

Attachment G

**Park Improvement and
Maintenance Agreement
Between
City of Benton Harbor and
Harbor Shores Community
Redevelopment, Inc.**

PARK IMPROVEMENTS AND MAINTENANCE AGREEMENT

This Park Improvements and Maintenance Agreement (this "**Agreement**") is entered into by and between the City of Benton Harbor, a Michigan municipal corporation, whose principal business address is 200 East Wall Street, Post Office Box 648, Benton Harbor, Michigan 49023-0648, and Harbor Shores Community Redevelopment Inc. ("**Harbor Shores**"), a Michigan non-profit corporation, whose principal business address is 400 Riverview Drive, Suite 420, Benton Harbor, Michigan 49022. In this Agreement, the Parties (as hereinafter defined) hereby amend and restate the terms and conditions on which the City of Benton Harbor and Harbor Shores will provide for the expansion of, improvement to, operation of, and maintenance of Jean Klock Park (as defined below), portions of property contiguous to Jean Klock Park commonly known as Parcel 8A (as defined below), and the Park Expansion Property (as defined below), in conjunction with the Lease (as defined below) and the Harbor Shores Project (as defined in Section 1.01(n) below). The City of Benton Harbor and Harbor Shores shall be collectively referred to in this Agreement as the "**Parties**."

Recitals

On November 3, 2005, the City of Benton Harbor and Harbor Shores entered into a Development Cooperation Agreement ("**Act 425 Agreement**") by and among the City of Benton Harbor, St. Joseph, and Harbor Shores. The subject of the Act 425 Agreement is an economic development Project (as defined in Section 1.01(n) below) to be located in the City of Benton Harbor, Benton Township, and St. Joseph, Michigan. Also, on April 13, 2006, the City of Benton Harbor and Harbor Shores entered into a Memorandum of Understanding, as amended, regarding the Project ("**Memorandum of Understanding**"). The Memorandum of Understanding provides for sale of certain City of Benton Harbor-owned land (not including any portion of Jean Klock Park) for the Project and sets forth additional terms regarding community benefits, parks and recreation, and zoning. Additionally, Harbor Shores and the City of Benton Harbor entered into a Rezoning Agreement relating to the Project ("**Rezoning Agreement**").

Pursuant to the foregoing agreements, the City of Benton Harbor and Harbor Shores entered into the Harbor Shores Golf Course Agreement, dated effective January 22, 2007 ("**Prior Agreement**") to expand and improve Jean Klock Park as part of the Project, to provide for the maintenance and operation of Jean Klock Park, Parcel 8A and the Park Expansion Property (as defined in the Prior Agreement) and to lease certain interior portions of Jean Klock Park and Parcel 8A to Harbor Shores for construction and operation of three (3) holes of a public golf course, contingent upon approval by the Michigan Department of Natural Resources ("**MDNR**"), Michigan Natural Resources Trust Fund ("**MNRTF**") Board, and National Park Service ("**NPS**"), and based on the terms and conditions set forth in the Prior Agreement.

Based upon comments from the NPS and MDNR, and pursuant to Section 7.27 of the Prior Agreement, which requires the Parties to execute any additional documents reasonably requested by the other party to carry out the intent of the Prior Agreement, the Parties have agreed to separate the Prior Agreement by entering into this Agreement and the Lease (as defined below), to modify the terms of the Prior Agreement to the extent necessary to satisfy the requirements of the NPS and MDNR. The Parties agree that this Agreement and the Lease shall

replace and supersede the Prior Agreement in its entirety and upon the effective date of this Agreement and the Lease, the Prior Agreement shall automatically and immediately terminate. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

Terms and Conditions

The City of Benton Harbor and Harbor Shores agree as follows:

Article I

Section 1.01. Definitions. In addition to terms defined elsewhere in this Agreement, terms used in this Agreement shall have the following meanings:

