

NORTH CAROLINA

PAMLICO COUNTY

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of May, 2012, by and between the TOWN OF ORIENTAL, a North Carolina municipal corporation, party of the first part ("Town"), and G. CHRISTOPHER FULCHER and wife DEBORAH WILLIS FULCHER, citizens and residents of Pamlico County, North Carolina ("Fulcher") and BAY CITY LODGE, INC., a North Carolina corporation ("Bay City"), parties of the second part, all hereinafter collectively are referred to as the "Parties."

WITNESSETH:

THAT WHEREAS, the Town is considering closing the right of way of Avenue A and a portion of the western terminus of the right of way of South Avenue at Raccoon Creek, said rights of way being more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Street R/W"), and identified on the survey attached hereto as Exhibit D as "Exhibit A Street Closings"); and, because there exist plats or maps showing Neuse Front Street, Avenue B and Main (or Maine) Street, the term "Street R/W" shall include any and all streets or rights of way or remnants thereof in the area west of the portion of Wall Street that extends from the southern margin of South Avenue to the Neuse River and westwardly, South of South Avenue, to Raccoon Creek (all the property of Fulcher or entities controlled by Fulcher); and

WHEREAS, if the Town closes the Street R/W, Fulcher and Bay City desire to convey to the Town in fee simple certain real property located in the Town, said property being more specifically described in Exhibit C attached hereto and incorporated herein by reference (the "Property") and to convey and dedicate a street right of way for public use to the Town a parcel of land more specifically described in the attached Exhibit B; both of which are identified on the survey attached hereto as Exhibit D as "Exhibit B Rededicated Portion South Avenue" and "Exhibit C To be Conveyed to Town of Oriental" respectively; and

WHEREAS, the Parties hereto desire to reduce their respective obligations regarding the Street R/W and the Property to writing in the event the Town closes the Street R/W.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and among the Parties as follows:

1. Definitions

1.1. Certain terms having specific definitions are used in this Agreement, and these terms and definitions, unless the context clearly indicates to the contrary, are as set forth in this Section 1. The defined terms appearing in this Section are set forth in the Agreement in the exact capitalized form as they appear between the quotation marks. When the same term is used in this Agreement with the meaning as assigned herein, it shall appear in the identical capitalized form. Otherwise, the meaning shall be as used in the context of the sentence in which it appears and not necessarily that as defined herein.

1.1.1. “Agreement” – means this Agreement among the Town and Fulcher and Bay City.

1.1.2. “Bay City” – means Bay City Lodge, Inc., a North Carolina corporation with its principal, office and place of business in Oriental, Pamlico County, North Carolina.

1.1.3 “Deed(s)” – means one or more general warranty deeds conveying the Property from Fulcher and Bay City to the Town in fee simple (Exhibit C parcel) or as public street right of way (Exhibit B parcel).

1.1.4. “Fulcher” - means G. Christopher Fulcher and wife Deborah Willis Fulcher, citizens and residents of Pamlico County, North Carolina.

1.1.5. “Property” – means the real property owned by Fulcher and a portion of the real property owned by Bay City located in the Town of Oriental, Pamlico County, North Carolina, more specifically described on Exhibit C attached hereto and incorporated herein by reference.

1.1.6. “Street Dedication” - means the real property identified on the attached Exhibit B and being a portion of the real property conveyed to Fulcher and/or Bay City as a result of the Town closing the Street R/W that Fulcher and/or Bay City shall dedicate to the Town for use as a public street in the event the Street R/W is closed by the Town.

1.1.7. “Street R/W” – means the real property identified on the attached Exhibit A, together with any streets or rights of way or remnants thereof in the area west of the portion of Wall Street that extends from the southern margin of South Avenue to the Neuse River and westwardly, South of South Avenue, to Raccoon Creek (all of the property of Fulcher or entities

controlled by Fulcher) of the Town, whether or not shown on Exhibit D, and excluding any and all utility easements that may exist, or that may be retained by the Town, within the area identified on the attached Exhibit A.

