ORDINANCE NO. 21-100

AUTHORIZING A DEVELOPMENT AGREEMENT IN CONNECTION WITH THE DEVELOPMENT AND REDEVELOPMENT OF CERTAIN REAL PROPERTY IN THE CITY OF SANDUSKY, OHIO AS PART OF A TAX INCREMENT FINANCING (TIF) PROGRAM UNDER OHIO REVISED CODE SECTION 5709.41; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, Cooke Building LLC, an Ohio limited liability company (the "Developer"), or its affiliates, is actively pursuing the development and redevelopment of certain real property located at 154-162 Columbus Avenue in the City of Sandusky, Ohio (the "City"), which real property is more particularly described on Exhibit "A" attached to the Development Agreement hereto (the "Property"); and

WHEREAS, the Developer desires to develop and redevelop the Property for a mixed-use commercial and residential development (the "Project"), in accordance with the terms, conditions, covenants and warranties in the Development Agreement that has been negotiated by the Developer and City attached hereto as Exhibit "1"; and

WHEREAS, the Project will be in furtherance of the City's urban redevelopment activities, and accordingly the City anticipates providing project-based tax increment financing for the Project, to be authorized by a separate ordinance pursuant to Ohio Revised Code ("R.C.") Section 5709.41; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that it is in the public interest and proper public purpose for the City to support economic development and improve the economic and general well-being of the people of the City to create or preserve jobs and employment opportunities; and

WHEREAS, approval to transfer land relating to the Development Agreement and the property located at 154-162 Columbus Avenue is being requested in companion legislation; 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 maintain the current development schedule and ensure the project is completed in a timely manner; 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 the 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 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. That the Development Agreement, substantially in the form attached hereto as Exhibit "1", which Development Agreement specifies, among other things, that (A) the plans for the Project be prepared and submitted to the City for approval in accordance with all customary City requirements, and (B) the Developer obtain all building permits, zoning approvals, and other governmental approvals required for the Project, is hereby authorized and approved, together with such revisions or additions thereto as approved by the City Manager and Law Director as are consistent with the objectives and requirements of this Ordinance and not otherwise materially adverse to the City. The City Manager, for and in the name of the City, with the approval of the Law Director, is hereby authorized to execute the Development Agreement and any amendments thereto deemed by the City Manager to be necessary. The approval of changes or amendments by the City Manager and the character of the changes or amendments as not being inconsistent with this Ordinance and not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof by the City Manager, with the approval of the Law Director.

Section 2. The City Manager, Finance Director, Law Director, or any other officials of the City, as appropriate, are authorized and directed to sign any other documents, instruments or certificates and take such actions as are necessary or appropriate to consummate or implement the actions described in or contemplated by this Ordinance.

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's Commission and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

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.

RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION

ATTEST:

MCKENZIE E. SPRIGGS
CLERK OF THE CITY COMMISSION

Passed: June 28, 2021

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "*Agreement*") is entered into as of April __, 2021, by and between the CITY OF SANDUSKY (the "*City*"), a municipal corporation duly organized and validly existing under the laws of the State of Ohio and its Charter, having an address 240 Columbus Avenue, Sandusky, OH 44870 and COOKE BUILDING LLC, an Ohio limited liability company (the "*Developer*"), with its principal offices at [___]. (The City and Developer are collectively referenced as "*Parties*.")

WHEREAS, the Developer is pursuing the redevelopment of an approximately .0219-acre site currently identified as 154 – 162 Columbus Ave and as Parcel IDs 56-00527.000, 56-00528.000 and 56-00528.001, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "*Development Site*").

WHEREAS, the Developer has demolished certain existing structures on the Development Site and intends to develop it for commercial purposes, including office, retail, and multi-family residential housing (the "*Development*"); and

WHEREAS, certain private improvements and infrastructure improvements are necessary in order to ensure the success of the Development, including, without limitation, the construction of certain infrastructure improvements described in Exhibit B attached hereto and made a part hereof (the "*Project*"); and

WHEREAS, the City has determined that the construction of the Project, the creation of jobs at the Development Site in connection with the Development, and the mutual fulfillment of this Agreement are all in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and regulation; and

WHEREAS, the City plans to establish a tax increment financing program pursuant to Ohio Revised Code Section 5709.41 with respect to the Development Site (the "*TIF*"). The TIF shall run for 30 years and provide a 100% exemption on the increase in assessed value of the Development Site, subject to certain conditions and limitations set forth herein As described herein, the allocation of TIF revenue will be dependent on the continued compliance by the Developer and the Development with this Agreement; and

WHEREAS, in order to create a TIF for the Project under R.C. 5709.41, the City must have held fee title to the Property prior to the enactment of the TIF Ordinance. Accordingly, Cooke Building LLC will convey fee title to the Property to the City for $1.00 within thirty (30) days following the date this Agreement is executed, and the City will re-convey the Property to Cooke Building LLC thereafter for the same amount, in each case on, and subject to, the terms of this Agreement; and

WHEREAS, the Developer has represented and agreed, and the City's support for the Project is predicated on the understanding that, the Project will comply with the terms and provisions of this Agreement; and

WHEREAS, the City, by adoption of Ordinance No. 2021-[___], duly adopted by the City Commission on April 12, 2021 (the "*Implementing Ordinance*"), has authorized the City Manager to enter into this Agreement for the development of the Development Site; and

WHEREAS, the Parties desire to place of record against the Development Site this Agreement and the agreed upon plan and schedule of development, including restrictions on use of the Development Site, with the intent that same shall be construed as covenants binding on the Parties and their successors in interest, and benefitting and running with the land, enforceable by the Parties hereto in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the Parties hereto, the City and the Developer hereby agree as follows:

I. INCORPORATION OF RECITALS; INTERPRETATION

A. The recitals and "Whereas" clauses set forth above are fully incorporated in this Agreement and specifically made a part hereof, as if fully restated here.

