

ORDINANCE NO. 23-102

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH BATTERY PARK SANDUSKY LLC RELATING TO THE MIXED-USE DEVELOPMENT OF THE BATTERY PARK PROPERTY LOCATED AT 701 E. WATER STREET; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City owns the property commonly known as Battery Park and Battery Park Marina and leased the property to Sandusky Bay Development Company, Ltd. from 1985 until 2020; and

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

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

WHEREAS, the City Commission approved a Consent Agreement to Assignment, approving the Assignment and Assumption of Lease Agreement between Sandusky Bay Investment Company, Ltd. and Battery Park Sandusky, LLC by Ordinance No. 20-125, passed on August 24, 2020; and

WHEREAS, Battery Park Sandusky LLC proposes to build in one or more phases a mixed-use development that will include approximately 172+/- market-rate apartments, which some or all may be converted to condominiums in the future, 66,100+/- square feet of restaurant, retail and commercial spaces, two (2) public parking garages containing 964+/- parking spaces, 68+/- for-sale loft-style condominium units, a nationally-branded or boutique hotel, enhanced public gathering and public and/or open spaces, and new easterly street extensions of Water and E. Market Streets, along with a new crescent-shaped connector street between Water & E. Market at the far east end, with sidewalks, driveways, crosswalks, access ways and utility connections; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into Development Agreement supporting the project as the City will receive equivalent economic and non-economic benefits from the development project including creating a significant number of new jobs, stimulating economic growth in the downtown and greater Sandusky area, and enabling the property to achieve its highest and best use, for the benefit of the Sandusky community; 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 to ensure the project is completed in a timely manner and provide the local support necessary to secure grant funding and financing; 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

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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

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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:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: April 24, 2023

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) dated _____, 2023, by and between the **CITY OF SANDUSKY, OHIO** (the “City”), a municipal corporation organized under the laws of the State of Ohio and its Charter, and **BATTERY PARK SANDUSKY LLC** (the “Developer”), an Ohio limited liability company. The City and the Developer and any Owner (as defined herein) are referred to collectively herein as the “Parties” and each individually a “Party”.

RECITALS:

WHEREAS, this Agreement’s purpose serves to set forth the City’s and Developer’s respective and collaborative development and financial objectives, initiatives and commitments related to the proposed development described herein of the Development Site (hereinafter defined), and is adopted pursuant to Ordinance No. 2023-[] (the “Development Agreement Ordinance”); and

WHEREAS, the City owns or leases from the Ohio Department of Natural Resources (“ODNR”) under the Submerged Land Lease (hereinafter defined), various parcels of land and water commonly known as the Battery Park Marina site, located east of the easterly right-of-way of Meigs Street and north of the existing City police station and municipal court property in the City, shown as “Parcel A” on Exhibit A (Plan of Survey) attached hereto and made a part hereof (the “Development Site”); and

WHEREAS, the City entered into a ground lease dated February 6, 1985, as amended from time to time with the City, as landlord, with the Sandusky Bay Investment Company, Ltd. (the “Original Ground Lessee”), and consented to the assignment of the ground lease by the Original Ground Lessee to Developer by an Assignment and Assumption of Lease Agreement, recorded on December 4, 2020, as Instrument No. 202011500 (collectively known as the “Ground Lease”), which such Ground Lease sets forth Developer’s development and other rights related to the Development Site; and

WHEREAS, the City has determined that it is in the best interest of the City to enter into negotiations to extend and modify the terms of the Ground Lease of the Development Site to Developer because: (a) the City will receive equivalent economic and non-economic benefits from the hereinafter described new, catalytic and transformational development project that is anticipated to equal or exceed the value of the Development Site, and (b) the Project (as hereinafter defined) will create a significant number of new jobs, stimulate economic growth in the downtown and greater Sandusky area, and enable the Development Site to achieve its highest and best use, for the benefit of the community of the City; and

WHEREAS, Developer proposes to build in one or more phases a mixed-use development that shall, among other enhancements, include approximately (a) 172+/- market-rate apartments, which some or all may be converted to condominiums in the future, (b) 66,100+/- square feet of restaurant, retail and commercial spaces, (c) two public parking garages containing 964+/- parking spaces, (d) 68+/- for-sale loft-style condominium units, (e) a nationally-branded or boutique hotel, (f) enhanced public gathering and public and/or open spaces to be determined by separate written agreement between the City and the Developer; and (g) new easterly street extensions of Water and E. Market Streets, along with a new crescent-shaped connector street between Water & E. Market at the far east end, all sidewalks, driveways, crosswalks, access ways and utility connections, all as further outlined below and as depicted and described on Exhibit B (Developer Concept Plans dated October 26, 2022, and referred to herein as the “Project Plans”) attached hereto and made a part hereof (all of the foregoing being referred to herein collectively as the “Project”)¹;

(i) The City will retain ownership of all city-owned portions of the Development Site;

(ii) Subject to approval by the State of Ohio Department of Natural Resources, Developer and City will enter into an Amended and Restated Ground Lease to, among other things, extend the term of the lease of the Development Site from the City to the Developer for a period of 99 years; and

¹ The ultimate end uses of the Project may change depending upon market conditions and market demand.
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(iii) Developer may with City approval in the City's discretion lease or acquire certain additional City property in the vicinity of the Development Site which, if leased or acquired by Developer, will be incorporated into the Development Site; and

(iv) The Developer will condominiumize the various uses on the Development Site.

WHEREAS, Developer and the City propose to collaboratively create a signature destination district on the Development Site that serves as an attraction to the City and potentially as a link between the City and Cedar Point. The City and Developer agree that the development of the Development Site shall be completed in a manner which, at a minimum:

- (i) Creates a transformational, vibrant, pedestrian-friendly commercial and residential district that dovetails with the architecture and aesthetics of Sandusky's Coastal lifestyle;
- (ii) Provides enhanced waterfront access to all Sandusky citizens;
- (iii) Incorporates and enhances the uses of the existing Battery Park and the Water Street and Meigs Street piers, creates enhanced green spaces, and supports and encourages public improvements of the adjacent public Sandusky Bay Pavilion Park;
- (iv) Establishes attraction for the eastward expansion of the Downtown Sandusky commercial and residential uses, catalyzing infill development;
- (v) Complements existing neighborhood businesses and serves as a destination for the region and a Downtown Sandusky gateway to the Lake Erie Shores & Islands;
- (vi) Creates significant positive economic and fiscal benefits for the adjacent neighborhoods, Sandusky City Schools, at-large community and the City; and
- (vii) Effectively incorporates community feedback into the design; and

WHEREAS, to accomplish this transformational and catalytic Development, the City shall assign revenue from an existing tax increment financing district (the "40 TIF") with respect to the Development Site or implement a program of tax increment financing as further described in this Agreement with respect to certain parcels of the Development Site pursuant to which the City grants one or more exemptions from real property taxation for the increase in assessed valuation of each parcel of real property within the Development Site; and

