

2008 PUBLIC FACILITIES AGREEMENT

THIS 2008 PUBLIC FACILITIES AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2008, by and between **THE COMMISSIONERS OF ST. MICHAELS** (the "Town"), a Maryland municipal corporation; and **TND DEVELOPMENT, INC.** (the "Developer"), a corporation organized and existing under the laws of the State of Maryland,.

RECITALS

1. Miles Point Property, LLC (the "Owner"), a Maryland limited liability company, is the fee simple owner of those certain tracts or parcels of land (hereinafter the "Perry Cabin Land"), consisting of approximately 72.167 acres, described in a deed dated August 11, 2004 from Harry C. Meyerhoff to the Owner, recorded among the Land records of Talbot County, Maryland, in Liber 1268, folio 312, et seq., a copy of which deed is attached hereto as **Exhibit A**.

2. The Perry Cabin Land was annexed to the Town pursuant to an Annexation Agreement dated May 6, 1980, between the Town, Perry Cabin Associates, and Talbot County, Maryland, recorded among the Land Records of Talbot County in Liber No. 548, folio 167, *et seq.* (the "Perry Cabin Farm Annexation Agreement"). Perry Cabin Associates conveyed the Perry Cabin Land to Henry C. Meyerhoff on December 31, 2003 through a deed recorded among the land records of Talbot County, Maryland in Liber No. 1267, folio 923, et seq.

3. The Owner is also the fee simple owner of those certain tracts or parcels of land located contiguous to the existing boundaries of the Town of St. Michaels, east of Maryland Route 33, and binding on Yacht Club Road (the "Miles Point Property"), consisting of approximately 16.16 acres of land, more or less, which land is described in the deed dated August 31, 2001, from Elsie W. Huntman to Owner, and recorded among the Land Records of Talbot County, Maryland in Liber No. 1019, folio 93, *et seq.*, a copy of which deed is attached hereto as **Exhibit B**.

4. The Miles Point Property is located adjacent to and contiguous with the northerly boundary of the Town and the Perry Cabin Land.

5. Owner sought to have the Miles Point Property annexed to the Town in 2003, but that annexation process (hereinafter the "2003 Miles Point Property Annexation") was declared by a court to be defective and was thereby rendered invalid.

6. In connection with the failed 2003 Miles Point Property Annexation and certain land use applications pertaining to the Perry Cabin Land, the Town and the Developer entered into the Public Facilities Agreement dated October 28, 2003, which is recorded among the Land Records of Talbot County, Maryland in Liber No. 1225, folio 191, *et seq.* (the "2003 Public Facilities Agreement"), which 2003 Public Facilities Agreement the parties hereto expressly agree terminated in the event that it has not previously been rendered void by the decision of the Court declaring the 2003 Miles Point Property Annexation to be invalid.

7. Owner is again seeking to have the Miles Point Property annexed to the Town.

8. The Developer desires to have the Miles Point Property annexed by the Town, and desires to develop the Perry Cabin Land and the Miles Point Property, which will require the future extension of utility services and public services, including roads and water facilities in a manner that

is established, uniform and agreeable to all parties hereto, so that, among other things, such facilities are uniformly designed, specified, installed and interchangeable, so that each system operates effectively and efficiently as a single system.

9. The Developer desires to develop the Miles Point Property and the Perry Cabin Land as a single development, under unified control, as a unified traditional neighborhood development substantially in accordance with the development parameters set forth in the annexation agreement of even date herewith between the Town and Owner (the "Annexation Agreement"), a copy of which is attached hereto as **Exhibit C** and which is incorporated herein by reference. However, the Developer acknowledges that the Town has no contractual obligation to issue land use approvals to permit development of the Perry Cabin Land and/or the Miles Point Property in the manner desired by the Developer, and the Developer also acknowledges that the Town expressly retains the right and obligation, unfettered by this Agreement, or any other agreement, to exercise independent judgment and discretion to evaluate any requests for any and all land use approvals to develop the Perry Cabin Land and/or the Miles Point Property based on the facts in the record and the applicable laws and regulations at the time such applications are made.

10. In connection with its current effort to annex the Miles Point Property to the Town, Owner has submitted a petition for annexation, a proposed annexation resolution, and the Annexation Agreement.

11. The Developer and the Town desire to establish the guidelines for the proposed extension of said utility services and public facilities.

12. The parties hereto wish to enter into this Agreement with regard to the Perry Cabin Land regardless of whether the Miles Point Property is annexed to the Town, and/or regardless of whether the Miles Point Property is developed with the Perry Cabin Land as a single development under unified control. The parties hereto wish to enter into this Agreement with regard to the Miles Point Property if, and during the period after, the Miles Point Property is annexed to the Town.