1.1.8 “Town” - means the Town of Oriental, a municipal corporation duly established and existing pursuant to the laws of the State of North Carolina.

2. Town Obligations

2.1. The Town shall consider closing the Street R/W in compliance with North Carolina law no later than July 31, 2012.

2.2. The Town shall cause a survey of the Street R/W (not necessarily showing all remnants or platted streets), the Street Dedication and the Property to be prepared.

2.3. If the Board of Commissioners determines that it is not in the best interest of the Town to close the Street R/W, none of the Parties shall have any further obligations to the others under this Agreement.

2.4. If the Board of Commissioners closes the Street R/W, the Town shall accept the Deed(s) from Fulcher and Bay City for the Property, and cause the same to be recorded.

2.5. If the Board of Commissioners closes the Street R/W, the Town shall also accept the dedication of the Street Dedication and cause the same to be recorded.

2.6. If the Board of Commissioners closes the Street R/W, the Town shall also relocate the two existing structures identified on Exhibit D onto the Property at the Town’s sole cost and expense no later than ninety (90) days after the recordation of the Deed(s) to the Property.

2.7. If the Board of Commissioners closes the Street R/W, the Town shall also execute an agreement with Fulcher and Bay City, and any related waivers, to establish the use of and access to the riparian corridors as illustrated on Exhibit D.

2.8. The Town shall have no obligation to pay for, fund, or finance the purchase of the Property, or any of Fulcher’s or Bay City’s obligations hereunder.

2.9. The Town shall be responsible for the costs and expenses associated with its obligations under this Agreement.

2.10. It is specifically understood and agreed between the Parties that every obligation assumed herein by the Town is subject to the limitation “to the extent that it may legally do so.”

3. Fulcher and Bay City Obligations

3.1. Fulcher and Bay City shall prepare and execute the Deed(s) to convey the Property to the Town, and deliver the same to the Town Manager who shall hold the Deed(s) in trust pending the Board of Commissioners' decision to close the Street R/W. If the Board of Commissioners closes the Street R/W, the Town Manager shall cause the Deed(s) to be recorded. If the Board of Commissioners determines that it is not in the best interest of the Town to close the Street R/W, the Town Manager shall return the Deed(s) to Fulcher and Bay City within ten (10) days of the Board's decision.

3.2. Fulcher and/or Bay City shall also prepare and execute a street dedication to dedicate the Street Dedication to the Town for use as a public street, and deliver the same to the Town Manager who shall hold the same in trust pending the Board of Commissioners' decision to close the Street R/W. If the Board of Commissioners closes the Street R/W, the Town Manager shall cause the Street Dedication to be recorded. If the Board of Commissioners determines that it is not in the best interest of the Town to close the Street R/W, the Town Manager shall return the Street Dedication to Fulcher and/or Bay City within ten (10) days of the Board's decision.

3.3. If the Town Manager records the Deed(s) to the Property, Fulcher shall cause the removal the dolphin at the channel end terminus of the partially completed dock or pier located on the Property no later than thirty (30) days after recordation of the Deed(s). Fulcher may keep the piles from the dolphin, and shall in any event remove them from the Property unless the Parties otherwise agree in writing.

3.4. If the Town Manager records the Deed(s) to the Property, Fulcher shall install appropriate pilings to extend the partially completed dock or pier located on the Property to the maximum permitted length while maintaining the existing width of the said dock or pier no later than forty-five (45) days after recordation of the Deed(s).

3.5. If the Town Manager records the Deed(s) to the Property, Fulcher and Bay City shall transfer all existing permits associated with the Property to the Town to the greatest extent possible no later than ten (10) days after such recordation of the Deed(s), or as soon thereafter as practicable.

3.6. If the Town Manager records the Deed(s) to the Property, Fulcher and/or Bay City shall execute any and all documents necessary and appropriate to transfer the Bay River

Metropolitan Sewerage District sewer tap located adjacent to the Property to the Town no later than thirty (30) days after recordation of the Deed(s), so that the Town may locate the sewer tap to the Property.