WHEREAS, pursuant to the terms hereof, and subject to Developer's securing of approval by the Sandusky City School District for the same as described in Section 2.1, the City intends that it will, among other actions: (i) enter into an Amended and Restated Ground Lease with the Developer that sets forth an extension of the Developer's rights related to the Development Site for a period of 99 years; (ii) declare the increase in assessed valuation of each parcel of real property located within the Development Site (being all of parcels 56-01377.00, 56-01377.001, 56-01377.002, 56-01377.003, 56-61377.501, 56-61377.000, 56-61377.001, which may be consolidated and/or split depending upon the use of the Property (collectively, the "TIF Improvements") to be a public purpose in accordance with O.R.C. Sections 5709.41, 5709.42 and 5709.43 (together with related provisions of the O.R.C., the "TIF Act"); (iii) declare the TIF Improvements to be a public purpose in accordance with O.R.C. Sections 5709.40, 5709.42 and 5709.43; (iv) declare that _____ percent (___%) of the TIF Improvements will be exempt from real property taxation for a period of thirty (30) years pursuant to the TIF Act (the "TIF Exemption"); (v) provide for the payment by any Owners of annual service payments in lieu of taxes as an obligation running with the land with respect to the real property located within the Development Site owned by any Owners in an amount equal to the real property taxes that would have been paid on the TIF Improvements had the TIF Exemptions not been granted pursuant to the TIF Act (the "TIF Service Payments" or the "Service Payments"); (vi) designate certain costs of public infrastructure improvements (collectively, the "Authorized Improvements") described in Exhibit D attached hereto and incorporated herein by this reference, that will benefit the Development Site; and (vii)

provide for the Crescent Condo Owners to receive a 10 year tax abatement effective upon the date ownership is transferred to the Crescent Condo Owner.

WHEREAS, the City has established a Designated Outdoor Refreshment Area (“DORA”), that encompasses the Development Site; and

WHEREAS, the City intends by separate legislation, and upon receipt of a petition filed by the Developer, to establish the Battery Park New Community Authority as a New Community Authority under Ohio Revised Code Chapter 349 involving a district within the Development Site.

NOW THEREFORE, in consideration of the foregoing premises and the promises and mutual covenants contained herein, the Parties covenant and agree as follows:

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EXHIBIT "1"

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. Unless otherwise defined herein, words and terms used in this Agreement with initial capital letters defined in this section shall have the meanings set forth in this Section 1.1.

“Agreement” means this Agreement dated _____, 2023, by and between the City and the Developer, as duly amended or supplemented from time to time in accordance with its terms.

“Authorized City Representative” means the City Manager of the City or the person acting by law in such capacity; provided, that the City may from time to time provide a written certificate to the Developer designating an alternate or alternates who shall have the same authority, duties, and powers as the initial Authorized City Representative.

“Authorized Developer Representative” means initially Adelbert P. Marous, Jr. provided, that the Developer may from time to time provide a written certificate to the City designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized Developer Representative.

“Authorized Improvements Plan” means the preliminary site plan for the Authorized Improvements dated October 26, 2022 and on file with the City and the Developer, as the same may be revised or supplemented from time to time with the approval of the City and the Developer, including, without limitation, any working drawings and plans and specifications for the Authorized Improvements.

“Authorized Improvement Expenses” means the expenses incurred in connection with the construction of the Authorized Improvements, including expenses incurred by the Developer for such purposes, all in accordance with this Agreement.

“Authorized Improvements” means any real and/or personal property identified generally on Exhibit D attached hereto and referred to thereon and generally referring to improvements approved by the City, including but not limited to both Public Improvements and Private Improvements, as defined herein. For avoidance of doubt, the inclusion of any Private Improvements within a TIF shall be conditioned upon necessary changes to tax increment financing with respect to the Development Site, as described in Section 2.1.

“BPS Apartments” shall mean the apartments constructed and owned by an entity to be formed that is a subsidiary and/or under common control with the Developer, which are Private Improvements, as depicted on the Master Plan.

“BPS Hotel” shall mean the hotel, which is a Private Improvement, as depicted on the Master Plan.

“BPS Marina” shall mean the marina, marina service spaces, and docks constructed and owned by an entity to be formed that is a subsidiary and/or under common control with the Developer, which are Private Improvements, as depicted on the Master Plan.

“BPS North Condos” shall mean the Private Improvement of condos ultimately transferred and owned by individual condo unit owners as depicted on the Master Plan.

“BPS Retail” shall mean the commercial retail space constructed and owned by an entity to be formed that is a subsidiary and/or under common control with the Developer, which are Private Improvements, as depicted on the Master Plan.

“CED” means a “Community Entertainment District” as defined by O.R.C. Section 4301.80, and other related provisions of the O.R.C.

“CED No. 1” means the CED created by Sandusky City Commission through the passage of Ordinance No. 05-111 on June 27, 2005, and amended by Ordinance No. 10-109 passed October 12, 2010 and by Ordinance No. 15-078 passed on June 8, 2015.

“City” means the City of Sandusky, Ohio.

“City Commission” means the Commission of the City of Sandusky, Ohio.

“City Documents” means this Agreement, the Ground Lease, TIF Agreement, and the NCA Documents.

“City Ordinances” means the Development Agreement Ordinance, the Exemption Ordinance, and the ordinances identified or referred to in the foregoing recitals.

“Completion Date” means the date specified in a certificate given pursuant to Section 3.4 of this Agreement.

“County” means Erie County, Ohio.

“County Treasurer” means the County Treasurer of the County.

“Crescent Condo Owner(s)” means each individual owner of a residential Crescent Condo that is sold and transferred from the Developer.

“Developer” means Battery Park Sandusky LLC, an Ohio limited liability company, and its successors and assigns.

“Development Site” means the real estate described on Exhibit A attached hereto, together with any and all other property which may from time to time be added to or incorporated within the Development Site by separate written agreement between the City and the Developer.

“DORA” means the Designated Outdoor Refreshment Area including the Development Site and certain other portions of downtown Sandusky, Ohio, pursuant to City Ordinance No. 21-094.

“Event of Default” means an Event of Default under Section 7.1 of this Agreement.

“Excluded Liability” means each Liability (as defined in Section 4.8) to the extent it is attributable to (i) the willful misconduct of any Indemnified Party (as defined in Section 4.8) or the failure of any Indemnified Party including but not limited to the City and/or 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.

“Exemption Ordinance” means [].

“Expiration Date” means the earlier of December 31, 2035 or five (5) years after a Transformational Mixed-Use Development Credit being awarded to the Developer.

“Federal” means the federal government of the United States of America.

“Final Approval” means the issuance of substantially all material City approvals required for the proper and lawful commencement of the performance of any portion or component of the work contemplated in the Master Plan and the passage of each period during which an appeal or a referendum petition may be filed to contest or overturn any such approvals.

“Force Majeure” means acts of God; fires; epidemics; pandemics (excluding the COVID-19 pandemic); landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental

authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any cause or event not reasonably within the control of the Developer or the City, as the case may be.