- (a) **"City Commission"** means the City Commission of Benton Harbor, its legislative body.
- (b) **"City Manager"** means the City Manager of Benton Harbor and his/her designee.
- (c) **"Day"** means a calendar day.
- (d) **"Golf Course Improvements"** has the meaning provided in the Lease.
- (e) **"Jean Klock Park"** has the meaning provided in the Lease.
- (f) **"Jean Klock Park Improvements"** means the improvements to be constructed within Jean Klock Park and Parcel 8A by Harbor Shores as set forth in **Exhibit A** to this Agreement, including, without limitation, sidewalks, volleyball courts, trees, benches, grills, and tables. Except as otherwise provided in this Agreement, the Jean Klock Park Improvements shall be constructed by Harbor Shores, at its expense, on Jean Klock Park and Parcel 8A within five (5) years after the Effective Date of this Agreement.
- (g) **"Lease"** means the Harbor Shores Lease Agreement entered into at the same time as this Agreement regarding the lease of approximately 30.16 acres of land, including approximately 22.11 acres of Jean Klock Park and 8.05 acres of Parcel 8A to Harbor Shores, for the purposes set forth in such agreement.
- (h) **"Leased Premises"** has the meaning provided in the Lease.
- (i) **"Parcel 8A"** has the meaning provided in the Lease.
- (j) **"Park Expansion Property"** means the real property that is collectively depicted and legally described in **Exhibit B** to this Agreement. All of the Park Expansion Property (i) has been deeded to the City of Benton Harbor under the terms and conditions of the Prior Agreement; or (ii) will be deeded to the City of Benton Harbor under the terms and conditions of this Agreement.

(k) "Park Expansion Improvements" means the Trail Improvements (as defined below) and the improvements to be constructed within the Park Expansion Property by Harbor Shores as set forth in Exhibit C to this Agreement, including, without limitation, trails, boardwalks, viewing platforms and a boat launch. Except as otherwise provided in this Agreement, the Park Expansion Improvements shall be constructed by Harbor Shores within five (5) years after the Effective Date of this Agreement, such construction shall begin within thirty (30) days of execution of this Agreement.

(l) "Permitted Use" has the meaning as provided in the Lease.

(m) "Person" has the meaning as provided in the Lease.

(n) "Project" means the planning, development, construction, financing, ownership and sale of the "Harbor Shores Development Project," which is a mixed use development project that may consist of commercial and retail buildings, residential homes, hotel(s), a public golf course, marina(s) and other recreational uses to be located in the City of Benton Harbor, Benton Township, and St. Joseph, Michigan.

(o) "Southwest Park Corridor" means the real property located within Jean Klock Park as depicted and outlined in bold in Exhibit D to this Agreement for the purpose of providing access for the public to Jean Klock Park. The public's use of the Southwest Park Corridor shall be dominant to Harbor Shores' subordinate use of such area.

(p) "State" means the State of Michigan.

(q) "Trail Improvements" means the improvements to be constructed as detailed in the City of Benton Harbor's Conversion Proposal, which was resubmitted to the NPS on _____, 2008, such improvements include, without limitation, proposed nature walks, proposed non-motorized paths, existing non-motorized paths and trails by Harbor Shores, trash receptacles, boardwalks, benches, lighting, signs and bridges.

Section 1.02. Exhibits. All Exhibits attached to this Agreement shall be operative parts of this Agreement and incorporated by reference where mentioned in this Agreement, except that in the event of any conflict between any Exhibit and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. Capitalized terms in the Exhibits to this Agreement shall be given the same meaning as in this Agreement, unless otherwise indicated. In the event of any conflict or inconsistency between the terms and condition of this Agreement and the terms and conditions of the Lease, the terms and conditions of the Lease shall control. From and after the Effective Date, this Agreement and the Lease shall amend and restate the Prior Agreement in its entirety. Reference to supplemental agreements, approvals, certificates, consents, notices, requests and the like means that such shall be in writing whether or not a writing is specifically mentioned.

