

## ORDINANCE NO. 21-091

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A SUBMERGED LANDS LEASE WITH THE STATE OF OHIO, OHIO DEPARTMENT OF NATURAL RESOURCES, FOR THE CEDAR POINT CAUSEWAY WETLAND PROJECT RELATED TO THE SANDUSKY BAY INITIATIVE FOR PROPERTY ADJACENT TO CEDAR POINT ROAD; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, Magnum Management Corporation is the owner of land fronting Sandusky Bay adjacent to Cedar Point Road, Parcel Number 55-00065.000, in the City of Sandusky, Ohio; and

**WHEREAS**, Magnum Management Corporation granted the City a legal property interest in the upland property by way of an Official Deed of Easement filed for record in Erie County, Ohio Official Records Number 202100266; and

**WHEREAS**, the City Commission authorized and approved the submission of an application to the U.S. Army Corps of Engineers to obtain a Department of Army Permit, submittal of an application to the State of Ohio to obtain a Submerged Lands Lease, if required to implement the project, a Shore Structure Permit, and a Water Quality Certification, and submittal to the U.S. Coast Guard for Private Aids to Navigation in connection with the Sandusky Bay Initiative Project and related to the Cedar Point Causeway Wetland Project by Resolution No. 020-19R, passed on May 28, 2019; and

**WHEREAS**, the Cedar Point Causeway Wetland Project involves the area along the western edge of the Cedar Point Causeway immediately to the south of the overflow/employee parking lot and the object is to create nearshore wetland areas with variations in water depth, water flow, and native wetland vegetation; and

**WHEREAS**, the City is required by the Ohio Department of Natural Resources (ODNR) to obtain a submerged lands lease prior to advertising for bids for the Cedar Point Causeway Wetland Project, which is within a submerged land area; and

**WHEREAS**, this Submerged Lands Lease authorizes the use of the property for a governmental non-income producing facility (fill/ecosystem restoration project); 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 Submerged Lands Lease and forward to the Ohio Department of Natural Resources for execution by the State of Ohio and to proceed with the project expeditiously; 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

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operation of the Municipal Departments, including the Department of Public Works, 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 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 the form of the Lake Erie Submerged Lands Lease, File No. SUB-2412-ER, a copy of which is marked Exhibit "1", attached to this Ordinance and specifically incorporated as if fully rewritten herein, and authorizes and directs the City Manager to execute the Submerged Lands Lease and forward to the appropriate State Officials for approval and execution.

Section 2. 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 3. 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 4. 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

STATE OF OHIO  
LAKE ERIE SUBMERGED LANDS LEASE  
FILE NUMBER SUB-2512-ER

This Lease of Lake Erie Submerged Lands is entered into by and between the State of Ohio, the "State", acting through the Director, Ohio Department of Natural Resources, the "Director", and The City of Sandusky, an Ohio Chartered municipal corporation, its successors or assigns, whose address is 240 Columbus Avenue, Sandusky, Ohio 44870, the "Lessee", pursuant to the provisions of Sections 1501.01, 1506.10 and 1506.11, Ohio Revised Code and the rules promulgated under Chapter 119, Ohio Revised Code, and authorized by Section 1506.02, Ohio Revised Code.

WHEREAS, Magnum Management Corporation is the owner of land fronting on Sandusky Bay adjacent to Cedar Point Road as described in the Affidavit On Facts Relating to Title filed for record in Erie County, Ohio Official Records Number 200608764, the "Upland Property"; and

WHEREAS, Magnum Management Corporation granted the Lessee a legal property interest in the Upland Property by way of Official Deed of Easement filed for record in Erie County, Ohio Official Records Number 202100266 and further described in Exhibit "D" attached hereto and made a part hereof, the "Upland Interest; and

WHEREAS, Lessee has submitted to the Director an application for a Lake Erie Submerged Lands Lease for a Governmental Non-income Producing Facility (Fill/Ecosystem Restoration Project); and

WHEREAS, the Director has determined that a Lake Erie Submerged Lands Lease may be entered into with Lessee for the following described Submerged Lands the "Lease Property".

DESCRIPTION

SEE EXHIBITS "A" (Plat), "B" (Ecosystem Restoration Parcel 1 description) and "C" (Ecosystem Restoration Parcel 2 description) ATTACHED HERETO AND MADE A PART HEREOF.

NOW THEREFORE, the State, in consideration of the mutual covenants and agreements hereinafter set forth, does hereby grant this Lease to Lessee, under the following terms and conditions:

1. TERM

This Lease shall be for a period of fifty (50) years, commencing February 1, 2021 and ending January 31, 2071.