B. Any reference herein to the City or the City Commission, or to any officer thereof, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

C. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the City, the Developer, or any other party under this Agreement or any other instrument or document entered into in connection with any of the foregoing.

D. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

II. DEVELOPER COVENANTS AND REPRESENTATIONS

A. The Developer shall develop the Project in accordance with the plan and schedule of development submitted to the City and currently on file ("*Development Plan*"), the modification of which may be approved by the City consistent with and in compliance with the current rules and regulations of the City. Buildings constructed on the Property shall be of the general design as shown in the Development Plan.

B. The Developer agrees that the Project will be constructed in a manner which is consistent with generally accepted construction industry standards and guidelines applicable to similar projects and in conformity with installation guidelines as may be recommended by various manufacturers of the building materials. If any portion of the Project does not meet the requirements of the City's zoning regulations, then the Developer must obtain the applicable City approvals for the portion(s) of the Project through the appropriate reviewing body or reconstruct the noncomplying portion of the Project.

C. The Developer, and any successors and assigns who subsequently become subject to this Agreement in accordance with Section XX(D) hereof (an "*Assignee*"), shall comply with all regulations and provisions set forth in the City's zoning code, subject to any now existing or hereafter applicable variances. The Developer, and any Assignee, shall also comply with any applicable Federal, State and local regulations in addition to any of the requirements set forth in the zoning code.

D. The Developer further covenants and agrees that:

(1) It is authorized to do business under the laws of the State of Ohio and is fully qualified to transact its business in the State of Ohio;

(2) It is not in violation of or in conflict with any provisions of the laws of the United States of America or the State applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement;

(3) This Agreement has, by proper action, been duly authorized, executed and delivered by the Developer, and all steps necessary to be taken by the Developer, have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein and therein, are valid and binding obligations of the Developer, enforceable in accordance with their terms;

(4) It has full power and authority to execute, deliver and perform this Agreement,

(5) The execution, delivery and performance of this Agreement do not, and will not, violate any provision of law applicable to the Developer or the Developer's organizational or operating agreements, and neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the Developer of any contract, agreement, understanding or instrument to which the Developer is a party or by which the Developer is subject or bound, or of any judgment, order, writ, injunction or decree issued against or imposed upon them as of the time of execution hereof, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

(6) There is no pending litigation, investigation or claim which materially and adversely affects or which might materially and adversely affect the Developer's performance of this Agreement and to the best of the

Developer's knowledge, there is no threatened litigation, investigation or claim that materially and adversely affects or that might materially and adversely affect the Developer's performance of this Agreement; and

(7) The representations and agreements of the Developer made in this Agreement are as of the date of the execution of this Agreement and such representations made by the Developer are made with the knowledge and expectation that such representations are to be treated as material to the City entering into this Agreement, and the Developer further represents that to its knowledge, as of the date of this Agreement, no representation set forth in this Agreement contains any untrue statement of material fact.

E. The Developer warrants, except as disclosed in writing to the City, that it has not employed or retained any company or person other than a bona fide employee working solely for the Developer to solicit or secure this Agreement, and that the Developer has not paid or has not agreed to pay any fee, commission, percentage, brokerage fee, or other consideration contingent upon or resulting from the award or making of this Agreement. The Developer warrants that it is not prohibited from contracting with the City by any provision of the Ohio Revised Code relating to conflicts of interest, illegal interest in government contracts, or any other ethical prohibition, and for breach or violation of this warranty, the City shall have the right to annul this Agreement with no further obligation or penalty.

III. CITY COVENANTS AND REPRESENTATIONS

The City covenants and represents to the Developer as follows:

A. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party, or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority.

B. To the best of the City's knowledge, there is no pending or, threatened litigation, investigation or claim which affects or which might affect the anticipated TIF Ordinance or the City's performance of this Agreement.

C. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit or impede the Developer's undertaking of the Development or the City's performance under, or the applicability and enforceability of, the anticipated TIF Ordinance.

D. .

IV. COVENANTS RUNNING WITH THE LAND

Upon execution of this Agreement, an original counterpart of this Agreement shall be recorded and shall be a covenant running with the land and shall be binding upon and inure to the benefit of the Parties and any successors and assigns of the Parties, including any future owners of the Development Site, who shall be subject to the provisions of this Agreement applicable to the Developer, to the fullest extent permitted by law and equity for the benefit of the City, whether or not such provision is included in any succeeding deed to the Developer's successors and assigns.

