

LEASE

THIS LEASE (this “Lease”) made effective this ____ day of _____, 2019, by and between the CITY OF RACINE, a municipal corporation of the State of Wisconsin, located in Racine County, hereinafter called the “Landlord” and RACINE HARBORSIDE LLC, a Wisconsin limited liability company, hereinafter called “Tenant”.

WITNESSETH:

1. Parking Units and Term.

- a) **Parking Units.** Landlord hereby Leases to Tenant, and Tenant Leases from Landlord, two (2) structured parking units to be constructed by Tenant on a portion of the real property described in the attached Exhibit A (the “Parking Units”) within the City of Racine, County of Racine, State of Wisconsin together with all improvements thereon. The Parking Units are condominium units located within a mixed use condominium project being developed by Tenant and known as the _____ Condominium.
- b) **Commencement and Term.** The term of this Lease shall commence as of the date first stated above (the “Commencement Date”). The term of this Lease shall end on the last day of _____, 2034, at which time Landlord shall convey to Tenant fee simple title to the Parking Units by limited warranty deed in consideration for \$1.00, unless Tenant exercises its Option to Purchase prior thereto. Notwithstanding any provision of this Lease to the contrary, this Lease shall terminate in the event Tenant abandons or ceases to use the Parking Units for a period of twelve (12) consecutive months upon receipt by Tenant of written notice from Landlord issued during the continuation of any such abandonment.

2. Permits.

- a) **Building Permits.** Promptly after the execution and delivery of this Lease, Tenant shall, at its sole expense (subject to Landlord’s reimbursement of expenses under the Tax Increment Financing Agreement **of even date** herewith entered into by and between the City of Racine

Commented [SR1]: I believe that the TID Agreement has already been executed?

and Tenant, the “TID Financing Agreement”), take all steps, including application for licenses and permits necessary for the construction and operation of the Parking Units provided for hereunder. Landlord agrees to cooperate with Tenant in applying for all necessary licenses and permits. In the event Tenant is unable to acquire all licenses and permits necessary for the construction of the Parking Units within 120 days of the effective date of this Lease, Tenant may, at its option, declare this Lease null and void.

- b) Improvements by Tenant. Tenant shall, at Tenant’s sole expense (subject to reimbursement by the City of Racine under the TID Financing Agreement), obtain all necessary building permits and promptly after obtaining the necessary permits, Tenant shall, diligently proceed with, the construction of a minimum 232 parking stalls and all other related improvements to the Parking Units, which shall be substantially consistent with the site plan attached hereto as Exhibit B. In the event Tenant is unable to acquire all building permits and approvals necessary for the construction of the Parking Units within 120 days of the effective date of this Lease, Tenant may, at its option, declare this Lease null and void.
- c) Parking Units Design and Construction. Tenant shall prepare, at its sole expense, any plans, drawings, and specifications that may be reasonably necessary for the construction of the Parking Units.
- d) Tenant Property. All improvements made by Tenant to the Parking Units shall be the property of Landlord throughout the term of this Lease.

3. Rent.

- a) Fixed Rent. Tenant shall pay to Landlord \$1.00 per year for each year of occupancy provided for under this Lease on or before January 31 of each year during the term of this Lease. Tenant may, at Tenant’s option, pay the full rents required hereunder at the time of execution of this Lease.
- b) Real Estate Taxes. Landlord and Tenant acknowledge that, as of the date of this Lease, the Parking Units are exempt from real estate taxes by virtue of Landlord’s tax-exempt status. In the event of a change in the taxable status of the Parking Units during the term of this Lease

by virtue of a change or repeal of the applicable provisions of Wis. Stat. § 70.11, or otherwise, Tenant shall pay when due any real property taxes and any special assessments that are assessed upon the Parking Units during this Lease. In the event Tenant exercises its Option to Purchase under this Lease, Tenant's payment obligations under this Lease shall terminate.

4. Condition/Use of Parking Units.

Use by Tenant. Tenant shall use and occupy the Parking Units for purposes of providing parking for Tenant's improvements. Tenant shall, at its expense, fully comply with all statutes, orders, regulations, ordinances and requirements of law, including those of the Federal Government, the State of Wisconsin and any county, municipal or other public authority with jurisdiction over the Parking Units and shall fully comply with any direction of any public officer or officers pursuant to law and with all rules, orders, and regulations of the City of Racine and any other governmental body imposing any duty upon the Landlord or Tenant with respect to the Parking Units. In the event that any change in Tenant's use of the Parking Units requires Tenant to repair or replace any portion of the Parking Units in order to comply with any such rule, regulation or requirement, Tenant shall be responsible, at Tenant's cost and expense, to complete the required repair or replacement of the Parking Units.

5. Care and Repair of Parking Units.

a) Maintenance. Tenant shall be responsible for all maintenance and repairs of any nature whatsoever, and shall commit no waste and shall take good care of the Parking Units and make all repairs necessitated by Tenant's use of the Parking Units. Tenant shall keep the Parking Units in a clean and safe condition.

b) Structural Repairs and Capital Costs. Tenant shall be responsible for all structural repairs or capital costs for replacement of any portion of the parking structure.

c) Snowplowing. Landlord shall provide, or cause to be provided, snowplowing services for the Parking Units.

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Commented [SR2]: Not sure the City is plowing the interior elements of the parking ramp - please advise.

6. Alterations.

- a) Tenant Alterations. Tenant may, at its expense, and without Landlord's consent, make all structural and non-structural alterations, changes, installations, additions, or improvements (collectively "changes") in, on, to, or about the parts of the Parking Units that it deems expedient or necessary for its purposes. All work shall be done in a good and workmanlike manner, and in accordance with all applicable laws.

- b) Prior Consent Required. Neither Landlord nor Tenant may, without the other party's prior written consent, assign this Lease or sublet all or any part of the Parking Units. Notwithstanding the foregoing, Tenant may grant a leasehold mortgage on Tenant's interest under this Lease to the holder of a first mortgage lien on Tenant's other units within the _____ Condominium, without Landlord's consent, and the holder of such leasehold mortgage may succeed to the interest of Tenant under this Lease by assignment or foreclosure.

7. Services.

Charges, Fees. Tenant agrees to pay all charges and fees related to the Parking Units and to pay for all permits and licenses that may be required by Tenant's use of the Parking Units.

8. Indemnity-Liability Insurance.

- a) Indemnification. After the Commencement Date, Tenant shall indemnify and hold Landlord harmless against and from any and all liabilities, fines, suits, claims, demands, and actions, and costs and reasonable expenses of any kind or nature (including but not limited to attorneys' fees) or by anyone whomsoever, due to or arising out of (i) any default by Tenant in observing, or any violation, or nonperformance of any term, covenant, or condition of this Lease required to be observed and performed by Tenant, (ii) any damage to person or property occasioned by Tenant's use and occupancy of the Parking Units or to any use or occupancy that Tenant may permit or suffer to be made of the Parking Units, (iii) any injury to person or persons, including death, resulting at any time therefrom, occurring on or about

the Parking Units during the term of the Lease arising out of or related to Tenant's occupancy or use of the Parking Units, or (iv) arising out of Tenant's occupation or operations on the Parking Units. Tenant's liability under this section shall be reduced by the net proceeds actually collected on any insurance provided by Tenant on the risks in question for Landlord's benefit. Nothing herein shall serve to limit Landlord's immunities and limits of liability under Wisconsin statute §893.80.

- b) Liability Insurance. During the term of this Lease, Tenant, at its sole expense and for the mutual benefit of Landlord and Tenant, shall carry and maintain comprehensive public liability insurance, including property damage, insuring Landlord and Tenant against liability for injury to persons or property occurring in or about the Parking Units or arising out of its ownership, maintenance, use or occupancy. The insurance shall have a limit of not less than \$1,000,000 per event with a \$1,000,000 aggregate. . Nothing herein shall serve to limit Landlord's immunities and limits of liability under Wisconsin statute §893.80.

9. Option to Purchase.

During the term of this Lease, Tenant shall have an Option to Purchase the Parking Units for \$1.00 by giving Landlord written notice of exercise at any time during the term of this Lease. Closing on conveyance of the Parking Units shall be within thirty (30) days after the date of Tenant's exercise of its option. At closing, Landlord shall convey fee simple title to the Parking Units to Tenant by limited warranty deed, warranting against Landlord's own acts only. Landlord shall not be permitted to sell or otherwise transfer or encumber title to the Parking Units during the term of this Lease.

10. Notices.

- a) Notices. Notices and demands required or permitted to be given hereunder shall be given by certified mail, addressed:

In the case of the Landlord, to:

City of Racine
730 Washington Avenue
Racine, Wisconsin 53403
Attn: City Attorney

In the case of Tenant, to:

Racine Harborside LLC
c/o Royal Capital Group, LLC
710 N Plankinton Ave, Suite 300
Milwaukee, WI 53203
Attn: Terrell J. Walter

- b) Notice shall be deemed to have been given on the date such notice is deposited in the United States mail.
- c) Either party may change the address to which notices or demands to it are to be given by notifying the other party hereto in writing of a new address to be used for such notices.
- d) Both parties agree that they will promptly forward to the other party a copy of any notice received from any third party affecting the rights of either party under this Lease.

11. Quiet Enjoyment.

- a) Quiet Enjoyment. Landlord covenants that, so long as Tenant pays the rent and performs the terms, covenants, and conditions applicable to this Lease, Tenant shall peaceably and quietly have, hold, and enjoy the Parking Units for the term of this Lease, subject to its provisions.
- b) Title Warranty. Landlord warrants and represents that it has good and marketable title to the real property of which the Parking Units form a part, free and clear of all liens and encumbrances except as noted on Exhibit C attached hereto.
- c) Landlord's Authority. Landlord represents and warrants that it is duly authorized and has full authority to enter into this Lease and to perform the covenants provided for hereunder.

Landlord warrants that it will defend Tenant and hold it harmless from any loss arising out of or related to any claim by any person holding an interest in the Parking Units alleging that Landlord lacked authority to enter into and/or perform its obligations under this Lease.

12. Miscellaneous Provisions.

- a) Non-Waiver. The failure of either party to insist on strict performance of any term, covenant, or condition hereof, or to exercise any option herein contained shall not be construed as a waiver of such term, covenant, condition, or option in any other instance.
- b) Written Modification. This Lease cannot be changed or terminated orally, but only by an instrument signed by both parties.
- c) Mechanic's Liens. Tenant and Landlord shall take all actions necessary to keep the Parking Units free and clear from all mechanics and other liens. Within 30 days after notice from the other party, the party for which materials or labor are claimed to have been furnished to the Parking Units shall discharge such mechanic's lien(s).
- d) Access to Premises. Landlord may enter the Parking Units at reasonable times upon reasonable notice to Tenant for the purpose of inspecting the condition thereof or supplying any service to be provided by Landlord hereunder.
- e) Interruption of Services. Interruption or curtailment of any utility service maintained in the building of which the Parking Units form a part, or furnished to the Parking Units, if caused by strikes, mechanical difficulties, or any causes beyond Landlord's control whether similar or dissimilar to those enumerated, shall not entitle Tenant to any claim against Landlord or to any abatement in rent, nor shall the same constitute constructive or partial eviction.
- f) No Representations. Neither party has made any representations or promises, except as contained in this Lease.
- g) Headings. Headings in this Lease are for convenience and reference only and shall not be used to interpret or construe its provisions.

- h) Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective successors, legal representatives, and assigns.
- i) Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Wisconsin.
- j) Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.
- k) Time is of the Essence. Time is expressly declared to be of the essence in this Lease.
- l) Entire Agreement. This Lease is the complete and entire agreement of the parties with respect to the matters covered by this Lease, and it shall supersede all prior agreements to the contrary. No agreements, promises, or representations made during or in connection with the negotiations for or approval of this Lease shall be binding or effective unless they are included herein. No modification of this Lease shall be binding unless in writing and signed by Landlord and Tenant.
- m) Rules of Construction. The parties acknowledge and represent that this Lease is the subject of negotiation by all parties and that all parties together shall be construed to be the drafter hereof and this Lease shall not be construed against any party individually as drafter.
- n) No Legal Relationship. Nothing in this Lease shall be construed to create an employer/employee relationship, joint employer, a joint venture or partnership relationship, or a principal/agent relationship.
- o) Recording. After execution, a memorandum of this Lease may be prepared by either party and recorded with the Register of Deeds for Racine County.