Upon the expiration of the term of this Lease, Lessee may apply to the State for a new lease in accordance with any and all laws and regulations pertaining to the leasing of Lake Erie submerged lands in effect at that time.

2. CONSIDERATION

The annual rental for the term of this Lease shall be based on the following calculations: Rent for a governmental non-income producing facility (Fill/Ecosystem Restoration Project) occupying a total of 1,356,655 square feet of submerged lands equals \$1.00 per year for the term of the Lease or renewals. The rent shall not be modified except as provided in Section 3 and Section 7 herein.

The first rental payment shall be computed from February 1, 2021, and shall be due by February 1, in each and every year hereafter. If any payment is not received by the due date, whether or not a demand for payment is made, the State, at its option, may terminate this Lease pursuant to Section 11 herein.

All rental payments are to be made payable to Ohio Treasurer of State and delivered to the Ohio Department of Natural Resources, Office of Coastal Management, 1031 Pierce Street, Suite A, Sandusky, Ohio 44870 or as otherwise may be directed in writing by the Ohio Department of Natural Resources. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code.

3. USE

Lessee shall use and occupy the Lease Property for a governmental non-income producing facility (Fill/Ecosystem Restoration Project). Any future improvements to the existing facilities, the construction of new facilities, or any change in the existing use of the Lease Property shall require the prior written approval of the Director. Any change in use approved by the Director, may also result in a re-evaluation of the rent, and this Lease, shall, accordingly, be modified to reflect the proper rent as assigned by the Director based on such change in use. Routine maintenance shall not require the prior written approval of the Director. Routine maintenance does not include 1) additional improvements or developments of the Lease Property, 2) improvements to the existing facilities, 3) construction of new facilities, or 4) any change in the use of the Lease Property as stated above.

This Lease is made subject to all prior leases or grants on any portion of the Lease Property, and to the renewal thereof. The State also reserves the right to grant utility easements or leases across, under, on or in the Lease Property.

Lessee shall not place any structures or fill material outside the limits of the Lease Property, and shall be liable for any and all damages resulting from such violation and shall be subject to subsequent termination of this Lease under the default provision provided in Section 11 herein.

This Lease shall be subject to any and all local, state or federal laws or regulations. The issuance of this Lease does not release the Lessee from obtaining any and all other permits or documents from any local, state or federal agency as required for the use of the Lease Property. Failure to obtain any required permits or documents shall be a violation of this Lease and cause this Lease to be subject to termination under the default provisions provided in Section 11 herein.

This Lease does not express or imply any control of fisheries or aquatic wildlife now vested in the Department of Natural Resources, Division of Wildlife.

This Lease does not authorize the Lessee to prejudice the littoral rights of any owner of land fronting on Lake Erie. Lessee shall at all times respect the littoral rights of neighboring upland owners, as well as the public's right to the free and unrestricted use of the waters outside the limits of the Lease Property.

The Lease Property shall be subject to the public's right of navigation in and around any structures and/or fill material on the Lease Property. However, the public's right of navigation shall be limited to the extent that it does not interfere with Lessee's safe use of Lessee's structures and/or fill material. Lessee shall not refuse, during storms or other adverse conditions, safe harbor refuge to any vessel seeking such refuge, provided that the harbor can accommodate such vessel.

4. MAINTENANCE/REPAIR

Lessee shall maintain and manage the Lease Property in a responsible manner, keeping it clean, sanitary and free from any debris. Lessee agrees to make every attempt to ensure that there is no excessive buildup of unsightly debris on the Lease Property as a direct result of Lessee's improvements.

5. LIABILITY

The State of Ohio is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollars per occurrence in accordance with section 9.87 of the Ohio Revised Code. The parties agree that Lessee shall be solely responsible for any and all claims, demands, or causes of

action arising from Lessee's actions, performance and obligations under this Lease. Each party to this Lease must seek its own legal representation and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Lease. Both parties being governmental entities in the state of Ohio, it is specifically understood and agreed that neither party indemnifies the other. Nothing in this Lease shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall Lessor be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits that may be attributable to the actions of the Lessee.

During the term of this Lease, Lessee, at its sole cost and expense, shall carry and maintain a policy of Comprehensive General Liability insurance with the broad form endorsement against claims for bodily injury, personal injury, wrongful death and property damage covered together with all costs of defense.