Section 1.03. Contingencies. This Agreement shall not be executed by the Parties until they receive prior written approval of it from the NPS. This Agreement is contingent upon the

execution of the Lease. In the event that this contingency is not satisfied, this Agreement shall terminate upon written notice from a party to this Agreement to the other party to this Agreement, and neither party to this Agreement shall have any further liability to the other party.

Article II

Section 2.01. Term. The term of this Agreement shall be the same as set forth in the Lease, including all terms and conditions set forth therein regarding the term.

Section 2.02. Consideration. The Consideration for entering into this Agreement is as provided under the Lease.

Section 2.03. Approval by the MDNR, the MNRTF Board and the NPS. The Parties acknowledge that Jean Klock Park is subject to the following agreements ("Grant Agreements") previously entered into by the City of Benton Harbor: (a) Development Project Agreement - Land and Water Conservation Fund, Project Number 26-00568; (b) Development Project Agreement - Michigan Natural Resources Trust Fund, Project Number 89-114; (c) Development Project Agreement - Michigan Department of Natural Resources Recreation Bond Program, Project Number BF 92-327; and (d) Development Project Agreement - Clean Michigan Initiative Recreation Bond Program, Project Number CM99-203. The Parties further acknowledge that the Parties have sought and obtained approval of the Project from the MDNR, MNRTF Board, and the NPS. The MNRTF Board approval is subject to the conditions as detailed in its final approval, including, without limitation, a review of this Agreement. The Parties shall use their best efforts to assist and cooperate fully with each other with regard to meeting any conditions imposed by the MDNR, MNRTF Board, the NPS and any other appropriate and/or required governmental bodies necessarily required for the performance of this Agreement by the Parties. Application and approval costs, including reasonable attorneys' fees, appraisal expenses, environmental reports, and mitigation sites, shall be borne by Harbor Shores.

Article III

Section 3.01. Park Jurisdiction. The City of Benton Harbor, as fee simple owner of Jean Klock Park, Parcel 8A and the Park Expansion Property, through its representatives, shall remain in charge of the operation and maintenance of all portions of Jean Klock Park, Parcel 8A and the Park Expansion Property not encompassed by the Leased Premises, consistent with the City of Benton Harbor's obligation to provide for and administer to the general welfare of the public and consistent with Sections 3.03 and 3.04 below.

Section 3.02. Improvements. Attached as **Exhibit A** is a detailed list of the Jean Klock Park Improvements which shall be completed by Harbor Shores under this Agreement. Attached as **Exhibit C** is a detailed list of the Park Expansion Improvements which shall be completed by Harbor Shores under this Agreement. The Trail Improvements include, but are not limited to, the current plans for park improvements, including action items, connection and access points for all park properties and park trails as detailed in the City of Benton Harbor's Conversion Proposal, which was resubmitted to the NPS on _____, 2008. The Parties acknowledge that Harbor Shores intends to complete at least One Million and no/100 Dollars (\$1,000,000.00)

capital improvements for the Jean Klock Park Improvements as detailed in **Exhibit A** and at least Five Hundred Thousand Eight Hundred Fifty and no/100 Dollars (\$500,850.00) in capital improvements for the Park Expansion Improvements as detailed in **Exhibit C**.

Harbor Shores guarantees and warrants all work performed by or for it in the construction and installation of the Park Expansion Improvements and Jean Klock Park Improvements against defective workmanship and materials for a period of one (1) year after completion of installation of such improvements. If the City of Benton Harbor gives Harbor Shores written notice of alleged defects in workmanship or materials in any of the Park Expansion Improvements or Jean Klock Park Improvements and requests inspection of them within one (1) year after the date of installation of such improvements, Harbor Shores will inspect improvements. Where such inspection reveals defects in workmanship or materials in any of the Park Expansion Improvements or Jean Klock Park Improvements, then Harbor Shores will make reasonable repairs to cure such defects without cost to the City of Benton Harbor. Harbor Shores does not warrant, however, against alleged defects which are the result of characteristics common to the materials used, such as (but not limited to) typical warping or deflection of wood; fading chalking or checking of paint due to sunlight; drying, shrinking or cracking of caulking and weatherstripping; heaving of cement; or initial settlement of the Park Expansion Improvements or Jean Klock Park Improvements or material shrinkage commonly associated with new construction. Harbor Shores will assign to and for the benefit of the City of Benton Harbor all assignable warranties made to Harbor Shores by contractors, materialmen and suppliers relative to services, materials and equipment incorporated in the Park Expansion Improvements or Jean Klock Park Improvements.