“Ground Lease” means that certain lease originally dated February 6, 1985, as amended from time to time from the City, as Landlord, to Sandusky Bay Investment Company, Ltd. (the “Original Ground Lessee”), and assigned by the Original Ground Lessee to Developer by an Assignment and Assumption of Lease Agreement, recorded on December 4, 2020 as Instrument No. 202011500, a Memorandum of Lease with respect to which is recorded at Volume _____, Page _____, in the real property records of Erie County, Ohio, together with any future modifications or amendments of the same.

“Indemnified Parties” means the City and any officials, employees, agents and representatives of the City, the NCA and its Board of Trustees, and their successors and assigns (and each, individually, the “Indemnified Party”).

“Liability” or “Liabilities” shall have the meaning set forth in Section 4.8.

“Master Plan” or “Project Plans” means Developer’s development plan for the redevelopment of the Development Site as submitted to the City on October 26, 2022, in connection with Developer’s application for PUD District approval in accordance with Section 1155.14 of the City’s Planning and Zoning Code, and attached hereto as Exhibit B.

“NCA” means the Battery Park New Community Authority established in accordance with the NCA Act.

“NCA Act” means O.R.C. Chapter 349, and other related provisions of the O.R.C.

“NCA Documents” means the Petition for Establishment of the Battery Park New Community Authority and any documents, Ordinances, and agreements related to the establishment, creation, and operation of the NCA.

“Notice Address” means:

(a) As to the City:

City of Sandusky, Ohio
240 Columbus Avenue
Sandusky, Ohio 44870
Attention: City Manager

With a Copy To:

Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
Attention: Rob McCarthy

(b) As to the Developer:

Battery Park Sandusky LLC
c/o Marous Development Group
38119 Stevens Boulevard
Willoughby, Ohio 44094
Attention: Adelbert P. Marous, Jr.

With a Copy To:

Sikora Law LLC
737 Bolivar Road, Suite 270
Cleveland, Ohio 44115
Attention: Michael J. Sikora III, Esq.

or a different address as to which notice is given pursuant to this Agreement.

“O.R.C.” means Ohio Revised Code.

“Owner” or “Owners” means (i) the Developer, as the initial lessee of certain parcels of real property located within the Development Site; (ii) the Developer, its successors, and assigns as future owners of all or any portion of or interest in any of the real property located within the Development Site, including, without limitation, any such real property acquired by the Developer, its successors or assigns, after the execution of this Agreement; and (iii) any current or future owners of all or any portion of or interest in any of the real property located within the Development Site other than the Developer, including but not limited to the City and NCA, their successors and assigns, whether or not such current or future owners are or were at any time related parties with the Developer.

“Parking Improvements” means those Authorized Improvements consisting of surface parking, surface parking lots, parking structures, or other parking facilities, and any related improvements and appurtenances thereto. The City and Developer shall determine the cost of parking spaces within the Parking Improvements by separate agreement.

“Person” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

“Private Improvements” means, collectively all of the improvements made to the Development Site that are not considered “Public Improvements”, including but not limited to the BPS North Condos, BPS South Apartments, BPS Retail, BPS North Apartments, BPS Marina, BPS Hotel, and those other Private Improvements listed on Exhibit D.

“Public Improvements” means the Parking Improvements, roads, parks, piers, traffic lights, sewer systems, wayfinding, public utilities, including but not limited to the Public Improvements listed on Exhibit D.

“PUD District” means the district including the Development Site for which Developer has filed for redevelopment approval in order to implement the Master Plan in accordance with Chapter 1155 of the City’s Planning and Zoning Code.

“Remediated” means, with respect to any real property, that all environmental hazards and hazardous materials affecting such property have been removed or contained in accordance with applicable law and to the satisfaction of all federal, State and local governmental authorities having jurisdiction over such removal or containment so that the affected property may be re-used and developed without imposing further environmental liability onto the owner, operator or occupant thereof.

“RFR” means the right and option of first refusal, pursuant to which the Developer has the pre-emptive right to acquire a ground leasehold interest and estate in and to any adjacent and surrounding property to the Development Site that the City may in its sole discretion determine is no longer needed for a public purpose and elect to dispose of during the term of the Ground Lease.

“Service Payments” shall have the meaning set forth in Section 2.2.

“State” means the State of Ohio.

“Submerged Land Lease” means that certain Submerged Land Lease SUB-0385-ER, originally dated as of December 21, 2017 from The Ohio Department of Natural Resources (“ODNR”), as landlord, to the City, as tenant, and recorded on March 16, 2018 as Instrument Number 201802174, together with any new or additional submerged land leases between ODNR, as

landlord, and the City, as lessee, demising property which may hereafter be added to or incorporated into the Development Site, as any of the same may be modified or amended.

“Term” means the period commencing with the execution of this Agreement and ending on the Expiration Date. Any exercise of the City’s termination rights shall occur with 180 days’ written notice from the City Manager.

“TIF Act” means O.R.C. Sections 5709.40 through 5709.43, O.R.C. Section 5709.83, and other related provisions of the O.R.C.

“TIF Agreement” means the Agreement to be entered between the City and Developer and satisfactory to the City establishing and/or describing the TIF Base Value, the TIF Exemption Period, the TIF Exemption, the TIF Fund, the TIF Improvements, and the TIF Service Payments. The TIF Agreement will describe the scope of funding of improvements from the TIF and the process for the same.

“TIF Base Value” shall mean the assessed value of the applicable parcels of real property within the Development Site as of the year in which the Exemption Ordinance is adopted as such base value may be adjusted by the Erie County Auditor as a result of improvements affecting such parcel or as otherwise adjusted by the Erie County Board of Revision and/or Ohio Board of Tax Appeals.

“TIF Exemption” means the tax increment financing exemption granted under the Exemption Ordinance pursuant to the TIF Act.

“TIF Exemption Period” means, for each parcel of real property located within the Development Site, the period commencing on the completion of the Project with respect to the applicable parcel (the “TIF Commencement Date”) and ending on the thirtieth (30th) anniversary of such date. The City will not pursue an increase in the value of the Development Site from the Effective Date of this Agreement until completion of the Development.

“TIF Fund” means the Battery Park Tax Increment Equivalent Fund established by the City with respect to the TIF Exemption pursuant to the Exemption Ordinance and in accordance with O.R.C. Section 5709.43.

“TIF Improvements” means the increase in assessed valuation of each parcel of real property located within the Development Site that appears on the tax list and duplicate of real and public utility property at any time after the effective date of the Exemption Ordinance were it not for the TIF Exemption.

“TIF Service Payments” means the service payments to be made in lieu of taxes by the Owner(s) with respect to the TIF Improvements on the Development Site, including, without limitation, all items identified as “Service Payments” in Section 2.2 hereof with respect to such TIF Improvements.

“Work” means the construction of the Authorized Improvements in accordance with this Agreement.

Section 1.2. Certain Words Used Herein; References. Any reference herein to the City, any members or officers thereof, or other public boards, commissions, departments, institutions, agencies, bodies or other entities, or members or officers thereof, includes without limitation, entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or performing their functions lawfully.