NOW, THEREFORE, for, in consideration of the premises, and for other good and valuable consideration hereinafter set forth, it is mutually agreed by and between the Developer and the Town as follows:

1. Subject Property. The land area that is subject to this Agreement ("Subject Property") shall be as follows:

1.1. The Perry Cabin Land regardless of whether the Miles Point Property is annexed to the Town; and

1.2. The Miles Point Property only if, and during the period after, it is annexed to the Town pursuant to the terms of the Annexation Agreement (Exhibit C herewith).

2. Development of the Subject Property. With regard to the Perry Cabin Land, and with regard to the Miles Point Property if it is annexed pursuant to the Annexation Agreement of even date herewith between the Owner and the Town and developed with more than two (2) dwelling units, the Developer shall cause the Subject Property to be developed in accordance with the land-use approvals and permits issued by the Town relating thereto, as follows:

2.1. As to the Perry Cabin Land: (a) in a unified manner; (b) under the management, direction, control and enforcement of the same person(s) or entity using the same standards, policies, practices and procedures; and (c) substantially in accordance with the Approved IDA Plan, a copy of which plan is attached as **Exhibit D**, as is it may be modified or replaced by subsequent applicable judicial decisions, land-use approvals, and/or by agreements between the Town and the Owner.

2.2. As to the Miles Point Property: in accordance with the Annexation Agreement between the Owner and the Town (Exhibit C herewith).

2.3. The Subject Property shall be developed in defined development areas, sections or phases (hereinafter referred to as "phases"), each phase consisting of no more than 30 contiguous acres of land, and the total area of all phases within which construction is occurring at any one time shall not exceed 30 acres. Prior to the issuance of a building permit for any one or more lots or parcels of less than one entire defined contiguous development phase that is a part of the Subject Property, the requirements of this Agreement, Section 3 (Conveyance And Infrastructure), must be satisfied for the entire development phase of which such lot or parcel is a part: The fact that a parcel of land of sufficient size to constitute an entire development phase has been conveyed by the Owner or Developer to a grantee, for that grantee to develop independently of the Developer, shall not alter the requirement that the Subject Property be developed in serial phases, with the total area of the phases within which construction is active at any one time being limited to 30 acres. As construction in one part of a phase is completed, a phase may be redefined and drawn to eliminate the land where construction is completed and add land where construction is to be started, provided that all portions of a phase shall be contiguous, and that a phase shall not be less than five acres in area. For the purpose of this paragraph, construction on a lot shall be completed when all active construction thereon has been completed and an occupancy permit therefore has been issued by the Town. The Town shall be furnished with a drawing of each phase, drawn in sufficient detail to allow the Town zoning inspector to readily determine the lots within the phase, the boundaries thereof, and the total acreage of the phase, before construction shall be permitted in such phase.

3. **Conveyance And Infrastructure.** Prior to the issuance of a building permit for any lot or parcel within any designated contiguous development phase that is a part of the Subject Property, the following conditions must be satisfied for the entire development phase of which such lot or parcel is a part, relating to the following subdivision, public improvements and public utilities (collectively "Infrastructure"):

3.1. A final subdivision plat of the entire phase, with approval by the Town Planning Commission and all other required governmental authorities indicated thereon, shall be recorded among the Plat Records of Talbot County.

3.2. Development of the Subject Property is subject to the availability and reservation of a sanitary sewerage hook-up for each lot or parcel in the section or phase, and the actual availability of actual sanitary sewerage service (collector and treatment capacity) to each such lot or parcel, as certified in writing by Talbot County.

3.3. All restrictive covenants, condominium regimes, owners' association by-laws, and other documents intended to govern the ownership, occupancy or use of all or any part of

the Subject Property, shall be recorded among the Land Records of Talbot County (the "Land Records").

3.4. All homeowner's associations and other entities anticipated by the restrictive covenants, condominium regimes, and other documents recorded among the Land Records of Talbot County, intended to own, govern, or administer the occupancy or use of all or any part of the Subject Property, shall be legally formed, existing, and functional.

3.5. All open spaces, common areas, recreational areas and public spaces (collectively "Open Spaces") within the phase of the Subject Property shall be described on the approved final subdivision plan, and permanent provisions for the ownership, maintenance and upkeep of all such open spaces, common areas, recreational areas and public spaces approval by the Planning Commission, as part of the final subdivision approval; and recorded simultaneously with the final subdivision plat among the Land Records. All such open spaces, common areas, recreational areas and public spaces within a phase shall be installed at Developer's expense, to the standards and requirements set forth in the applicable ordinances and regulations of the Town, at or before construction of such phase shall be considered completed for the purpose of determining whether more than 30 acres of the Subject Property is under construction. Phases shall not be drawn or defined to avoid or isolate such open spaces, common areas, recreational areas and public spaces