V. DESCRIPTION OF THE PROJECT

Developer shall construct, or cause to be constructed, a new multi-story mixed use commercial and residential development to be known as the Hogrefe-Cooke Building on the Development Site. The Project shall be generally consistent with the site plan attached hereto as Exhibit C (the "*Site Plan*") and include the following components:

- ~30,000 square foot mixed-use building including retail, office and residential uses
- ~10,000 square feet of retail located on the first floor
- ~10,000 square feet of commercial office space located on the second floor
- ~10,000 square feet of residential located on the third floor

The City must approve any revisions or changes to the aforementioned components.

VI. CONVEYANCE OF THE DEVELOPMENT SITE

Transfer by Cooke Building LLC of the title to the Parcels to the City (the "*Initial Conveyance*") shall take place within thirty days of execution of this Agreement, or such other date as the parties may agree upon (the "*Initial Conveyance Date*"); provided, however that the initial Conveyance shall occur prior to the passage of the TIF Ordinance. On the Initial Conveyance Date, Cooke Building LLC shall convey the Property to the City for $1.00, by Limited Warranty Deed. Developer shall pay all customary closing costs relating to the Initial Conveyance. The City agrees to neither make, nor permit to be made, any material changes to the condition of the Property during the period in which it owns the Property. During the period in which City owns the Property, Developer, its employees, and its agents are permitted to enter upon the Property for the purpose of conducting activities associated with the Project at no cost to the City, provided that such entry shall be at the sole risk of developer, its employees, and its agents, and provided, further that the activities described in this Section VI are subject to the indemnification provision of Section XVIII of this Agreement.

On the Initial Conveyance Date, or as early as is practicable following the Initial Conveyance Date, but in any event no later than two business days following the Initial Conveyance Date, the City shall re-convey the Property to Cooke Building LLC (the "*Re-conveyance*"), for $1.00, by Quitclaim Deed.

Developer shall pay all fees and costs related to the Initial Conveyance and Re-conveyance.

VII. CONTINGENCIES

The obligation of the City to provide the Project TIF Revenue, as defined in Section X (collectively, the "*Incentives*") for the Project in accordance with the Service Agreement is contingent upon the satisfaction of all of the following contingencies with respect to the Project (collectively, the "*Incentive Contingencies*"). The Developer agrees to submit to the City for a review all plans, documents, requested modifications, zoning, or any other item which concerns the Project in accordance with the City's current and generally applicable regulations. Each of the items required to be submitted to the City to satisfy the City shall be in form and substance acceptable to the City.

A. Plans. The Developer shall have caused the plans for the Project (the "*Project Plans*") to be prepared and submitted to the City, and the Developer shall have addressed all open questions/concerns of the City regarding the Project, and the City shall have approved such plans. It is further agreed that prior to receiving all permits required to commence construction of the Project, the Developer shall deposit a non-refundable amount estimated to be necessary to pay the City's cost of plan review. The Developer shall also pay for all inspection fees, and the Developer shall engage an engineering firm licensed in the State of Ohio to perform Construction Administration and Inspection and Testing Services. Independent of the City approvals for the Project Plans, the City is still requiring the Developer to apply for any conditional use permits per the City code, including but not limited to those related to outdoor dining.

B. Historic Building Requirements. The Developer shall consult and follow the City's Landmark Preservation Ordinance, the Secretary of the Interior's Standards for Rehabilitation, and the Sandusky Preservation Design Guidelines regarding the rehabilitation of historic structures that are part of the Project.

C. Project Budget. The Developer shall have prepared and submitted to the City, and the City shall have approved, the Project budget based on the approved Project Plans and other information then most currently available, itemizing and detailing the Project costs, including commercially reasonable contingency amounts, and with documentation satisfactory to the City (the "*Project Budget*"). Developer shall also have provided to the City evidence that Developer's lenders for the Project have approved the Project Budget.

D. Environmental. Developer shall have submitted such environmental reports for the Development Site to City as have been as of the date thereof requested by City and evidencing that there are no hazardous materials located on the Development Site or violation of environmental laws that would prevent development of the Development Site in accordance with the Project Plans. Developer shall have delivered a reliance letter from the preparer of the environmental reports authorizing reliance on those reports by the City.

E. Utilities. To the extent that utility improvements are necessary to service the Project, the Developer at its cost, shall be responsible for the construction, reconstruction or installation of utility improvements (including any underground utilities), including, but not limited to, storm and sanitary sewers (including necessary site grading therefore) and

water lines, unless otherwise stated in any Easement or License Agreement between the parties.

F. Service Agreement. The Service Agreement shall be effective and shall also have been recorded against the Project Site.

The Parties will proceed diligently and in good faith to pursue the satisfaction of these items in a timely and coordinated manner intended to result in the timely development of the Project in accordance with the Development Plan.

VIII. CONSTRUCTION OF PROJECT

At such time as Developer has obtained all building permits, zoning approvals, historic conservation approvals to the extent applicable, and other governmental approvals required for the Project, Developer shall promptly commence and thereafter complete the construction of the Project as reflected in the Project Plans, in compliance with all applicable laws, and in accordance with the terms set forth in the applicable construction agreement(s). Developer shall be responsible for acquiring and paying for all State, local, or Federal permits required for the Project.

