

1 Introduced July 22, 2008, by Councilman
2 Canada, seconded by Councilman Hursey,
3 (by request of Administration)

4 **RESOLUTION R08-45**


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6 A resolution authorizing the Mayor to execute a Cooperative Endeavor
7 Agreement with Slidell Development Company relative to reimbursement of expenses
8 incurred in certain infrastructure improvements in relation to the Summit Fremaux project.

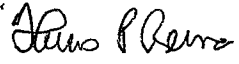
9 WHEREAS, Louisiana Constitution Article VII, Section 14 provides for
10 cooperative endeavor agreements between public and private entities for a public purpose;
11
12 and

13
14 WHEREAS, the City of Slidell and Slidell Development Company desire to
15 set forth their respective rights and obligations relating to the payment of certain
16 infrastructure improvements in relation to the Summit Fremaux project and reimbursement
17 for certain expenses.
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20 NOW THEREFORE BE IT RESOLVED by the Slidell City Council that the
21 Mayor is hereby authorized to execute a Cooperative Endeavor Agreement in the form
22 attached hereto and made a part hereof.
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25 **ADOPTED** this 22nd day of July, 2008.

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29 Raymond H. Canada
30 President of the Council
31 Councilman, District E

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34 Thomas P. Reeves
35 Council Administrator
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COOPERATIVE ENDEAVOR AGREEMENT

THIS AGREEMENT (this "Agreement"), dated this ___ day of _____, 2008, is by and between **SLIDELL DEVELOPMENT COMPANY, L.L.C.**, a Delaware limited liability company ("SDC"), and the **CITY OF SLIDELL**, a municipal corporation organized and existing under the laws of the State of Louisiana (the "City"). SDC and the City may be together referred to as the "**Parties**" or individually as a "**Party**."

R E C I T A L S:

1. SDC is the owner of certain real property located in the City of Slidell, the Parish of St. Tammany, Louisiana as more particularly described on **Exhibit A** attached hereto and as depicted on the map attached hereto as **Exhibit A-1** (the "**Land**").

2. The Parties have previously entered into a Development Agreement (Cooperative Endeavor Agreement) dated as of March ___, 2008 (the "**Development Agreement**") regarding the development of the Land for certain public and nonpublic uses. The public uses will include the **Infrastructure Improvements** (as defined in the Development Agreement). The nonpublic uses will consist of a **Mixed Use Development** (as defined in the Development Agreement). The Infrastructure Improvements and the Mixed Use Development shall be collectively referred to herein as the "**Development**."

3. Pursuant to the Development Agreement, the City agreed to provide for the funding of up to Ten Million and 00/100 Dollars for the construction of the Boulevard (as defined in the Development Agreement) and Two Million and 00/100 Dollars (\$2,000,000) for certain additional Infrastructure Improvements to be completed in accordance with a Community Block Grant program under the management for the Louisiana Recovery Authority (the "**CDBG Improvements**").

4. The Parties have determined that the Infrastructure Improvements described on **Exhibit B** hereto, including the Boulevard and the CDBG Improvements, (the "**Public Bid Improvements**") should be constructed under a single public bid contract (the "**Public Bid Contract**").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, all defined terms set forth above shall have the meanings so ascribed to them, and, unless otherwise defined herein, shall have the meanings ascribed to them under the Development Agreement.

ARTICLE II

THE PUBLIC BID CONTRACT

(a) The City agrees to comply with all public bid requirements under applicable State and Federal laws and regulations, including applicable notice requirements. The Parties agree that Evans Graves Engineering (the "Engineer") will be engaged to complete the bid package and to conduct the bid process in connection with such requirements.

(b) Once the Public Bid Contract has been awarded, the City agrees to enter into a {FIXED PRICE?} Public Bid Contract in substantially the form attached hereto as **Exhibit C** for the construction of the Public Bid Infrastructure Improvements in accordance with the Infrastructure Plans approved by both parties (the "**Approved Plans**"). Any change to the Approved Plans shall be subject to the approval of both of the Parties.

(c) As provided in the Development Agreement, the Public Bid Contract shall require the general contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State in an amount sufficient to ensure completion of the construction of Public Bid Infrastructure Improvements in accordance with the Approved Plans and the completion deadlines set forth in Exhibit B hereto. The City shall be an obligee of the bonds, SDC and Regions Bank shall be named as additional obligees thereunder.

(d) The Parties acknowledge that the Public Bid Infrastructure Improvements will include certain improvements to be financed by bonds to be issued by the Fremaux Community Development District (the "CDD Improvements").

(e) The Parties agree to comply with, and the City agrees to cause the Engineer and the general contractor to comply with, all State laws governing Community Development Districts and all Federal and state laws and regulations governing the award and management of Community Block Development Grants and construction of the related improvements.

(f) {DISCUSS 10 % RETAINAGE}

ARTICLE III

PAYMENT AND REIMBURSEMENT

3.1. Subject to SDC's obligations set forth under Section 3.2 below, the City agrees to perform all obligations of the Owner under the Public Bid Contract, including payment obligations, and to take all actions necessary to enforce the Public Bid Contract in accordance with its terms.

3.2. Within ____ () days following satisfaction of the Payment Requirements (as defined below), SDC agrees to pay to the City the following amounts payable by the City under the Public Bid Contract: (i) any amounts attributable to the construction of the Boulevard in excess of Ten Million and 00/100 Dollars (\$10,000,000) as reflected on Exhibit E; (ii) any amounts attributable to the CDBG Improvements in excess of Two Million and 00/100 Dollars (\$2,000,000) as reflected on **Exhibit D** and (iii) all other amounts payable for the construction of the Public Bid Infrastructure Improvements other than the Boulevard and the CDBG Improvements in accordance with Approved Plans. As used herein, the term "**Payment Requirements**" refers to: (i) completion of the applicable work for which payment is requested in accordance with the Approved Plans, (ii) receipt of demand from the City and (iii) delivery of the applicable invoices and lien waivers {ADD REQUIREMENTS OF REGIONS}.

