

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2017, by and between the **CITY OF PALM COAST, FLORIDA**, a municipal corporation (“CITY”) and **GIOIA SAILS SOUTH LLC** (“Project GS2”).

RECITALS:

WHEREAS, Project GS2 is company headquartered in Palm Coast and looking for expansion opportunities; and

WHEREAS, upon the effective date of this Agreement, Project GS2 employs forty-three (43) full time employees and is experiencing substantial growth; and

WHEREAS, Project GS2 was contemplating relocating its business both inside and outside the City of Palm Coast; and

WHEREAS, Project GS2 has agreed to expand within the City of Palm Coast, Florida and maintain forty-three (43) and create ten 10 (10) primary jobs over the next five (5) years under the terms and conditions of this Agreement; and

WHEREAS, the City desires to provide Project GS2 economic incentives in furtherance of the municipal purpose of retaining Project GS2 as a major employer within the City and expanding economic activity within its jurisdictional borders under section 166.021(9), Florida Statutes: and

WHEREAS, the parties recognize this Agreement is necessary to ensure that the economic incentives provided by the City to Project GS2 ultimately serve their intended municipal purpose; and

WHEREAS, the City has established terms and conditions herein whereby Project GS2 by complying with these terms and conditions, can receive the benefit outlined in this Agreement, while the City can fulfill the City’s desire to support employers which will create jobs and significantly enhance the prospects of local economic development; and

WHEREAS, the parties agree that the economic incentives provided by the City hereunder are for the benefit of the public health, safety, welfare and convenience of the citizens of the City of Palm Coast, Florida and the County; and

WHEREAS, the City Council finds and declares that this Agreement serves a public purpose, which includes promotion of economic development, job growth, and the future expansion of the City’s tax base.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the parties agree has been exchanged and received the parties agree as follows:

1.0 **Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by reference.

2.0 **Definitions.** For purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

- (a) “County” Shall mean Flagler County, Florida
- (b) “Effective Date” shall be the date on which the last signatory hereto shall execute this Agreement, and it shall be the date on which this Agreement shall go into effect. The Agreement shall not be effective against any party until said date.
- (c) “Jobs” shall have the meaning given to such terms in Section 288.106(i), Florida Statutes

3.0 **Commitment by Project GS2.**

- (a) Project GS2 agrees that during the term of this Agreement, the City of Palm Coast, Florida shall serve as a primary business location of Project GS2.
- (b) Project GS2 agrees to construct an approximately 30,000 square foot industrial building in the City of Palm Coast for expansion of its business operations with an estimated \$2.8 million in new capital in building construction and personal property. The building shall be constructed and a certificate of occupancy issued within five (5) years of the Effective Date.
- (c) Within five (5) years of the Effective Date, Project GS2 agrees to use commercially reasonable best efforts to maintain a minimum of fifty-three (53) Jobs at the City of Palm Coast location.

4.0 **Commitments by City.**

- (a) The City shall extend the City’s Fiber Optic Network (City FiberNET) to Project GS2’s location at no cost to Project GS2, if located along the existing City FiberNET.
- (b) The City shall rebate the City’s FiberNET transport costs to Project GS2 for five (5) years after connection. This does not include any costs or fees normally due to the service provider operating on the City’s FiberNET.
- (c) The City shall waive all planning application and permit fees (excluding building permit fees) in connection with the construction of the building contemplated in

subsection 3.0 (b). In addition, upon receipt of any completed City permit applications filed by GS2 in furtherance of this Agreement, the City shall expedite permitting, whenever feasible.

- (d) The City shall offset impact fees imposed by the City, from other non-impact fee, legally available City funds, which are due in connection with the construction of the building contemplated in subsection 3.0 (b) through collection of future property taxes resulting from the construction.
- (e) The City shall not make any public announcements regarding this Agreement of the transactions contemplated hereunder unless and until such public announcements have been approved by and coordinated with Project GS2 and the Office of the Governor of the State of Florida, if applicable.

5.0 **Progress Reports.** Upon request by the City, Project GS2 shall submit in sufficient and reasonable detail a written progress report, along with supporting documentation, as to the status of the number of employees employed by Project GS2 at its offices within the City of Palm Coast. If the detail is not sufficient in the City's Manager's reasonable discretion to permit the City to determine compliance with this Agreement, the City may seek more reasonable written detail from Project GS2.