The intent and understanding of the Parties is for the Developer to have items of the Project constructed and completed within two years following passage of Project permits. The Completion deadline shall occur for the purposes of this Agreement when the Project obtains the necessary City certificate of occupancy. The time for performance indicated immediately above is subject to any approved extensions by the City for delays beyond the reasonable control of the Developer that prevent the Developer from timely performing its obligations under this Agreement. A request for extension must be in writing and may be granted at the discretion and approval of the City. With respect to the Developer, delays or failures to perform due to lack of funds or the inability to procure labor or materials shall not be deemed unforeseeable delays beyond the reasonable control of the Developer. In the event that construction does not occur, or construction of the Project ceases to progress within 120 days of receiving the requisite permits, in addition to and not in limitation of any other remedies available to the City, the Developer shall comply with all City requirements relating to restoration of the Project Site until such time as construction shall begin or resume, as the case may be.

At all times during construction of the Project, the Developer shall have on-site a competent representative who is knowledgeable and familiar with the Project. The representative shall be capable of reading plans and specifications and shall have the authority to execute the plans and specifications and any alterations required by the City. The representative shall be replaced by the Developer when, in the opinion of the City, reasonably determined, his/her performance is deemed inadequate.

IX. USE AND DESIGN RESTRICTIONS

Developer, for itself and its successors and assigns, and every successor in interest to any portion of the Development Site, agrees and covenants that Developer and its successors and assigns shall not permit the use of any portion of the Development Site for any of the uses set forth on Exhibit D attached hereto and incorporated herein (the "*Prohibited Uses*").

Without intending to restrict the provisions of this Section, it is intended and agreed that the City and its successors, shall be deemed beneficiaries of the agreements, covenants, and restrictions provided in this Section both for and in their own right and also for the purposes of protecting the interests of the community. Such agreements, covenants, and restrictions shall run in favor of the City and its successors for the entire period during which same remain in effect, without regard to whether the City and its successors have at any time been, remain, or are an owner of any portion of the Development Site or interest therein to or in favor of which such agreements, covenants, and restrictions relate, the City and its successors shall have the right, in the event of any breach of any such agreement, covenant, or restriction, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce such agreements, covenants, and restrictions and to enforce the curing of any breach thereof.

X. TIF REIMBURSEMENT

The Developer will pay statutory service payments generated from the Project (the "*Project TIF Revenue*") to the Erie County Treasurer, pursuant to a service payment agreement entered into by and between the City and the Developer dated as of April __, 2021 (the "*Service Agreement*"), in the same manner as if the TIF with respect to the Property had not been established in accordance with the Service Agreement. The Project TIF Revenue will be distributed by the Erie County Treasurer to an urban redevelopment tax increment equivalent fund (the "*TIF Fund*"). The Service Agreement will provide, among other things,

- A minimum $200,000 payment in lieu of taxes by the Developer into the TIF Fund;
- 12.5% of the Project TIF Revenue to the Sandusky City School District pursuant to a school compensation agreement entered into between the City and the Sandusky City School District;
- The application of the Project TIF Revenue to the Developer in accordance with this Agreement and the Service Agreement in an amount not to exceed $140,000; and
- The costs for which reimbursement is available.

XI. CITY LEGAL FEES PAID BY DEVELOPER

The Developer shall pay the City's fees for outside legal counsel incurred in connection with this Agreement and the planning and documenting of the Project. Upon execution of this Agreement the City shall provide an invoice to the Developer. Such amounts shall be paid by Developer within thirty (30) days of execution of this Agreement.

XII. MAINTENANCE

Developer will maintain the Project in a first class manner, consistent with other high quality mixed-use developments in Northwest Ohio, including necessary building maintenance, mulching, grass cutting, pruning and watering.

XIII. DEFAULT; REMEDIES

A. Developer Defaults. Any one or more of the following shall constitute a "*Developer Default*":

a. Default by the Developer in the due and punctual payment, performance, or observance of any material obligation of the Developer under this Agreement or any other agreement by and between the City and the Developer with respect to the Project (each a "Project Agreement") as to which the City has given notice to the Developer, which default the Developer does not cure within the period of time specified in the notice;

b. Any representation or warranty made by Developer in this Agreement or in any other Project Agreement is false or misleading in any material respect as of the time made;

c. Any report, certificate, or other document furnished by the Developer to the City pursuant to this Agreement or any other Project Agreement is false or misleading in any material respect as of the time furnished and has been relied upon by the City to its material detriment prior to correction by the Developer;

d. The filing by the Developer of a petition for the appointment of a receiver or trustee;

e. The making by the Developer of a general assignment for the benefit of creditors;

f. The entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer as debtor;

g. The filing by the Developer of an insolvency proceeding with respect to the Developer or any proceeding with respect to the Developer for compromise, adjustment, or other relief under the laws of any country or state relating to the relief of debtors;

h. The occurrence of a default by the Developer under any of the loan documents or equity investment documents that is not either (i) cured within the applicable cure period, if any, provided therein or (ii) waived in writing by the Developer's lenders or investors, as applicable; or

B. Remedies for Developer Default. At any time as of which a Developer Default exists, the City at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

a. By written notice to the Developer, terminate this Agreement, provided that such termination shall not affect the obligations of the Developer that have then accrued, including the indemnification requirements of Developer hereunder

b. By written notice to the Developer and the trustee, cease disbursements of proceeds from the TIF Fund;

c. (i) recover from the Developer any sums of money that are due and payable by the Developer to or for the benefit of the City under this Agreement; (ii) commence an action for specific performance or other equitable relief against the Developer with respect to the defaulted obligations as provided in Section 8.6; and (iii) exercise the City's rights under Section 8.7 with respect to the Developer Default; and

d. Enforce, or avail themselves of, any other remedies available to them at law or in equity.