Said policy shall designate as an additional named insured the State of Ohio as its interest may appear. The policy limits shall be no less than the following:

Bodily Injury		\$250,000 per person
		\$500,000 per occurrence
Property Damage	\$100,000 per occurrence	\$500,000 aggregate
	OR	
Combined single limit		\$1,000,000 per occurrence

Said policy shall contain a clause providing that thirty (30) days written notice of cancellation, nonrenewal, or decrease in coverage will be given to the Director. A copy of the Certificate of Coverage shall be filed with and is subject to the approval of the Director.

The State reserves the right, but has no obligation, to periodically review the liability limits for the insurance policies required. If at any time the State reasonably determines that the then required policy limits are insufficient to adequately protect the State's interests and/or do not meet current industry guidelines, the State may require an increase in the policy limits. The Lessee shall have sixty (60) days following notification by the State of the new policy requirements to obtain insurance meeting the new requirements and to file with the State proof of insurance conforming to the new requirements. Failure to comply with this clause shall constitute a material breach of this Lease and cause this Lease to be subject to termination under the default provision provided in Section 11 herein.

## 6. MINERAL RIGHTS

This Lease reserves to the State all mineral rights as required by Section 1506.11 of the Ohio Revised Code, and should the State cause any such minerals to be removed from the Lease Property, their removal will be conducted in a manner that will not damage any improvements of the Lessee on the Lease Property.

7. ASSIGNMENT/MORTGAGE/SUBLETTING

Lessee shall not assign or mortgage this Lease or sublet any part of the Lease Property in a manner inconsistent with Rule 1501-6-05(D) of the Ohio Administrative Code. There shall be no assignment, sublease or mortgage of the Lease without the written consent of the Director whose consent shall not be unreasonably withheld or unreasonably conditioned.

Lessee shall deliver a written request to assign, sublet or mortgage this Lease to the Director not less than ninety (90) days prior to the proposed effective date thereof. The Director shall respond to Lessee within thirty (30) days of the Director's receipt of Lessee's request. If the Director fails to act in any manner within ninety (90) days of the receipt of Lessee's request, the request shall be deemed approved by the Director.

If Lessee transfers the Upland Interest, Lessee must assign this Lease to the transferee of the Upland Interest prior to or on the date of the transfer of the Upland Interest. If assigned prior to the date of transfer, Lessee shall instruct the closing officer of the title company or bank or Lessee's attorney to hold the assignment in escrow until the transfer of the Upland Interest is completed. In the event that the transfer of the Upland Interest is not consummated, the assignment of this Lease shall automatically be null and void. Failure to comply with this clause shall constitute a material breach of this Lease and cause this Lease to be subject to termination under Section 11, including Lessee's duty to remove all personal property, structures and fixtures constructed or placed on the Lease Property and to restore the Lease Property to a condition satisfactory to the State.

Rental rates and other lease terms shall be subject to revision at the time of assignment of this Lease.

Applicants for the Director's consent to assign, mortgage or sublet this Lease shall be entitled to an administrative review of and appeal from any decision of the Director pursuant to Section 119.06, Ohio Revised Code.

8. TAXES

Lessee shall be responsible for any and all federal, state, and/or local taxes and/or assessments levied against the Lease Property.

9. ACCESS

The State may, without prior notice, at all reasonable times and without interfering with the operations of the Lessee, enter into and upon the Lease Property to determine if the Lessee is complying with the terms of this Lease or for any other lawful purpose.

10. DISCRIMINATION PROHIBITED

Lessee shall not discriminate against any person or entity on the basis of race, color, religion, sex, ancestry, handicap, disability, age or national origin.

11. STATE'S RIGHT TO TERMINATE

If Lessee breaches or defaults on any of the terms or conditions of this Lease, and if such breach or default is not remedied within thirty (30) days after written notification by the State of the breach or default, the State may terminate this Lease.

The State shall give written notice of any termination made under this Section and Lessee shall then surrender possession of the Lease Property to the State. Lessee shall have ninety (90) days from the date on the written notice to remove all personal property, structures and fixtures constructed or placed on the Lease Property to the extent such removal does not damage, degrade, or interfere with any wetlands created by the Lessee on the Lease Property, and to restore the Lease Property to a functional condition satisfactory to the State which satisfaction shall not be unreasonably withheld. If the Lease Property is not restored to a condition satisfactory to the State, the State may have the Lease Property restored at expense of Lessee.

A termination made under this Section shall not be deemed to be a condemnation or appropriation of the interest of the Lessee in the Lease Property and the only right to compensation the Lessee shall be entitled to is a pro-rated refund of any rental monies previously paid to Lessor. Lessor shall not be liable for any damages or loss to the Lessee arising out of a termination made pursuant to this Section.