Section 3.03. Maintenance.

(a) **Jean Klock Park, Parcel 8A and the Park Expansion Property.** Harbor Shores shall provide the following maintenance during the term of this Agreement for Jean Klock Park and Parcel 8A (but not including the Leased Premises), the Park Expansion Property and public trails to be constructed as detailed in the City of Benton Harbor's Conversion Proposal, which was resubmitted to the NPS on _____, 2008: sand and dune maintenance; trash removal; cleaning of public restrooms; grass mowing and related landscaping trimming and maintenance; and other customary park maintenance items. Notwithstanding the foregoing, Harbor Shores' maintenance obligations under this Subsection (a) do not include maintenance as the result of special events or public road maintenance or repair or replacement of any of the non-golf course related infrastructure located within Jean Klock Park, Parcel 8A or the Park Expansion Property. Further, with regard to the maintenance required to be completed by Harbor Shores under this Subsection (a), Harbor Shores shall perform and pay for or cause to be performed and paid for all such required maintenance promptly or, alternatively, within seven (7) days after receipt of written notice from the City of Benton Harbor demanding such action or within such reasonably longer period if such maintenance, repair or replacement cannot be completed within such 7-day period.

(b) **The City of Benton Harbor Responsibilities.** Subject to the maintenance obligations of Harbor Shores detailed in Subsection (a) above and Section 3.02 above, the City of Benton Harbor shall, at its cost, perform and pay for or cause to be performed

and paid for all maintenance, repair and replacement necessary to keep the Jean Klock Park Improvements, Jean Klock Park and Parcel 8A (except for the Leased Premises and Golf Course Improvements), any portions of the Park Expansion Property and related Park Expansion Improvements that are owned by the City of Benton Harbor during the term of this Agreement, clean, sanitary, presentable and safe and in good order, condition and repair, consistent with a first-class public park and in compliance with all applicable laws, ordinances, rules and regulations during the term of this Agreement. Notwithstanding the foregoing, the City of Benton Harbor shall not be responsible for any maintenance, repair and replacement of the Leased Premises or Golf Course Improvements. The City of Benton Harbor shall perform all such maintenance, repair and replacement as needed and, in any event, within seven (7) days after receipt of written notice from Harbor Shores or such reasonably longer period if such maintenance, repair or replacement cannot be completed within such 7-day period.

Section 3.04. Operations. The City of Benton Harbor shall be responsible for the operation of the Jean Klock Park Improvements, Jean Klock Park and Parcel 8A (except for the Leased Premises and Golf Course Improvements), and any portions of the Park Expansion Property and related Park Expansion Improvements that are owned by the City of Benton Harbor during the term of this Agreement.

Section 3.05. Access to Trail Improvements. Upon completion of the construction and installation of the Park Expansion Improvements, the public will have the right to use the portions of the Trail Improvements that are located on Harbor Shores owned real property at no charge. Harbor Shores may implement reasonable rules and regulations regarding such use with the prior written approval of the City of Benton Harbor, which approval shall not be unreasonably withheld, delayed or conditioned.

Section 3.06. Park Access. The City of Benton Harbor hereby grants to Harbor Shores reasonable access over and across Jean Klock Park, Parcel 8A and the Park Expansion Property for the purpose of allowing the construction and installation of the Jean Klock Park Improvements, for the purpose of allowing the construction and installation of the Park Expansion Improvements, and for the purpose of its maintenance obligations as detailed in **Section 3.03** above and **Section 3.02** above ("**Park Access Rights**"). The Park Access Rights shall be for the use of Harbor Shores and its agents. Notwithstanding the foregoing, Harbor Shores shall not have access under this Agreement to any portion of the Lake Michigan beach or any portion of the dunes within Jean Klock Park that are to the west of the western boundary of the Lease Premises, except for the purposes of the construction and installation of the Jean Klock Park Improvements and for the purpose of complying with its maintenance obligations as detailed in **Section 3.03(a)** above and **Section 3.02** above. Notwithstanding anything to the contrary herein, in all instances, the public's right to use all areas of Jean Klock Park and Parcel 8A (other than the Leased Premises), and the Park Expansion Property shall be dominant compared to Harbor Shores' subordinate use of all such areas under this Agreement; and, the City of Benton Harbor shall, as may be required from time to time, with input from Harbor Shores and MDNR staff, make and adopt reasonable rules and regulations regarding Jean Klock Park uses by Harbor Shores consistent with the terms of this Agreement to minimize and resolve any conflicts between Harbor Shores' use and all other uses in such a way that promotes the public's use of Jean Klock Park. The City of Benton Harbor is responsible for future repair and

future replacement of the Jean Klock Park Improvements, with the exception of Harbor Shores' obligations under **Section 3.02** above and Harbor Shores' retention of financial responsibility to make any future repairs and future replacements of the Jean Klock Park Improvements necessitated by actions or inaction of Harbor Shores that adversely impacts the Jean Klock Park Improvements. Likewise, Harbor Shores shall retain financial responsibility to make any future repairs to Jean Klock Park, Parcel 8A and the Park Expansion Property necessitated by actions or inaction of Harbor Shores that adversely impacts Jean Klock Park, Parcel 8A and the Park Expansion Property. Harbor Shores acknowledges that Jean Klock Park and Parcel 8A have state-listed threatened plants species and that Harbor Shores shall reasonably comply with necessary and appropriate design and construction measures so that such threatened plants species are not threatened or adversely impacted.

Section 3.07. Termination of Marina Easement. Pursuant to the Prior Agreement, Cornerstone Alliance, the City of Benton Harbor and the City of St. Joseph entered into the Easement Agreement, dated April 19, 2007, recorded April 27, 2007, in Liber 2788 Page 297 of the Berrien County Register of Deeds records ("**Marina Easement**"). The Parties agree to use their best efforts to terminate the Marina Easement within thirty (30) days of the Effective Date of this Agreement.

Section 3.08. Termination of Access Easement. Harbor Shores, Harbor Shores BHBT Land Development, LLC and the City of Benton Harbor entered into the Access Easement Agreement, dated April 19, 2007, recorded April 27, 2007, in Liber 2788 Page 421 of the Berrien County Register of Deeds records ("**Access Easement**"). The Parties agree to use their best efforts to terminate the Access Easement within thirty (30) days of the Effective Date of this Agreement.

Section 3.09. Parcels H1 and H2. Pursuant to the Prior Agreement, Cornerstone Alliance, a Michigan nonprofit corporation, executed and recorded a Covenant Deed, dated April 20, 2007, recorded April 27, 2007, in Liber 2788, Page 388 of the Berrien County Register of Deeds records, which conveyed certain real property to the City of Benton Harbor ("**Prior Deed**"). The real property being conveyed under the Prior Deed included, but was not limited to, the real property legally described and depicted on **Exhibit E** attached hereto ("**Parcels H1 and H2**"). The City of Benton Harbor hereby agrees to use its best efforts to convey title to and transfer Parcels H1 and H2 to Cornerstone Alliance pursuant a covenant deed within thirty (30) days of the Effective Date of this Agreement.

Section 3.10. Changes to Park Mitigation Parcels. Pursuant to the Prior Agreement, Harbor Shores BHBT Land Development, LLC, a Michigan limited liability company ("**BHBT**"), executed and recorded a Covenant Deed, dated April 20, 2007, recorded April 27, 2007, in Liber 2788, Page 376, of the Berrien County Register of Deeds records which conveyed certain real property commonly known as Park Mitigation Parcel C to the City of Benton Harbor ("**Parcel C Deed**"). Also, pursuant to the Prior Agreement, BHBT executed and recorded a Covenant Deed, dated April 20, 2007, recorded April 27, 2007, in Liber 2788, Page 380, of the Berrien County Register of Deeds records, which conveyed certain real property commonly known as Park Mitigation Parcel D to the City of Benton Harbor ("**Parcel D Deed**"). Additionally, pursuant to the Prior Agreement, BHBT executed and recorded a Covenant Deed,

dated April 20, 2007, recorded April 27, 2007, in Liber 2788, Page 385, of the Berrien County Register of Deeds records which conveyed certain real property commonly known as Park Mitigation Parcel F to the City of Benton Harbor ("**Parcel F Deed**"). Because portions of the Golf Course Improvements, as currently designed, encroach on the property covered by the Parcel C Deed, Parcel D Deed and Parcel F Deed, the City of Benton Harbor shall use its best efforts to convey title to and transfer the real property legally described on **Exhibit F** attached hereto ("**Encroachment Area**") to BHBT within thirty (30) days of execution of this Agreement. Additionally, Harbor Shores shall use its best efforts to convey title to and transfer the real property legally described on **Exhibit G** attached hereto ("**Addition to Park Mitigation Parcel C**") to the City of Benton Harbor within thirty (30) days of execution of this Agreement. Also, Harbor Shores shall use its best efforts to convey title to and transfer the real property legally described on **Exhibit J** attached hereto ("**Addition to Park Mitigation Parcel D**") to the City of Benton Harbor within thirty (30) days of execution of this Agreement.

Section 3.11. Underground Anchor and Tieback Agreement. The City of Benton Harbor and Harbor Shores shall enter into an Underground Anchor and Tieback Agreement ("**Underground Anchor and Tieback Agreement**") for the construction, installation, use, maintenance, repair, restoration, replacement and service of underground anchors and tieback rods, across, under and through the real property as depicted on **Exhibit H** attached hereto burdening that portion of the real property described as Mitigation Parcel H Appraisal on **Exhibit B** attached hereto ("**Mitigation Parcel H**") for the sole purpose of providing support to the marina walls to be constructed on and for the benefit of the real property as legally described on **Exhibit I** hereto ("**Marina Parcel**"). Harbor Shores shall complete the initial construction and installation of the anchors and tiebacks under the Underground Anchor and Tieback Agreement prior to the completion or installation of the Park Expansion Improvements to be located on Mitigation Parcel H. Harbor Shores shall keep and maintain the anchors and tiebacks in a manner that does not pose a risk to the public and in a manner that prevents the anchors and tiebacks from being visible from the surface of Mitigation Parcel H. Harbor Shores shall restore, at its sole cost and expense, any damage caused by it to Mitigation Parcel H relating to the Underground Anchor and Tieback Agreement. The Parties agree to use their best efforts to enter into the Underground Anchor and Tieback Agreement within thirty (30) days of the Effective Date of this Agreement.

Section 3.12. Community Benefits. The Parties agree to consider the use of locally owned and operated businesses in the design and construction of the Project. Further, Harbor Shores commits to use its best efforts in selecting a certain number of locally owned and operated businesses in the design and construction of the Project where appropriate and reasonable. Harbor Shores also agrees that at least forty percent (40%) of the employees that will maintain Jean Klock Park and the golf course shall be City of Benton Harbor residents. Additionally, Harbor Shores agrees to use a good faith effort in hiring the City of Benton Harbor residents in an amount of at least ten percent (10%) of the employees for construction of the golf course, including, but not limited to, demolition and site clearing work. Finally, Harbor Shores agrees to provide funding for the City of Benton Harbor to contribute to a community benefits program as detailed and described in the Lease.

Article IV