Any reference to a section or provision of the Constitution of the State, the TIF Act, a section, provision or chapter of the O.R.C., Federal or State laws includes without limitation, that section, provision or chapter, or those laws or regulations, as amended, modified, revised, supplemented or superseded from time to time.

Words of any gender include the correlative words of any other gender or identification. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “herein,” “hereby,” “hereto” and “hereunder”, and similar terms, refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Agreement.

[END OF ARTICLE I]

EXHIBIT "1"

DRAFT

ARTICLE II

EXEMPTIONS; OBLIGATIONS OF THE OWNERS; APPLICATION OF SERVICE PAYMENTS

Section 2.1. Tax Exemptions. The Development Site is currently subject to tax increment financing established pursuant to O.R.C. Section 5709.40. If the Developer obtains approval of the Sandusky City School District to establish a the TIF in accordance with the terms described in this Agreement, the City will remove the Development Site from the existing TIF, and declare (a) that _____ percent (___%) of the TIF Improvements are a public purpose entitled to exemption from real property taxation for the TIF Exemption Period through City legislation, and the City and Developer will enter into the TIF Agreement for the TIF.

Section 2.2. Obligation to Make Service Payments. Subject to Section 2.1 hereof, during the Term of this Agreement, the Service Payments that will be made by the Owner(s) will equal the real property taxes that would have been payable by such Owner(s) with respect to _____ percent (___%) of the Authorized Improvements to the Development Site had the TIF Exemptions not been granted and with TIF Service Payments payable with respect to _____ percent (___%) of the TIF Improvements to the Development Site during the TIF Exemption Period. Service Payments will vary from time to time, including as the assessed value of each parcel of real property located within the Development Site varies, as the assessed value of the TIF Improvements varies and as the applicable tax rates vary. Each of the Owners shall pay the Service Payments, when due, on each applicable Payment Date until termination or expiration of this Agreement.

For all purposes of this Agreement, "Service Payments" shall be deemed to refer to and shall include (i) any payments commonly known as "property tax rollback payments" with respect to any TIF Improvements, (ii) any payments received by the City under O.R.C. Sections 319.302, 321.24, 323.152, and 323.156, or any successor provisions thereto, as the same may be amended from time to time, with respect to any TIF Improvements, (iii) any penalties and interest received by the City with respect to any late or delinquent Service Payments, whether received from the County Treasurer or received directly by the City, and (iv) any other payments received by the City with respect to any TIF Improvements were those tax values not exempt from real property taxation pursuant to the TIF Exemptions.

No Owner shall, under any circumstance, be required to pay both real property taxes and Service Payments for any tax year with respect to an Authorized Improvement, whether pursuant to the TIF Act, the Exemption Ordinance, this Agreement or any other applicable law.

In the event that any Service Payment or any installment thereof, is not paid when due by any Owner on any Payment Date, to the extent that the County Treasurer does not impose a late fee or delinquency charge, the City may impose and collect a late payment charge, payable to the City, in the amount of the charges for late payment of real property taxes, including penalty and interest, which would have been paid pursuant to O.R.C. Section 323.121 on the delinquent amount.

Section 2.3. Payment, Deposit, and Application of Service Payments. The Service Payments shall be made by or on behalf of the Owners to the County Treasurer on or before the applicable Payment Dates.

Section 2.4. Additional Obligations. Promptly upon execution of this Agreement, the Developer shall, at Developer's sole cost and expense, cause this Agreement, it being understood and agreed that the lien of this Agreement shall, in accordance with O.R.C. Section 323.11 and O.R.C. Section 5709.91, be prior to any mortgage, assignment, lease or other conveyance by the Owner(s) of any of their part of or interest in the Development Site, and prior to any security instrument encumbering all or any part of or interest in the Authorized Improvements except for the Submerged Land Lease and the Ground Lease; provided, however, that nothing contained in this Agreement shall be construed to permit acceleration of the Service Payments beyond the current year that such Service Payments are due. During the Term of this Agreement, the Owner(s) shall cause all instruments of conveyance of any of their interest in all or any portion of the Development Site, and of any improvements thereto, to subsequent mortgagees, lessees, lienholders, successors, assigns or transferees, to be made expressly subordinate and subject to this Agreement unless such interest is subordinate to this Agreement by operation of O.R.C. Section 5709.91.

Section 2.5. Binding Nature of Obligations; Security for Payment. The obligation to perform and observe the agreements on the part of any Owner contained herein shall be binding and enforceable against each and every Owner by the County Treasurer, to the extent applicable, and shall also, to the extent permitted by law, be enforceable by the City.

Anything herein to the contrary notwithstanding, any Owner's obligation hereunder to pay Service Payments, to use and develop its real property within the portion of the Development Site or to perform and observe any other agreements on their part contained herein, shall be absolute and unconditional and shall be covenants running with the land of such real property and shall be binding and enforceable by the City against the Owner(s), as applicable, but only to the extent of the respective Owners' obligations and only with respect to its or their interest in the Development Site and the Authorized Improvements, or any part thereof or any interest therein. Each Owner's obligation to make the Service Payments shall be secured by the lien on its interest in the Development Site and the Authorized Improvements, as provided by O.R.C. Section 5709.91.

Obligations of Owners arising pursuant to the TIF Act, and this Agreement will not be terminated for any cause including, without limitation, delay in completion of or failure to complete the Authorized Improvements or any other improvements within the Development Site, a delay in the completion of or failure to complete the Authorized Improvements, or a failure by the City or the Developer to complete any other obligation arising under the TIF Act or this Agreement; any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Authorized Improvements or the Authorized Improvements; commercial frustration of purpose; any change in the constitution, tax or other laws or judicial decisions or administrative rulings of or administrative actions by or under authority of the United States of America or of the State or any political subdivision thereof. Except as may be expressly provided herein, nothing contained in this Agreement shall be construed to release any current or future Owner from the performance of any of its agreements or its obligations contained in this Agreement.

Section 2.6. Payment of Taxes; Contests. Each Owner shall pay, cause, or require to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Development Site (except as otherwise provided herein) or any personal property or fixtures installed or brought therein or thereon (including, without limitation, any taxes levied against the Owner with respect to the receipts, income or profits from leasing or subleasing space within the Authorized Improvements, which, if not paid, may become or be made a lien on its interest in all or any portion of the Development Site) and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Development Site. Except as otherwise provided in this Section, nothing herein is intended to prevent any Owner (or a successor, assign or transferee), at its expense and in good faith from contesting the amount or validity of any taxes, assessments or other charges.

Notwithstanding the first paragraph of this Section, the Parties agree that the provisions of this Agreement are based upon an understanding that the value of any TIF Improvements on a parcel within the Development Site will be calculated based on the increase in the assessed value of such parcel over the TIF Base Value were it not for the TIF Exemptions, which increase, if any, shall as to any TIF Improvements, appear on the tax list and duplicate of real and public utility property at any time after the effective date of the Exemption Ordinance, The Parties agree that (i) the City will not file a complaint with the board of revision with respect to any TIF Improvements, or otherwise take any action, that will have the effect of increasing the TIF Base Value for any TIF Improvements, and (ii) to the extent that the City is made party to any action that would have the effect of increasing the TIF Base Value for any TIF Improvements, it will not agree or consent to such increase unless required to do so by law.