12. LESSEE'S TERMINATION OPTION

(a) In the event Lessee should wish to discontinue its use of or is unable to continue its use of the Lease Property, prior to the expiration of this Lease as stated in the Term provision herein, then Lessee shall have the option ("Termination Option") to terminate this Lease, subject to and in accordance with the following terms and conditions:

(i) Lessee shall deliver a written request to terminate this Lease to the



Director. There shall be no termination of this Lease without the written consent of the Director, which consent shall not be unreasonably withheld or unreasonably conditioned. In the event that the Director consents to Lessee's request to terminate this Lease prior to its date of expiration, Lessee will execute a Lease Termination Agreement prepared by the State ("Termination Agreement");

- (ii) Lessee shall have the time specified in the Termination Agreement to remove all personal property, structures and fill constructed or placed upon the Lease Property, and to restore the Lease Property to a condition satisfactory to the Director. If the Lease Property is not restored to a condition satisfactory to the Director, the Director may have the Lease Property restored at the expense of Lessee; and
- (iii) Lessee must not be in default under this Lease and all rent, additional rent, and other charges payable under this Lease shall be paid through and apportioned as of the effective date of termination of this Lease, unless waived in writing by the Director.

- (b) The Termination Option shall automatically become null and void upon the earlier to occur of: (i) the termination of Lessee's right to possession of the Lease Property or (ii) the failure of Lessee to timely or properly exercise the Termination Option.

### 13. EMINENT DOMAIN

This Lease is subject to the State's right of eminent domain as provided for in Section 1506.11(E), and elsewhere in the Ohio Revised Code.

### 14. EXPIRATION

Upon the expiration of this Lease and the subsequent failure of Lessee to apply to the State for a new lease pursuant to Section 1 herein, Lessee shall remove all personal property, structures and fixtures constructed or placed on the Lease Property, and restore the Lease Property to a condition satisfactory to the State. If the Lease Property is not restored to a condition satisfactory to the State, the State may have the Lease Property restored at the expense of the Lessee.

### 15. REPRESENTATIVES/AGENTS

Where this Lease refers to either the State or the Lessee, those terms shall include the agents, employees, or authorized representatives of each party.

16. QUIET ENJOYMENT

The State covenants that if, and so long as, Lessee pays the rent when due and performs the covenants hereof, Lessee may quietly occupy the Lease Property, during the term, without any hindrance by the State or any person or persons lawfully claiming under the State. The State is not obligated to warrant or defend the Lease Property or this Lease against any claim asserted by any other person or entity. A taking by eminent domain shall not be deemed to be a breach of this covenant.

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[Signature pages to follow]



The foregoing Lease of Lake Erie Submerged Lands is hereby approved.

THE STATE OF OHIO, LESSOR

\_\_\_\_\_  
Scudder D. Mackey, Ph.D., Chief  
Office of Coastal Management  
As Designee for Mary Mertz, Director  
Ohio Department of Natural Resources

STATE OF OHIO,

ERIE COUNTY, ss:

Before me, a notary public in and for State of Ohio, County of \_\_\_\_\_, personally appeared the above-named Scudder D. Mackey, Ph.D., Chief, Office of Coastal Management, Ohio Department of Natural Resources, on behalf of LESSOR, State of Ohio, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed.

In testimony whereof, I hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
Notary Public (Print Name)

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Gerald E. Dailey, Assistant Attorney General.



## Exhibit B

KS ASSOCIATES

**Sandusky Bay Initiative  
Submerged Land Lease Parcel 1  
8.7137 Acres (379,569 Square Feet)  
Page 1 of 3**

**Situated** in the City of Sandusky, County of Erie and State of Ohio and known as being submerged land within Lake Erie adjacent to the First Ward of the City of Sandusky, being more definitely described as follows;

**Commencing** at the southwesterly corner of Sublot No. 3 in Revised Plat Laguana Subdivision No. 1 as recorded in Plat Volume 19, Page 41 of the Erie County Records, being also the intersection of the easterly right of way of Cedar Point Road (50 feet wide) and the northerly right of way of Chausee Road (50 feet wide), said point bearing North 07° 36' 01" East, 35.36 feet from a 1" iron pin found at the intersection of the centerline of Cedar Point Road and the centerline of Chausee Road and bearing South 37° 23' 59" East, 100.44 feet from a 5/8" iron pin found in the easterly right of way of Cedar Point Road;

Thence, South 38° 46' 34" West, 1675.50 feet to the natural shoreline of Lake Erie as observed on September 17, 2017 and being the **True Point of Beginning** for the parcel herein described;

Thence, along the natural shoreline of Lake Erie the following thirteen courses;

South 34° 25' 41" East, 16.38 feet;