C. City Default. Any one or more of the following shall constitute a "*City Default*":

a. Default by City in the due and punctual payment, performance or observance of any obligation of City under this Agreement or any other Project Agreement, as to which the Developer has given a Default Notice, as defined herein, to the City, which default the City do not cure within the period of time specified for cure in the Default Notice;

b. Any representation or warranty made by City in this Agreement or any other Project Agreement is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City; or

c. Any report, certificate or other document furnished by City to the Developer pursuant to this Agreement or any other Project Agreement is false or misleading in any material respect as of the time made and has been relied upon by the recipient to its material detriment prior to correction by City.

D. Remedies for City Default. At any time as of which a City Default exists, the Developer, at its option, may, but shall not be obligated to, exercise any one of more of the following remedies;

a. By written notice to the City, terminate this Agreement, provided that such termination shall not affect the obligations of the City that have then accrued;

b. (i)) except for obligations requiring The City Commission approval, commence an action for specific performance or other equitable relief against City with respect to the defaulted obligations; and (ii) exercise the Developer's rights under Section 8.7 with respect to the City Default; and

c. Enforce, or avail itself of, any other remedies available to it at law or in equity.

E. Default Notices. At any time when there exists a default by the Developer in the due and punctual payment, performance or observance of any obligation of the Developer under this Agreement or any other Project Agreement, City may give the Developer a written notice, indicated as being a "Default Notice" under this Section, identifying the default and specifying a period of time for the cure of the default. At any time when there exists a default by City in the due and punctual payment, performance or observance of

any obligation of City under this Agreement or any other Project Agreement, the Developer may give the City a written notice, indicated as being a "Default Notice" under this Section, identifying such default and specifying a period of time for the cure of the default. Any notice given in accordance with this Section is called a "*Default Notice*." The period of time for cure to be set forth in any Default Notice may be not shorter than such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default.

F. Enforcement. As the remedy at law for the breach of any of the terms of this Agreement may be inadequate, each enforcing Party has a right of temporary and permanent injunction, specific performance, and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy.

G. Self-Help. Without limiting the provisions of this Section XIII, (i) should any defaulting Party fail to remedy any default identified in a Default Notice within the reasonable cure period specified in the Default Notice, or (ii) should any default under this Agreement exist which (A) constitutes or creates an immediate threat to health or safety or (B) constitutes or creates an immediate threat of damage to or destruction of property, then, in any such event, the non-defaulting Party has the right, but not the obligation, to enter upon the property of the defaulting Party to take such steps as the non-defaulting Party may elect to cure, or cause to be cured, the default or violation. If a non-defaulting Party cures, or causes to be cured, a default as provided above in this Section, then there will be due and payable by the defaulting Party to the non-defaulting Party upon demand the amount of the reasonable costs and expenses incurred by the non-defaulting Party in pursuing the cure, plus interest thereon from the date of demand at the rate set forth in (H) below.

H. Interest. Except as otherwise expressly provided herein, amounts that are due and payable by the Developer to City under this Agreement will bear interest if not paid when due, until paid, (a) at the prime rate published in the "Money Rates" section of the Wall Street Journal from time to time for the first 30 days after due and (b) at the higher of the rate provided for in clause (a) or 8% per annum beyond the first 30 days after due.

I. Costs of Enforcement. If an action is brought by the City for the enforcement of any provision of this Agreement, the Developer, and only to the extent that the Developer is found to be in default or breach of this Agreement or another Project Agreement, will pay to the City all costs and other expenses that become payable as a result thereof, including without limitation, reasonable attorneys' fees and expenses.

Notwithstanding any other provision of this Agreement, the above-described notification and cure provisions shall not apply when (i) the City's Building Official issues a stop work order for local, county or state code violations related to construction defects, or (ii) the City Engineer issues a stop work order for local, county or state construction code violations.

XIV. COMMUNITY ENGAGEMENT

Developer acknowledges that community engagement is a critical component of the Project and will cooperate with the City as part of the community outreach process and will specifically engage with property and business owners and organizations in the Downtown district, as well as residents on residential streets surrounding the Development Site throughout the Project. Developer shall maintain a social media presence for the Project throughout construction and utilize social media as one of many vehicles to provide communications to the community about the Project.

Developer and the City will agree to a mutually acceptable schedule of status updates and community meetings throughout the construction of the Project.

XV. WAGE REQUIREMENT

The Developer and the City acknowledge and agree that portions of the construction of the Project may be subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed in constructing those portions of the Project shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Project, which wages shall be determined in accordance with the requirements of that Chapter 4115.

XVI. INSURANCE

During construction and until completion of the improvements on that portion of the Property being developed by it, Developer shall maintain insurance in such amounts and for such events as may be required by its lender or required by the City's existing rules and regulations applicable to all development and construction in the City, and as may be commonly maintained in connection with a development of the size and nature of the Project. In addition, the Developer shall maintain vibration damage insurance coverage in a policy reasonably satisfactory to the City. The Developer agrees, on behalf of itself and its agents, subcontractors, and subconsultants that the insurance policies required herein (excluding the professional liability insurance) shall require the insurer to name the City as an additional insured, and to provide the City with 30 days' prior written notice before the cancellation of a policy. All insurance shall be effected by valid enforceable policies issued by insurers authorized to do business in the State of Ohio.