6.0 **Compliance with Laws.** Project GS2 shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within the City of Palm Coast.

7.0 **Work is a Private Undertaking.** With regards to Project GS2's business operations and compliance with applicable laws, ordinances, rules, and regulations, it is specifically understood and agreed to by and between the parties hereto that the contractual relationship between the City and Project GS2 is such that the Project GS2 is an independent contractor and not an agent of the City. Project GS2 and its contractors, partners, agents, and employees are independent contractor and not employees of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City, on one hand, and Project GS2 and its contractors, Partners, employees, or agents, under this Agreement.

8.0 **Compliance Monitoring.** Project GS2 shall be responsible for complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority regarding the location and continued operation of its business within City of Palm Coast.

9.0 **Audit and Inspections; Job Compliance Check.** Project GS2 agrees that any records with respect to Project GS2's Obligations to the City Under this Agreement shall be made available to the City, at any time during normal business hours upon seventy-two (72) hours written notice to Project GS2, no more than once every calendar year, to audit, examine, and make excerpt or transcripts of all data relevant confirming that Project GS2's compliance with the Agreement. Any audit shall be conducted to Government

Auditing Standards, or Generally Acceptable Auditing Standards, as applicable at the time of audit. Notwithstanding the foregoing, (1) Project GS2 shall not be required to make available any documents or information that (i) are attorney/ client privileged, (ii) constitute a trade secret under the Uniform Trade Secret Act, or (iii) which are determined exempt from disclosure under Florida's Public Records Laws as trade secrets; and (2) with respect to any information regarding the amount of employee wages for specific Jobs, the City shall (a) treat such information as confidential, (b) not release such information to any third party, (c) not take any notes with respect to the information reviewed, and (d) not make any copies of any of the information reviewed. Any deficiencies noted in audit reports prepared by the City must be fully cleared by Project GS2 within thirty (30) days after notice of said deficiencies were received by Project GS2. The City shall also conduct a written annual compliance check on the number of employees employed by Project GS2 on each anniversary date of this Agreement, Subject to restrictions set forth in this Paragraph, Project GS2 shall fully cooperate with the City providing access to appropriate payroll documentation to verify the total number of employees and whether such employees are part-time or full-time. Failure of Project GS2 to reasonably comply with the above audit requirements will constitute a material breach of this Agreement and may result, at the sole discretion of the City, in the withholding of future economic incentives, terminating pending economic incentives, the reimposition of any ad valorem taxes abated under this Agreement, or termination of any other obligation required hereunder. Notwithstanding the foregoing, the parties agree to submit any dispute under this Paragraph to nonbinding mediation before the City's exercise of its rights hereunder for alleged violation by Project GS2.

- 10.0 **Promotion of Economic Incentives.** Either party may issue news releases, public announcements, advertisements, or other form of publicity concerning its efforts in connection with this Agreement. However, unless otherwise agreed, the party publicizing its efforts shall provide a courtesy copy of any written material to the other party for review and comments prior to publication.
- 11.0 **Severability.** Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable by any paragraph of this Agreement to render, void, invalid, or unenforceable any other paragraph or any part of any paragraph in this Agreement.
- 12.0 **Integration; Modification; Exhibits.** The drafting, execution, and delivery of this Agreement by the parties has not been induced by any representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof unless expressly referred to herein. Modifications of this Agreement shall only be made in writing signed by both parties referred to herein. Modifications of this Agreement shall only be made in writing signed by both parties. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except if there is conflict between

an exhibit and provisions of this Agreement, the provisions of this Agreement shall prevail over the exhibit.