Thence, South 16° 21' 28" East, 55.10 feet;

Thence, South 58° 07' 39" East, 26.64 feet;

Thence, South 18° 33' 27" East, 29.37 feet;

Thence, South 31° 39' 06" West, 16.55 feet;

Thence, South 47° 54' 37" West, 24.07 feet;

Thence, South 19° 50' 28" West, 21.11 feet;

Thence, South 33° 21' 20" East, 23.04 feet;

Thence, South 56° 37' 47" East, 32.40 feet;

Thence, South 31° 21' 38" East, 23.87 feet;

Thence, South 15° 44' 15" East, 47.56 feet;

Thence, South 16° 00' 09" East, 63.85 feet;

Thence, South 18° 35' 14" East, 77.60 feet to the littoral rights partition line between Erie County Parcel No. 55-00065.000 conveyed to Magnum Management Corporation as recorded in RN200608764 of the Erie County Records and Erie County Parcel No. 55-00064.000 conveyed to Cedar Point Park LLC as recorded in RN201410099 of the Erie County Records;

Thence, leaving said natural shoreline, along said littoral rights partition line, South 71° 40' 07" West, 944.27 feet;

## Exhibit B

KS ASSOCIATES

**Sandusky Bay Initiative  
Submerged Land Lease Parcel 1  
8.7137 Acres (379,569 Square Feet)  
Page 2 of 3**

Thence, leaving said littoral rights partition line, North 23° 14' 12" West, 30.52 feet;

Thence, North 21° 24' 07" West, 49.96 feet;

Thence, North 16° 40' 11" West, 70.48 feet;

Thence, North 06° 53' 20" West, 101.52 feet;

Thence, along the arc of a curve which deflects to the right, 146.46 feet, said curve having a radius of 132.00 feet, a central angle of 63° 34' 17", and a chord of 139.06 feet which bears North 26° 09' 47" East;

Thence, North 44° 43' 05" East, 143.30 feet to the southerly line of Lake Erie Submerged Land Lease SUB-670-ER;

Thence, along the southerly line of said Lake Erie Submerged Land Lease SUB-670-ER the following eight courses;

North 45° 31' 51" East, 15.71 feet;

Thence, North 27° 02' 06" East, 28.24 feet;

Thence, North 37° 33' 31" East, 19.87 feet;

Thence, North 52° 48' 00" East, 17.14 feet;

Thence, North 76° 08' 48" East, 53.08 feet;

Thence, North 71° 55' 05" East, 48.82 feet;

Thence, North 81° 14' 34" East, 474.73 feet;

Thence, leaving said southerly line, North 38° 46' 34" East, 79.02 feet to the point of beginning.

Containing within said bounds 8.7137 acres (379,569 square feet) of land as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor, No. 7730 in September 2017 and October 2018.

Bearings are based on the Ohio State Plane, North Zone, NAD83(2011) Grid North.

Exhibit B

KS ASSOCIATES

Sandusky Bay Initiative  
Submerged Land Lease Parcel 1  
8.7137 Acres (379,569 Square Feet)  
Page 3 of 3

*T. A. Bixler 8-13-20*

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Trevor A. Bixler, P.S.  
Professional Surveyor, Ohio No. 7730

**KS ASSOCIATES**  
Civil Engineers + Surveyors  
260 Burns Road, Suite 100  
Elyria, OH 44035  
440 365 4730



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## Exhibit C

KS ASSOCIATES

**Sandusky Bay Initiative  
Submerged Land Lease Parcel 2  
22.4308 Acres (977,086 Square Feet)  
Page 1 of 3**

Situated in the City of Sandusky, County of Erie and State of Ohio and known as being submerged land within Lake Erie adjacent to the First Ward of the City of Sandusky, being more definitely described as follows;

Commencing at the southwesterly corner of Sublot No. 3 in Revised Plat Laguana Subdivision No. 1 as recorded in Plat Volume 19, Page 41 of the Erie County Records, being also the intersection of the easterly right of way of Cedar Point Road (50 feet wide) and the northerly right of way of Chausee Road (50 feet wide), said point bearing North 07° 36' 01" East, 35.36 feet from a 1" iron pin found at the intersection of the centerline of Cedar Point Road and the centerline of Chausee Road and bearing South 37° 23' 59" East, 100.44 feet from a 5/8" iron pin found in the easterly right of way of Cedar Point Road;

Thence, South 38° 46' 34" West, 1675.50 feet to the natural shoreline of Lake Erie as observed on September 17, 2017;

Thence, along the natural shoreline of Lake Erie the following thirteen courses;