Section 2.7. Reserved.

Section 2.8. Provision of Information. The Developer and each Owner agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated Tax Incentive Review Council to enable that Tax Incentive Review Council to review and determine annually during the term of this Agreement the compliance of the Developer and each Owner with the terms of this Agreement. Any information supplied to such Tax Incentive Review Council will be provided solely for the purpose of monitoring the Developer's or Owner's compliance with this Agreement. The Developer and each Owner further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status reports required by O.R.C. Sections 5709.40(I)

and 5709.41(E) to the Director of the Ohio Department of Development on or before March 31 of each year. Any information supplied to the City will be provided solely for the purpose of enabling the City to comply with this requirement.

[END OF ARTICLE II]

EXHIBIT "1"

DRAFT

ARTICLE III

CONSTRUCTION OF THE AUTHORIZED IMPROVEMENTS

Section 3.1. Definition of the Authorized Improvements. The Authorized Improvements shall include any real and personal property, identified generally on Exhibit D to this Agreement and referred to thereon, and generally referring to those Authorized Improvements that will be constructed by the Developer or the City, as determined by separate written instrument. The identification of the Authorized Improvements, including any real property dedicated for the purpose of constructing a portion of the Authorized Improvements thereon, may be revised or supplemented from time to time, provided such revisions or supplements are approved by the City and the Developer.

Section 3.2. Phases; Completion Date; Certifications. The City and the Developer agree to cooperate in order that the Authorized Improvements may be substantially complete in accordance with the schedule approved by the Parties and contained within the Authorized Improvements Plan. The Work may be undertaken and completed in several phases as mutually agreed upon in writing by the City Representative and the Developer Representative. The completion date for any phase of the Work may be extended by mutual written agreement of the Parties so long as the Parties have shown good faith and commitment to constructing the Development.

Upon filing initial Building Permit applications, the Developer will diligently work with the City to address comments and be responsive, including by providing substantive written responses and/or resubmissions (as applicable) within 30 days after receipt of written comments from the City. Additionally, the City will also endeavor to review and provide comments or approvals to the Developer in an expeditious manner. Developer will commence construction of the Project, including, but not limited to, demolition and environmental remediation, no later than nine (9) months after receiving the Building Permits for the Project, the effective date of all TIF-related legislation and agreements, or obtaining financing for the Project, whichever is latest (the "Commencement Deadline"); provided, however, that if the issuance of Building Permits for the Project by the City occurs later than three (3) months after application for such Building Permits by the Developer (not including any period of time beginning upon delivery by the City of a correction notice to the Developer and ending upon resubmission by the Developer), the Commencement Deadline shall be extended by a period of time equal to the time by which the issuance of such Building Permits exceeds three (3) months. During the above-referenced 9-month period, the Developer shall proceed in good faith to advance the Project, and shall respond to any reasonable requests made by the City regarding the status of the Project. Notwithstanding anything to the contrary herein, and subject to the terms of this Agreement, the Developer shall use commercially reasonable efforts to commence construction on the Development Site within three (3) years from the date of execution of this agreement. The timeline for commencing construction may be extended by the City Manager pursuant to a written request from the Developer to extend the period of time within which work must be commenced made and received prior to the expiration of said three (3) year period.

In addition, construction of the Project shall be substantially completed no later than three years from the date Developer certifies to the City it has secured the necessary financing for the Project. For avoidance of doubt, the Developer may satisfy the obligations of this Section 3.2 through completion of a substantial portion for Project, as determined by the City, provided that any portion of the Development Site which is not completed shall be maintained by the Developer as open public space in its present state. Any undeveloped portion of the Development Site which remains undeveloped after December 31, 2035 shall be subject to conveyance to the City upon request of the City Manager. Developer may extend this time period and renew this Agreement for five (5) years at a cost of \$100,000 total for this extension paid to the City upon request of the City Manager.

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 (as described in the first grammatical paragraph of this Section VIII) 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 time for performance indicated above is subject to any approved extensions by the City 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 Manager. In the event that construction does not occur, or construction of the Project ceases to progress within 120 days after commencement of construction on the Development Site, 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 Development 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 available and made known to the City 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 address any questions raised by the City with respect to such plans and specifications.

The Completion Date of each phase of the Work shall be specified to the City, or another appropriate governmental entity in a certificate signed by the Developer. Such certificate (a) shall describe all property acquired or installed as part of that completed phase, (b) shall state the cost of Work allocable to that completed phase, and (c) shall state that:

- (i) the construction, improvement and equipping of that phase of the Authorized Improvements has been completed substantially in accordance with the related Authorized Improvements Plan, all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with that phase of the such Authorized Improvements have been paid or discharged;
- (ii) all other facilities necessary in connection with that phase of the Work have been constructed, improved and equipped; and
- (iii) the construction, improvement and equipping of the Authorized Improvements has been accomplished in a manner which conforms to all then applicable governmental requirements.

Section 3.3. Dedication and Acceptance of Certain Authorized Improvements. The City and Developer shall negotiate by separate written instrument or amendment of this Agreement the ownership of the Public Improvements (“Public Improvement Agreement”). Upon inspection (by an inspector approved by the City and paid for by the Developer) and satisfactory completion of each phase of the Public Improvements in accordance with the terms of the Public Improvement Agreement the Developer shall cause those Public Improvements specifically agreed upon to be dedicated to the City, or another appropriate governmental entity designated by the City, including but not limited to the NCA or and/or ODNR, and such governmental entity, to the extent permitted by law, shall accept such completed Public Improvements for its ownership subject to the conditions to be determined by the City in connection with the same, including satisfactory warranty, bond, and inspection. Acceptance by the appropriate governmental entity of the ownership of any Authorized Improvements in one or more phases shall not relieve the Developer of its responsibility for defects in material or workmanship with respect to such Authorized Improvements as set forth in this Agreement.

Section 3.4. Conveyance of the Authorized Improvements. The City or any other governmental entity holding title to any of the Authorized Improvements may, subject to applicable Federal tax law restrictions, convey the title to any of the Authorized Improvements to any of the Developer, its successors or assigns, if so determined by the City in its discretion by separate written instrument.

Notwithstanding anything in this Section to the contrary, Private Improvements and those improvements established and governed by the NCA are not subject to the requirements of this Section. The Parties may amend this Section of this Agreement once the NCA is finalized and approved.

[END OF ARTICLE III]

ARTICLE IV

FURTHER PROVISIONS RELATING TO THE CONSTRUCTION AND MAINTENANCE OF THE AUTHORIZED IMPROVEMENTS

Section 4.1. Authorized Improvements Plan. The design, construction, improvement and equipping of the Authorized Improvements will be accomplished in accordance with the Authorized Improvements Plan, which shall include the plans and specifications for each phase of the Authorized Improvements. Such plans and specifications will be prepared by the Developer, shall be consistent in all material respects with the description of the Authorized Improvements in Exhibit D, and shall comply with the engineering, technical, and contractual standards generally required by the City and set forth in the City Building Code as well as, with respect to any Authorized Improvements that the City accepts for ownership, such other standards as shall be determined by the City.

