

THIS EXCLUSIVE DEVELOPMENT AGREEMENT made May ____, 2015.

BETWEEN:

CAPE BRETON REGIONAL MUNICIPALITY, a body politic in the Province of Nova Scotia;

(hereinafter called "**CBRM**")

OF THE FIRST PART

- and -

HARBOR PORT DEVELOPMENT PARTNERS INC., a corporation duly incorporated pursuant to the laws of Canada, with a registered office situate at 3940 Cote des Neiges, Suite B92, Montreal, Quebec, Canada H3H 1W2;

(hereinafter called the "**HPDP**")

OF THE SECOND PART

WHEREAS the CBRM is the owner of certain lands identified by PID Nos. 15678253, 15210651, 15210073, 15589567, 15210461, 15378268 and 15545312, commonly known as the Greenfield Site which comprise a portion of the Port of Sydney;

AND WHEREAS CBRM is in the process of acquiring lands in proximity to the Greenfield Site, referred to as Backlands, identified as follows:

Point Edward property:

15031891,15589575,15718976,15589591,15589617,15589583,15589609

AND WHEREAS it is the intention and desire of HPDP to develop the Greenfield Site and, subject to acquisition by CBRM, the Backlands property, into a state of the art container terminal and logistic park for the purpose of linking the Port of Sydney to global cargo markets (the "Project");

AND WHEREAS HPDP has invested considerable time and expense in establishing and maintaining business relationships with viable strategic partners interested in participating in the Project and is desirous of further facilitating development on behalf of CBRM for the advancement of the Project;

AND WHEREAS it is the desire of the parties to document the relationship between CBRM and HPDP.

NOW THEREFORE WITNESSETH IN CONSIDERATION of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Exclusive Rights

- (a) CBRM hereby grants to HPDP, subject to the terms and conditions set out herein, sole and exclusive development rights in relation to the advancement of the Project.

2. Duties of HPDP

- (a) HPDP shall use its best efforts to develop a consortium of equity investors, and other necessary entities which would be required to initiate the construction of a container terminal, leading to the eventual operation of the container terminal. Without limiting the foregoing, HPDP shall:

- i. Use its best efforts to develop a consortium of equity partners for development of a state of the art container terminal for the Port of Sydney, and such other collateral developments as may be agreed between the Parties;
- ii. Facilitate completion of a feasibility study as a basis for securing funding for the Project;
- iii. Report with CBRM on a biweekly basis and advise (financial and otherwise) and advise with respect to the planning of the Project;
- iv. Facilitate and mediate discussions between potential investors, developers, operators, and CBRM to assist in establishing timelines in relation to initiating the Project and development process generally;
- v. Initiate cooperative relationships with other international ports and associations;
- vi. Subject to approval of the CBRM Council, finalize a binding agreement between CBRM, HPDP and the strategic partners that will form the basis of commencement of the Project (the "Development Agreement"). For greater certainty, the parties, acting reasonably, agree that the Development Agreement shall only be exercised at a time in which:
 - a. HPDP has identified a viable scheme for the operation of an international container terminal;
 - b. HPDP has delivered associated financial projections and aggregate construction costs;
 - c. The Parties have reached final agreement with respect to the financial return of CBRM on the Project ("CBRM financial return"). It is agreed that the CBRM financial return, shall include, *iter alia* :

1. A lump sum payment at the time of execution of the Development Agreement; and
2. An annual lease payment in relation to the occupation and use of the Greenfield site, and associated lands for the Project; and
3. A royalty based annual revenue stream calculated and based upon throughput associated with the Project.

vii. Perform such other appropriate and necessary services in connection with the Project as HPDP, in good faith, deems appropriate.

(b) Notwithstanding anything to the contrary herein, HPDP shall not enter into any agreement, contract or arrangement with any person, firm or corporation, or other enterprise imposing any legal obligation or liability of any kind whatsoever on CBRM, unless it has specific authority to do so from CBRM, in writing.

3. Costs and Remuneration

- (a) CBRM acknowledges that HPDP has invested considerable time and expense in relation to the promotion of the Project and shall continue to do so through the duration of this Agreement.
- (b) All funds to be paid hereunder shall be paid in Canadian dollars to be disbursed on closing via wire transfer.

4. Term

- (a) The term of this Agreement shall be for a period of two (2) years (the "Term"). The Agreement may be extended upon both parties agreeing, and acting reasonably, that HPDP has made viable progress but was unable in good faith to finalize the Development Agreement by the end of the initial Term.
- (b) This Agreement may be terminated as follows:
 - i. by mutual agreement between the parties; or
 - ii. CBRM may terminate the Agreement for cause.
- (c) Upon termination of this Agreement, or in the event the parties fail to negotiate a Development Agreement, the propriety rights in all work product generated by the efforts of HPDP shall become the sole property of CBRM upon payment by CBRM of all direct costs of HPDP associated with compilation of the data.

5. Relationship

- (a) The relationship of HPDP to CBRM is intended to be and shall be that of an independent contractor. Prior to entering into a Development Agreement, the parties acknowledge and agree that HPDP is not an employee, partner or joint venturer of CBRM. HPDP shall not act or attempt to act, or represent itself, directly or by implication, as an employee, partner or joint venturer of CBRM. HPDP shall in the course of all transactions and in all

correspondence and other documents emphasize its role as the developer of the aforementioned lands on behalf of the owner of these lands, CBRM.

6. Representations of HPDP

(a) HPDP represents and warrants that:

- i. in executing this agreement, it is not presently involved, nor will it involve itself in any conflict of interest situation which would prevent it from acting in CBRM's best interests; and
- ii. it shall disclose to CBRM any beneficial or carried interest HPDP has acquired, or will acquire, in respect of any investor or other strategic partner in relation to the Project; and
- iii. it will not, directly or indirectly, disclose or use, at any time, either during or subsequent to the termination or expiry of this agreement, any secret or any confidential information, knowledge or data of CBRM unless it has been determined by CBRM and HPDP that such disclosure is necessary to further development related to the Project.

7. Disclosure and Confidentiality

(a) CBRM will provide all information deemed relevant, and reasonably required by HPDP, to further development related to the Project.

(b) Each party shall, during the term of this agreement, and thereafter, treat as confidential any and all information learned by the other concerning the business or affairs of the other, and in particular:

- i. not disclose to any third party the terms and conditions of this agreement;
- ii. take proper steps to prevent such disclosure by employees, and
- iii. safeguard all documents against theft, damage or access by unauthorized persons.

8. Dispute Resolution

(a) All disputes, controversy or claims arising out of or in connection with or in relation to the contract, including any question regarding its existence, validity or termination, shall be submitted to and be subject to the jurisdiction of the courts of the Province of Nova Scotia which shall have exclusive jurisdiction in the event of any dispute under this agreement. The parties irrevocably submit to the jurisdiction of such courts to finally adjudicate or determine any suit, action or proceedings arising out of or in connection with this agreement. Alternatively, the parties may agree to submit the matter to arbitration in accordance with the Nova Scotia Commercial Arbitration Act.

9. Assignment

(a) This agreement is not assignable by HPDP, either directly or indirectly.

10. Applicable Law

- (a) This agreement shall be governed by and construed in accordance with the domestic laws of the Province of Nova Scotia.

11. Notice

- (a) Any notice or other documents required or permitted to be given hereunder shall be in writing and shall be delivered, mailed by pre-paid registered mail, return receipt requested or sent by facsimile transmission addressed to the party or parties to whom it is to be given at the address shown below or at such other address or addresses as the party or parties to whom such writing or document is to be given shall have last notified all other parties hereto in accordance with the provisions of this section:

if to HPDP at:

3940 Cote des Neiges
Suite B92
Montreal, Quebec
Canada H3H 1W2

if to CBRM at:

c/o The Breton Law Group
292 Charlotte Street, Suite 300
Sydney, NS B1P 1C7

- (b) Any such notice or other document shall:
- i. if delivered, be deemed to have been given and received at the place of receipt on the date of delivery, provided that if such date is a day other than a business day, such notice or document shall be deemed to have been given and received at the place of receipt on the first business day in the place of receipt, thereafter;
 - ii. if transmitted by facsimile transmission, be deemed to have been given and received at the place of receipt on the next business day in the place of receipt, following the day of sending, and
- (c) In the event of postal disruption, such notices or documents must either be delivered personally or sent by facsimile transmission.

12. Entire Agreement

- (a) This agreement constitutes the entire agreement of all the parties with respect to the subject-matter hereof and, except as stated in this agreement and in the instruments and documents to be executed and delivered pursuant to it, contains all of the representations, undertakings and agreements of all parties respecting the subject-matter hereof. There are no representations, undertakings or agreements of any kind between all the parties respecting the subject-matter hereof except those contained in this agreement.

13. Successors and Assigns

- (a) This agreement shall be binding on and enure to the benefit of the successors of both parties and all persons or corporations succeeding to or acquiring the business now carried on by CBRM or HPDP.

SIGNATURE PAGE FOLLOWS

DRAFT

IN WITNESS WHEREOF the parties hereto have set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

Witness

Witness

Witness

Witness

CAPE BRETON REGIONAL MUNICIPALITY

Per: Cecil Clarke, Mayor

Per: Deborah Campbell, Clerk

**HARBOR PORT DEVELOPMENT
PARTNERS INC.**

Per:

Per:

