

## DONATION AGREEMENT

This Donation Agreement, is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), at Lorain, Ohio by and between **Spitzer Great Lakes, LTD, Company**, an Ohio corporation (which with its successors and assigns is herein called "Owner") and **Lorain Port Authority**, an Ohio political subdivision (which with its successors and assigns is herein called "Port").

WHEREAS, Owner holds fee simple title to the real estate, with all improvements thereon, located at 301 Broadway Avenue, Lorain, Ohio, and with Permanent Parcel Nos. \_\_\_\_\_ and Ohio historical tax credits all as more fully described on Exhibit A attached hereto and made a part hereof, said real estate, including the land and all improvements thereon and all appurtenant easements, rights and privileges, is herein called the "Real Estate",

NOW THEREFORE, in consideration of the mutual covenants and promises herein and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Owner and Port hereby agree as follows:

### SECTION 1 — DONATION AND ACCEPTANCE

Owner shall donate to Port and Port shall accept from Owner the Real Estate and tax credits as a charitable contribution, subject to Owner obtaining an appraisal in an amount of at least Three Million and No/100 Dollars (\$3,000,000.00).

### SECTION 2 — CONFIRMATION OF DONATION AND ACCEPTANCE

Within fifteen days after the Closing Date, as defined below, Port shall complete, execute and deliver to Owner as "donee", Part IV of Owner's Internal Revenue Service Form 8283, in order to evidence receipt by Port of the Real Estate. At the Closing, Port shall provide Owner a written acknowledgement of the donation of the Real Estate, in compliance with the requirements of Internal Revenue Code, including, but not limited to, Section 170(f)(8) and the Regulations promulgated thereunder time being of the essence. Port shall promptly deliver to Owner such other documents as the Owner may reasonably request to evidence said donation. On or before the Closing, Owner and Port shall deliver to each other resolutions from the governing body or parties of each authorizing the donation and acceptance thereof and such other evidence of authority as either may reasonably request. Port shall not take any action at any time which would adversely affect, limit or impair the deductibility of the donation for federal income tax purposes by Owner.

### SECTION 3 — CONVEYANCE OF REAL ESTATE

(a) Owner shall convey to Port at the Closing the Real Estate by a limited warranty deed (the "Deed") as defined in Ohio revised Code Section 5302.07 conveying fee simple title to the Real Estate subject to taxes and assessments, which are a lien, but not yet due and payable and all encumbrances of record prior to the date hereof; provided, however, that the Real Estate will be conveyed free and clear of all mortgages and liens other than the lien for real estate taxes and assessments not yet due and payable. The Closing Date shall be the date the Deed is filed with the Lorain County Recorder which shall be no later than September 1, 2016.

(b) Real estate taxes and assessments, both general and special (the "Taxes"), shall be prorated to date of transfer.

(c) Any and all utility expenses and any and all other charges or expenses associated with or related to the ownership of the Real Estate ("Property Expenses"), that are due and payable before Closing, shall be paid in full by Owner on or prior to the Closing. Property Expenses that become due and payable after Closing shall be paid by the Port.

(d) Port shall have the right, but not the obligation, prior to the Closing to conduct inspections and investigations of any nature with respect to the Real Estate, including without limitation, title examination, survey and environmental studies; provided, however, that the inspections take place during normal business hours and with a representative of Owner and that all persons entering the Property in advance release Owner for any and all claims due to any injuries or damage to them while on the Property.

#### SECTION 4 — CLOSING

(a) Escrow agent (the "Escrow Agent") shall be First American Title Insurance Company, 5505 Detroit Road, Sheffield Village, Ohio 44054. Immediately following the Effective Date, Owner shall open an escrow account with Escrow Agent. This Agreement shall serve as escrow instructions and shall be subject to the usual conditions of acceptance of Escrow Agent except as otherwise provided herein.

(b) Owner shall order, at Port's expense, a title insurance commitment (the "Title Commitment") and special tax search issued by the First American Title Insurance Company. (the "Title Company"), as agent for First American Title Insurance Company, in the amount of the appraisal for the charitable contribution to be obtained by Owner, with such endorsements, at Port's expense as Port may require, setting forth the state of the title of the Real Estate and all encumbrances of record affecting title to the Real Estate.

(c) Port's obligations under this Agreement are subject to the following conditions (the "Conditions"):

- (i) That Port approve the Title Commitment,
- (ii) That Port approve a survey, if any, of the Real Estate that is obtained by Port at its expense,
- (iii) That Port approve the results of inspections, obtained at its expense, of the Real Estate,
- (iv) Receipt from Owner of an appraisal for the Property which exceeds Three Million and No/100 Dollars (\$3,000,000.00), and
- (v) That the Port is able to enter into a lease agreement with 301 Broadway, LLC, the developer, satisfactory to the Port, for the lease of the real estate and that said developer is able to obtain financing for the redevelopment of the Real Estate.

Port shall approve all the foregoing unless they reveal a condition or encumbrance that materially and adversely affects the value of the Real Estate.

(d) Owner's Deposits. On or before the Closing Date, Owner shall deposit in escrow with Escrow Agent:

- (i) The Deed duly executed and in proper form for recording; and,
- (ii) All funds, information and documents reasonably required by Escrow Agent and Title Company in order to issue the Title Policy and open and close the escrow and satisfy Owner's payment obligations hereunder and to satisfy in full all mortgages and liens (except for real estate taxes and assessments, not yet due and payable) encumbering the Real Estate (the "Liens").

(e) Port's Deposits. Port shall, on or before the Closing Date, deposit in escrow with Escrow Agent:

(i) The documents, fully executed, required under Section 2, and

(ii) Information and documents reasonably required by Escrow Agent and Title Company to open and close the escrow and issue the Title Policy and to satisfy Port's obligations hereunder.

(f) Escrow Agent's Closing Obligations. Provided that all escrow deposits have been made and Title Company is prepared to issue to Port an owner's title insurance policy (the "Title Policy") in the amount of the appraised value as determined by Owner's appraiser, in accordance with the Title Commitment (except the Liens which shall not be exceptions), Escrow Agent shall transfer title to the Real Estate to Port and record the Deed, and shall make the payments and deliveries as follows:

(i) Charge Port with and pay to the payee entitled thereto:

(A) The cost of title examination, special tax search, Title Commitment and Title Policy; and,

(B) The Escrow Agent's fee, the transfer tax and conveyance fees, if any, and the recording fee for the Deed.

(ii) Charge Owner with and pay to the payee entitled thereto any amounts necessary to satisfy the Liens.

(iii) Immediately following the Closing Date, Escrow Agent shall deliver:

(A) To Owner the settlement statement and funds due Owner; and,

(B) To Port the Title Policy, the Deed and the settlement statement.

#### SECTION 5 — BROKER'S COMMISSION

Port and Owner represent and warrant to each other that no real estate brokers are involved in this transaction. Port and Owner each shall indemnify, defend and hold the other harmless from and against all claims for brokerage commissions or fees or finder's fees made by any broker, finder or any other person or entity claiming: (i) to have been retained by Port or Owner, as the case may be, in connection with this transaction or the Real Estate or (ii) to be the procuring cause of this transaction due to any act or authorization of Port or Owner as the case may be.

#### SECTION 6 — IMPROVEMENTS

(a) Port acknowledges that a building and other improvements (collectively the "Improvements") are part of the Real Estate.

(b) Port acknowledges that there is no fire and extended coverage casualty insurance or liability coverage with respect to the Improvements. Owner shall continue its current practices with respect to the management and maintenance thereof; provided, however, that Owner shall be under no obligation to replace all or any portion of the Improvements or make any repairs with a cost in excess of Five Thousand Dollars (\$5,000.00). In the event of damage to the Improvements after the date of this Agreement with a reasonable cost to repair in excess of \$20,000.00, Port may terminate this Agreement with 30 days written notice to Owner and if Owner fails to cure the same within said 30 days or commences to cure during said 30 days if the cure cannot reasonably be effected in 30 days.

## SECTION 7 — NOTICES

Any notices or deliveries which may or are required to be provided or made hereunder may be made either by certified mail, addressed to the addresses set forth below or by hand delivery. Delivery by mail shall be deemed received two days after deposit in the United States mail and delivery by hand shall be deemed received on the date delivered:

As to Owner:            Spitzer Great Lakes, LTD Company  
                                 150 E. Bridge Street  
                                 Elyria, OH 44035

As to Port:              Lorain Port Authority  
                                 319 Black River Lane  
                                 Lorain, OH 44052

## SECTION 8 — BINDING EFFECT; NO ASSIGNMENT

This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns; provided, however, that neither party shall assign this Agreement without the prior written consent of the other party.