Upon request, the Developer shall provide all insurance certificates to the City.

XVII. WARRANTY

The Developer warrants that all Infrastructure Improvements constructed by Developer will be in conformity with the Development Plans and free from defects in workmanship, materials and equipment, commencing on the date of the City Commission's formal acceptance of the dedication of the Infrastructure Improvements for a period of ten years. The guarantee provided in this Section shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law.

Should defects in the Infrastructure Improvements become apparent, the City Engineer shall promptly notify the Developer and provide a copy of said notice to the Finance Director. Within ten (10) days of receipt of said notice, the Developer shall visit the Development in the company of the City Engineer to determine the extent of all defects and shall promptly repair or replace the defective work, including all adjacent work damaged as a result of such defects or as a result of remedying the defects, whether or not such adjacent work was originally provided by the Developer.

If the defective work is considered by the City Engineer to be an emergency, the City Engineer may require the Developer to visit the Development within one (1) day of receipt of said notice. The Developer shall be fully responsible for the cost of temporary materials or equipment required during the repair or replacement of the defective work.

If the Developer do not promptly repair or replace defective work, the City may repair or replace such defective work and charge the cost thereof to the Developer or the Developer' surety. Defective work that is repaired or replaced by the Developer shall be inspected by the City Engineer. The repaired or replaced work and shall be guaranteed by the Developer pursuant to the terms of this Section XVII.

XVIII. INDEMNIFICATION

Developer shall, at its cost and expense, defend, indemnify and hold the City and any officials, employees, agents and representatives of the City, its successors and assigns (collectively the "*Indemnified Parties*" and each an "*Indemnified Party*"), harmless from and against, and shall reimburse the Indemnified Party for, any and all loss, cost, claim, liability, damage, judgment, penalty, injunctive relief, expense or action (collectively the "*Liabilities*" and each a "*Liability*"), other than Excluded Liabilities, as defined below, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other person, the basis of which claim (a) was caused by or results from the actions or failures to act of Developer or its affiliates, agents, employees, contractors, subcontractors and material suppliers while in possession or control of the Project, whether or not such action or inaction was negligent or reckless, or is in any way related to the construction of the Project or the selection of contractors, subcontractors or material suppliers relating thereto; (b) is based, in whole or in part upon failure or alleged failure of Developer or its affiliates to satisfy their obligations under this Agreement or another Project Agreement; (c) relates to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of Developer or its affiliates; or (d) relates to the bankruptcy or insolvency of Developer or its affiliates. The indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under any Project Agreement.

"*Excluded Liability*" means each Liability to the extent it is attributable to (i) the willful misconduct of any Indemnified Party or the failure of any Indemnified Party that is a third party beneficiary of this Agreement to perform any obligation required to be performed by the Indemnified Party as a condition to being indemnified hereunder, including without limitation, the settlement of any Liability without the consent of the Developer, or, to the extent the Developer's ability to defend a Liability is prejudiced materially, the failure of an Indemnified Party to give timely written notice to the Developer of the assertion of a Liability.

Upon notice of the assertion of any Liability, the Indemnified Party shall give prompt written notice of the same to the Developer. Upon receipt of written notice of the assertion of a Liability, the Developer shall have the duty to assume, and shall assume, the defense thereof, with power and authority to litigate, compromise or settle the same; provided that, the Indemnified Party shall have the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval may be withheld in its sole discretion.

At Developer's expense, an Indemnified Party may employ separate counsel and participate in the defense of any Liability; provided, however, that any such fees and expenses must be reasonable and necessary to protect the interests of the Indemnified Party. The Developer shall not be liable for any settlement of any Liability made without its written consent, but if settled with the written consent of the Developer, or if there is a final judgment for the plaintiff in an action, the Developer agrees to indemnify and hold harmless the Indemnified Party, except only to the extent of any Excluded Liability.

XIX. PROPERTY VALUE CONTESTS

As a condition to the City's establishment of the TIF, the Developer agrees that the Developer and affiliate thereof, including any subsequent purchaser or lessee of all or a portion of the Project Site, shall not file a complaint (including, without limitation, a complaint filed in accordance with Ohio Revised Code Sections 5715.13 or 5717.19), unless the City gives written permission, that seeks to reduce the real property tax valuation of the Project Site or any portion thereof as such valuation is established by the Erie County Auditor (the "*Minimum Value*") until the date on which the TIF is no longer effective. The Developer shall enforce such obligations by including such obligations in any leases or any transfer instruments affecting the Project Site or any portion thereof.

XX. CONFIDENTIALITY

Unless otherwise directed by court order, City will treat the loan documents, the equity investment documents, the commitments of any tenants or purchasers to the Project, the expected or actual tenant and ownership mix of the Project, any proformas, and any other information provided to the City and clearly marked "trade secret" as trade secrets and not as public records or information, and will not disclose such documents or information to any third party without the written consent of the Developer. The City will promptly notify the Developer of (a) any public records request made to it that seeks disclosure of such documents or information and (b) any court action filed against it to compel the disclosure of such documents or information. The City will reasonably cooperate with the Developer in defending any such court action. The Developer will defend City against any third party claim related to the Developer's designation of certain records as exempt from public disclosure, and will hold harmless the City for any liability or award to a plaintiff for damages, costs and reasonable attorney's fees, incurred by the City by reason of such claim.