- 13.0 **Attorney's Fees.** Unless otherwise provided herein, each party agrees to bear their own attorney fees and cost in furtherance of this Agreement.
- 14.0 **Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 15.0 **Waiver.** No failure to insist on the prompt performance by Project GS2 of its obligations under this Agreement shall be construed as a waiver by the City of its rights to demand performance. Further, any waiver by the City of any breach or violation of Project GS2's Obligations under this Agreement shall not be construed as continuing waiver or consent to any subsequent breach or violation or impede the City's ability to enforce the terms of this Agreement.
- 16.0 **Notices.** All notices required or permitted under this Agreement and any written consents or approvals requires hereunder shall be in writing (including telecopy communication) and shall be (as elected by the person giving such notice) hand-delivered by messenger or overnight courier service, telecopied or mailed by registered or certified mail (postage pre-paid), returned receipt requested, and addressed to each party at their respective addresses as set forth below or to such other addresses any party may designate by notice complying with the terms of this Paragraph:

For the City:

City of Palm Coast
Attn: City Manager
160 Lake Avenue
Palm Coast, FL 32164

With copy to:

Anthony A. Garganese, Esquire
Garganese, Weiss & D'Agresta, PA
PO Box 2873
Orlando, FL 32802-2873

For Gioia Sails:

Gioia Sails South LLC
Patrick Moynihan, Vice President
6 Commerce Blvd.
Palm Coast, FL 32164

Such notice, request, or other communication shall be considered given and deemed delivered: (a) on the date delivered if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by telecopier if transmitted prior to 5:00 p.m. on a business day, and on the next business day if transmitted after 5:00 p.m. or on a non-business

day, provided that copy of the notice is provided within two business days thereafter by one of the other methods permitted by this Paragraph: or (c) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

17.0 **Term; Termination; Termination by Parties.**

- (a) Unless sooner terminated by the City or Project GS2 under this Agreement or terminated by mutual consent, the Agreement shall terminate five (5) years from the Effective Date. The City may terminate this Agreement, without penalty and any further obligation to perform under this Agreement, in the event of a material breach of any provision of this Agreement by Project GS2, which shall include, but not be limited to, failing to fulfill any of its obligations under Paragraph 3.0. The City may also terminate this Agreement if: (i) Project GS2 is declared bankrupt or insolvent; (ii) Project GS2 adopts a plan or resolution of liquidation of Project GS2 or substantially sells all of its assets; (iii) Project GS2 engages in fraud or misleading compliance reporting against the City; or (iv) a receiver or trustee is appointed on behalf of Project GS2 for purposes of taking control of substantially all of Project GS2's assets within the City of Palm Coast, Florida or the said assets are judicially seized for any reasons, and possession of said assets are not released to Project GS2 within ninety (90) days. Project GS2 may terminate the Agreement in the event of a material breach of any provision of this Agreement by the City which shall include, but not be limited to, failing to fulfill any of its legal obligations under Paragraph 4.0. Prior to exercising its right to terminate this Agreement, the terminating party shall provide the other party with written notice of termination setting forth the reason for termination ("Default") and at least a thirty (30) day opportunity to cure the Default. In the event of termination under this Paragraph by Project GS2, Project GS2 shall have all remedies available at law, including, without limitation, the right to sue for damages. However, any damages claimed or awarded to Project GS2 under this Agreement shall not exceed the total monetary value of the economic incentives required to be made by the City pursuant to Paragraph 4.0 of this Agreement.

- (b) The City and Project GS2 acknowledge and agree that Project GS2's performance under the terms of this Agreement is conditioned upon the approval by the State of Florida of other agreements related to Project GS2's business operations. Project GS2 shall have the right to either accept or reject this Agreement until February 24, 2017, at 5:00 P.M. EST ("Acceptance Date"). On or before the Acceptance Date, Project GS2 shall deliver to the City written confirmation of its acceptance of the Agreement. In the event such acceptance confirmation is not delivered to the City prior to the Acceptance Date, this Agreement shall be deemed terminated and shall be null and void and of no further force and effect and the parties shall have no further obligations hereunder.