Section 4.2. Authorized Improvement Construction Standards. The Authorized Improvements contemplated by this Agreement shall be constructed and completed by the Developer in a good and workmanlike manner using first-class materials in accordance with all applicable laws, ordinances, rules and regulations and related safety standards, including the specifications and standards of the City. Upon the commencement of any phase of the Authorized Improvements undertaken pursuant to this Agreement, the Developer must diligently pursue such construction to completion, subject only to delay occasioned by Force Majeure.

Section 4.3. Maintenance and Management of Certain Authorized Improvements. The Developer shall be responsible for the design and construction of the Authorized Improvements, and once constructed, the City shall be responsible for the maintenance and management responsibilities of those Public Improvements specifically accepted by the City by separate written instrument. Notwithstanding anything in this Section to the contrary, Private Improvements and those improvements established under and governed by the NCA are not subject to the requirements of this Section.

Section 4.4. Nondiscriminatory Hiring Clause. The Developer will state that it practices nondiscriminatory hiring in the Developer's operations in all solicitations or advertisements for employees placed by them or on their behalf. As used in this Section 4.4, the term "nondiscriminatory hiring" means that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry or any other classification that is now or may become a classification protected by Federal or State law. The Developer shall require all contractors and shall require all contractors to require all subcontractors to include in each contract a summary of this nondiscriminatory hiring clause.

Section 4.5. Insurance Requirements. The Developer shall require all contractors to require all subcontractors to maintain until such time as that contractor or subcontractor has completed its portion of the Work, such insurance as is required by the Authorized Improvements Plan, which insurance shall protect the City, the Developer and any contractor or subcontractor performing Work covered by this Agreement from the types of claims for damages as set forth in the Authorized Improvements Plan. Such insurance policy or policies shall include the City and the Developer as additional named insureds. Such insurance policies shall further provide that any attorneys' fees accruing or payable with respect to a claim under such policy shall be paid by the insurer and shall not count against the coverage limits of such policy. Prior to commencement of any portion of the Work by any contractor or subcontractor, such contractor or subcontractor, as the case may be, shall provide to the City and the Developer an original certificate of insurance as proof of such insurance coverage. Insurance may not be changed or canceled unless all insureds, including the City and the Developer, are notified in writing not less than thirty days prior to such change or cancellation.

Section 4.6. Provision of Security for Mechanic's Liens. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Authorized Improvements, the Developer shall, or shall require the appropriate contractor to, provide any security required by O.R.C. Section 1311.311 to cause that mechanic's lien to be released of record with respect to the Authorized Improvements.

Section 4.7. Compliance with Law. The Developer and the City acknowledge and agree that potentially certain portions of the work that are Public Improvements that are owned by the City contemplated under this Agreement may be subject

to the requirements of Ohio Revised Code Chapter 4115 and to the extent such requirements apply, the Developer shall comply in all material respects and, as between the City and the Developer, all such compliance obligations shall run to the Developer.

Section 4.8. Indemnification. Developer shall, at its cost and expense, defend, indemnify and hold the Indemnified Parties 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 Liability or Liabilities, 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 any other agreement by and between the City and the Developer with respect to the Project (each a “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.

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.

[END OF ARTICLE IV]

ARTICLE V

CONSTRUCTION OF THE PRIVATE IMPROVEMENTS

Section 5.1. Construction of the Private Improvements. The Developer intends to construct, in multiple phases and at its sole cost and expense, certain Private Improvements constituting a mixed-use development within the Development Site. The Developer's Private Improvements will include residential, commercial, and retail properties. The obligation to develop, construct, and implement the Developer's Private Improvements shall be an obligation solely of the Developer, its successors and assigns.

Section 5.2. Plans for the Private Improvements. The Developer shall have the right to generate and alter the plans for the development and construction of its Private Improvements; provided, that the Developer shall comply with all applicable laws and regulations, including all building and zoning regulations of the City, including all approved Planned Unit Development ("PUD") requirements. The plans for the development and construction of the Developer's Private Improvements shall be memorialized in plans governing such Private Improvements and may be revised or supplemented by the Developer from time to time, provided such revisions or supplements comply with all applicable laws and regulations. Any plans for the Developer's Private Improvements shall be placed and maintained on file with the Developer, and shall, to the extent required by law, be available as public records in the City's Building Department.

[END OF ARTICLE V]

EXHIBIT "1"

ARTICLE VI

CERTAIN REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 6.1. Certain Representations, Warranties, Covenants and Agreements of the City. The City covenants, agrees, represents and warrants as of the date of delivery of this Agreement that:

(a) Municipal Organization. It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State and its Charter.

(b) Conditions Satisfied. It has or will have upon their execution duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of the City Documents and to constitute such City Documents as valid and binding instruments enforceable in accordance with their respective terms.

(c) No Violation of Law. It is not in violation of or in conflict with any provision of the laws of the State or its Charter which would impair its ability to observe and perform its covenants, agreements and obligations under the City Documents.

(d) Power and Authority. It has and will have full power and authority (i) to execute, deliver, observe and perform the City Documents and all other instruments and documents executed and delivered by the City in connection therewith, and (ii) to enter into, observe and perform the transactions contemplated in the City Documents and those other instruments and documents.

(e) No Modification. It has or will have duly authorized the execution, delivery, observance and performance of the City Documents; so long as the Developer is not in default in the performance of its obligations under this Agreement beyond the expiration of any applicable period of notice or grace (if any), the City shall not modify, amend, supplement or terminate any of the City Documents without the prior, written consent of the Developer except pursuant to the final and unappealable order of a court of competent jurisdiction.

(f) Valid City Ordinances. The City Ordinances and Agreements are valid and binding, have not been amended, modified or rescinded, and are in full force and effect, and are not subject to repeal by referendum; so long as the Developer is not in default in the performance of its obligations under this Agreement beyond the expiration of the applicable period to cure said default, the City shall not amend, modify, supplement, repeal or terminate any of the City Ordinances without the prior written consent of the Developer except pursuant to the final and unappealable order of a court of competent jurisdiction.

(g) Remediation. The City will use best efforts to seek grant funds to support the Developer's efforts to undertake work that may be needed to cause the property to be fully Remediated as described in the Phase II Report of the Property up to \$50,000.

(h) Amend CED. Upon receipt of an application from the Developer, the City shall take such action as might reasonably be necessary to amend the CED No. 1 in order to remove the Development Site from the existing CED No. 1 and to establish another CED comprised entirely of the Development Site. Once the Project is completed, Developer shall have the right to consent to the sharing of liquor licenses under the CED in Developer's sole discretion.

(i) Water Taxi. The City will use reasonable efforts in an attempt to establish a scheduled water-taxi, ferry, or similar service from the Development Site directly to Cedar Point. The City will seek any necessary approvals that need to be granted for the Water Taxi to be established.