3.6. Sewer lines, mains, trunks, lift stations, and pumps, as specified and approved by Talbot County, Maryland (the "County"), shall be installed, extended to the Subject Property and to each lot in the phase of the Subject Property, and connected to the County Sanitary District No. 2 Sewerage System, at Developer's expense. Anything to the contrary contained herein notwithstanding, no such sewer line, main, trunk, lift station, or pump extending service to, or located upon, the Subject Property shall be located under any tidal wetland or navigable water. Sewer mains, trunks, lift stations, and pumps shall also be extended or enlarged at the Developer's expense, in accordance with specifications of the County in size and capacity to provide adequate sewer collection and pumping capacity from the Subject Property in its entirety as development is contemplated herein, to a point within the current boundaries of the Town where a sewer main is of adequate size to collect and pump sewage in such quantity to the County Sanitary District No. 2 Sewerage Treatment Plant. Upon completion to specifications and acceptance by the County, the Developer shall convey to the County, without consideration, all such sewerage collection lines, mains, trunks, lift stations, and pumps, together with a perpetual easement adequate for the installation, repair, maintenance and replacement thereof, all of which shall thereupon become a part of the County Sanitary District No. 2 Sewerage System.

3.7. Circulating water lines, mains and trunks, as specified and approved by the Town, shall be installed, extended to each lot within the or phase of the Subject Property, and connected to the Town's water system, at Developer's expense. In addition, Developer shall, at its expense, install a water line inside the property line of each platted lot to a point agreeable to the Town engineer where a water meter pit shall be located, construct such water meter pit to accommodate a water meter of the type specified by the Town, install in each pit a water meter with a shut-off valve of the type specified by the Town, and provide each pit with an appropriate cover. Water mains and trunks shall also be extended or enlarged at the

Developer's expense, in accordance with specifications of the Town in size and capacity to provide an adequate water supply, at reasonable pressure, to service the Subject Property in its entirety as development is contemplated herein, from a point within the current boundaries of the Town where a water main is of adequate size to supply water in such quantity and pressure, to the Subject Property. Upon completion to specifications and acceptance by the Town, the Developer shall convey to the Town, without consideration, all such water lines, mains, trunks, pits, valves and meters, together with a perpetual easement adequate for the installation, repair, maintenance and replacement thereof, all of which shall thereupon become a part of the Town's municipal water system.

3.8. Fire hydrants of a type specified by the Town shall be installed within the phase of the Subject Property and connected to the Town's municipal water system at Developer's expense, in such a manner and at such intervals such that no residential dwelling or commercial structure shall be more than 600 feet from a fire hydrant, or to such higher standard for insurance purposes as may be specified by the Town. Upon completion to specifications and acceptance by the Town, all such fire hydrants and connections, together with a perpetual easement adequate for the installation, repair, maintenance and replacement thereof, shall be conveyed by the Developer to the Town, all of which shall thereupon become a part of the Town's municipal water system.

3.9. All roads, curbs, gutters, alleys, sidewalks, and other public ways within the phase of the Subject Property, as indicated on the approved final subdivision plan or otherwise required by law, shall be installed or bonded (with construction of all such bonded roads, curbs, gutters, alleys, sidewalks, and other public ways to be completed within six months after an occupancy permit has been issued by the town for each buildable lot within the phase) at Developer's expense, to the standards and requirements set forth in the applicable ordinances and regulations of the Town. The Developer shall also pay for all intersections, extensions and connections between roads, curbs, gutters, alleys, sidewalks, and other public ways within the section or phase of the Subject Property and such roads, curbs, gutters, alleys, sidewalks, and other public ways located immediately outside of the Subject Property. Upon completion to specifications and acceptance by the Town, all such roads, curbs, gutters, alleys, sidewalks, and other public ways, together with a perpetual easement adequate for the installation, repair, maintenance and replacement thereof, shall be offered by the Developer for dedication to the Town. Acceptance to any or all of such roads, curbs, gutters, alleys, sidewalks, and other public ways shall be solely at the discretion of the Town. If such offer is not immediately accepted by the Town, then such offer shall remain open indefinitely, for acceptance by the Town at any time. Upon acceptance by the Town, all such accepted roads, curbs, gutters, alleys, sidewalks, and other public ways shall thereupon become a part of the Town's municipal road system. In the event that some or all of such roads, curbs, gutters, alleys, sidewalks, and other public ways are not accepted by the Town, then they shall be private and shall be maintained by and at the expense of the property owners. The Developer shall make provision, in a document acceptable to the Town and to be recorded among the Land Records of Talbot County, for the maintenance, repair and reconstruction of all such roads, curbs, gutters, alleys, sidewalks, and other public ways that are not accepted by the Town. It is the intent of this Agreement that all water, sewer, stormwater management, electric, street light, telephone, cable television and other pipes, wires, cables, conduits, facilities and connections (hereinafter "Conduits"), to be located