[Signatures begin on following page]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease the day and year first above written.

TENANT:

RACINE HARBORSIDE LLC

By: Royal Capital Group, LLC, its Member

By: _____
Kevin L. Newell, Manager

By: CDS Racine 2018, LLC, its Member

By: _____
Michael Krolczyk, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Kevin L. Newell, the Manager of Royal Capital Group, LLC, a member of Racine Harborside LLC, and Michael Krolczyk, the Manager of CDS Racine 2018, LLC, a member of Racine Harborside LLC.

Notary Public, State of Wisconsin
My commission expires: _____

[Signature Page to Lease]

EXHIBIT A

Legal Description

Parcel A:

All of Lots 6, 7, 8, 9, 10 & 11, Knight and Cram's Subdivision of Block 58, Original Plat of Racine according to the recorded plat of said Subdivision.

Also that part of Block 56, Original Plat of Racine, as surveyed by Moses Vilas, according to the recorded plat thereof, lying Easterly of the recorded Plat of Knight and Cram's Subdivision. Also that part abutting said property known as Hamilton Street, as vacated from the East line of Michigan Boulevard Easterly to Lake Michigan. Also the North 290.00 feet of Block 57, of said Original Plat of Racine, excepting therefrom the real estate described in Quit Claim Deed from Walker Manufacturing Company of Wisconsin to the City of Racine dated March 21, 1958 and recorded April 21, 1958 in Volume 622 of Deeds, Page 507, Document No. 673654, as follows: "All that certain piece of parcel of land located in Northeast 1/4 Section 9-3-23 East; lying South of South line of Hubbard Street and East of line described as follows: Begin at a point in North line of Block 56, Original Plat of City of Racine; run thence from said point South 0 degree 22 minutes East to a point in Northerly boundary line of lands conveyed by Walker Manufacturing Company of Wisconsin a Wisconsin Corporation to W.H. Pugh Coal Company, a Wisconsin Corporation, by Warranty deed dated October 18, 1955 and recorded in the Office of the Register of Deeds from Racine County, Wisconsin on October 20, 1955 in Volume 582 of Deeds, Page 83, as Document No. 638690, in the Office of the Register of Deeds for Racine County, Wisconsin". Also excepting therefrom that portion conveyed to W.H. Pugh Coal Company by Deed dated October 18, 1955 recorded October 20, 1955 in Volume 582 of Deeds, Page 83, Document No. 638690, as follows:

Beginning on the Easterly extended North line of Reichert Court as now laid out, at a point that is located 642.65 feet East of the East line of Michigan Boulevard, run thence North 180.00 feet; thence East to the waters of Lake Michigan, run thence Southerly along the waters edge of Lake Michigan to the extended centerline of said Reichert Court; thence West along the extended centerline of Reichert Court to a point 642.65 feet East of the East line of Michigan Boulevard; thence North to the place of beginning. Said land being in the City of Racine, County of Racine and State of Wisconsin; West line and North line of Document No. 638690 is delineated on a Plat of Survey that is on file at the Real Estate Description Department with file Number 642067, Job No. 98.146 Nielson Madsen and Barber. Also excepting therefrom the tract of land that is North of a line that begins at the Northeast corner of Lot 6 of Knight and Cram's Subdivision and extends East to Lake Michigan. Said Extended line is parallel to the North line of Block 56, of said Original Plat of Racine.

TOGETHER WITH that part of vacated Hubbard Street lying east of the right of way line of Michigan Boulevard to Lake Michigan, as contained in Resolution No. 4414, recorded on April 2, 2002, as Document No. 1824415; ALSO that part of vacated Reichert Court as contained in Resolution No. 3698, recorded on January 11, 2001, as Document No. 1754728.

Tax Key: 2485

Address: 1129 Michigan Boulevard

Parcel B:

All of Lots 1, 2, 3, 4, 5, 12, 13, 14, 15 & 16, Knight and Cram's Subdivision of Block 58, Original Plat of Racine, according to the recorded Plat of said Subdivision.