18.0 **Indemnification and Hold Harmless.**

- (a) Project GS2 assumes any and all risk of personal injury and property damage to the extent attributable to the intentional and negligent acts or omissions of Project GS2 and its officers, employees, servant, and agent thereof while acting within the scope of their employment with Project GS2 and performing Project GS2's requirements and obligations under the terms and conditions set forth in this Agreement. The City assumes any and all risks of personal injury and property damages to the extent attributable to the intentional and negligent acts or omissions of the City's officers, employees, servants, and obligations of the City under this Agreement. Subject to the terms and conditions of this Agreement, Project GS2 and the City further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) a waiver of sovereign immunity of the City beyond the waiver provided in Section 768.28, Florida Statutes. The limits of liability on the City set forth in section 768.28, Florida Statutes are hereby fully incorporated herein by this reference. This Paragraph shall survive termination of this Agreement.
- (b) The obligations arising under this Paragraph 18.0 shall survive the expiration or termination of this Agreement, as to claims or causes of action, liabilities, expenses, losses, costs, reasonable attorneys fees, damages, fines and penalties of every kind and character or incurred or suffered by the City as a result thereof, based upon events arising prior to the date of termination of this Agreement.

19.0 **Assignment.** This Agreement and the grant provided hereunder shall not be assigned by Project GS2 without the prior written consent of the City.

20.0 **No City Obligation for Future Funds.** No provisions in this Agreement shall be constructed as requiring the City to provide additional economic incentives of any kind, other than as specifically provided herein.

21.0 **Conflict of Interest.** Project GS2 represents and warrants, and this Agreement is being made by the City in reliance thereon, that Project GS2 and its officers, employees, and agents are neither officers nor employees of the City. Further, that no consideration of any kind is being paid, transferred, or conveyed directly to any City officer or employee, or indirectly to any City officer or employee through some other third party including a relative or legal entity, for the City's commitment to enter into this Agreement.

22.0 **Representations of Project GS2.** Project GS2 represents to the City that (i) Project GS2 is an entity organized in the State of Connecticut and Duly authorized to conduct business in Florida; (ii) Project GS2 has the authority to enter into the Agreement and perform the requirements of this Agreement; (iii) to Project GS2's best knowledge, Project GS2's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; (iv) to Project GS2's best knowledge, Project GS2's

performance under this Agreement shall not result in the creation of any claims against the City for Money or performance, any lien, charge, encumbrance or security interest upon any asset of the City; (v) Project GS2 shall have sufficient capital to perform its obligations under this Agreement: and (vi) Project GS2 does not require any third party consent to execute, deliver and perform it obligations under this Agreement unless otherwise stated in this Agreement.

- 23.0 **Project GS2's Continuing Disclosure Requirement.** Project GS2 must promptly notify the City of any developments that materially and adversely impact this Agreement and Project GS2's obligations stated herein including, but not limited to, compliance with all applicable laws, rules, and regulations pertaining to clean air permits, initiation any law suits or bankruptcy proceedings, sale or conveyance of real property, labor disputes, and changes in business operations.
- 24.0 **No Delegation of Police Power.** Project GS2 shall not pledge the credit of the City nor make the City a guarantor of payment or surety for any contract, debt, or obligation, judgment, lien, or any form of indebtedness. The parties agree that this Agreement does not nor shall it be constructed as delegation of any of the City's authority or police powers to Project GS2.
- 25.0 **Choice of Law; Venue.** This Agreement has been made and entered into in the State of Florida, County of Flagler, and the laws of such state shall govern the validity and interpretation of this Agreement and the performance due hereunder. The parties agree that venue shall be exclusively in Flagler County, Florida, for all state court actions or disputes which arise out of or based upon this Agreement, and Orlando, Florida for all federal court actions or disputes which arise out of or are based upon this Agreement.

**THIS SPACE LEFT INTENTIONALLY BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS THEREOF, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

WITNESSES:

CITY OF PALM COAST, FLORIDA

Printed Name

By: _____
JIM LANDON, CITY MANAGER

Printed Name

ATTEST:

By: _____
VIRGINIA SMITH, CITY CLERK

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by the CITY OF PALM COAST, JIM LANDON, City Manager and VIRGINIA SMITH, City Clerk, of the City of Palm Coast, Florida, (check one) who are personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: _____

PROJECT GS2

WITNESSES:

Printed Name

Printed Name

By: GIOIA SAILS SOUTH LLC

Name: PATRICK MOYNIHAN

Its: VICE PRESIDENT

Date: _____

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by PATRICK MOYNIHAN, the Vice President of Gioia Sails LLC (check one) who is personally known to me or who produced _____ as identification.

Notary Public
Print Name: _____
My Commission expires: