

ORDINANCE NO. 19-011

AN ORDINANCE AUTHORIZING AND APPROVING A GRANT IN THE AMOUNT OF \$1,000,000.00 THROUGH THE SUBSTANTIAL DEVELOPMENT GRANT PROGRAM TO THE ERIE COUNTY PORT AUTHORITY, IN RELATION TO THE PROPERTY LOCATED AT 250 E. MARKET STREET; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, Resort School, LLC, is jointly owned by entities affiliated with Marous Development Group, LLC and Cedar Fair, LP, who are in the process of acquiring property from the City located at 250 E. Market Street and approval for this acquisition is being requested in companion legislation; and

WHEREAS, the Port Authority was formed, among other purposes, to assist and collaborate with organizations to obtain economic development incentives for the purpose of generating new economic development in Erie County, Ohio; and

WHEREAS, the Port Authority, in collaboration with Resort School, LLC, desires to construct a five-story, approximate seventy-eight thousand (78,000) square foot mixed-use facility housing both post-secondary education space and minimally eighty (80) residential units on the property and the \$13,600,000+ development is tentatively planned to be constructed and occupied by September 30, 2020; and

WHEREAS, it has been determined that the development of this property with the project pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and for the health and safety and welfare of its residents, and are necessary to improve the economic and general welfare of the citizens of the City; and

WHEREAS, the Economic Development Incentive Committee met on January 23, 2019, and is recommending to approve a grant to the Erie County Port Authority in the amount of \$1,000,000, in accordance with the Sandusky City Economic Development Programs, to assist with project costs for the purpose of furthering economic development efforts in the City; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the Grant Agreement and allow the project to move forward and commence construction in the Spring of 2019; 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. This City Commission authorizes and directs the City Manager to enter into a Grant Agreement with the Erie County Port Authority for financial assistance related to the property located at 250 E. Market Street, through the Substantial Development Grant Program for the purpose of furthering economic development efforts in the City, substantially in the same form as Exhibit "A", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. This City Commission authorizes and approves the grant funding to the Erie County Port Authority, and the Finance Director is directed to expend funds to the Erie County Port Authority, in an amount **not to exceed** One Million and 00/100 Dollars (\$1,000,000.00) of which Three Hundred Forty Thousand and 00/100 Dollars (\$340,000.00) will be paid with Real Estate Development Funds and Six Hundred Sixty Thousand and 00/100 Dollars (\$660,000.00) will be paid with Economic Development Capital Projects Funds of the City of Sandusky pursuant to and in accordance with the terms of the Grant Agreement.

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.



DENNIS E. MURRAY, JR.
PRESIDENT OF THE CITY COMMISSION

ATTEST:



KELLY L. KRESSER
CLERK OF THE CITY COMMISSION

Passed: January 28, 2019

GRANT AGREEMENT

This Grant Agreement (the "Agreement") is made and entered into as of the ____ day of _____, 2019 between the CITY OF SANDUSKY, OHIO (the "City"), a municipal corporation and political subdivision duly organized and validly existing under the Constitution, its Charter, and the laws of the State of Ohio, and the ERIE COUNTY PORT AUTHORITY, a body corporate and politic and governmental subdivision of the State of Ohio created under 4582.21, et. seq. of the Ohio Revised Code, and/or its assigns ("the Port Authority").

WITNESSETH:

WHEREAS, the Port Authority was formed, among other purposes, to assist and collaborate with organizations to obtain economic development incentives for the purpose of generating new economic development in Erie County, Ohio; and

WHEREAS, the Port Authority, in collaboration with Resort School LLC, an Ohio limited liability company (the "Company"), desires to construct a five-story, approximate seventy-eight thousand (78,000) square foot mixed-use facility housing both post-secondary education space and minimally eighty (80) residential units (the "Facility") at the underutilized vacant lot at 250 E. Market Street, Sandusky, Ohio 44870 and further known as permanent Parcel Number 56-64051.000 (the "Land"). The Company will purchase the Land from the City, own the land, and lease the Land to the Port Authority to construct the Facility that will be leased back to the Company for a period of five (5) years, whereupon the Company will acquire and own the Facility thereafter. The Land and construction of the Facility represent a total investment of \$13,600,000+/-, which such development is tentatively planned to be constructed and occupied by September 30, 2020, herein after referred to as the "Project". To aid in the development of the Project, the Company, on behalf of the Port Authority, has applied for Substantial Development assistance through the City (the "Grant Application"); and

WHEREAS, to induce the Project, the City has agreed to provide economic incentive grants to the Port Authority to assist in the payment of a portion of the costs of the Project as further described in Section 1 hereof; and

WHEREAS, the City has determined that the development of the Land with the Project pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and for the health and safety and welfare of its residents, and are necessary to improve the economic and general welfare of people of the City;

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto agree as follows:

Section 1. City Grant.

The City agrees to grant One Million Dollars (\$1,000,000.00) to the Port Authority (the "City Grant") toward the costs of the Project, payable in three (3) disbursements: (1) \$480,000 on the later of one (1) week after the transfer of Permanent Parcel Number 56-64051.000 from the City to the Company or closing of all other financing sources, (2) \$400,000 on or before January 15, 2020, conditioned upon visual evidence that vertical construction of the Facility has

EXHIBIT

"A"

commenced by such date and (3) \$120,000 on the later of receipt of a certificate of occupancy for the Project or January 15, 2021. Exactly \$660,000 of the City Grant will be expensed from the Economic Development Capital Projects account (#431-4070-53000) while the remaining \$340,000 of the City Grant will be expensed from the Real Estate Development Fund (#248-0000-53000). This grant amount will not increase if the Port Authority chooses to make additional improvements not contemplated in the Grant Application. Construction must be done in accordance with and to the reasonable satisfaction of the City, which includes, but is not limited to, compliance with all Planning and Zoning codes, including Landmarks Commission and Planning Commission approval, and other applicable codes and regulations of the City, including obtaining permits. The grant is also contingent upon the Port Authority securing all other project financing. Furthermore, the Port Authority agrees to display a sign during construction and for at least one (1) year upon completion of the Project noting the City's support; and

The City shall pay the City Grant by check in the name of the Port Authority, or its assigns, on the dates of the events listed in the preceding paragraph.

Section 2. Authority to Sign.

The Port Authority and the City both represent that this Agreement has been approved by formal action of the duly authorized representatives of both parties.

Section 3. Assignment or Transfer.

The Port Authority agrees that this Agreement is not transferable or assignable without the express, written approval of the City Manager. Notwithstanding the foregoing, this Agreement, and/or grant funds to be disbursed by the City, may be assigned by the Port Authority, and related grant funds or a portion thereof, disbursed directly, to the Company without further approval from the City or City Manager. The Port Authority shall notify the City Manager and/or Chief Development Officer in writing should the Port Authority elect any portion of the grant funds to be disbursed to the Company.

Section 4. Choice of Law.

This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and the parties hereto agree that any dispute or other matter arising out of the interpretation or operation of this Agreement shall be determined in a Court of competent jurisdiction located within the State of Ohio and County of Erie.

Section 5. Binding Agreement.

This Agreement shall be binding on each of the parties and their respective successors and assigns.

Section 6. Miscellaneous.

- (a) Notice. Any notice or communication required or permitted to be given under this Agreement by either party to the other shall be deemed sufficiently given if delivered personally or mailed by United States registered or certified mail postage prepaid or by overnight delivery and addressed as follows:
- (i) TO THE CITY: City Manager
c/o Chief Development Officer
City of Sandusky, Ohio
City Building
222 Meigs Street
Sandusky, OH 44870
- (ii) TO THE PORT AUTHORITY: Erie County Port Authority
5002 Timber Commons Drive
Sandusky, OH 44870
Attention: James O. Miller-Chair
- (iii) WITH A COPY TO THE COMPANY: Resort School LLC
36933 Vine Street
Willoughby, Ohio 44094
Attention: Adelbert P. Marous, Jr.-Manager

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

(b) Amendments. This Agreement may only be amended by written instrument executed by all parties.

(c) Effect of Agreement. This Agreement is signed by the parties as a final expression of all the terms, covenants and conditions of their agreement and as a complete and exclusive statement of its terms, covenants and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

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

IN WITNESS WHEREOF the parties hereto, by and through their duly authorized representatives, have executed this Agreement on behalf of the corporate entities identified herein, on the date first written above.

ERIE COUNTY PORT AUTHORITY

By: _____
James O. Miller - Chair

CITY OF SANDUSKY, OHIO

By: _____
City Manager

The legal form of the within instrument is hereby approved.

Director of Law
City of Sandusky

CERTIFICATE OF DIRECTOR OF FINANCE

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

Director of Finance

Date