3.3. In addition to its obligations under Section 3.2 above, SDC agrees to advance proceeds to the City for payment of the cost of the CDBG Improvements to the extent permitted under {INSERT REG REFERENCE} provided however that (i) such agreement to advance funds is conditioned upon the satisfaction of the Payment Requirements and (ii) the City agrees to reimburse the SDC in full for such payments promptly upon receipt of the CDBG award.

ARTICLE IV

ASSIGNMENT, TRANSFER AND SUBLETTING

This Agreement may be assigned or transferred in whole or in part by SDC to any of its affiliates, related entities or any of their lender(s) financing any portion of the Development.

ARTICLE V

MISCELLANEOUS

5.1. **Attorney's Fees.** If any party receives a judgment, settlement, or award in its favor (the "**Receiving Party**") against another Party (the "**Paying Party**") regarding an action under this Agreement, the Paying Party will pay upon demand all of each Receiving Party's costs, charges, and expenses, including reasonable attorneys' fees, associated with such legal action; provided, however, if, prior to commencement of a trial, the Paying Party offered to pay an amount equal to or in excess of such judgment, settlement or award, then the Receiving Party shall not be entitled to such costs, charges and expenses, including reasonable attorneys' fees, associated with such legal action.

5.2. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered to be an original document.

5.3. **Successors and Assigns.** This Agreement shall be inure to the benefit of and bind the parties hereto, their respective successors and/or assigns.

5.4. **Survival of Covenants.** The covenants in this Agreement shall not terminate until they have been fully performed or have expired by their terms. All covenants, representations and warranties shall survive the expiration or earlier termination of this Agreement (and the obligations to be performed hereunder) unless otherwise expressly provided in a written agreement signed by all of the Parties.

5.5. **Severability.** If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not effect the validity of the remainder of this Agreement.

5.6. **Governing Law.** This Agreement shall be governed by the laws of the State of Louisiana without regard to its principles of conflict of laws which would result in the application of the laws of any other jurisdiction.

5.7. **No Waiver.** No consent or waiver, express or implied, by any Party hereto or to any breach or default by any Party in the performance by another Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by any other Party of the same or any other obligations of any such Party hereunder. Failure on the part of any Party to complain of any act or failure to act any other Party or to declare the any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by any such Part(ies) of its (their) rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance. Nothing contained herein shall be deemed a waiver or modification of either of the Parties' rights or obligations under the Development Agreement.

5.8. **Remedies.** Whenever a Party hereto shall default in the performance of any of its obligations under this Agreement, the other Parties hereto may take whatever legal proceeding as is provided for such Party(ies) under the Development Agreement.

5.9. **No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the Parties and their respective successors and assigns.

5.10. **Headings.** The headings in the sections in this Agreement are for convenience of reference only and shall not form a part hereof.

5.11. **No Third-Party Beneficiaries.** Except as otherwise expressly set forth herein, this Agreement is intended only for the benefit of the signing Parties hereto, and neither this Agreement, nor any of the rights, interest or obligations hereunder, is intended for the benefit of any other person or third-party.

5.12. Notices. All notices to be given hereunder shall be given in the same manner as set forth in the Development Agreement.

5.13. Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no representations, oral or written, relating to the transactions described herein which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by the Party against whom enforcement of any change, modification, or discharge is sought.

5.14. Exhibits. The Recitals set forth above and the following exhibits attached hereto are incorporated herein for all purposes:

- Exhibit A Legal Description of the Land
- Exhibit A-1 Map of the Land
- Exhibit B Public Bid Improvements and Deadlines
- Exhibit C Form of Public Bid Contract

[Remainder of page intentionally left blank]

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized officers and/or representatives, to be effective the day and year first above written.

SDC:

SLIDELL DEVELOPMENT COMPANY, L.L.C.
a Delaware limited liability company

By: _____

Name: _____

Its: _____

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of **SLIDELL DEVELOPMENT COMPANY, L.L.C.**, a Delaware limited liability company, is signed to the foregoing Development Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Development Agreement, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the _____ day of _____, 2008.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____

SIGNATURE PAGE

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized officers and/or representatives, to be effective the day and year first above written.

CITY:

CITY OF SLIDELL, LOUISIANA,
a municipal corporation

By: _____

Name: _____

Its: _____

STATE OF LOUISIANA
PARISH/COUNTY OF _____

Before me, the undersigned Notary Public, duly commissioned, qualified and sworn within and for the State and Parish/County aforesaid, personally came and appeared _____, who acknowledged that he/she is the _____ of the **CITY OF SLIDELL, LOUISIANA**, a municipal corporation (the "**Corporation**"), that as such duly authorized officer, by and with the authority of the Board of Directors of the Corporation, he/she signed and executed the foregoing instrument for and on behalf of the Corporation, as his/her and its free and voluntary act and deed, for the uses, purposes and benefits therein expressed.

WITNESSES:

Print name: _____

(Signature)

Sworn to and subscribed before me
this _____ day of _____, 2008.

NOTARY PUBLIC
My commission expires: _____

EXHIBIT "A"

Legal Description of the Land

Lifestyle Center

Vintage

UNO

EXHIBIT "A-1"

Map of Land

Lifestyle Center

Vintage

UNO

EXHIBIT "B"

Public Bid Infrastructure Improvements and Deadlines

[Copy to Come]

EXHIBIT "C"

Form of Public Bid