Also that part of Block 58, Original Plat of Racine, as surveyed by Moses Vilas, according to the recorded Plat thereof, lying Easterly of the recorded Plat of Knight and Cram's Subdivision that tract of land that is North of a line that begins at the Northeast corner of Lot 6 of Knight and Cram's Subdivision and extends East to Lake Michigan, said extended line is parallel to the North line of Block 58, of said Original Plat Racine. Excepting therefrom the real estate described in Quit Claim Deed from Walker Manufacturing Company of Wisconsin to the City of Racine dated March 21, 1958 and recorded April 21, 1958 in Volume 622 of Deeds, Page 507, Document No. 673854, as follows: "All that certain piece of parcel of land located in Northeast 1/4 of Section 9-3-23 East, lying South of the South line of Hubbard Street and East of line described as follows: Begin at a point in North line of Block 58 produced East, being Southerly line of Hubbard Street, which point is 980.40 feet North 89 degrees 35 minutes East from Northwest corner of Block 58, Original Plat of City of Racine; run thence from said point South 0 degree 22 minutes East to a point in Northerly boundary line of lands conveyed by Walker Manufacturing Company of Wisconsin, a Wisconsin Corporation, to W.H. Pugh Coal Company, a Wisconsin Corporation, by Warranty Deed dated October 18, 1955 and recorded in the Office of the Register of Deeds of Racine County, Wisconsin on October 20, 1955 in Volume 582 of Deeds, Page 83, as Document No. 638690. Said land being in the City of Racine, County of Racine and State of Wisconsin.

Tax Key: 2468

Address: 1231 Michigan Boulevard

EXHIBIT B

Site Plan

[To Be Attached]

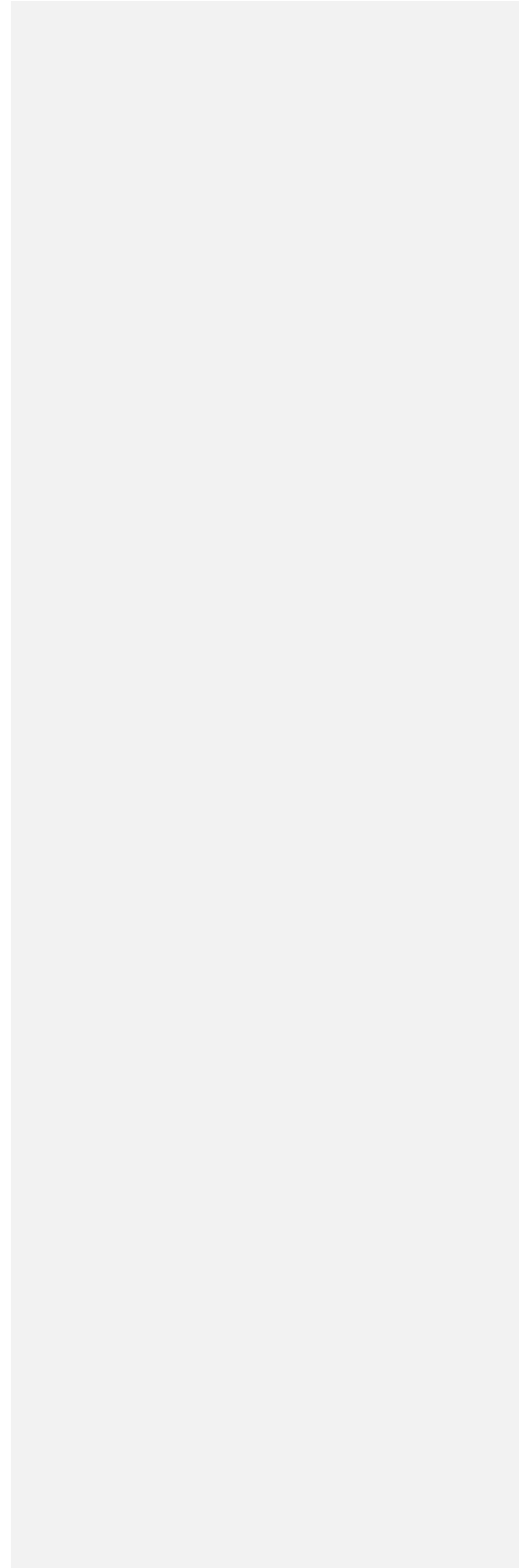


EXHIBIT C
Permitted Encumbrances

[To Be Attached]

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