South 34° 25' 41" East, 16.38 feet;

Thence, South 16° 21' 28" East, 55.10 feet;

Thence, South 58° 07' 39" East, 26.64 feet;

Thence, South 18° 33' 27" East, 29.37 feet;

Thence, South 31° 39' 06" West, 16.55 feet;

Thence, South 47° 54' 37" West, 24.07 feet;

Thence, South 19° 50' 28" West, 21.11 feet;

Thence, South 33° 21' 20" East, 23.04 feet;

Thence, South 56° 37' 47" East, 32.40 feet;

Thence, South 31° 21' 38" East, 23.87 feet;

Thence, South 15° 44' 15" East, 47.56 feet;

Thence, South 16° 00' 09" East, 63.85 feet;

Thence, South 18° 35' 14" East, 77.60 feet to the littoral rights partition line between Erie County Parcel No. 55-00065.000 conveyed to Magnum Management Corporation as recorded in RN200608764 of the Erie County Records and Erie County Parcel No. 55-00064.000 conveyed to Cedar Point Park LLC as recorded in RN 201410099 of the Erie County Records and being the **True Point of Beginning** for the parcel herein described;

Thence, continuing along the natural shoreline of Lake Erie, the following seven courses;

## Exhibit C

KS ASSOCIATES

**Sandusky Bay Initiative  
Submerged Land Lease Parcel 2  
22.4308 Acres (977,086 Square Feet)  
Page 2 of 3**

South 19° 10' 00" East, 159.47 feet;

Thence, South 19° 09' 42" East, 207.03 feet;

Thence, South 27° 11' 37" East, 118.17 feet;

Thence, South 13° 21' 31" East, 44.06 feet;

Thence, South 17° 46' 16" East, 269.73 feet;

Thence, South 29° 08' 18" East, 45.23 feet;

Thence, South 18° 03' 25" East, 132.84 feet;

Thence, leaving said natural shoreline, along the arc of a curve which deflects to the right, 283.68 feet, said curve having a radius of 490.68 feet, a central angle of 33° 07' 30", and a chord of 279.75 feet which bears South 71° 01' 23" West;

Thence, South 19° 42' 17" West, 180.54 feet;

Thence, along the arc of a curve which deflects to the right, 691.64 feet, said curve having a radius of 272.11 feet, a central angle of 145° 37' 44", and a chord of 519.93 feet which bears North 89° 55' 04" West;

Thence, North 15° 48' 57" West, 409.24 feet;

Thence, North 20° 47' 03" West, 168.87 feet;

Thence, North 33° 23' 32" West, 142.78 feet;

Thence, North 41° 43' 20" West, 60.75 feet;

Thence, North 33° 04' 00" West, 92.13 feet;

Thence, North 24° 55' 57" West, 95.54 feet to said littoral rights partition line between Erie County Parcel No. 55-00065.000 and Erie County Parcel No. 55-00064.000;

Thence, along said littoral rights partition line, North 71° 40' 07" East, 944.27 feet to the point of beginning.

Containing within said bounds 22.4308 acres (977,086 square feet) of land as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor, No. 7730 in September 2017 and October 2018.

Bearings are based on the Ohio State Plane, North Zone, NAD83(2011) Grid North.

Exhibit C

KS ASSOCIATES

Sandusky Bay Initiative  
Submerged Land Lease Parcel 2  
22.4308 Acres (977,086 Square Feet)  
Page 3 of 3

*T. A. Bixler 8-13-20*

Trevor A. Bixler, P.S.  
Professional Surveyor, Ohio No. 7730

**KS ASSOCIATES**  
Civil Engineers + Surveyors  
260 Burns Road, Suite 100  
Elyria, OH 44035  
440 365 4730

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Exhibit D

**Transferred**  
 in Compliance with sections  
 319-202 and 322-02 of the  
 Ohio Revised Code

FEE \$ \_\_\_\_\_

Exempt

R.E. TRANSFER

\$ \_\_\_\_\_

Richard H. Jeffrey  
 Erie County Auditor

Trans. Fees: \$ \_\_\_\_\_

Date: 1/11/2021

Per O.R.C. 319.203  
 Erie County Auditor / Engineer  
 Date: 1/11/2021

Barbara A. Sessler  
 County Recorder, Erie County OH  
 202100266 Total Pages: 7  
 01/11/2021 12:01:16 PM Fees: \$74.00

