

## ORDINANCE NO. 20-125

**AN ORDINANCE APPROVING AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE THE CONSENT AGREEMENT TO ASSIGNMENT RELATING TO THE BATTERY PARK AND BATTERY PARK MARINA PROPERTY; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the City owns the property commonly known as Battery Park and Battery Park Marina and has leased the property to Sandusky Bay Development Company, Ltd. since 1985 for the development, rehabilitation, and operation of the property for the purpose to improve and increase recreational facilities available to the public; and

**WHEREAS**, the Lease Agreement, which was assigned to Sandusky Bay Investment Company, Ltd., was amended by Addendum dated February 25, 1991, and further amended by Addendum to Lease Agreement dated March 11, 1997; and

**WHEREAS**, Sandusky Bay Investment Company, Ltd. and Marous Development Group, LLC have entered into a Real Estate & Business Asset Purchase Agreement, which Marous Development Group, LLC later assigned to Battery Park Sandusky, LLC, for the transfer of the marina and business assets to Battery Park Sandusky, LLC; and

**WHEREAS**, pursuant to the Real Estate & Business Asset Purchase Agreement, Sandusky Bay Investment Company, Ltd. wishes to transfer, assign, and set over all of its rights under the original 1985 lease and subsequent addendum and Battery Park Sandusky, LLC wishes to accept and assume the obligations of the lease agreement; and

**WHEREAS**, in order for the Real Estate & Business Asset Purchase Agreement to be fulfilled, the City must execute a Consent Agreement to Assignment, approving the Assignment and Assumption of Lease Agreement between Sandusky Bay Investment Company, Ltd. and Battery Park Sandusky, LLC; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the Consent Agreement to Assignment that is necessary for the assignment of the lease agreement and transfer of the marina and business assets to Battery Park Sandusky LLC, for the continuance of recreational amenities for the public; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments, including the Department of Community Development, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in

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accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission approves of the Consent Agreement to Assignment relating to the Battery Park and Battery Park Marina property and authorizes and directs the City Manager to execute the Consent Agreement to Assignment on behalf of the City, a copy of which is marked Exhibit "A" and is attached to this Ordinance and is specifically incorporated as if fully rewritten herein together with such revisions or additions thereto as are approved by the Law Director as not being substantially adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. This City Commission agrees to and accepts Battery Park Sandusky LLC as an assignee under the existing Lease Agreement for the Battery Park and Battery Park Marina property.

Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST:

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MCKENZIE E. SPRIGGS  
CLERK OF THE CITY COMMISSION

## CONSENT AGREEMENT TO ASSIGNMENT

This Consent Agreement to Assignment (the “Consent”) is made effective this \_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”) by the City of Sandusky, Ohio, an Ohio chartered municipal corporation, which, with its successors and assigns, is hereinafter referred to as “Lessor”.

1. The undersigned, being the Lessor under that certain Lease Agreement dated as of February 6, 1985, by and between Lessor and Sandusky Bay Investment Company, Ltd., as lessee and successor in interest to Sandusky Bay Development Company, Ltd. (“**SBIC**”), with the consent of Lessor pursuant to that certain Lease Assignment effective February 6, 1985, as amended by that certain Addendum dated February 25, 1991, and further amended by that certain Addendum to Lease Agreement dated March 11, 1997 (collectively, the “**Lease**”) hereby consents to the above assignment of the Lease by Lessee to Battery Park Sandusky LLC, an Ohio limited liability company (“**BPS**”), pursuant to Section 12.1 of the Lease, and agrees to and accepts BPS as an assignee under the Lease, together with BPS’ assumption of all obligations to Lessor under the Lease. Notwithstanding Section 12.1 of the Lease, Lessor releases SBIC from the Developer’s Continuing Liability from and after the Effective Date of this Consent; provided, however, that the foregoing release is unique to SBIC and shall in no way release BPS from the Developer’s Continuing Liability in the event of a future assignment or subleasing pursuant to Section 12.1.

2. Lessor does not waive the right to consent to any other future assignment or subleasing of all or any portion of the leased premises pursuant to Section 12.1 of the Lease by granting the above request.

3. From and after the Effective Date, Lessor shall indemnify BPS from any and all costs, expenses, claims, losses, damages, liabilities and judgments (including reasonable attorneys' fees) arising out of (i) the removal and/or relocation of any underground utilities which are located within the Easement Area (as defined below) if and to the extent the removal and/or relocation of which is necessary in connection with BPS’ development of the property which is the subject of the Lease and (ii) any alleged and/or asserted rights of third-parties pursuant to any unrecorded easements, licenses, occupancies and agreements, which were reserved by Penn Central Corporation, a Pennsylvania corporation (“**Penn**”) in that certain

Quitclaim Deed from Penn to Lessor dated June 11, 1980, and recorded in Volume 484 Page 895, Erie County, Ohio Recorder (collectively, the “**Unrecorded Penn Easements**”), and are unknown to BPS as of the Effective Date (collectively, the “**Lessor Indemnities**”). The Easement Area shall be that area labeled as “Item 15, City of Sandusky, Old Pier Track Right of Way, Volume 484, Page 895” on that certain ALTA/NSPS Land Title Survey of Battery Park and Marina prepared by Riverstone dated [\_\_\_\_\_]. Notwithstanding anything in this Section 3 to the contrary, the forgoing Lessor Indemnities shall only be enforceable against Lessor to the extent permitted under Ohio law, as finally determined in the state or federal courts of Ohio located in the City of Sandusky, Ohio. Lessor expressly acknowledges and agrees that the Lessor Indemnities, as described in this Section 3, shall be enforceable at all times by BPS against Lessor during the Term of the Lease.

4. Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Lease.

This Consent was authorized, certified, and approved by the Commissioners of the City of Sandusky on \_\_\_\_\_ by \_\_\_\_\_.

**CITY OF SANDUSKY, OHIO,**  
an Ohio chartered municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

Acknowledged before me, a Notary Public in and for said County and State aforesaid, personally appeared \_\_\_\_\_, as the \_\_\_\_\_ of the City of Sandusky, Ohio, an Ohio chartered municipal corporation, who acknowledged that he/she did sign the foregoing instrument and on behalf of said corporation. This is an acknowledgment clause. No oath or affirmation was administered to the signers.

GIVEN, under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC