shall be formed to monitor the Developer's performance of the local participation goals as stated in item (2) above (the "Monitoring Committee"). The Monitoring Committee shall include a representative for each of the Developer, the City Commission, the City Manager, the general contractor for the Private Improvements, and a public representative from the building trades.

(4) All contractors, sub-contractors, and sub-sub-contractors shall seek to comply with the Responsible Contractor Policy, a copy of which is attached hereto as **Exhibit E**.

(5) The Developer agrees to submit to the City and the Monitoring Committee as a part of the monthly report required by Section 8.4 of this Agreement, a proposed bidders list of the intended pre-qualified sub-contractors and suppliers for the purpose of working toward the local participation goals stated in item (2) above.

(6) The contracts for the construction of the Private Improvements shall be competitively bid to union and non-union pre-qualified contractors in accordance with the competitive bidding procedures of either the construction manager or the general contractor.

(7) The Developer shall inform the City and the Monitoring Committee of the successful bidding results from the competitive bidding process conducted pursuant to item (6) above.

(8) The City acknowledges that the requirements of this Section 4.2 may not apply to the construction of the Private Improvements on Parcel 3 if the Developer sells or assigns its rights to construct the hotel and conference facility on Parcel 3 to a national hotel chain (the "Hotel Developer"). The Developer shall not sell or assign its rights to construct the

Private Improvements on Parcel 3 until the Monitoring Committee has met with the Hotel Developer to discuss the local and minority participation requirements of this Section 4.2.

Section 4.3. Good Faith Deposit

The Developer has, prior to or simultaneously with the execution of this Agreement by the City, delivered to the City a good faith deposit of cash or a certified or cashier's check payable to the City, drawn on a solvent bank, in the amount of \$100,000 (hereinafter referred to as the "Deposit"), which Deposit is to be retained by the City as security for the performance of the obligations of the Developer pursuant to this Agreement, provided, however, that if the Developer has submitted its Improvement Plans in accordance with Section 4.1, has demonstrated to the City that it has obtained all necessary commitments to finance the construction of the Private Improvements, and has not defaulted on its obligations under this Agreement, the City shall return the Deposit to the Developer upon the earlier of (i) the termination of this Agreement or (2) the issuance of the final Certificate of Occupancy with respect to the completion of all of the Private Improvements.

Section 4.4. Certificates of Occupancy

Promptly after completion of the Private Improvements with respect to a particular Parcel in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Private Improvements, the City upon request of the Developer and in accordance with standard City procedures shall provide to Developer a certification of occupancy with respect to such Parcel (a "Certificate of Occupancy"). Such certification by the City shall be a conclusive determination of satisfaction and termination of the covenants in the Agreement with respect to the obligations of the Developer and its successors and assigns to construct the Private Improvements with respect to such Parcel. For purposes of

obtaining the Certificate of Occupancy, the Private Improvements shall be deemed “substantially complete” upon the issuance of an occupancy permit for that portion of the Private Improvements that are under consideration, but shall not include custom interior build outs for any modified residential units and/or any tenant improvements not performed by the Developer.

In response to the request for a Certificate of Occupancy by the Developer, the City shall either issue a Certificate of Occupancy with an attached list of items to be completed, or the City shall, within 15 days after the written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Private Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Occupancy.

SECTION 5

PUBLIC IMPROVEMENTS AND FINANCING

Section 5.1. Public Improvements

Subject to and conditioned upon (a) the Developer's purchase of Parcel 1 and Parcel 3 in accordance with this Agreement, (b) the issuance and sale of bonds by the Issuer in accordance with Section 5.3 or the receipt of other funds from the Developer, in each case in an amount sufficient to pay all costs of the Public Improvements, (c) the City's receipt of sufficient property interests, without cost, for such Public Improvements, and (d) the terms and conditions of this Agreement, the City agrees to construct or cause the construction of the Public Improvements consisting of: (1) Perry Street right-of-way improvements; (2) pedestrian shoreline, public path and public park improvements; (3) Meigs Street right-of-way improvements; (4) Meigs Street Pier improvements; (5) Water Street right-of-way improvements and public parking; (6) Washington Street right-of-way improvements and public parking (collectively, the "Public Improvements"). The Public Improvements are estimated to cost \$3,000,000 in the aggregate.

These Public Improvements shall be constructed in accordance with the designs and plans and specifications set forth in the approved Improvement Plans. To the extent feasible and to the extent the funding contemplated hereunder is made available to the City, the City shall use good faith efforts to communicate and cooperate with the Developer so that the Public Improvements related to a particular Parcel will be completed at or about the same time as the Private Improvements for that particular Parcel.

The City shall not be obligated to construct or cause the construction of any Public Improvements that would cost in the aggregate more than \$4,000,000 (the "Public

Improvement Cap”), unless otherwise agreed to by the City. Notwithstanding the foregoing, any improvements constructed using amounts received in accordance with Section 5.4 hereof usable for costs of the Public Improvements shall not be included in determining the costs attributable to the Public Improvement Cap.

Section 5.2. Easements

The Developer hereby grants to the City such temporary construction easements over the Property (after owned by the Developer) as are reasonably necessary from time to time to enable the City to construct and complete the Public Improvements, and shall execute and deliver to the City upon request from time to time temporary construction easements in forms satisfactory to the City. The City agrees to terminate any such construction easement once the Public Improvements have been completed.

The City hereby grants to the Developer such temporary construction easements over any portions of the Property owned by the City or public rights-of-way as are reasonably necessary from time to time to enable the Developer to construct and complete the Private Improvements, and shall execute and deliver to the Developer upon request from time to time temporary construction easements in forms satisfactory to the Developer. The Developer agrees to terminate any such construction easement once the Private Improvements have been completed.

Section 5.3. Funding for Public Improvements

The City and the Developer intend that a port authority or other issuer acceptable to the City (the “Issuer”) will issue bonds to pay all of the costs of the construction of the Public Improvements (the “Bonds”). The Bonds shall be issued by the Issuer and may provide for a cooperative agreement to be entered into between the City and the Issuer. Such cooperative

agreement may provide that the Issuer will construct the Public Improvements on behalf of the City consistent with the terms of this Agreement or as otherwise agreed to by the City. The Bonds would be payable from service payments in lieu of taxes collected by the City pursuant to one or more tax increment financing programs (the “Service Payments”) and from such other security provided by the Developer that may be necessary to offer the Bonds at public or private sale.

Subject to the City Conditions (defined below), if requested by the Developer, the City shall use good faith efforts to cooperate with an acceptable Issuer and, if required, enter into a cooperative agreement to be delivered in connection with the delivery of the Bonds, in form and substance satisfactory to the City, under which the City will agree to transfer the Service Payments received by the City to the Issuer for payment of debt service on the Bonds, other than any portion of the Service Payments to be paid to the Sandusky City School District (the “School District”); provided, however, that the City shall not assume any financial obligation for the repayment of the Bonds or the construction of the Public Improvements, or for any payments to the School District, or for any fees or expenses related thereto except for such transfer of Service Payments and the City otherwise shall have no obligation to cause the issuance of the Bonds.

The City’s agreements in this Section 5.3 are subject to the following conditions (the “City Conditions”):

(1) the Developer’s Improvement Plans have been approved by the City pursuant to Section 4.1 hereof;

(2) the documents to be entered into in connection with the Bonds satisfactorily address the security for the Bonds, the evidence of financing for the remaining costs of the Public Improvements and the costs of the Private Improvements, the ownership and

maintenance of the Public Improvements, the process for construction of the Public Improvements, and the time schedule for the construction of the Public Improvements.

