

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**2008 Legislative Session**Resolution No. CR-23-2008Proposed by Council Member KnottsIntroduced by Council Members Knotts and Campos

Co-Sponsors _____

Date of Introduction April 1, 2008**RESOLUTION**

1 A RESOLUTION concerning

2 The Issuance of Special Obligation Bonds

3 For the purpose of providing that special obligation bonds may be issued from time to time under
4 the provisions of this Resolution and Section 10-269 of the Prince George's County Code, as
5 amended (2003 Edition, 2007 Supplement) and Section 9-1301 of Article 24 of the Annotated
6 Code of Maryland, as amended (2005 Replacement Volume, 2007 Supplement) (collectively, the
7 "Special Taxing District Act") and consistent with the provisions of Resolution No. CR-25-2004
8 of the County Council of Prince George's County, Maryland (the "Formation Resolution") in the
9 aggregate principal amount of Thirty-Five Million Dollars (\$35,000,000) in order for the County
10 to finance or reimburse, in accordance with the Special Taxing District Act, costs related to the
11 construction of certain infrastructure improvements, as more particularly described herein;
12 making certain findings and determinations, among others, concerning the public benefit and
13 purpose of such special obligation bonds; providing for the levy of a special tax in the form of a
14 special hotel rental tax, the creation of a special fund and the allocation of such special tax with
15 respect to the special taxing district to be paid over to such special fund as provided in the
16 Special Taxing District Act; providing that such special obligation bonds authorized to be issued
17 hereby shall be payable from the Special Hotel Rental Tax (defined below) collected and
18 deposited in the special fund, as described below, and that the special obligation bonds shall not
19 constitute a general obligation debt of the County or a pledge of the County's full faith and credit
20 or taxing power other than the taxes representing the Special Hotel Rental Tax; specifying
21 certain terms and conditions with respect to the issuance of the special obligation bonds;
22 authorizing the County Executive of the County to specify, prescribe, determine, provide for and

1 approve certain details, forms, documents or procedures in connection with such special
2 obligation bonds issued hereunder and any other matters necessary or desirable in connection
3 with the authorization, issuance, delivery and payment of such special obligation bonds;
4 authorizing the County Executive to take certain actions, to execute documents and make certain
5 commitments on behalf of the County in connection with the issuance and delivery of such
6 special obligation bonds; authorizing the execution and delivery of such special obligation bonds
7 and such other documents as may be necessary and desirable to effectuate the financing of the
8 infrastructure improvements and the issuance and delivery of such special obligation bonds; and
9 generally providing for, and determining various matters in connection with, the issuance,
10 delivery and payment of such special obligation bonds.

11 WHEREAS, in order to assist in facilitating the financing for the infrastructure
12 improvements described in Exhibit A attached hereto and made a part hereof, the County will
13 issue its special obligation bonds to fund such improvements; and

14 WHEREAS, the Formation Resolution has heretofore designated a contiguous area within
15 the County known as the “National Harbor Special Taxing District” as a “special taxing district”
16 as that term is used in the Special Taxing District Act (the “District”); and

17 WHEREAS, the owners of the real property in the District are developing retail,
18 commercial, office and residential facilities in the location generally known as National Harbor
19 (“National Harbor”) which shall be served by the infrastructure improvements; and

20 WHEREAS, such development will further economic development within the County and
21 thus meet the public purposes contemplated by the Special Taxing District Act, the Formation
22 Resolution and this Resolution; and

23 WHEREAS, the County Council of Prince George’s County (the “Council”) has
24 determined to waive the requirements of CR-89-2006 specifically for the special obligation
25 bonds authorized to be issued by the provisions of this resolution and secured by the Special
26 Hotel Rental Tax; and

27 WHEREAS, the owners of at least two-thirds of the assessed valuation of the real property
28 located within the District and at least two-thirds of the owners of the real property located
29 within the District have petitioned the County to undertake proceedings under the Special Taxing
30 District Act (i) to levy additional special taxes in the form of a special hotel rental tax on hotels,
31 as described in Section 9-1301(c)(5) of Article 24 of the Annotated Code of Maryland, as

1 amended (2005 Replacement Volume and 2007 Supplement), located in the District (the
2 “Special Hotel Rental Tax”) to be paid over to a special fund, and (ii) to issue special obligation
3 bonds or special obligation refunding bonds pursuant to the Special Taxing District Act, secured
4 by a levy of the Special Hotel Rental Tax in order to finance or refinance all, or a portion, of the
5 costs of infrastructure improvements, as described in Exhibit A attached hereto; and

6 WHEREAS, the County will pledge its receipts from the Special Hotel Rental Tax to the
7 special fund, as more specifically provided for herein; and

8 WHEREAS, the proposed infrastructure improvements will be situated within the District;
9 and

10 WHEREAS, the special obligation bonds will be issued and secured pursuant to the
11 provisions of the Special Taxing District Act, the Formation Resolution and this Resolution; and

12 WHEREAS, to the extent that the taxes representing the levy of the Special Hotel Rental
13 Tax in any given fiscal year of the County exceeds the debt service payable on the special
14 obligation bonds in any such fiscal year, as well as any other payments required to be satisfied by
15 the Special Hotel Rental Tax such excess will be used to redeem the special obligation bonds as
16 more specifically provided for herein; and

17 WHEREAS, if the debt service payable on the special obligation bonds in any fiscal year
18 exceeds the taxes representing the Special Hotel Rental Tax, such debt service payments shall be
19 deferred and paid from future available amounts of the Special Hotel Rental Tax as more
20 specifically provided for herein; and