XXI. MISCELLANEOUS

A. Any notice of communication required or permitted to be given under this Agreement by either Party to the other shall be deemed sufficiently given if personally delivered, or mailed by certified United States mail, postage prepaid, and addressed as follows:

(1) If to the City:
City of Sandusky
240 Columbus Avenue
Sandusky, OH 44870
Attn: City Manager

With a copy to:
City of Sandusky
240 Columbus Avenue
Sandusky, OH 44870
Attn: Law Director

(2) Notice to Developer: [ ]

with a copy to: [ ]

Either Party may change its address for notice purposes by providing written notice of such change to the other Party.

B. Entire Agreement/No Third Party Beneficiary. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the Project and the Property to be completed in connection therewith, and contains all of the covenants, agreements, and other terms and conditions between the Parties hereto with respect to the same. No waivers, alterations or modifications of this Agreement or any agreements in connection therewith shall be valid unless in writing and duly executed by all Parties hereto.

Nothing contained in this Agreement shall be construed so as to confer upon any other person the rights of a third-party beneficiary.

C. Amendment.

(a) Recognizing the likelihood of changing conditions (such as demand and supply factors; changes in tenants that are in (or likely to be in) the northwestern Ohio regional market area; and other needs and concerns of the City and the Developer), the Parties agree to review and consider amendments to this Agreement, as necessary. Any amendments to this Agreement shall be in writing executed by the Parties.

(b) The City and the Developer acknowledge and agree that in the event either Party requests further amendment and/or modification of this Agreement, the affected Parties shall thereafter engage in good-faith discussion and negotiation, undertaking all efforts to resolve and address such issues as the

Parties may then raise in connection with this Agreement and such further amendment and modification thereof.

(c) The Parties further acknowledge and agree that this Agreement, as initially executed, is intended to outline the goals and objectives of the Project, as among the Developer and the City, and governs the obligations of the Parties. All prior discussions and agreements of the Parties relating to the subject-matter of this Agreement are hereby incorporated into this Agreement, which shall supersede any such prior discussions and agreements, all of which are integrated herein.

D. Assignment. This Agreement shall be binding on the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld. All representations and warranties of the Developer and the City herein shall survive the execution and delivery of this Agreement.

E. Exhibits. The Exhibits to this Agreement constitute an integral part of and are hereby incorporated by reference into this Agreement.

F. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument anyone or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

G. Severability. The invalidity or unenforceability of anyone or more phrases, sentences, clauses, or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof, and this Agreement shall be deemed amended to the extent required to make the provisions hereof lawful, valid and enforceable, giving maximum effect to the intent of the Parties as evidenced in this Agreement. The Parties agree to enter into a written instrument to evidence any such amendment.

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

I. Captions. The captions of the Articles and Sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or in any manner limit or define the terms of this Agreement.

J. Force Majeure. Except as expressly provided herein or with respect to any monetary obligation, if either Party is delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any cause or circumstance beyond the reasonable control of such Party, including, but not limited to, strikes, lockouts, pandemics, epidemics, shortages of labor, fuel or materials, acts of God, enemy act, riot, insurrection or other civil commotion, fire or other casualty or any orders

of any governmental agency, court, or tribunal with jurisdiction over the Project, Developer or the City, then the time for performance of such covenant or obligation shall be extended by a reasonable time to accommodate such delay or hindrance. The Party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such delay, notify the other Party thereof in writing, and the cause thereof, and provide information concerning the projected term of the delay.

K. Conflict of Interest: City's Representatives Not Individually Liable. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to the Developer or any successor to the Developer or on any obligations under the terms and conditions of this Agreement.

L. Survival. The provisions of this Agreement shall survive any expiration or earlier termination of the Agreement to the extent necessary to carry out the intent and expectations of the Parties.

M. Non-Waiver. Failure of City or Developer to complain of any act or omission on the part of the other Party, however long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by City or Developer at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision.

N. Approvals by City. Any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction of the City, certificate or certification by the City or the opinion of the City shall be interpreted as requiring action by the City Managerof the City (or such other official as the City Managerof the City may from time to time designate) granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, unless such provision expressly provides otherwise.

O. Municipal Power. Nothing in this Agreement shall be construed to be in derogation of the powers granted to the municipal corporations by Article XVIII of the Ohio Constitution, including the right to protect the health, safety and welfare of its citizens.

P. Further Assurances. The Developer shall take or cause to be taken any and all other or further actions necessary or required of the Developer in order to effectuate any of the terms and provisions herein.

Q. Good Faith. Whenever in this Agreement any Party is required or permitted to grant approval or consent, take any action or request any other Party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or

term, the Party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the granting of such approval or consent that the approving or consenting Party does not believe are necessary in connection with such approval or consent.

(Signature Page Follows)

IN WITNESS WHEREOF, the City and Developer, each by a duly authorized representative, have caused this Agreement to be executed on this __ day of _____, 2021.