The City shall use good faith efforts in cooperation with the Developer to implement a tax increment financing program or programs so that Service Payments are available to pay debt service on the Bonds; provided that, it is acknowledged that the City's participation in tax increment financing is subject to receiving approvals from the School District and potentially from the Erie County Board of County Commissioners. The Developer shall seek the approvals from the School District and any necessary approval from the County Commissioners and shall be responsible for fulfilling any condition of those approvals.

Section 5.4. Sustainable Design & Alternative Power

The City agrees to cooperate with the Developer in applying for any public funding or grant dollars specifically designated for green and sustainable design and alternative energy. The City also agrees to cooperate with the Developer in seeking to designate the Property as a "Green District", seeking to obtain Leadership in Energy and Environmental Design ("LEED") certification for the various improvements to the Property, and seeking to incorporate LEED design standards and guidelines into the PUD zoning classification for the Property.

SECTION 6
[RESERVED]

SECTION 7
BREACH AND REMEDIES

Section 7.1. In General

Except as otherwise provided in this Agreement, in the event of breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed promptly to cure or remedy such breach, and, in any event, within 30 days after receipt of such notice, which period may be extended if the breaching party is making reasonable progress to cure or remedy the breach; provided, however, that such 30 day grace period shall not be applicable to the times by which Service Payments shall be made under this Agreement. In case such action is not taken within such time or not diligently pursued, or the default or breach shall not be cured or remedied within such time, the party asserting breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, or proceedings to recover damages suffered as the result of such default.

Pursuit of any of the remedies in this Section shall not preclude pursuit of any of the other remedies herein provided, or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation of any of the other party's obligations hereunder. Forbearance by a party to enforce one or more of the remedies herein provided upon the occurrence of an event of default shall not be construed to constitute a waiver of such default.

Section 7.2. Force Majeure

Except as otherwise provided herein, neither the City nor Developer shall be considered in default in their obligations to be performed hereunder, if delay in the performance

of such obligations is due to unforeseeable causes beyond its control and without its fault, including but not limited to, acts of God or of the public enemy, acts of terrorism, acts of the Federal or state government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financing or financial capacity by Developer or the City, it being the purpose and intent of this Section that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Section shall within 14 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay.

Section 7.3. Canceling of Submerged Land Lease or Revesting Title in the City Upon Happening of Event Subsequent to Sublease or Conveyance to Developer

In the event that subsequent to conveyance by the City to the Developer of title to any Parcel or any part thereof or sublease by the City to the Developer of the submerged lands lease to any Parcel or any part thereof, and prior to completion of the Private Improvements with respect to that Parcel as certified by the City, the Developer (or successors in interest) shall default in or violate its obligation with respect to the construction of such Private Improvements (including the nature of the improvements and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within 90 days (180 days if the default is with respect to the date for completion of construction of the Private

Improvements), or cure is not being diligently pursued, after written demand by the City so to do, then the City shall have the right, as the case may be, to terminate Sublease to that Parcel and the City shall have the right to reenter and take possession of that Parcel and to terminate (and revert in the City) the estate conveyed by the Deed to the Developer, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of that Parcel to the Developer, shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the Developer specified in this Section, failure on the part to the Developer to remedy, end, or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such clauses, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interests in and to that Parcel conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in that Parcel, shall revert to the City; provided, that the City shall provide written notice to the Developer thirty (30) days prior to exercising any remedy pursuant to this Section, and provided further, that such condition subsequent and any reversion of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage entered into to finance the Private Improvements, and (ii) any right or interest provided in this Agreement for the protection of the holder of such mortgage.

Section 7.4. Other Rights and Remedies of City; No Waiver by Delay

The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including also the right to execute and record or file among the public land records in the office in which the Sublease or Deed is

recorded a written declaration of the termination of all the right, title and interest of the Developer, and (subject to such mortgage liens and leasehold interests as provided in this Section), their successors in interest and assigns, in that Parcel, and the reversioning of title thereto in the City; provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that the City should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this Section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

SECTION 8
MISCELLANEOUS

Section 8.1. Term of Agreement

Unless earlier terminated in accordance with the terms herein, the provisions of this Agreement shall be effective as of the Effective Date and shall continue in full force and effect until the full payment of all debt service for the Bonds.

Section 8.2. Representations of Authority

The Developer hereby represents that it has full power and authority to enter into this Agreement and carry out its terms. The City hereby represents that it has full power and authority to enter into this Agreement and carry out its terms.

Section 8.3. Representation as to Developer Entity

Sandusky Marina District Development, LLC hereby represents that it is an Ohio limited liability company, with its sole member and Managing Member being R. John Eymann.

Section 8.4. Progress Reports

Until construction of all of the Private Improvements has been completed, the Developer shall make monthly reports, in such detail as may reasonably be requested by the City, of the actual progress of the Developer with respect to construction of such Private Improvements. Developer, for itself and future Assignees, agrees to supply or cause to be supplied to the City from time to time such information as the City may reasonably request concerning the amount of investment made, number of new jobs created, and amount of payroll attributable to such new jobs, and such other information related to carrying out this Agreement, as the City reasonably requires in connection with preparation of reports required by the State of Ohio, Erie County, or any other public agency, in connection with the City's implementation of this Agreement and any other applicable law.

Section 8.5. Discrimination Prohibited

The Developer shall, and shall cause future Assignees to, in the use and redevelopment of the Property, not to discriminate against any person or group of persons based upon race, creed, sex, religion, color, age, national origin or ancestry in the sale, lease or other transfer, use or occupancy, of the Property.

Section 8.6. Restrictions on Transfer of Property, Assignment and Encumbrance

The Developer further represents and agrees that, prior to completion of the Private Improvements with respect to a Parcel, the Developer will not sell, transfer, assign or otherwise dispose of its rights in this Agreement or property interest in such Parcel without the written consent of the City; provided, however, that Developer may sell and convey residential units on each Parcel upon completion, and may enter into sales agreements providing therefor prior to completion, and provided further that the Developer may assign the obligations in this Agreement to an entity that is 51% or more owned by (a) the Developer, or (b) the sole member of the Developer (the "Member"); provided that the assignee agrees to be bound by all of the provisions of this Agreement, including this Section. The Developer may also transfer its interest in a Parcel or a structure thereon, or any part thereof, for the purposes of obtaining construction or permanent financing for the Private Improvements.

Prior to completion of the Private Improvements with respect to a Parcel, neither the Developer nor any successor in interest to such Parcel or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon such Parcel or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to such Parcel or any part thereof, except for the purposes only of obtaining funds only to the extent necessary for paying the Purchase Price and

constructing, developing, furnishing and equipping the Private Improvements on the such Parcel, paying any other costs associated with such financing, including attorney fees, and entering into leases that will not be effective until after the completion of the Private Improvements.

After the Private Improvements have been constructed on each parcel the Developer may assign all of its obligation, rights and duties under this Agreement pursuant to a written agreement where the City is a party or a third-party beneficiary if the assignee assumes all of the rights, duties and obligations of the Developer pursuant to this Agreement or a portion thereof. After all of its obligations contained in this Agreement have been assigned, the Developer shall be released from any further obligations, rights or duties under this Agreement.

Section 8.7. Restrictions on Transfer of Interests in the Developer

The Developer acknowledges that the identity of the principals who own and control the Developer are important considerations to the City in entering into this Agreement with the Developer. Prior to completion of the Private Improvements, and without the prior written approval of the City, the Developer represents and agrees for itself, its Member and any successor in interest to itself and its Member, respectively, that there shall be no voluntary transfer by the current Member which would decrease the interest of such Member in the Developer to less than fifty-one percent (51%), nor shall the Member suffer or permit such transfer to be made, or be suffered that would cause any other similarly significant change in the ownership of the Developer, or with respect to the identity of the persons in control of the Developer or the degree thereof, by any other method or means.