3.6. If the Town Manager records the Deed(s) to the Property, Fulcher and Bay City shall also execute an agreement with the Town, and any related waivers, to establish the use of and access to the riparian corridors as illustrated on Exhibit D.

3.7. Within three (3) years of recording the Deed(s), and only in the event the Town adopts an ordinance allowing property owners to waive side setbacks for Town parks while Fulcher and/or Bay City (or any entity or entities whose majority interest[s] are owned or controlled by them or either of them) directly or indirectly owns the real property to the immediate south of the Property, Fulcher and Bay City agree to waive any side setbacks along the southern line of the Property to the greatest extent possible.

3.8. Fulcher and Bay City shall be responsible for the costs and expenses associated with their respective obligations under this Agreement.

4. Miscellaneous

4.1. If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

4.2. This Agreement shall be enforceable by each party hereto by all remedies available at law or in equity, including but not limited to specific performance. Failure or delay to exercise any right, remedy or privilege hereunder shall not operate as a waiver of such right, remedy or privilege nor prevent subsequent enforcement thereof.

4.3. This Agreement shall be executed by the Parties hereto in triplicate originals, each of which, when executed, shall constitute one and the same Agreement and one of which shall be retained by each party.

4.4. This Agreement shall be governed in accordance with the laws of the State of North Carolina.

4.5. Each party agrees that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other actions as may be reasonably required to carry out the purpose and intent of this Agreement.

4.6. This Agreement may not be modified or amended except by subsequent written agreement authorized and executed by each party.

4.7. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

4.8. No party hereto may assign this Agreement without the express written consent of the others, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Town of Oriental has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its Town Clerk or Deputy Clerk; and Bay City Lodge, Inc. has caused this Agreement to be signed and executed by its president or vice president, after due authorization by its Board of Directors; and G. Christopher Fulcher and wife Deborah Willis Fulcher have signed and executed this Agreement, all in triplicate, on the day and year first above written.

TOWN OF ORIENTAL

By: _____
William R. Sage, Mayor

ATTEST:

Oriental Town Clerk

BAY CITY LODGE, INC.

By: _____
G. Christopher Fulcher, President

G. Christopher Fulcher

Deborah Willis Fulcher

STATE OF NORTH CAROLINA—COUNTY OF PAMLICO

I, _____, the undersigned Notary Public of the County and State aforesaid, certify that Robert J. Maxbauer, personally known to me or identified by satisfactory evidence, personally came before me this day and acknowledged that he is the Town Clerk for the Town of Oriental a North Carolina municipal corporation, and that William R. Sage is Mayor of the Town of Oriental, and, by authority duly given and as the act of such entity duly approved and authorized by the Oriental Board of Commissioners, they both voluntarily signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this the _____ day of May 2012

My Commission Expires:

Notary Public

STATE OF NORTH CAROLINA—COUNTY OF PAMLICO

I, _____, the undersigned Notary Public of the County and State aforesaid, certify that G. Christopher Fulcher, personally known to me or identified by satisfactory evidence, personally came before me this day and acknowledged that he is the President of Bay City Lodge, Inc., a North Carolina corporation, and that by authority duly given and as the act of such entity, he voluntarily signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Notarial stamp or seal, this the _____ day of May 2012

My Commission Expires:

Notary Public

STATE OF NORTH CAROLINA—COUNTY OF PAMLICO

I, the undersigned Notary Public of the County and State aforesaid, hereby certify that G. Christopher Fulcher and wife Deborah Willis Fulcher, personally known to me or identified by satisfactory evidence,, personally came before me this day and acknowledged, their due and voluntary execution of the foregoing instrument for the purposes therein stated.

Witness my hand and Notarial stamp or seal, this the _____ day of May 2012

My Commission Expires:

Notary Public