21 WHEREAS, the special obligation bonds will initially be delivered to National Harbor
22 Development L.L.C. (the “Developer”) to pay or reimburse the Developer for costs permitted by
23 the Special Taxing District Act that are being incurred by the Developer in connection with its
24 construction of the infrastructure improvements. The special obligation bonds are to be delivered
25 and the improvements will be provided in accordance with the terms and the requirements set
26 forth in a Development Agreement (the “Development Agreement”), between the County and
27 the Developer; and

28 WHEREAS, the infrastructure improvements to be financed with the proceeds of the
29 special obligation bonds will be maintained by the Developer and by owners of the real property
30 located within the District; and

1 WHEREAS, as a condition precedent to the issuance of the special obligation bonds, the
2 Developer will be obligated to make a contribution to Prince George’s Community College; and

3 WHEREAS, the County and the Developer previously entered into that certain TPC Local
4 and Minority Business Utilization and Local Resident Participation Agreement dated as of May
5 18, 2004, as amended (the “Participation Agreement”) which provides that local businesses,
6 minority business enterprises and local minority business enterprises shall be afforded every
7 opportunity to participate in the economic opportunities created by development of National
8 Harbor; and

9 WHEREAS, as a condition precedent to the issuance of the special obligation bonds, the
10 County and the Developer will further amend the Participation Agreement to provide additional
11 opportunities for local minority business enterprises to participate in the development of National
12 Harbor; now, therefore,

13 SECTION 1. BE IT ENACTED by the County Council of Prince George’s County,
14 Maryland, as follows:

15 A. The words and terms used in this Resolution that are defined in the Special Taxing
16 District Act or the Formation Resolution shall have the meanings indicated in the Special Taxing
17 District Act and the Formation Resolution, as the case may be, unless the context clearly requires
18 a contrary meaning.

19 B. Acting pursuant to this Resolution, the Special Taxing District Act and the Formation
20 Resolution, it is hereby found and determined that the issuance of the bonds, as further described
21 herein (the “Bonds”) for delivery to the Developer for the financing or the reimbursement of the
22 costs of the infrastructure improvements related to the development of the District, accomplish
23 the public purposes of this Resolution, the Special Taxing District Act and the Formation
24 Resolution and pursuant to the Formation Resolution and this Resolution, the County has
25 complied with Section 10-269 of the Prince George’s County Code and Section 9-1301(f) of
26 Article 24 of the Annotated Code of Maryland. For the purpose of implementing the provisions
27 of this Resolution, the requirements of CR-89-2006 have been waived; provided, that such
28 waiver shall not constitute a repeal of CR-89-2006 and that CR-89-2006 remains in full force
29 and effect.

30 C. The types of infrastructure improvements to be financed as permitted by the Special
31 Taxing District Act in connection with the District are set forth in Exhibit A attached hereto and

1 made a part hereof including costs related to such improvements which are intended to be funded
2 with the issuance of the Bonds. The infrastructure improvements are contained within the
3 geographic boundaries of the District. Marketing and maintenance costs related to the
4 infrastructure improvements and/or National Harbor may not be funded by the Bonds.

5 D. Within thirty (30) days of the issuance of the Bonds, the Financial Officer of the
6 County shall record among the Land Records of the County at the cost of the District a
7 declaration to the effect that all hotels located in the District are subject to the Special Hotel
8 Rental Tax until such time as the Financial Officer records a release stating that the Special
9 Rental Hotel Tax has been terminated.

10 E. Pursuant to the Special Taxing District Act, the County hereby establishes a special
11 fund to be designated the "National Harbor Special Hotel Rental Tax Fund" (the "Special Fund")
12 with respect to the District and the County Executive, Chief Administrative Officer and the
13 Financial Officer of the County are hereby directed and authorized to deposit in such Special
14 Fund all the taxes representing the Special Hotel Rental Tax received by the County. The County
15 Executive, the Chief Administrative Officer and the Financial Officer and other officers and
16 employees of the County, to the extent applicable, are hereby authorized to take all necessary
17 steps in order to establish a separate fund to be held by the County. The monies in the Special
18 Fund are pledged to the payment of the Bonds and to make any other payments required to be
19 satisfied by the Special Hotel Rental Tax consistent with the provisions of this Resolution.

20 F. Pursuant to the Special Taxing District Act and this Resolution, the County hereby
21 levies and imposes the Special Hotel Rental Tax at a rate and amount of five percent (5%) on all
22 gross amounts of money paid to the owners or operators of hotels located in the District by
23 transient guests or tenants for renting, using or occupying a room or rooms in the hotels located
24 in the District to provide for the payment of the principal of and interest on the Bonds and to
25 provide for replenishment of any debt service reserve fund securing the Bonds as well as for the
26 payment of County administrative expenses, to the extent such replenishments and expenses are
27 not otherwise provided for. The Special Hotel Rental Tax also may be levied with respect to
28 refunding bonds issued under the Special Taxing District Act pursuant to the provisions of an
29 ordinance or resolution enacted or adopted by the County in connection with the issuance of such
30 refunding bonds. The Special Hotel Rental Tax is levied and imposed upon the room rental rate
31 of all hotels within the District, for the purposes, to the extent and in the manner provided in this

1 Resolution through the application of the procedures provided herein. Further, the Special Hotel
2 Rental Tax levied and imposed by the Special Taxing District Act and this Resolution in the
3 District shall take effect and be in force from the later of December 1, 2008 or the date this
4 Resolution becomes law. The levy and imposition of the Special Hotel Rental Tax shall remain
5 in place until the earlier of the date the Bonds are forgiven, paid in full or defeased, or the
6 maturity date of the Bonds.

7 G. The Bonds may be issued in one or more series in the aggregate principal amount of
8 Thirty-Five Million Dollars (\$35,000,000). The Bonds will be utilized solely to finance or
9 reimburse all or part of the costs of the improvements described in Exhibit A attached hereto and
10 made a part hereof through the issuance of such Bonds for delivery to the Developer as permitted
11 pursuant to the provisions of the Special Taxing District Act. The Bonds will be payable solely
12 from the amounts levied and deposited in the Special Fund created by this Resolution. As
13 provided above, in addition to the payment of debt service on the Bonds, monies in the Special
14 Fund may be used to replenish any debt service reserve fund securing the Bonds as well as to pay
15 administrative expenses of the County, to the extent such replenishments and expenses are not
16 otherwise provided for. To the extent the debt service payable on the Bonds in any fiscal year
17 exceeds the amounts on deposit in the Special Fund, such debt service payments shall be
18 deferred and paid from future available amounts on deposit in the Special Fund; provided, that if
19 and when amounts on deposit in the Special Tax Fund are available to make deferred payments,
20 such deferred payments shall be made without any penalty interest or premium other than the
21 compounding of interest; and provided further, that, if there is insufficient funds to make
22 payment of all amounts due and owing on the final maturity date of the Bonds, the obligation
23 with respect to such Bonds shall be forgiven. Provisions may be made for municipal bond
24 insurance or any other type of financial guaranty of the Bonds, if applicable. To the extent that
25 the taxes representing the levy of the Special Hotel Rental Tax in any given fiscal year of the
26 County exceeds the principal and interest payable on the Bonds, amounts needed to replenish
27 any debt service reserve fund or to pay County administrative expenses in any such fiscal year,
28 such excess will be used to redeem the Bonds pursuant to the provisions of an indenture of trust
29 providing for the issuance of such Bonds. In addition, the Bonds may be secured through the
30 establishment of additional sinking funds or the pledge of other assets and revenues toward the
31 payment of the principal and interest on the Bonds, if applicable. The Bonds issued hereunder

1 are a special obligation of the County and do not constitute a general obligation debt of the
2 County or a pledge of the County's full faith and credit or taxing power except for the Special
3 Hotel Rental Tax. In addition, Bonds issued hereunder may be refunded by bonds issued under
4 the Special Taxing District Act. Monies on deposit in the Special Tax Fund may not be used to
5 pay marketing and maintenance costs related to the infrastructure improvements and/or National
6 Harbor.

7 H. The Bonds shall be executed in the name of the County and on its behalf by the County
8 Executive, by manual or facsimile signature, the corporate seal of the County or a facsimile
9 thereof shall be impressed or otherwise reproduced thereon and attested by the Clerk of the
10 County Council or the Chief Administrative Officer by manual or facsimile signature. The
11 Development Agreement to be entered into between the County and the Developer to provide for
12 the construction by the Developer of the infrastructure improvements referred to in Exhibit A
13 and, where applicable, all other documents as the County Executive deems necessary to
14 effectuate the issuance and delivery of the Bonds of any series, shall be executed in the name of
15 the County and on its behalf by the County Executive by manual signature, and the corporate
16 seal of the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and
17 attested by the Clerk of the County Council or the Chief Administrative Officer by manual
18 signature. If any officer whose signature or countersignature or a facsimile of whose signature or
19 countersignature appears on the Bonds of any series or on any of the aforesaid documents ceases
20 to be such officer before the delivery of the Bonds of such series or any of the other aforesaid
21 documents, such signature or countersignature or such facsimile shall nevertheless be valid and
22 sufficient for all purposes, the same as if such officer had remained in office until delivery. The
23 County Executive, the Clerk of the County Council and other officials of the County are hereby
24 authorized and empowered to do all such acts and things and execute such documents and
25 certificates as the County Executive may determine to be necessary to carry out and comply with
26 the provisions of this Resolution, subject to the limitations set forth in the Special Taxing District
27 Act and this Resolution.

28 I. The Bonds shall be issued and delivered to the Developer, within the limitations and
29 requirements of the Special Taxing District Act and this Resolution, upon such terms and
30 conditions as the County Executive and County Council shall approve. As a condition precedent
31 to the issuance of the Bonds, the County shall enter into an agreement with the Developer,

1 pursuant to which the Developer will be obligated to make a \$5,000,000 contribution to the
2 Prince George's Community College over a five (5) year period (the "Contribution Agreement")
3 the form of which is attached hereto Exhibit B. In the event that the Developer defaults on its
4 payment obligations under the Contribution Agreement, the County's obligation to pay debt
5 service on the Bonds will be suspended until the Developer's payment obligations are cured. If
6 such payment obligations are not cured within four (4) months, the County's obligation to pay
7 debt service on the Bonds shall be forgiven in its entirety. As an additional condition precedent
8 to the issuance of the Bonds, the County shall enter into Amendment No. Three to the
9 Participation Agreement ("Amendment No. 3") the form of which is attached hereto as Exhibit
10 C.

11 J. Subject to the provisions of this Resolution, the County Executive by executive order:

12 (1) shall prescribe the form, tenor, terms and conditions of and security for the Bonds;

13 (2) shall prescribe the principal amounts, rate or rates of interest, which shall be a fixed
14 rate of interest equal to eight percent (8%), denominations, date, maturity or maturities (within
15 the limits prescribed in the Special Taxing District Act), and the time and place or places of
16 payment of the Bonds, and the terms and conditions and details under which the Bonds may be
17 called for redemption prior to their stated maturities;

18 (3) may appoint bond counsel, underwriters, a financial advisor and if necessary, may
19 appoint a trustee, a bond registrar and a paying agent or agents for the Bonds;

20 (4) shall approve the form and contents of, and execute and deliver (where applicable),
21 the Development Agreement, an indenture of trust and such other contracts and documents to
22 which the County is a party and which may be necessary to effectuate the issuance and delivery
23 of the Bonds and apply the Special Fund as set forth herein;

24 (5) shall determine the time of execution, issuance and delivery of the Bonds and
25 prescribe any and all other details of the Bonds;

26 (6) shall approve the terms of the delivery of the Bonds as provided in Paragraph I
27 hereof;

28 (7) shall provide for the direct or indirect payment of all costs, fees and expenses
29 incurred by or on behalf of the County in connection with the issuance and delivery of the
30 Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, the

1 funding of reserves, legal expenses (including the fees of bond counsel) and compensation to any
2 person performing services by or on behalf of the County in connection therewith; and

3 (8) shall do any and all things necessary, proper or expedient in connection with the
4 issuance and delivery of the Bonds in order to accomplish the legislative policy of the Special
5 Taxing District Act and the public purposes of this Resolution, subject to the limitations set forth
6 in the Special Taxing District Act and any limitations prescribed by this Resolution.

7 This delegation of authority to the County Executive is subject to his discretion and to
8 the extent he does not exercise such discretion pursuant to the provisions of this Resolution,
9 neither such officer nor the County shall be subject to any liability.

10 SECTION 2. BE IT FURTHER ENACTED, that the Bonds being authorized herein, the
11 construction costs of the infrastructure improvements for which said Bonds are authorized and
12 issued, and any costs paid or reimbursed from the Special Hotel Rental Tax are not deemed to be
13 construction, monetary contributions or procurement for purposes of Subtitle 10A of the Prince
14 George's County Code. Any improvements and costs funded in whole or part by said Bonds or
15 paid or reimbursed from the Special Hotel Rental Tax are specifically exempted from the
16 provisions of Subtitle 10A.

17 SECTION 3. BE IT FURTHER ENACTED, that each and all of the infrastructure
18 improvements delineated in Exhibit A attached hereto which are to be funded with the issuance
19 of the Bonds shall be open to the general public in the same manner and to the same extent as
20 infrastructure improvements constructed, owned and maintained by the County.

21 SECTION 4. BE IT FURTHER ENACTED, that the provisions of this Resolution are
22 severable, and if any provision, sentence, clause, section or part hereof is held or determined to
23 be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such
24 illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the
25 remaining provisions, sentences, clauses, sections or parts of this Resolution or their application
26 to other persons or circumstances. It is hereby declared to be the legislative intent that this
27 Resolution would have been passed if such illegal, invalid, unconstitutional or inapplicable
28 provision, sentence, clause, section or part had not been included herein, and as if the person or
29 circumstances to which this Resolution or any part hereof are inapplicable had been specifically
30 exempted herefrom.

31 SECTION 5. BE IT FURTHER ENACTED, that this Resolution shall take effect upon

1 approval by the County Executive.

Adopted this 18th day of November, 2008.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Samuel H. Dean
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

EXHIBIT A

DESCRIPTION OF THE PUBLIC FACILITIES AND IMPROVEMENTS

The public facilities and improvements, include but are not limited to, streets and sidewalks, including promenades, a plaza, and entrance features; utility installation; transit facilities, including piers, ferries and ground transit vehicles; parks and recreational facilities, including public art; lighting; parking facilities; and other necessary improvements for the development and utilization of the National Harbor, including but not limited to related security, landscaping and tree plantings. Marketing and maintenance costs related to the infrastructure improvements and/or National Harbor may not be funded by the Bonds.

EXHIBIT B

CONTRIBUTION AGREEMENT

by and among

PRINCE GEORGE'S COUNTY, MARYLAND,

THE PETERSON COMPANIES L.C.

and

NATIONAL HARBOR DEVELOPMENT L.L.C.

Dated as of November 18, 2008

**Prince George's County, Maryland
Special Obligation Bonds
(National Harbor Project)
Series 2008**

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CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT is dated as of _____, 2008 and is made by and among **PRINCE GEORGE’S COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland (the “County”), **THE PETERSON COMPANIES L.C.**, a _____ (the “Peterson Companies”) and **NATIONAL HARBOR DEVELOPMENT L.L.C.**, a State of Maryland limited liability company (“National Harbor Development” and, collectively with the Peterson Companies, the “Developer”).

RECITALS

The County is authorized under Section 9-1301 of Article 24 of the Annotated Code of Maryland, as amended, and Section 10-269 of the Prince George’s County Code, as amended (collectively, the “Special Taxing District Act”), to create a special taxing district, to levy special hotel rental taxes and to issue bonds for the purpose of financing, refinancing or reimbursing the cost of certain infrastructure improvements as necessary for the development and utilization of the land in a defined geographic region within the County.

Pursuant to the Special Taxing District Act, the County Council of Prince George’s County, Maryland (the “County Council”) adopted Resolution No. CR-25-2004 on July 6, 2004, which was approved by the County Executive on July 6, 2004 (the “Formation Resolution”), designating an area to be known as the National Harbor Special Taxing District (the “Special Taxing District”) as a special taxing district.

Pursuant to the Special Taxing District Act, the County Council adopted Resolution No. CR-23-2008 on _____, 2008, which was approved by the County Executive on _____, 2008 (the “Bond Resolution”), creating a special fund with respect to the Special Taxing District and providing for the levy of a special hotel rental tax on all hotels located within the Special Taxing District and authorizing the issuance of special obligation bonds payable from amounts on deposit in the Special Tax Fund created under the provisions of the Indenture (defined herein). The Formation Resolution and the Bond Resolution are referred to collectively herein as the “Resolutions.”

Pursuant to the Resolutions, the County Executive, by Executive Order, has authorized the issuance and sale by the County of \$35,000,000 aggregate principal amount of special obligation bonds (the “SHOT Bonds”). The proceeds of the SHOT Bonds are to be used to fund the costs of public improvements for the Special Taxing District.

As consideration for the County issuing the SHOT Bonds and delivering the SHOT Bonds to the Developer, the Developer has agreed to make certain contributions to Prince George’s Community College (the “Community College”).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged by both parties hereto, the County and the Developer agree, as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Contribution Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein and if defined in the Recitals hereof, shall have the meanings ascribed to them in the Recitals hereof.

“*Contribution Agreement*” means this Contribution Agreement dated as of _____, 2008 by and among the County, the Peterson Companies and National Harbor Development, as amended or supplemented from time to time.

“*Community College*” means Prince George’s Community College and any successor thereof.

“*Effective Date*” means the date on which the SHOT Bonds are issued pursuant to the Indenture.

“*Indenture*” means the Indenture of Trust by and between the County and _____, as Trustee dated as of _____, 2008, as supplemented or amended from time to time.

“*Memorandum of Understanding*” means the Memorandum of Understanding to be executed by and among the County Executive, the County Council, the Developer and the Community College relating to the use of the contributions.

“*SHOT Bonds*” means the Prince George’s County, Maryland Special Obligation Bonds (National Harbor Project) Series 2008, at any time outstanding under the Indenture.

ARTICLE II

CONTRIBUTION TO COMMUNITY COLLEGE

Section 2.01 Contributions

The Developer agrees to fund dedicated programs at the Community College through contributions to the Community College. The total contribution amount is Five Million Dollars (\$5,000,000) to be paid as follows: (i) One Million Dollars (\$1,000,000) to be paid ninety (90) days after the issuance of the SHOT Bonds; (ii) One Million Dollars (\$1,000,000) to be paid on December 31, 2009; (iii) Five Hundred Thousand Dollars (\$500,000) to be paid on December 31, 2010; (iv) Five Hundred Thousand Dollars (\$500,000) to be paid on December 31, 2011; (v) One Million Dollars (\$1,000,000) to be paid on December 31, 2012; and (vi) One Million Dollars (\$1,000,000) to be paid on December 31, 2013. Upon each contribution payment

hereunder, the Developer shall provide written notice to the County indicating the amount of the payment and the date such payment was made.

Section 2.02 Use of Contributions.

The contributions shall be used as set forth in the Memorandum of Understanding.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.01 Representations, Covenants and Warranties of the Peterson Companies.

The Peterson Companies represents, warrants and covenants for the benefit of the County as follows:

(a) *Organization.* The Peterson Companies is a _____ duly organized and validly existing under the laws of the _____, [qualified to do business in the State of Maryland] and has the power and authority to own its properties and assets and to carry on its business in the State of Maryland as now being conducted and as hereby contemplated.

(b) *Authority.* The Peterson Companies has the power and authority to enter into this Contribution Agreement and to perform its obligations under this Contribution Agreement, and has taken all action necessary to cause this Contribution Agreement to be executed and delivered, and this Contribution Agreement has been duly and validly executed and delivered by the Peterson Companies.

(c) *Binding Obligation.* This Contribution Agreement is a legal, valid and binding obligation of the Peterson Companies, enforceable against the Peterson Companies in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) *No Conflict.* The execution and delivery by the Peterson Companies of this Contribution Agreement and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the Peterson Companies a breach or default under any agreement or instrument to which it is a party or by which it is bound, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would, in any material respect, constitute a default or an event of default under this Contribution Agreement.

(e) *Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against the Peterson Companies: (i) in any way questioning the due formation and valid existence of the Peterson Companies; (ii) in any way

contesting or affecting the validity of this Contribution Agreement or the consummation of the transactions contemplated thereby; or (iii) which would have a material adverse effect upon the financial condition of the Peterson Companies or its ability to make the contributions contemplated by this Agreement.

Section 3.02 Representations, Covenants and Warranties of National Harbor Development.

National Harbor Development represents, warrants and covenants for the benefit of the County as follows:

(a) *Organization.* National Harbor Development is a limited liability company duly organized and validly existing under the laws of the State of Maryland and has the power and authority to own its properties and assets and to carry on its business in the State of Maryland as now being conducted and as hereby contemplated.

(b) *Authority.* National Harbor Development has the power and authority to enter into this Contribution Agreement and to perform its obligations under this Contribution Agreement, and has taken all action necessary to cause this Contribution Agreement to be executed and delivered, and this Contribution Agreement has been duly and validly executed and delivered by National Harbor Development.

(c) *Binding Obligation.* This Contribution Agreement is a legal, valid and binding obligation of National Harbor Development, enforceable against National Harbor Development in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) *No Conflict.* The execution and delivery by National Harbor Development of this Contribution Agreement and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of National Harbor Development a breach or default under any agreement or instrument to which it is a party or by which it is bound, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would, in any material respect, constitute a default or an event of default under this Contribution Agreement.

(e) *Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of its knowledge, threatened by or against National Harbor Development: (i) in any way questioning the due formation and valid existence of National Harbor Development; (ii) in any way contesting or affecting the validity of this Contribution Agreement or the consummation of the transactions contemplated thereby; or (iii) which would have a material adverse effect upon the financial condition of National Harbor Development or its ability to make the contributions contemplated by this Agreement.

Section 3.03 Representations of the County.

The County represents to the Developer, as follows:

(a) The County is a body corporate and politic and a political subdivision of the State of Maryland and has the full legal right, power and authority to enter into this Contribution Agreement and to consummate the transactions on its part contemplated by this Contribution Agreement; and

(b) The County, by all necessary official action of the County, has duly authorized and approved the adoption, or execution and delivery by the County of, and the performance by the County of the obligations on its part contained in this Contribution Agreement, and such authorizations and approvals are in full force and effect.

ARTICLE IV

TERMINATION

Section 4.01 Mutual Consent.

Except as provided in Section 4.02, this Contribution Agreement may be terminated only by the mutual, written consent of the County and the Developer in which event the County's obligation to pay debt service on the SHOT Bonds shall be forgiven in its entirety.

Section 4.02 Termination Upon Payment Default.

If the Developer fails to pay any contribution at the time and in the amount required hereunder, the County's obligation to pay debt service on the SHOT Bonds shall be suspended until the Developer's payment default has been cured. If such payment default is not cured within four (4) months, this Agreement shall terminate and the County's obligation to pay debt service on the SHOT Bonds shall be forgiven in its entirety.

ARTICLE V

MISCELLANEOUS

Section 5.01 Notices.

Any notice required or permitted by this Contribution Agreement to be given or delivered to either party shall be deemed to have been received when delivered by an overnight delivery service, personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

County:	Prince George's County, Maryland County Administration Bldg. 14741 Governor Oden Bowie Drive, Room 5032 Upper Marlboro, Maryland 20772 Attention: Iris B. Boswell, Deputy Chief Administrative Officer for Budget, Finance and Administration
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With Copy to: Prince George's County, Maryland
County Administration Bldg., Rm. 5121
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
Attention: Stephanie P. Anderson, County Attorney

Prince George's County, Maryland
County Administration Bldg.
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
Attention: Mr. Dave Van Dyke, Director
Office of Audit and Investigations

Developer: The Peterson Companies L.C.
Suite 400
12500 Fairlakes Circle
Fairfax, Virginia 22033
Attn: Milton V. Peterson
Nancy Z. McGrath

With a copy to: McGuireWoods LLP
7 St. Paul Street, Suite 1000
Baltimore, Maryland 21202
Attn: Alan Cason, Esq.

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 5.02 Severability.

If any part of this Contribution Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Contribution Agreement shall be given effect to the fullest extent possible.

Section 5.03 Successors and Assigns.

This Contribution Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Contribution Agreement shall not be assigned by the Developer without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the County, the County may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which the County deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the County.

Section 5.04 Other Agreements.

Nothing herein shall be construed as affecting the County's or the Developer's rights or duties, or any affiliate of the Developer, to perform their respective obligations under other agreements, use regulations or subdivision requirements relating to the development within the District. This Contribution Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 5.05 No Other Liability of Developer.

The obligations of the Developer hereunder are strictly limited to the express obligations undertaken.

Section 5.06 Waiver.

Failure by a party to insist upon the strict performance of any of the provisions of this Contribution Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contribution Agreement thereafter.

Section 5.07 Merger.

No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Contribution Agreement shall be binding.

Section 5.08 Parties in Interest.

Nothing in this Contribution Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the County and the Developer any rights, remedies or claims under or by reason of this Contribution Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Contribution Agreement contained by or on behalf of the County or the Developer shall be for the sole and exclusive benefit of the County and the Developer. Notwithstanding the foregoing, the Community College is a third party beneficiary of this Agreement.

Section 5.09 Amendment

This Contribution Agreement may be amended, from time to time in a manner consistent with the Bond Resolution, by written supplement hereto and executed by both the County and the Developer.

Section 5.10 Counterparts; Governing Law.

This Contribution Agreement may be executed in counterparts, each of which shall be deemed an original. This Contribution Agreement shall be construed in accordance with the laws of the State of Maryland.

Section 5.11 Effective Date.

This Contribution Agreement shall be effective as of the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Contribution Agreement as of the day and year first above written.

THE PETERSON COMPANIES L.C.

By: MVP Management, LLC,
a Virginia limited liability company, its
Manager

By: _____
Name: _____
Its: _____

**NATIONAL HARBOR DEVELOPMENT
L.L.C.**

By: MVP Management, LLC,
a Virginia limited liability company, its
Manager

By: _____
Name: _____
Its: _____

ATTEST:

**PRINCE GEORGE’S COUNTY,
MARYLAND**

By: _____
Clerk of the County Council

By: _____
Jack B. Johnson
County Executive

REVIEWED FOR LEGAL SUFFICIENCY

Prince George's County, Maryland
Office of Law

EXHIBIT C
AMENDMENT NO. THREE
TO
TPC LOCAL AND
MINORITY BUSINESS UTILIZATION AND LOCAL RESIDENT
PARTICIPATION AGREEMENT

This AMENDMENT NO. THREE TO TPC LOCAL AND MINORITY BUSINESS UTILIZATION AND LOCAL RESIDENT PARTICIPATION AGREEMENT dated as of November 18, 2008 (the “Amendment No. Three”), is entered into by and between Prince George’s County, Maryland (the “County”) and The Peterson Companies L.C. (“Peterson”).

RECITALS

WHEREAS, the County and Peterson entered into the TPC Local and Minority Business Utilization and Local Resident Participation Agreement dated as of May 18, 2004, as amended by Amendment No. One dated as of July 2, 2004, and by Amendment No. Two dated as of March 31, 2006 (collectively, the “Participation Agreement”);

WHEREAS, the County is planning to issue special obligation bonds pursuant to CR-23-2008 or similar legislation and secured by Special Hotel Rental Tax revenues (the “SHOT Bonds”) to provide for the payment of a portion of the costs of infrastructure at National Harbor;

WHEREAS, Peterson has agreed to provide additional opportunities for local minority business enterprises to participate in the development of the Project, as more particularly provided for herein; and

WHEREAS, the County and Peterson have agreed to further amend the Participation Agreement to reflect the additional commitments made by Peterson.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree as follows:

1. **Definitions.** All terms not otherwise defined in this Amendment No. Three, including its preamble and recitals, have the meanings provided in the Participation Agreement.

a. The following definition is added to Exhibit A of the Participation Agreement:

“5. Local Minority Business Enterprise: (LMBE) is a business enterprise whose principal place of operation is located within Prince George’s County, Maryland, and one (A) which is at least fifty-one percent (51%) owned by one or more minority individuals, or, in the case of any publicly-owned corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority individuals; (B) whose general management and daily business affairs and essential productive operations are controlled by one or more minority individual; and (C) which has been certified as set forth in Section 3(d) of the Participation Agreement, as amended.”

2. **Amendments.** The Participation Agreement is hereby amended as follows:

a. The second sentence of Section 2(b) of the Participation Agreement is hereby deleted and the following is added in place thereof:

“(b) Additionally, Peterson shall use Best Efforts to cause thirty percent (30%) of the persons employed by Peterson or its affiliates in permanent positions for the Project to be residents of the County. In no event, however, shall at any time less than twenty percent (20%) of the persons employed by Peterson in permanent positions on the Project be residents of the County. Best Efforts

as used in this Amendment No. Three shall be the same definition set forth in Exhibit B of the Participation Agreement entered into by the County and Peterson on or about May 18, 2004.”

- b. Section 2 of the Participation Agreement is further amended by adding a new Section 2(e) as follows:

“(e) Peterson agrees to actively recruit County residents for its professional and managerial positions at National Harbor.”

- c. The following is added after the third sentence in Section 3(a) of the Participation Agreement:

“For construction commencing January 1, 2009 through December 31, 2014, Peterson shall use its Best Efforts to cause twenty percent (20%) or more of the total costs of contracting for new Peterson-owned construction to be incurred pursuant to contracts made with LMBEs. In no event shall less than fifteen percent (15%) of such costs be incurred pursuant to contracts made with LMBEs. The parties acknowledge that the penalties set forth in Section 2(g) of this Amendment No. Three shall apply if Peterson does not cause fifteen percent (15%) of the total costs of contracting for new Peterson-owned construction to be incurred pursuant to contracts made with LMBEs.

- d. Section 3(b) of the Participation Agreement is deleted in its entirety and the following is added in place thereof:

“(b) In contracting for the operation and maintenance of the Project, price, quality and any other material consideration being equal, Peterson shall use its Best Efforts to award thirty percent (30%) of operation and maintenance contracts to LMBEs. In no event, however, shall less than twenty percent (20%) of the annual value of such contracts (exclusive of taxes, debt service, insurance and loan closing costs) be incurred pursuant to contracts made with LMBEs.” The parties acknowledge that the penalties set forth in Section 2(g)

of this Amendment No. Three shall apply if Peterson does not award twenty percent (20%) of operation and maintenance contracts to LMBEs.

- e. Section 3(d) of the Participation Agreement is deleted in its entirety and the following is added in place thereof:

“(d) Certification of all LMBEs shall be required. Any LMBE certified by the County, the Maryland Department of Transportation, the Washington Metropolitan Area Transit Authority, the Maryland/District of Columbia Minority Supplier Development Council (or other organizations with similar certification authority) or any federal agency shall be deemed certified for purposes of this Participation Agreement.”

- f. Section 4 of the Participation Agreement is deleted in its entirety and the following is added in place thereof:

“Peterson shall work with the County Economic Development Corporation (the “EDC”) or other designated County or quasi-County entity to develop programs to support the retail, construction and equity goals of this Amendment No. Three and help identify tenant/franchise opportunities for retail/dining/entertainment expected to occur at National Harbor. Information provided by Peterson will include background packages on amount of space, build-out requirements, and specific preferences available for qualified LMBEs relative to leasing discounts, build-out assistance, marketing assistance, franchising opportunities and such other items designed to assist the LMBE in locating at National Harbor. Peterson agrees that members of its retail team will meet quarterly with the designated County entity to provide this information and to work through details, issues or concerns that may arise from time to time.”

- g. Section 6 of the Participation Agreement is deleted in its entirety and the following is added in place thereof:

“Peterson shall use its Best Efforts to meet the goals set forth herein. The Compliance Manager shall review any Additional Report (as defined in new paragraph Section 15 set forth in Section 2(h) of this Amendment No. Three). In the event that Peterson fails to employ Best Efforts as determined by the Compliance Manager’s review of the Additional Report and such failure shall not be cured by Peterson within thirty (30) days after Peterson’s receipt of notice from the County or the Compliance Manager, then such failure shall be deemed an “Event of Default.” On the occurrence of an Event of Default or at the end of any one year period in which Peterson fails to meet the minimum requirements contained in Sections 2(a), 2(b), 2(c), 2(d), and new paragraphs “11”, “12” and “13” set forth in 2(h) of this Amendment No. Three, Peterson shall be subject to an annual fine for such year of \$500,000. During the applicability of this Amendment No. Three, if Peterson fails to meet the minimum requirements for three consecutive one year periods, the annual fine shall be increased to \$1,000,000 in the third year. Thereafter, the annual fine reverts to \$500,000 per year except for any subsequent three year occurrence as above. Such amounts represent compensation for the failure to meet a goal freely approved by Peterson and is a material consideration for the County in issuing the SHOT Bonds and is not a penalty. Notwithstanding the foregoing, in the event Peterson disputes a determination of an Event of Default, Peterson shall have the right to appeal such determination to a panel of neutral mediators. The panel shall consist of three members. The County shall appoint one member to the panel of neutral mediators. Peterson shall appoint one member to the panel. The third member of the panel shall be jointly agreed on by the County and Peterson. No penalty may be assessed against Peterson until Peterson has exhausted such appeal. Peterson agrees to pay all reasonable expenses incurred by a panel of neutral mediators. Any fines under this new Section 6 are limited to Events of Default or failure to meet the new requirements under or set forth in this Amendment No. Three.”

- h. The Participation Agreement is amended by the addition of the following provisions:

“11. Equity Opportunity:

(a) Peterson agrees to create a new LMBE or minority individual equity participation opportunity for a fifteen percent (15%) ownership interest in the Aloft Hotel or comparable hotel. The investment will be based on the lower of Peterson’s actual cost (i.e., bank approved budget) or appraised value and actual loan agreements. Within the constraints of the federal securities laws, Peterson will work with the EDC or other appropriate County or quasi-County entities to solicit interest from potential investors who are LMBEs or minority individuals who reside in the County. This investment opportunity will be directed towards a combination of smaller and/or larger minority investors.

(b) Peterson shall use its Best Efforts to sell land to one or more LMBEs for the purpose of developing a high-end national hotel in close proximity to the Gaylord National Hotel and Convention Center. Peterson commits the price of the land will be the value of such land as of September 22, 2005.

(c) Peterson agrees to identify, from the date of the issuance of the SHOT Bonds through December 31, 2014, additional retail/dining/entertainment equity investment opportunities, including net lease opportunities for LMBEs as opportunities arise. Any identified opportunities would be presented to and discussed with the EDC or other designated County or quasi-County entity on a quarterly basis. The ownership interest for these opportunities is expected to range from fifteen percent (15%) to fifty-one percent (51%) or more based on the investment opportunities and the availability of suitable investors. Peterson shall afford LMBEs meaningful opportunities to participate in these equity investments as long as the selected LMBEs are willing and able to meet the timelines and satisfy the financial considerations outlined for the particular investment.”

“12. Mortgage Lending Services: Peterson agrees to utilize the services of

one or more LMBEs as one of the designated residential mortgage lenders at National Harbor. Peterson shall facilitate the relationship by initially providing financial assistance to enhance the ability of the LMBE to compete and close loans. Peterson shall use its Best Efforts to cause the LMBE to close \$20,000,000 of loans for Buildings L and K. Peterson shall use its Best Efforts to cause one or more LMBEs to close \$20,000,000 of loans for Building R. Additionally, Peterson shall utilize the services of one or more LMBEs as designated residential mortgage lenders for all remaining residential units permitted under the County's current CSP (SP- 98012 approved by PGCPB No. 98-110) and Subdivision approvals.

“13. Residential Sales Listings: Peterson agrees to utilize the services of one or more LMBEs as one of the designated listing agents or brokers for Building R and all future buildings that will be constructed for the remaining residential units permitted under the County's current CSP (SP- 98012 approved by PGCPB No. 98-110) and Subdivision approvals. To facilitate this, Peterson will require its current sales listing broker to collaborate with the designated LMBEs to enhance the ability of the LMBEs to participate in the high-end condominium sales market and ensure maximum success converting listings to sales of units. The LMBE listing agents or brokers will receive not less than twenty percent (20%) of all residential listings for Building R and any future buildings that will be constructed for the remaining currently approved residential units. On a quarterly basis, Peterson shall notify the EDC or other designated County or quasi-County entity of any upcoming residential listings and when construction will begin on other residential buildings.

“14. County and Developer Collaboration: Several of the initiatives of this Amendment No. Three require timely collaboration between the County and Peterson in order to be successful. The parties agree to meet at least quarterly, and more often should circumstances dictate, to ensure all goals are being met

and any issues or concerns are being addressed within the time frame required by this Amendment No. Three and the Participation Agreement. The meetings will include, but are not limited to, the following items:

- i. Upcoming business and equity investment opportunities
- ii. Formal LMBE outreach activities and results
- iii. Direct financing review
- iv. Issue resolution
- v. Other items as required

If any issues or concerns arise relating to this Amendment No. Three, as reasonably determined by the County or Peterson, the parties agree to hold open, good faith discussions to understand County and Peterson perspectives and to work cooperatively to develop expedited solutions to ensure that development at National Harbor proceeds in the ordinary course.”

“**15. Additional Reporting:** To commence within six (6) months after the first SHOT revenues are received by the County, and semi-annually thereafter, Peterson shall prepare and submit a report (the “Additional Report”) to the County and Compliance Manager detailing Peterson’s utilization of LMBEs as it pertains to matters listed in this Amendment No. Three. The Compliance Manager shall be appointed jointly by the County Executive and the County Council. At the quarterly meeting contemplated by Section 14 following the receipt of the Additional Report, representatives of Peterson, Compliance Manager and the County shall discuss the activities reported and identify future activities that will help achieve the objectives set forth in this Amendment No. Three.”

3. **Effective Date.** This Amendment No. Three shall be held in escrow until and be effective upon the issuance of the SHOT Bonds.

[Signature Page Follows]

IN WITNESS WHEREOF, the County and Peterson have caused this Amendment No. Three to the Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

THE PETERSON COMPANIES L.C.

By: MVP Management, LLC,
a Virginia limited liability company, its
Manager

By: _____
Name:
Title:

NATIONAL HARBOR DEVELOPMENT LLC

By: MVP Management, LLC,
a Virginia limited liability company, its
Manager

By: _____
Name:
Title:

PRINCE GEORGE’S COUNTY, MARYLAND

By: _____
Jack B. Johnson
County Executive

APPROVED FOR FORM
AND LEGAL SUFFICIENCY

Prince George's County, Maryland
Office of Law