(j) Additional Permits and Approvals. The City shall use its reasonable efforts to cooperate with the Developer in identifying and procuring such consents, permits, authorizations and approvals from itself and other

governmental entities as may be necessary or appropriate for the implementation of the Master Plan and the construction, use and operation of the various buildings, structures and improvements contemplated thereby, including if necessary (i) such studies, coordination and approvals of matters pertaining to coastal zone or similar matters as ODNR, the United States Coast Guard (“USCG”) or the U.S. Army Corps of Engineers (“USACE”) may request or require in connection with the construction of any Authorized Improvements or any Private Improvements; (ii) any wetlands delineations or surveys required in connection with any Authorized Improvements or Private Improvements; (iii) such governmental applications, permits and consents necessary or appropriate to establish a scheduled water-taxi, ferry, or similar service from the Development Site directly to Cedar Point, including without limitation any of the same that may be required if there is the establishment of a pier or dock for such service within the Development Site. The Developer shall be responsible for the preparation of all applications for any of the foregoing approvals, permits, and consents and for the payment of any fees or costs for the same; (iv) the City will use best efforts to help with the acquisition/use of perimeter land for the Water Street extension and public boardwalk (Parcel B); (v) the City shall cooperate on all environmental approvals including but not limited to Section 106 Secondary Source Review and Summary and Wetland Delineation and Ecological Survey Report, if needed.

(k) Repairs to Breakwalls. The City shall to the extent such repairs are necessary use reasonable efforts to repair the existing Breakwalls, as described in the Ground Lease, at the City’s costs.

(l) Sandusky Bay Pavilion Improvements. The City shall take such action as might reasonably be necessary to make at least one million (\$1,000,000.00) worth of public improvements, as determined the City, to Sandusky Bay Pavilion park. The Sandusky Bay Pavilion Park shall be one of the City’s top priorities, the City will consider any requests from the Developer regarding the Sandusky Bay Pavilion Improvements during its annual budget cycle, and the City will use its best efforts to obtain Federal and State of Ohio funds solely to be used to transform the Sandusky Bay Pavilion Park.

(m) Development Site Public Infrastructure and Public Improvements. The City shall act in good faith to support such action by the Developer as might reasonably be necessary to ensure the completion of, financing of and public dedication of the Public Improvements pursuant to the Public Improvement Agreement, to be located within the Development Site and/or immediately adjacent thereto and solely for the purpose of servicing the Development Site. Such completion and financing thereof may be pursuant to and use, in part, proceeds from the TIF Fund.

(n) Circulator Trolley Loop. The City will use reasonable efforts in an attempt to establish a circulator trolley loop from the Development Site, through the greater Downtown Sandusky area and to/from Cedar Point. The City will seek any necessary approvals that need to be granted for the trolley to be established.

(o) Right of First Refusal. The City and Developer shall negotiate in good faith to enter into a right of first refusal (the “ROFR”) with respect to the adjacent and surrounding property to the Development Site. The ROFR shall not obligate the City to sell or dispose of City owned property, but shall provide that in the event the City in its discretion determines to sell or dispose of such property, the Developer shall have the first right to purchase the property at a market-based price determined by the City.

Section 6.2. Certain Representations, Warranties, Covenants and Agreements of the Developer. The Developer covenants, agrees, represents and warrants as of the date of delivery of this Agreement that:

(a) Good Standing. The Developer (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio, and (ii) has or will have all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) No Adverse Claims. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Developer threatened, against or affecting the Developer in any court or before any

governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or the ability of the Developer to perform its obligations under this Agreement.

(c) Proper Authority. The Developer's execution and delivery of this Agreement and its performance of its obligations hereunder (i) are within the Developer's organizational authority and powers, (ii) will not conflict with or result in the breach of (x) any of the Developer's organizational documents, (y) agreement, articles of organization, operating agreement or other instrument to which the Developer is a party or by which it may be bound, or (z) any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Developer or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of the Developer.

(d) No Default. No event has occurred and no condition exists with respect to the Developer that would constitute a default under this Agreement or which, with the lapse of time or with the giving of notice or both, could reasonably be expected to become an Event of Default under this Agreement.

(e) Ongoing Business. The Developer will maintain its legal existence so long as the Developer remains liable under this Agreement.

(f) No Delinquent Taxes. The Developer has not been charged with any delinquent real property taxes on the general tax list of real property of the County.

Section 6.3 Issuance of Permits. The City agrees, as soon as practical and in the normal course of business, to issue all necessary Permits for the approved Private Improvements and/or Authorized Improvements upon receipt of a Permit application and approval thereof.

EXHIBIT "1"
[END OF ARTICLE VI]

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default and Remedies.

- (a) The following shall be Events of Default under this Agreement:
- (i) the failure of an Owner to pay no later than the thirtieth (30th) calendar day following its due date any Service Payment, or any installment thereof, due by the Owner, including any applicable late payment charges; and
 - (ii) the failure of the City, the Developer or an Owner to perform or observe any other covenant made by it in or pursuant to this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by at least one of the other Parties hereto.

(b) Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, or any successor to such Party, such Party or successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days after such written notice, an Event of Default shall be deemed to have occurred and the Party or Parties asserting default or breach may institute such proceedings at law or in equity, or in the case of a claim against the City, an action in mandamus, as may be necessary or desirable in its opinion to remedy such default or breach.

(c) Notwithstanding Section 7.1(b) hereof, if by reason of Force Majeure any Party fails in the observance or performance of any of its agreements, duties or obligations to be observed or performed under this Agreement, the Party shall not be deemed to be in default under this Agreement. The Party will give notice promptly to the other Parties of any event of Force Majeure and will use its best efforts to remedy that event with all reasonable dispatch; provided that a Party will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing Person, when in that Party's judgment, that course would be unfavorable to it; and no suspension will constitute an Event of Default if that suspension is a result of the application of Federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates, charges or revenues of the Developer, which prevents the Developer from observing and performing the applicable covenant, agreement or obligation.

(d) The declaration of an Event of Default hereunder and the exercise of rights, remedies and powers upon the declaration are subject to any applicable limitations of Federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 7.2. Enforcement. The provisions of this Agreement may be enforced to the fullest extent permitted by law, by the Developer, the City and the County Treasurer by injunction or any other remedy at law or in equity, subject to the terms of this Agreement.

Section 7.3. No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy or power conferred upon or reserved to any Party under this Agreement is intended to be exclusive of any other available right, remedy or power, but each right, remedy and power shall be cumulative and concurrent and shall be in addition to every other right, remedy and power available under this Agreement or existing at law, in equity or by statute or otherwise now or hereafter.

No exercise, beginning of the exercise, or partial exercise by any Party of any one or more rights, remedies or powers shall preclude the simultaneous or later exercise by that Party of any or all other rights, remedies or powers. No delay or omission in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair that or any other right, remedy or power or shall be construed to constitute a waiver of any Event of Default hereunder, but any right, remedy or power may be exercised from time to time and as often as may be deemed to be expedient.

Section 7.4. No Additional Waiver Implied by One Waiver. If any obligation under this Agreement shall be breached by any Party and the breach shall have been waived by the other Party, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach or any subsequent breach.