OFFICIAL DEED OF EASEMENT  
 FOR SHORELINE DEVELOPMENT AT  
 PERMANENT PARCEL NUMBER  
 55-00065-000

WHEREAS, on this 22nd day of June, 2020 ("Effective Date") this OFFICIAL DEED OF EASEMENT is granted by Magnum Management Corporation (Grantor), to the City of Sandusky, a municipal corporation of the State of Ohio (Grantee), for the purpose of allowing ingress and egress and to establish an upland ownership interest; and

WHEREAS, Grantee plans to construct public improvements to support aquatic habitat restoration in Sandusky Bay through the beneficial use of dredged material ("the Sandusky Bay Initiative Project"); and

WHEREAS, Grantor owns littoral parcels, Permanent Parcel Number 55-00065.000, which is private property along the Lake Erie shore landward of the Sandusky Bay Initiative Project, and spanning the distance of the proposed improvements as well as property leading from the shoreline to the street level (the "Property"); and

WHEREAS, Grantee requires a submerged lands lease with the State of Ohio to implement public improvements on the State-owned lakebed and an Easement Agreement to develop the facilities and to allow limited public access on privately owned property; and

WHEREAS, Grantor intends to grant an easement and confirming the prior yield of Grantor's littoral rights to Grantee necessary for the public improvements and to satisfy requirements within Ohio Revised Code 1506.11 and the rules adopted thereunder for the installation of the public improvements; and

WHEREAS, Grantor acknowledges that the standard requirement for the duration of a submerged lands lease per the Ohio Department of Natural Resources (ODNR) is 50 years, and that Grantee's Easement for the Property will be an appurtenant easement, not a permanent easement, with a term of years consistent with the submerged lands lease.

NOW, THEREFORE, pursuant to these premises Magnum Management Corporation (Grantor), for good and valuable consideration, receipt of which is hereby acknowledged, does hereby give, grant and convey to the City of Sandusky, Ohio (Grantee), the non-exclusive easement as specifically described in Exhibit "A" attached hereto and incorporated herein, for the sole

## Exhibit D

purpose of ingress and egress and to establish an upland interest for the purpose of entering into a submerged land lease with the Ohio Department of Natural Resources.

The duration of this easement shall not be less than the term of Grantee's Submerged Land Lease with ODNR for the Property.

The grant is made on the express condition that Grantee shall be solely responsible for maintaining any and all of its improvements located within the easement, in compliance with all local, state and federal laws.

Grantee shall timely pay all taxes and assessments (if any) imposed on the easement premises by reasons of Grantee's activities thereon and any other charges or expenses attributable to Grantee's activities on the premises. Nothing herein shall prohibit Grantee from contesting the taxability of the premises or the taxable value of the premises; provided, however, that Grantee posts adequate security, to cover any taxes that may become due and owing after final determination of taxability or value.

TO HAVE AND TO HOLD the above granted easement to the above described premises, for the purpose above mentioned to said Grantee.


And the Grantor, for itself, its successors and assigns, does covenant that at and until the sealing of these presents, it is well seized of the above described premises as a good and indefeasible estate in fee simple and has good right to bargain, and grant the same in manner and forms as above written, and that it will warrant and defend said premises with the appurtenances thereunto belonging to the Grantee, its successors and assigns, against all lawful claims and demands whatsoever for the purpose herein described.

SIGNATURES TO FOLLOW

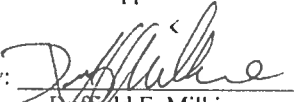
Exhibit D

IN WITNESS WHEREOF, Magnum Management Corporation by Brian C. Witherow, Executive Vice President & Chief Financial Officer, has caused their name to be affixed hereto this Easement this 23rd day of June, 2020.

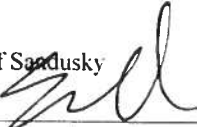
Magnum Management Corporation

By:   
Brian C. Witherow  
Date: 6-23-20

The legal form of this instrument is approved.

By:   
Duffield E. Milkie  
Executive Vice President & General Counsel  
Date: 6-23-20

The undersigned hereby agrees and consents to the terms and conditions of this Official Deed of Easement.

City of Sandusky  
By:   
Eric Wobser  
City Manager  
Date: 6/29/20

The legal form of this instrument is approved.

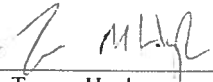
By:   
Trevor Hayberger  
Law Director  
Date: 6-30-2020

Exhibit D

STATE OF OHIO )  
 ) SS:  
COUNTY OF ERIE )

On this 22<sup>nd</sup> day of June, 2020 before me a Notary Public in and for said County and State, came Brian C. Witherow, Executive Vice President & Chief Financial Officer, who acknowledged the execution of the foregoing deed to be his/her voluntary act on behalf of Magnum Management Corporation, and the free act and deed of Magnum Management Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at Sandusky, Ohio, the day and year last aforesaid.



MELISSA L. JOHNSON  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Expires  
January 21, 2023

Melissa L. Johnson  
Notary Public  
My Commission Expires  
1.21.2023

STATE OF OHIO )  
 ) SS:  
COUNTY OF ERIE )

On this 29 day of June, 2020 before me a Notary Public in and for said County and State, came Eric Wobser (City Manager), who acknowledged the execution of the foregoing deed to be his/her voluntary act on behalf of City of Sandusky, and the free act and deed of City of Sandusky.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal at Sandusky, Ohio, the day and year last aforesaid.



MEGAN E. STOOKEY  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
10-13-2021

Megan E. Stookey  
Notary Public  
My Commission Expires  
10/13/2021

## Exhibit D

### EXHIBIT A

(Additional Easement Description information to be inserted)



Exhibit D

CITY OF SANDUSKY  
ERIE COUNTY, OHIO

IN THE MATTER OF:

City of Sandusky – Sandusky Bay Initiative shoreline improvements.

STATE OF OHIO            )  
COUNTY OF ERIE        )  
CITY OF SANDUSKY        )

AFFIDAVIT OF  
MAGNUM MANAGEMENT CORPORATION

Now comes Magnum Management Corporation, the property owner of record lands known as permanent parcel; number 55-00065-000 situated on the Sandusky Bay shoreline in Lake Erie, Sandusky, Erie County, Ohio, and hereby states:

1. I am the duly authorized representative of the property including permanent parcel number 55-00065.000.
2. That the lands described above are situated on the Sandusky Bay shoreline in Lake Erie west of the Cedar Point Causeway road and south of permanent parcel number 55-00065.000.
3. That I am in full support of the Sandusky Bay Initiative improvements project proposed for this portion of the Sandusky Bay shoreline in Lake Erie.
4. That I am aware that the City of Sandusky will obtain and hold a Submerged Lands Lease or leases from the State of Ohio for the Sandusky Bay Initiative project.
5. That I recognize as the identified adjacent upland property owner that the aforementioned Submerged Lands Lease impacts the littoral rights of my property, nevertheless I do not object to the Submerged Lands Lease between the State of Ohio, as Lessor, and the City of Sandusky and its successors or assigns, as Lessee.
6. I am aware that the City seeks to obtain an interest in the littoral parcel to satisfy requirements within RC 1506.11 and the rules adopted thereunder for the installation of the Sandusky Bay Initiative public improvements.
7. That the relationship of the lakeward area of the proposed Sandusky Bay Initiative public improvements and the littoral parcel and related Littoral apportionment boundary lines is depicted in Exhibit "A".
8. That the undersigned hereby recognizes that it yields its littoral rights to the City of Sandusky to that area of the Lake Erie Territory necessary for the Sandusky Bay Initiative public improvements as more particularly described and provided in Exhibit "A".
9. That upon the execution of the Submerged Lands Lease for the Sandusky Bay Initiative public improvements between the City of Sandusky and the State of Ohio, the fee upland owner signing the affidavit is committing to convey an easement interest to the City that will run with the land and be binding on successors in title, heirs and assigns for a period of time that is coterminous with the City's Submerged Lands Lease.

Exhibit D

- 10. That should the property transfer after the signing of this affidavit and prior to the conveyance of an easement interest to the City for the Sandusky Bay Initiative project, the undersigned agrees to provide a copy of this affidavit to any subsequent owner to inform them of the continuing obligations under this affidavit of any subsequent owners to yield the littoral rights to the City and to convey an easement interest to the City for such improvements.
- 11. That thus affidavit, the yielded littoral rights and other obligations hereunder shall automatically become null and void upon the earlier to occur of: (i) if for any reason, the Submerged Lands Lease for the Sandusky Bay Initiative project is not executed between the City and the State of Ohio or (ii) the termination of the Lessee's rights to the possession of the Lease Property or (iii) the expiration of the Lease.

Further Affiant sayeth naught.

Magnum Management Corporation

Brian C. Witherow  
 Brian C. Witherow  
 Executive Vice President &  
 Chief Financial Officer

Sworn to and subscribed in my presence by Brian C. Witherow, this 23<sup>rd</sup> day of June, 2020.



MELISSA L. JOHNSON  
 NOTARY PUBLIC  
 STATE OF OHIO  
 My Commission Expires  
 January 21, 2023

Melissa L. Johnson  
 Notary Public  
 My Commission Expires  
121.2023

Witnesses

Karla B. Sutter

Date: 6-23-20

Deff Kuttner

Date: 6-23-20