CITY OF SANDUSKY	Cooke Building LLC
By:	By:
_____	_____
Its: City Manager	Its:
	_____

Approved as to Form:

_____
Law Director, City of Sandusky

Exhibit A

Development Site

Permanent Parcel Nos: 56-00527.000, 56-00528.000 and 56-00528.001

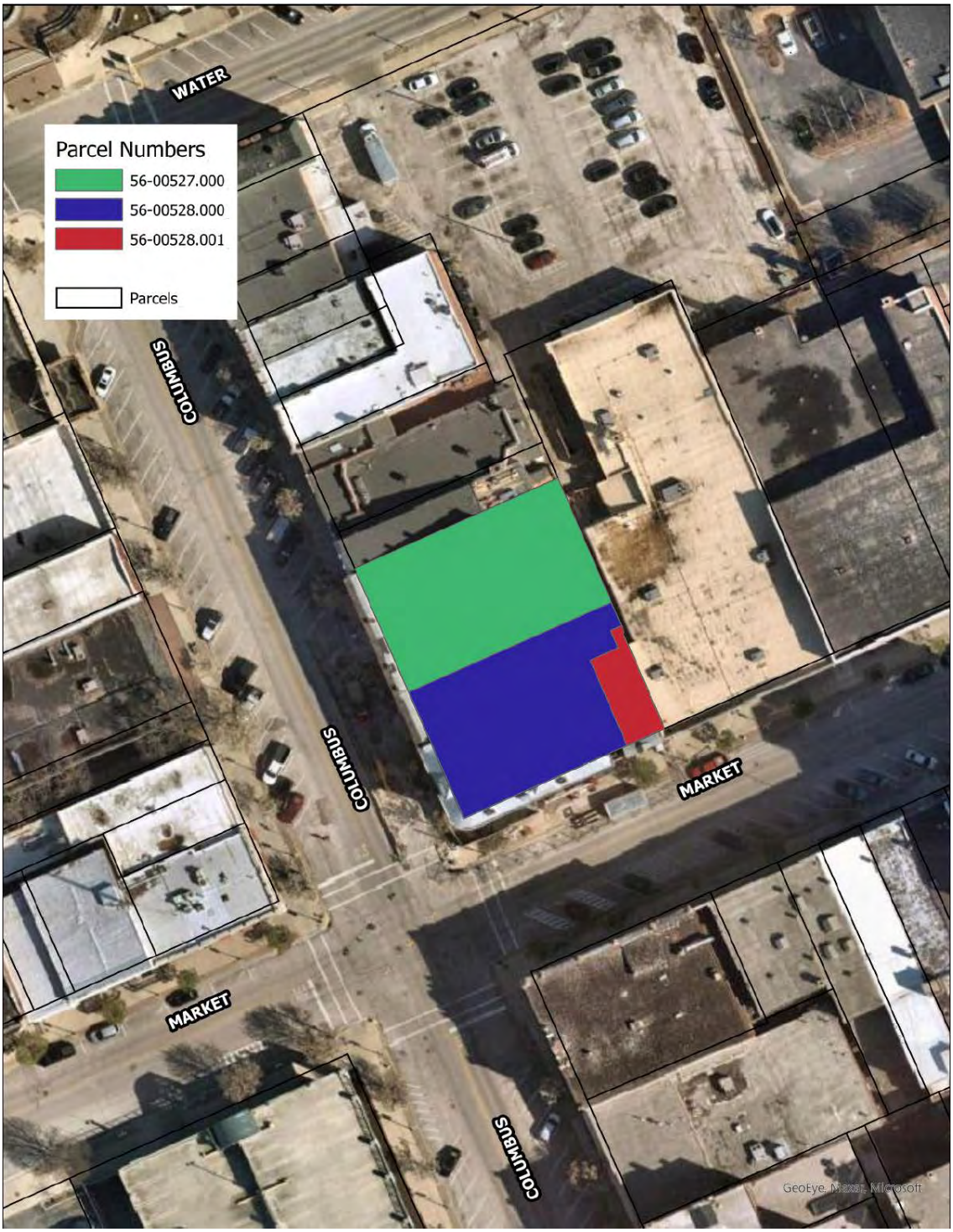

Exhibit B

Improvements

All improvements required under the Development Plan within the public right-of-way and to be conveyed at completion or otherwise owned by the City or another public entity, including but not limited to sidewalk construction and repair

Exhibit C

Site Plan

[ ]

Exhibit D

Prohibited Uses

The following restrictions shall be placed upon the Development Site and no portion of the Project shall be used for the following purposes or uses (collectively, the "Restricted Uses"):

1. Any establishment which stocks, displays, sells, rents, distributes, or offers for sale or rent any x-rated, pornographic, lewd, obscene or so-called "adult" newspaper, book, magazine, film, picture, video tape, video disc, material or other similar representation or merchandise of any kind;

2. Any establishment which stocks, displays, sells, rents, distributes, or offers for sale or rent any tobacco products (including but not limited to hookah or "vaping" products) or paraphernalia commonly used in the use or ingestion of marijuana or illicit drugs; or any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, pipe screens, rolling papers, rolling devices, coke spoons or roach clips. This restriction shall not prohibit the inclusion of a medical marijuana dispensary.

3. Surface parking as primary use.