Section 8.8. Agreement Binding on Parties; No Personal Liability

All covenants, obligations and agreements of the City, the Developer and future assignees contained in this Agreement shall be effective to the extent authorized and permitted

by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or officer, or employee of the City in other than their official capacity or of any individual person who is an officer, member, director or shareholder of the Developer or other owner other than in their capacity as an officer, member, director or shareholder, and neither the members of the City Commission nor any City official executing this Agreement, or any individual person executing this Agreement on behalf of the Developer, shall be liable personally by reason of the covenants, obligations or agreements of the City or the Developer contained in this Agreement.

Section 8.9. Compliance with Applicable Laws

The Parties hereby agree to comply with all applicable federal, state and local laws, regulations and ordinances in connection with construction of the Private Improvements, the Public Improvements and the use and operation thereof, and otherwise in connection with the performance of their rights, duties and obligations pursuant to this Agreement. In accordance with the Plan, the Developer shall maintain all structures and facilities in accordance with all codes and ordinances of the City.

Section 8.10. Counterparts

This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 8.11. Notice

Any notice or communication between the parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally or mailed by U.S. registered or certified mail, return receipt requested, which shall be deemed delivered when either the return receipt is signed or refused, and addressed as follows:

1. Notices to the City:

City Manager
City of Sandusky
222 Meigs Street
Sandusky, Ohio 44870

With a copy to:

Director of Law
City of Sandusky
222 Meigs Street
Sandusky, Ohio 44870

2. Notices to Developer:

Sandusky Marina District Development LLC
6161 Riverside Drive
Suite A
Dublin, Ohio 43017
Attention: R. John Eymann

With a copy to:

Isaac, Brant, Ledman & Teetor, LLP
250 East Broad Street
Suite 900
Columbus, Ohio 43215
Attention: Timothy E. Miller

Section 8.12. Captions

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 8.13. Governing Law

This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

Section 8.14. Complete Agreement

All negotiations, considerations, representations and understandings between the parties as to the Property and the subject matters of this Agreement, are incorporated herein and

may be modified or altered only by an agreement in writing signed by both parties to this Agreement.

Section 8.15. Severability

If any provision in this Agreement or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other provision or portion thereof. To the extent an interpretation of a provision or a portion thereof can be made which will make it valid or enforceable, the parties agree that the interpretation making it valid or enforceable should be chosen.

[Balance of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Developer have each caused their duly authorized representatives to execute this Agreement as of the date aforesaid.

CITY OF SANDUSKY, OHIO

By: _____
City Manager

**SANDUSKY MARINA DISTRICT
DEVELOPMENT LLC**

By: _____
R. John Eymann, Managing Member

The legal form of the within instrument
is hereby approved.

By: _____
Director of Law

Date: _____, 2008

STATE OF OHIO)
) SS:
COUNTY OF ERIE)

On this _____ day of _____, 2008, before me a Notary Public in and for said County and State, personally appeared Matt Kline, City Manager of the City of Sandusky, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of the City on behalf of the City, and that the same is his voluntary act and deed as the officer on behalf of the City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Sandusky, Ohio on the day and year aforesaid.

[SEAL]

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF _____)

On this _____ day of _____, 2008, before me a Notary Public in and for said County and State, personally appeared R. John Eymann, being the Managing Member of Sandusky Marina District Development LLC, who acknowledged the execution of the foregoing instrument as the duly authorized representative thereof, and that the same is his voluntary act and deed as said representative and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at _____, Ohio on the day and year aforesaid.

[SEAL]

Notary Public

EXHIBITS

Exhibit A – The Property

Exhibit B – Parcel 1

Exhibit C – [Reserved]

Exhibit D – Parcel 3

Exhibit E – Responsible Contractor Policy

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned, fiscal officer of the City, hereby certifies that the money required to meet the obligations of the City during the year 2008 under the Agreement has been lawfully appropriated by the Commission of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Director of Finance