No failure by any Party to insist upon the strict observance by the other Party of any obligation under this Agreement, and no failure to exercise any right, remedy or power upon a breach thereof, shall constitute a waiver of any right to strict observance or a waiver of any breach. No express waiver shall be deemed to apply to any other breach or to any existing or subsequent right to remedy the breach.

Section 7.5. Waiver of Appraisal, Valuation and Other Laws. If there is an Event of Default that the defaulting Party does not contest, the defaulting Party shall be deemed to waive the benefit of all appraisal, valuation, stay, extension or redemption laws in force from time to time, all right of appraisal and redemption to which it may otherwise be entitled, and all rights of marshaling, all to the extent that the defaulting Party may effect that waiver lawfully. Neither the defaulting Party nor anyone claiming through it, shall set up, claim or seek to take advantage of any of those laws or rights.

Section 7.6. Right to Observe and Perform Covenants, Agreements and Obligations. If the Developer or any Owner commits an Event of Default under this Agreement, without demand upon the Developer or the Owner, as the case may be, and without waiving or releasing any covenant, agreement, obligation or Event of Default, upon thirty (30) days' prior written notice to the Developer or the Owner, as the case may be, the City may (but shall not be obligated to) observe or perform that covenant, agreement or obligation for the account of the defaulting Party.

Section 7.7. Provisions Subject to Applicable Law. All rights, remedies and powers hereunder may be exercised only to the extent permitted by applicable law. Those rights, remedies and powers are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

EXHIBIT "1"
[END OF ARTICLE VII]

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Notices. All notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed given if actually received, if hand-delivered or sent by recognized, overnight delivery service or sent by electronic mail, and addressed to the other Party at its Notice Address or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt. A duplicate copy of each notice, certificate, request or other communication given hereunder to either Party shall be given also to the other. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 8.2. Extent of Provisions Regarding the City. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective and enforceable to the extent authorized and permitted by applicable law. All obligations of the City arising under this Agreement shall be deemed to be duties specifically enjoined by law and resulting from any office, trust, or station upon the City within the meaning of O.R.C. Section 2731.01.

Section 8.3. Extent of Provisions Regarding the Parties; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of either Party in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving either Party's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 8.4. Assignment; Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns, subject, however, to the specific provisions hereof. The Developer shall not assign this Agreement, including, without limitation, its rights to receive any payments hereunder, to any person other than one in which either the Developer or a Developer-related entity has a controlling interest, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 8.5. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 8.6. Severability. If any provision of this Agreement is held to be illegal or invalid for any reason,

- (a) that illegality or invalidity shall not affect the remainder of this Agreement, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,
- (b) the illegality or invalidity of any application of any such provision shall not affect any legal and valid application to any other fact or circumstance, and
- (c) the balance of this Agreement shall remain effective to the full extent permitted by law.

Section 8.7. Estoppel Certificates. Within fifteen (15) days after a request from the Developer or any Owner, the City will execute and deliver a certificate stating that to the knowledge of the person issuing such certificate with respect to the requesting party's component of the Development Site: (a) this Agreement is in full force and effect; (b) the requesting Owner is not in default under this Agreement, or, if that Owner is in default, specifying same; and (c) such other matters as that Owner reasonably requests related to the obligations to pay Service Payments.

Section 8.8. Limited Obligation of City. Any covenant, agreement or obligation of the City under this Agreement which requires the expenditure of funds shall not be a general debt of the City. Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement to pay to the Trustee the Service Payments shall be a limited, special

obligation of the City to be made solely from Service Payments. The obligations of the City under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation and do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Developer nor any other person shall have any right to have taxes levied by the City for the payment of Service Payments.

Section 8.9 Obligations Unconditional and Irrevocable. The obligations of the City to assign and pay the Service Payments shall be absolute, irrevocable, and unconditional, and the City shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Developer or any other person or entity.

Section 8.10. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 8.11. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County.

Section 8.12. Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

Section 8.13. Amendments. Except as otherwise expressly provided in this Agreement, this Agreement may not be effectively amended, changed, modified, altered or terminated except in writing with the consent of the City, the Developer if any real property subject to this Agreement is owned by the Developer, and each Owner to the extent of the real property subject to this Agreement owned by such Owner.

EXHIBIT "1"
[END OF ARTICLE VIII]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above. Pursuant to O.R.C. 147.011, each signer hereby acknowledges by signing this document that the signer has signed this document, understands this document and is aware of the consequences of this document by signing it.

CITY OF SANDUSKY, OHIO

By: _____
Title: City Manager

Approved as to Form:

By: _____

Title: City Attorney

STATE OF OHIO)
)
COUNTY OF _____)

SS:

The foregoing document was acknowledged before me this __ day of _____, 2023, by _____, the City Manager of Sandusky, Ohio, on behalf of the City.

No oath or affirmation was administered to the signer in connection with this notarial act.

Notary Public

My commission: _____

[CITY SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

FINANCE DIRECTOR'S CERTIFICATE

The undersigned, Finance Director of the City of Sandusky, Ohio (the "City") under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2023 under the foregoing Agreement (\$0.00) have been appropriated lawfully for that purpose, and is in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with O.R.C. Sections 5705.41 and 5705.44.

Dated: _____, 2023

[_____], Finance Director
City of Sandusky, Ohio

EXHIBIT "1"

[CITY FINANCE DIRECTOR CERTIFICATE TO DEVELOPMENT AGREEMENT]

EXHIBIT A

[Ground Lease Site]

EXHIBIT "1"

EXHIBIT B

THE DEVELOPMENT

(Developer Concept Plans dated October 26, 2022)

EXHIBIT "1"

DRAFT

EXHIBIT C

INTENTIONALLY OMITTED

EXHIBIT "1"

EXHIBIT D

THE AUTHORIZED IMPROVEMENTS

The Authorized Improvements consist primarily of, but not limited to, the following; provided that ownership and long term maintenance of any Authorized Improvements constituting Public Improvements shall be determined by the City and the Developer by separate written instrument or amending the Development Agreement (“Public Improvement Agreement”):

PUBLIC IMPROVEMENTS:

1. Development Infrastructure:

- a. Utilities: Water/sewer/electric/gas/phone/fiber
 - i. Additional utilities funding to come from the TIF
 - ii. Non-revenue public uses to complete development
 - iii. Streets, sidewalks, crosswalks, street lighting, streetscape & landscape, wayfinding, utilities infrastructure (Request No. 3) and traffic signalization
 - b. Streets, sidewalks, crosswalks, street lighting, streetscape & landscape, wayfinding
 - c. Boardwalk along the Lake Erie water’s edge
- 2. Repairs/Replacements of Breakwalls**
 - 3. Enhancements to Sandusky Bay Pavilion Park**

PRIVATE IMPROVEMENTS:

New Construction Related to the Private portion of the Development:

- a. BPS Retail
- b. BPS North Condominiums
- c. BPS Apartments
- d. BPS Hotel
 - e. BPS Marina (docks, marina services spaces and marina infrastructure)