## SECTION 9 — SOLE AGREEMENT; NO MERGER

This Agreement constitutes the entire agreement between Owner and Port with respect to the Real Estate and the other matters, which are treated herein, and supersedes all prior and contemporaneous agreements, representations, warranties, promises and understandings. The post-Closing obligations and liabilities of Port and Owner, expressly provided for in this Agreement, shall survive the conveyance of the Real Estate and shall not be merged in the Deed.

## SECTION 10 — REPRESENTATIONS AND WARRANTIES

- (a) Owner represents and warrants to Port that on the date hereof:
  - (i) Owner has full power and authority to enter into this Agreement and to perform its obligations hereunder, and this Agreement constitutes the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms;
  - (ii) There are no outstanding written or oral leases or other occupancy agreements covering or in any way affecting the Real Estate that will survive the Closing, and no person or entity has any right to acquire the Real Estate (whether by option to purchase, contract, or otherwise);
  - (iii) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby will constitute a violation of or be in conflict with or constitute a default under any term or provision of any agreement or instrument to which Owner is a party or by which the Real Estate or any part thereof is bound;
  - (iv) There are no management or service contracts that are not terminable upon thirty days' notice;
  - (v) To the extent of the actual knowledge of Alan Spitzer, without inquiry, the Real Estate and the uses presently made thereof do not contravene any applicable laws, rules, regulations, ordinances or codes and Owner has not received any

outstanding work orders, deficiency notices, action request notices or other notifications of non-compliance or contravention of the Real Estate; and

- (vi) To the extent of the actual knowledge of Alan Spitzer, without inquiry, there are no legal actions, including any eminent domain actions or proceedings, under way or pending by Owner or by any third party, including any governmental agency, relating to the Real Estate, or which could affect this transaction and there are no unsatisfied judgments outstanding against Owner except for complaints pending from the City of Lorain regarding the need for repairs to the Property as set forth in Exhibit "B" attached hereto.

(b) All of the foregoing representations and warranties in this Section shall be true and accurate as of the Closing Date. Any litigation with respect to any breach of the foregoing representations and warranties shall be brought by the filing of a complaint with a court with jurisdiction over Port and Owner and over the subject matter of the complaint within one (1) year and thirty (30) days after the Closing Date.

(c) Except as expressly provided herein and except with respect to the warranty covenants in the Deed, Owner makes no representations or warranties with respect to the Real Estate or its physical or economic condition or its fitness for any purpose of Port or any other matters and Port shall take the Real Estate in its "as is" condition and all warranties (express or implied) are excluded and Port acknowledges that it has had full and unimpeded access to the Real Estate and that it has relied solely on its independent investigation of the Real Estate.

#### SECTION 11 — POSSESSION

Port shall have sole and exclusive possession of the Real Estate on the date of the Closing.

#### SECTION 12 — MISCELLANEOUS

(a) Ohio law shall govern the interpretation and enforcement of this Agreement. All disputes arising with respect to the provisions of this Agreement shall be exclusively venued in the State Courts of Lorain County, Ohio. Port and Owner hereby submit to the personal jurisdiction of said State Courts. This Agreement may be enforced by specific performance or by an action for damages or a combination thereof subject to the limitations set forth herein.

(b) No waiver by Owner or Port and no refusal or neglect of Owner or Port to exercise any right hereunder or to insist upon strict compliance with the terms of this Agreement shall constitute a waiver of any provision of this Agreement with respect to any subsequent matter and shall not be deemed to be a course of dealing or an amendment of this Agreement.

(c) The captions of this Agreement are for convenience only and do not define, describe or limit any provision hereof.

IN WITNESS WHEREOF, Owner and Port have hereunto set their hands as of the day and year first above written.

**Spitzer Great Lakes, LTD, Company**

**Lorain Port Authority**

By: \_\_\_\_\_  
Alan Spitzer, President

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"Owner"

"Port"

**EXHIBIT A**

Legal Description

**EXHIBIT B**