

**DEVELOPER INCENTIVE AGREEMENT
“500 MAIN HOTEL”**

THIS AGREEMENT made this ____ day of _____, 2019, by and between THE MAIN ATTRACTION, LLC, a Wisconsin limited liability company, (“DEVELOPER”), and the CITY OF RACINE, a municipal corporation of the State of Wisconsin, in Racine County, the (“CITY”).

WITNESSETH:

WHEREAS, the DEVELOPER is the owner of land in the CITY, said land being described on **EXHIBIT A** attached and incorporated herein, ("SUBJECT LANDS"); and

WHEREAS, the CITY has adopted “Racine Downtown Plan” dated as of May 10, 2005 (the “Downtown Plan”) for the SUBJECT LANDS and surrounding areas as described therein, and has adopted “A Comprehensive Plan for the City of Racine: 2035” in November, 2009 (the “2035 Plan”, and together with the Downtown Plan, the “Master Plans”); and

WHEREAS, the Downtown Plan anticipates that the SUBJECT LANDS will be redeveloped for mixed uses; and

WHEREAS, the 2035 Plan notes the absence of hotels as a factor in the planning for the CITY’s growth and states one goal as being to “maintain and develop a land use pattern that strengthens the character and livability of the CITY’s downtown core”, and to “Encourage development and redevelopment that is sensitive to the preservation of historic and cultural features, and is compatible with such uses”; and

WHEREAS, the DEVELOPER desires to redevelop SUBJECT LANDS, the Historic Zahn’s Department Store building/property at 500 Main in Downtown Racine on Monument Square a mixed use facility, to include an 80-unit, approximately 79,915 sq. ft. “Boutique” Hotel, with a roof-top bar, premium coffee shop/cafe, meeting rooms, and banquet facility, all substantially as depicted on **EXHIBIT B** attached. This redevelopment is referred to herein as the "PROJECT"; and

WHEREAS, the CITY finds that the PROJECT is consistent with and pursuant to the Master Plans as described above; and

WHEREAS, the CITY intends that the DEVELOPMENT INCENTIVE be and hereby is considered a contribution to the capital of the DEVELOPER; and

WHEREAS, the CITY has agreed, in consideration of DEVELOPER commitments herein, to provide certain financial payments, contributions or grants (the “DEVELOPMENT INCENTIVE”), as authorized under Chapters 62 and 66 of the Wisconsin Statutes, to DEVELOPER to facilitate development of the PROJECT; and

WHEREAS, at this time the parties wish to enter this DEVELOPER INCENTIVE AGREEMENT (the “INCENTIVE AGREEMENT”) setting forth the terms for the provision of the DEVELOPMENT INCENTIVE by the CITY.

NOW, THEREFORE, the parties agree:

1. SITE PLAN. The PROJECT consists of the Historic Zahn’s Department Store building/property at 500 Main in Downtown Racine on Monument Square as a mixed use facility including an 80-unit, approximately 79,915 sq. ft. Boutique Hotel, with a roof-top bar, restaurant, premium coffee shop/cafe, meeting rooms, and banquet facility, and other ancillary complementary uses, all substantially as depicted on **EXHIBIT B** attached. The main entrance of the Hotel will be on the East façade of the building along Monument Square. As used in this Agreement, the term “boutique” hotel means that the hotel is initially developed and opened as a hotel that is not “flagged” by a national chain of hotels, although the hotel may participate in a nationwide marketing or reservations system that is used for similar boutique hotels; nothing herein requires the hotel to remain a boutique hotel throughout its existence as a hotel.

2. [Intentionally omitted.]

3. DEVELOPER INCENTIVE.

INCENTIVES. As an incentive for DEVELOPER to undertake the PROJECT, the CITY shall pay to DEVELOPER, or as otherwise set forth herein, a REDEVELOPMENT INCENTIVE. The REDEVELOPMENT INCENTIVE shall consist of:

A. SITE IMPROVEMENTS. CITY agrees to provide funding for site improvements regarding the SUBJECT LANDS, in an amount not to exceed \$1,950,000. These funds shall be released to DEVELOPER following closing of construction financing and within 10 business days of City Engineer's written verification of commencement of construction of the PROJECT. In the event that DEVELOPER is required, by terms of any third-party financing source, to demonstrate that the sources of funding for its acquisition of the SUBJECT LANDS are "committed", CITY will, under terms of an escrow agreement acceptable to CITY in its sole discretion, escrow the site improvement funding (\$1,950,000) with an escrow agent acceptable to CITY. CITY approves Knight Barry Title Group as an escrow agent. The terms of the release of funds from escrow will be consistent with the terms of this INCENTIVE AGREEMENT.

B. BANQUET FACILITIES. CITY agrees to provide funding for the construction of banquet and pre-function space in an amount not to exceed \$945,000. This amount was calculated as 2700 square feet at \$350/square foot, but is not subject to re-measurement and recalculation so long as the plans and specifications for the PROJECT reflect areas of approximately this number. These funds shall be released to the DEVELOPER within 5 business days following closing of construction financing and within 10 business days of City Engineer's written verification of commencement of construction of the elevators and stairways which service the banquet and pre-function space. In the event that DEVELOPER is required, by terms of financing under any third-party funding source, to demonstrate that the sources of funding for this acquisition are "committed", CITY will, under terms of an escrow agreement acceptable to CITY in its sole discretion, escrow the acquisition funds with an escrow agent as described in 3(A) above.

The REDEVELOPMENT INCENTIVES under 3(A) and 3(B) will, at the instruction of DEVELOPER, be delivered to an affiliate of DEVELOPER which would act as a co-

developer for purposes of these two sections (“SAGE”). If so engaged as a co-developer, prior to release of any REDEVELOPMENT INCENTIVES, SAGE will execute a joinder to this Agreement for the purpose of being bound by the provisions of this Agreement solely with respect to the activities necessary for the release of the REDEVELOPMENT INCENTIVES in 3(A) and 3(B), and to agree that it will use the REDEVELOPMENT INCENTIVES in furtherance of the PROJECT.

C. ROOF TOP FACILITIES. CITY agrees to provide funding for the construction of a destination, public access, roof-top pavilion bar and observation-deck. This funding shall be reimbursed to DEVELOPER as a return of 25% of Room Tax Revenues received yearly (paid within 30 days of CITY’s receipt of formal accounting for receipts for the year-period immediately preceding) from the PROJECT for a 10-year period (2021- 2030) at a not-to-exceed total of \$608,000. If the number of hotel rooms in the PROJECT exceeds 80, the not-to-exceed total shall increase by \$6,000 for each additional room.

D. REC FEE WAIVER. CITY will not charge DEVELOPER any Residential Equivalent Connection (REC) fees (water connection and capacity charges) related to the PROJECT redevelopment.² CITY shall pay Water Utility all REC fees owed by DEVELOPER using Intergovernmental Revenue Sharing Funds.

E. LEASE OF CITY LANDS. CITY shall enter into long-term leases to provide parking for the PROJECT of the following CITY owned lands:

1. 441 Lake Avenue. CITY will lease eight surface spaces and CITY will lease all of the underground³ parking facility at 441 Lake Avenue for valet and general parking for hotel guests⁴. Terms shall include an initial minimum term

² The REC fees, based upon the PROJECT description, are estimated as follows: estimated as total REC fees required (47 less 4 historic credits = 43 Net REC fees x \$500/REC = \$21,500)

³ Approximately 38 spaces.

⁴ None of the leases in this Section impose on DEVELOPER an obligation to police the use of the parking facility. With respect to 441 Lake Avenue, the parties acknowledge that there may be occasional use by members of the

of ten (10) years, with an option for one (1) automatic renewal period of 10 years (so long as PROJECT remains open and operating as a hotel), provided that if the CITY desires to redevelop this site, it will provide at least the same number of dedicated parking stalls for hotel use at a location reasonably proximate to the Hotel; CITY will not redevelop the 441 Lake Avenue facility and the 110 Seventh Street facility at the same time. DEVELOPER shall pay all costs of operations, maintenance, and cleaning (i.e., the lease will contain commercially typical provisions related thereto for a triple net lease), but only for the underground portion; the CITY shall be responsible for such costs at the above ground level. CITY shall be responsible for all capital maintenance and replacement costs. CITY shall receive lease fees equal to \$3 per-day per-stall used (use is determined by gross parking revenues generated by DEVELOPER from structure operations accounted for and remitted quarterly). The lease in this paragraph and the lease in paragraph (3) below may not be terminated by the CITY at the same time, with the intent that the benefits of at least one lease will be available at all times for hotel purposes.

2. 512 Wisconsin Avenue. CITY will lease the 11-stall parking lot at 512 Wisconsin Avenue, for an initial two-year term, with options for nine (9) successive two (2) year renewals, beginning upon hotel opening and continuing thereafter, at monthly or longer-term parking lease rates equal to the otherwise then-lowest-available per-stall parking lease rates offered the general public or other commercial, government, or non-profit lessees. Should the CITY, during the lease term or any renewal thereof, require the property for redevelopment as a parking structure or for any other legitimate use, it may terminate the lease, upon the following conditions: (A) CITY has not terminated the lease relating to the facility at 441 Lake Avenue, and (B) CITY fulfills the remaining term of the lease (including extensions) by providing an equal number of alternatively located and reasonably proximate downtown parking spaces at equal lease rates.

public for purposes unrelated to the Hotel, but DEVELOPER will not hold the parking facility out as being available for general parking.

3. 110 Seventh Street (McMynn Ramp). CITY will lease sixty (60) parking spaces in the McMynn Ramp facility at 110 Seventh Street for valet and general parking for hotel guests. Terms shall include an initial minimum term of ten (10) years, with an option for one (1) automatic renewal period of 10 years (so long as PROJECT remains open and operating as a hotel), provided that if the CITY desires to redevelop this site, it will provide at least the same number of dedicated parking stalls for hotel use at a location reasonably proximate to the Hotel; CITY will not redevelop the 441 Lake Avenue facility and the 110 Seventh Street facility at the same time. CITY shall pay all costs of operations, maintenance, and cleaning and shall be responsible for all capital maintenance and replacement costs. CITY shall receive lease fees equal to \$3 per-day per-stall used (use is determined by gross parking revenues generated by DEVELOPER from structure operations accounted for and remitted quarterly). The lease in this paragraph and the lease in paragraph (1) above may not be terminated by the CITY at the same time, with the intent that the benefits of at least one lease will be available at all times for hotel purposes.

F. USE OF 426 WISCONSIN AVENUE. DEVELOPER shall be permitted to utilize DEVELOPER's lot/property at 426 Wisconsin, for construction lay-down space during the full duration of the development and construction of the PROJECT. The construction lay-down space is depicted on **EXHIBIT C**. DEVELOPER shall keep said lay-down space securely fenced during the period. Following construction, DEVELOPER shall be permitted to utilize said lot/property for parking for the PROJECT, both before and following the Hotel opening and continuing until a mutually acceptable alternative is found.

G. USE OF FIBER OPTIC. If the CITY installs, at its sole discretion, fiber optic cable facilities into and connecting with the PROJECT, CITY will make fiber optic connections/network available to the PROJECT. CITY will own such fiber optic

connections/network and will not charge for such facilities in excess of charges that it imposes on other similarly situated properties.

- H. **GEOTHERMAL WELLS.** If DEVELOPER's engineers determine (subject to CITY review and agreement, which will not be unreasonably withheld, conditioned or delayed), that it is materially disadvantageous for DEVELOPER to locate a geothermal well system for PROJECT entirely within DEVELOPER's private property, CITY will permit DEVELOPER to construct and maintain geothermal wells within Public rights-of-way immediately proximate to the PROJECT location, at DEVELOPER's sole cost and responsibility/liability, and only if said wells do not interfere with or jeopardize any elements of publicly-owned or maintained streets, infrastructure or utilities, as determined in the sole discretion of the CITY Engineer. If the determination is made to install such a well, then the parties will execute and deliver a formal easement in recordable form establishing the location and existence of the well and all laterals which service it, and which provides that if in the course of future street or utility work any such well subject to a recorded easement is disturbed then the person causing such disturbance will be responsible for the costs of repair or replacement.
- I. **REMOVAL OF CITY PARKING.** Before PROJECT completion/Hotel opening, CITY will remove angled public parking spaces along Monument Square in number reasonably acceptable to CITY to allow the former spaces to be designated as a patron drop-off zone for the pick-up and drop-off of Hotel patrons, all in conformity with plans approved by the CITY and all as depicted in **EXHIBIT C**.
- J. **REDESIGN OF MONUMENT SQUARE.** CITY agrees to work closely with DEVELOPER on any future re-design or re-configuration of Monument Square, and/or the areas of Wisconsin and Fifth Streets proximate to the PROJECT to consider and incorporate PROJECT needs related to parking, access, encroachments for awnings and/or porte cochere, and traffic flow relative to PROJECT design, operations, construction, staging and scheduling. Without

limiting the foregoing, any such plans will include, if DEVELOPER requests and CITY agrees to the re-design, which approval will not unreasonably be withheld, vehicular access to the Hotel (as further described in section K below).

- K. **INGRESS AND EGRESS.** CITY agrees to grant, for such period that a building exists in the location and operates as a Hotel similarly configured, the right of vehicular, pedestrian and bicycle ingress and egress from Fifth Street onto the NW Corner of Monument Square to facilitate patron drop-off and pick-up, all as depicted in **EXHIBIT C**.
- L. **SIDEWALK SEATING.** CITY will grant permission for sidewalk seating for the hotel's café and restaurant, subject to such terms and conditions as are typically imposed on such permits. The area in which sidewalk seating is permitted is directly in front of the building, along Monument Square.
- M. **LICENSES AND PERMITS.** CITY will assist DEVELOPER and subsequent Hotel operators in obtaining all hotel, liquor, food service and other typical licenses and permits needed for the operations contemplated in this Agreement.
- N. **LOAN BY CITY.** Upon verification satisfactory to CITY that DEVELOPER has secured construction financing necessary for the PROJECT to proceed, and provided that CITY secures a \$3,500,000 to \$4,000,000 General Obligation Loan from the Board of Commissioners of Public lands (BCPL), wherein the approved "public purpose" for such loan is in support of a portion of project financing, CITY shall make a subordinated loan to the DEVELOPER in the amount of \$3,500,00 to \$4,000,000 (the "City Loan"). The City Loan shall bear interest at the rate equal to the interest rate of Developer's post-construction, permanent financing (as established after the take-out of any, initial construction-duration financing. DEVELOPER expects that the principal financing will be \$9,300,000, in which case the City Loan shall be \$4,000,000. However, for each \$100,000 that the principal financing exceeds \$9,300,000, the City Loan shall be decreased in increments of \$71,450, to a minimum of \$3,500,000 subordinate to a \$10,000,000 maximum First Loan. The City Loan shall be subject to the following:

1. The City Loan will be secondary only to (i) the DEVELOPER's principal financing not to exceed \$10,000,000 (the "First Loan") and any refinancing of the First Loan from time to time, and (ii) during the construction period only, financing which 'bridges' the time period until the historic tax credit equity investor makes its investments following completion of the historic project, which will not be in excess of the anticipated amounts of such equity investments. The First Loan will not exceed \$10,000,000. The CITY will execute and deliver a commercially reasonable form of subordination agreement if required by DEVELOPER's principal lenders.

2. The City Loan shall be secured by personal guaranties of DEVELOPER's principals. The personal guaranties shall be limited to 50% for each guarantor (together with interest and all expenses of collection), and the guaranties shall exclude the personal residences of the guarantors.

3. Prior to Developer's post-construction permanent financing being put in place, the City Loan shall bear interest at a rate equal to the BCPL Interest rate charged the City plus one hundred (100) basis points.

4. The Note for the City Loan shall provide for a twenty (20) year amortization period, payable in monthly installments by DEVELOPER. In the event the CITY is able to secure the loan funds under terms allowing for payment of interest only for up to the first two years on its note, the CITY shall extend the option to DEVELOPER to pay installments of interest only under the same terms available to the CITY; the CITY will in good faith seek such an arrangement from BCPL.

5. The City Loan may be prepaid in whole or in part at any time and from time to time without fee or premium.

6. In the event of default, the CITY may suspend its performance under this Agreement, after providing DEVELOPER written notice of the nature of a claimed default and providing DEVELOPER a period of thirty (30) days to cure the default; provided that if DEVELOPER has commenced a cure of the default within

such initial 30 day period but is not able to complete the cure within that period then the period will be extended to allow DEVELOPER to complete the cure so long as DEVELOPER takes commercially reasonable steps to continue to cure such default. In the event the default is not cured, the CITY may cancel its future performance under this Agreement. For clarity, any cash incentives that have been expended for construction by DEVELOPER may not be recovered, and any non-cash incentives that have been provided prior to default will remain in effect.

7. The City Loan will be subordinate to the First Loan, and the CITY will execute and deliver a commercially reasonable form of subordination agreement as proposed by the holder of the First Loan, provided that the DEVELOPER will be permitted to make payments under the CITY Loan while the First Loan is not in default, and that the CITY will not be required to standstill from taking enforcement action under the City Loan for a period longer than 180 days after notice that a standstill period has begun.

8. The CITY acknowledges that Developer will acquire and utilize, as a portion of project financing independent of \$10 Million Maximum First Loan, up to \$4,000,000 in PACE (Property Assessed Clean Energy) financing which shall be repaid by the Project as a long-term assessment against the property independent of and in addition to the property tax levy imposed by the CITY and/or other local taxing jurisdictions.

O. CERTAIN PROJECT ELEMENTS. CITY has, prior to execution of this Agreement, formally approved the following project elements:

1. Off-street Loading Dock. A loading dock otherwise required under Sec. 114-1223.(5) of the CITY zoning code, will not be required for this Project.

2. Curb Cuts. The Project will require two curb cuts to the west of the building, and the CITY has permitted such curb cuts to be made.

3. Off Street Parking. The CITY agrees that the parking provided by Sections 3(E) and 3(F) above satisfies the parking requirements for the PROJECT under the CITY zoning code.

4. DEVELOPER OBLIGATIONS

A. FINANCING. DEVELOPER has provided its financing commitment and proof of PROJECT equity for fifteen percent (15%) of the budget related to completing the PROJECT in its entirety, which has been accepted by the CITY.

B. MINIMUM INVESTMENT. DEVELOPER guarantees it shall invest at least \$25,000,000 (in debt and equity) related to the PROJECT (including soft costs). Proof of construction costs shall be submitted in form and substance reasonably acceptable to the City Engineer.

C. ROOF-TOP PAVILION. DEVELOPER will construct and maintain, as part of the PROJECT, a regional destination roof-top pavilion, bar and observation deck which, for the complete duration of the period from its initial opening through December 31, 2030, to be equally accessible and open to the general public and hotel patrons during all hours of operation. No easement or ownership rights, by prescription or otherwise, shall be conferred upon any person or the public by virtue of accessibility to the public. If the hotel charges its guests a fee for access to the roof-top pavilion then the same fee may be imposed on members of the public.

D. CITY ORDINANCES AND POLICIES. DEVELOPER shall comply with all CITY rules, regulations, policies and Ordinances provisions, including, the “Racine Works” Ordinance which requires that the construction work hours dedicated to any private construction projects benefitting from \$1MM or more in City-provided incentives, to include 20% qualified and eligible low-income CITY residents. DEVELOPER will further meet all City Zoning Ordinance, Building Code, and Downtown Design standards (including energy efficiency and sustainability goals). Under the Racine Works Ordinance, non-compliance could subject an offender to a forfeiture of \$10,000, or two and one-half percent of the total cost of the qualifying contract as awarded, whichever is greater, plus statutory court costs.

For purpose of this agreement, and with regard to compliance with the 20% resident hiring portion of the Racine Works ordinance, the City agrees that substantial compliance with the plan attached as “Exhibit E”, including allowing for the exemption of construction hours and

corresponding makeup with permanent, operational hours, will be deemed to be compliance with the Racine Works Ordinance, and that, if all elements and activities of Exhibit E are met, then no administrative actions will be taken to seek other enforcement of, or penalties, fines, or return of incentives under the Racine Works Ordinance as it relates to the calculation of said hours. In the event of non-compliance with the plan attached as EXHIBIT E, the “qualifying contract” will equal the total hours worked (estimated at 75,000 hours) multiplied by the average hourly wage for all project construction labor, which the parties agree shall be established at \$27.32 per hour.

E. ENERGY EFFICIENCY AND SUSTAINABILITY GOALS. DEVELOPER shall apply for and achieve Leadership in Energy and Environmental Design (LEED) Standards designation for the PROJECT. DEVELOPER’s goal will be to achieve “LEED Platinum Certification.” To attain this designation, DEVELOPER shall incorporate into the PROJECT the enumerated LEED scoring elements detailed in “EXHIBIT D” attached. The parties agree that the elements detailed in EXHIBIT D have been selected for the purpose of achieving, and are expected to achieve, a LEED Gold designation, but that DEVELOPER cannot guaranty that this designation will be achieved because the award of designations is outside the control of DEVELOPER. CITY agrees to work with DEVELOPER to assist in seeking available grant funds which may be available to aid in DEVELOPER’s efforts.

F. SMART CITY ELEMENTS. DEVELOPER shall work in cooperation with the CITY to incorporate strategically selected Smart City elements into the PROJECT and market the building as meeting Smart City criteria, taking advantage of Racine’s position as Foxconn’s “Smart City” Designation. DEVELOPER shall commit at least \$400,000 in strategically selected Smart City elements within the PROJECT, which will include but not be limited to: (i) HVAC controls, lighting controls, acoustical controls (including in each case both hardware and software), (ii) a state of the art hospitality reservations software system, and (iii) equipping not less than 3% of the available, site-designated parking spaces with electric vehicle charging stations. Specifically, DEVELOPER shall fund, and install, charging stations in four (4) of the eight (8) available

surface parking spaces at the 441 Lake Avenue lot to be leased to DEVELOPER. DEVELOPER will, at CITY's written request and at CITY's cost, install an additional four (4) charging stations in the remaining surface parking spaces if such installation is at the same time as DEVELOPER's installation of its 4 charging stations. Also, CITY will allow DEVELOPER to convert (also inclusive of Smart City Funding commitment referenced) up to two (2) public parking spaces along Fifth Street, alongside the PROJECT, to become EV parking spaces to support Smart City tech and possible LEED points for the PROJECT. Further, DEVELOPER agrees to cooperate with the CITY regarding use of the PROJECT grounds to accommodate future or technologically advanced Smart City elements⁶⁵⁵ and shall not unreasonably refuse a CITY request for such improvements; provided however that it will not be unreasonable to refuse such a request if DEVELOPER believes that such an element as installed would impair the ability of the PROJECT to produce the federal and state Historic Tax Credits which are planned, and that it will not be unreasonable to condition acceptance of such a request on the elements not interfering materially with the operations of DEVELOPER's systems, and the CITY's obligation to pay for the installation, maintenance, repair and replacement of any such elements.

5. SCHEDULE. The DEVELOPER shall endeavor to commence construction of the PROJECT by July 1, 2020 and shall continue uninterrupted to completion subject to force majeure events, as they are defined in the construction documents for this PROJECT.

6. OWNERSHIP ASSIGNMENT. DEVELOPER may assign this INCENTIVE AGREEMENT, or any part thereof, with the approval of the CITY, which approval shall not be unreasonably withheld or delayed, to any entity or person acquiring any portion or portions of the PROJECT (including DEVELOPER'S lender), provided that if any such transfer occurs, the terms and conditions of this INCENTIVE AGREEMENT shall run with the title of the PROPERTY. Notwithstanding the foregoing, DEVELOPER's lender shall not be obligated to take any action hereunder as a substitute or successor DEVELOPER unless such lender takes over the

⁶⁵⁵ Examples would include cameras, sensors or other road-side or transportation-based technology for autonomous vehicles.

development of the PROJECT. If there is a default under this INCENTIVE AGREEMENT, CITY will give notice to any assignee and a commercially reasonable opportunity to cure.

7. BINDING EFFECT. This INCENTIVE AGREEMENT applies to the PROJECT. The covenants, agreements, restrictions and provisions in this INCENTIVE AGREEMENT constitute covenants running with the land and shall bind all parties, their heirs and assigns (including inter alia any condominium unit owners, condominium owners' associations, purchasers at Sheriff's sale, receivers, trustees and mortgagees) and successors having an interest in the land affected.

8. INDEMNITY. In addition to, and not to the exclusion or prejudice of, any provisions of this INCENTIVE AGREEMENT, or any documents incorporated by reference, DEVELOPER shall indemnify and save harmless the CITY, its officers, agents and employees and shall defend same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, reasonable attorney's fees, and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which result primarily from the acts or omissions of DEVELOPER or any of its contractors in constructing the PROJECT and which are not the result of the acts or omissions of the CITY or the reasonable reliance by the DEVELOPER or any of its contractors on the actions or statements of the CITY or its agents. This indemnity shall also include the violation of any law or ordinance by DEVELOPER or any of its contractors, and the intentional infringement of any patent, trademark, trade name or copyright by DEVELOPER or any of its contractors. This indemnity does not apply to any claims arising out of the CITY's negligence or willful acts of bad faith.

9. NOTICES. All notices, requests, demands and other communication (collectively, "Notices") shall be in writing and given by (i) established express delivery service which maintains delivery records, (ii) personal delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at these addresses or at such other addresses the parties may designate by notice in the above described manner.

CITY: City of Racine
730 Washington Avenue
Racine, Wisconsin 53403
ATTN: City Attorney

City of Racine
730 Washington Avenue
Racine, Wisconsin 53403
ATTN: Director of City Development

DEVELOPER: c/o Dominion Properties
2025 N. Prospect Avenue
Milwaukee, Wisconsin 53202
Attn: Christopher Adams
Attn: Michael O'Connor

And to:

Husch Blackwell LLP
555 East Wells Street Suite 1900
Milwaukee, Wisconsin 53202
Attn: Hal Karas, Esq.

Notices may also be given by facsimile transmission provided the Notices are concurrently given by one of the above methods. Notices shall be effective upon receipt or upon attempted delivery if delivery is refused or impossible because the recipient has failed to provide a reasonable means for accomplishing delivery.

10. TAX-EXEMPT COVENANT. For a period of 10 years or so long as DEVELOPER is receiving the cash incentives under subsections 3(A), (B) and (C) above, whichever is longer, DEVELOPER agrees that it will not sell, lease, assign or otherwise transfer or convey any interest in the PROJECT or the Property to a person or entity exempt from general property taxation or in a manner which would cause all or any portion of the Property to be exempt from general property taxation (the "Tax-Exempt Covenant"). This INCENTIVE AGREEMENT shall be recorded by the CITY, and DEVELOPER agrees that the Tax-Exempt Covenant will run with the Land and will bind all present and future owners of the PROPERTY. If any court finds the Tax-Exempt Covenant is not valid or enforceable or if the Tax-Exempt Covenant is terminated, then DEVELOPER, or its successors and assigns, shall make payments in lieu of taxes to the CITY equal to the property taxes that would have been collected were the Property taxable, and by the same date that the last installment tax payment on the Property would have been due were the entire Property taxable.

11. RECORDING. This INCENTIVE AGREEMENT shall be recorded in the office of the Register of Deeds of Racine County, Wisconsin, before recording any other mortgage or security on the PROPERTY, it being understood by the parties that (subject to Section 7 above) until termination of this INCENTIVE AGREEMENT, this INCENTIVE AGREEMENT will run with the land and will be binding upon the PROPERTY and the PROJECT and any owner and/or lessee and/or mortgagee of all or any portions of the PROPERTY and the PROJECT and their successors and assigns. Upon the termination of this INCENTIVE AGREEMENT, the CITY shall execute and deliver a release to DEVELOPER to remove this INCENTIVE AGREEMENT as a cloud on the PROPERTY's title. However, those provisions by their express terms that indicate a continuing obligation or restriction on the PROPERTY shall not be removed from the title and such provisions shall continue to run with the land and be binding on the PROPERTY for the period indicated. Notwithstanding the foregoing, this INCENTIVE AGREEMENT will terminate of its own accord 10 years from the date hereof.

12. SEVERABILITY. In the event any of the terms and provisions of this INCENTIVE AGREEMENT are unenforceable, then to the greatest extent possible the remainder of this INCENTIVE AGREEMENT or the application of such term or provision to persons or circumstances other than to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this INCENTIVE AGREEMENT shall be valid and shall be enforced to the extent permitted by law.

13. AUTHORITY. Each of the individuals and officers who have executed this INCENTIVE AGREEMENT represent and warrant he or she is duly authorized to execute this INCENTIVE AGREEMENT on behalf of the CITY or DEVELOPER and that all action necessary for said party to so execute and perform the terms of this INCENTIVE AGREEMENT have been duly taken by the party and that no other signature and/or authorization is necessary for such party to enter into and perform the terms of this INCENTIVE AGREEMENT.

14. NO PRESUMPTION. This INCENTIVE AGREEMENT shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction for or against any party.

15. ADDITIONAL AGREEMENT. Both parties recognize that an additional Development Agreement may be necessary before construction of the private improvements, to address issues that may arise based upon design.

This INCENTIVE AGREEMENT is binding upon the heirs, personal representatives, successors and assigns of both parties.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, DEVELOPER and CITY have caused this INCENTIVE AGREEMENT to be signed in two original counterparts the day and year first above written.

DEVELOPER:

THE MAIN ATTRACTION, LLC

By:

Managing Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the Managing Member of _____.

Notary Public, State of Wisconsin
My commission expires:

CITY OF RACINE:

By:
Cory Mason, Mayor

By:
Tara Coolidge, Assistant City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me this day of _____, 2019, the above-named Cory Mason, Mayor, and Tara Coolidge, Assistant City Clerk, of the City of Racine, and to me known to be such Mayor and Assistant City Clerk of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority, and pursuant to the authorization by the Common Council from their meeting on the ___ day of _____, 2019.

Notary Public, State of Wisconsin
My commission expires:

APPROVED AS TO FORM:

Scott R. Letteney, City Attorney

Provisions have been made to pay the liability that will accrue hereunder.

David Brown, Finance Director

This document was drafted by Attorney H. Stanley Riffle on behalf of the City of Racine.

Exhibit "A"

Property Description

500 MAIN STREET - LEGAL DESCRIPTION

Lots One (1) and Two (2), Block Twenty-six (26), in the Original Plat of Racine, as surveyed by Moses Vilas, according to the recorded Plat thereof. Said land being in the City of Racine, County of Racine, State of Wisconsin.

The following is for informational purposes only:

Address: 500 Main Street

Tax Key No.: 00290000

Exhibit “B”
Conceptual Site Plan

Exhibit “C”

Construction Lay Down Space and Traffic Pattern

[see attached]

Exhibit "D"

LEED Scoring Elements



LEED v4 for BD+C: New Construction and Major Renovation

Project Checklist

Project Name: 500 Main Street Racine, WI

Date: 9/9/2019

Y ? N

1			Credit Integrative Process	1	Set an energy perf. Target, set goals for site, envelope, water etc.
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12	2	0	Location and Transportation	16	Notes
			Credit LEED for Neighborhood Development Location	16	Could potentially be a part of Machinery Row
1			Credit Sensitive Land Protection	1	
1	1		Credit High Priority Site	2	Infill in historic district
3			Credit Surrounding Density and Diverse Uses	5	12 du/acre & .8 floor ratio area OR 35,000 sf /acre buildable land (w/ 1/4 mile)
4	1		Credit Access to Quality Transit	5	routes 1, 3 & 7 Route 2 looks to be >1/4 mile. Since we have 2+ routes & 144 trips 4pts.
1			Credit Bicycle Facilities	1	Short term racks for 2.5% occupants, long term protected racks for 5% + showers
1			Credit Reduced Parking Footprint	1	Provide fewer parking spaces than code allows (v4.1 no off street parking or reduced)
1			Credit Green Vehicles	1	Provide electric charging stations for 2% of parking spaces

4	3	3	Sustainable Sites	10	Notes
Y			Prereq Construction Activity Pollution Prevention	Required	
1			Credit Site Assessment	1	Phase I & II Environmental Site assessment. Phase I from previous or new will get it. 12/27/18
	2		Credit Site Development - Protect or Restore Habitat	2	14,776 sf of roof. Now= 2,477 sf veg, 1,105 pavers for 3582sf (Need 4,433 sf total or 851 sf more) (Includes no site SF!)v4.1 Only 25%, we are close
	1		Credit Open Space	1	25% of outdoor space vegetative. VEG = 2,477 sf. NEED 4,433 sf to meet. (includes no site SF!)
		3	Credit Rainwater Management	3	Green roof would have to be huge and intensive.
2			Credit Heat Island Reduction	2	Green roof and PV
1			Credit Light Pollution Reduction	1	BUG

5	4	2	Water Efficiency	11	Notes
Y			Prereq Outdoor Water Use Reduction	Required	
Y			Prereq Indoor Water Use Reduction	Required	
Y			Prereq Building-Level Water Metering	Required	

DEVELOPER INCENTIVE AGREEMENT

Historic Zahn's Department Store/Hotel Project

[10-24-19](#)

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2			Credit	Outdoor Water Use Reduction	2	No irrigation needed? Irrigating green roof?
2	2	2	Credit	Indoor Water Use Reduction	6	30% reduction for 2 pts. 50% for 6 points
	2		Credit	Cooling Tower Water Use	2	No, even with v4.1 (maybe 2pts by using 20% recycled water for process)
1			Credit	Water Metering	1	2 or more submeters for items such as irrigation, hot water, process, etc...

18	8	3	Energy and Atmosphere		33	Notes
Y			Prereq	Fundamental Commissioning and Verification	Required	
Y			Prereq	Minimum Energy Performance	Required	
Y			Prereq	Building-Level Energy Metering	Required	
Y			Prereq	Fundamental Refrigerant Management	Required	
3	2	1	Credit	Enhanced Commissioning	6	\$13,000 for enhanced (3pts) \$15,000 for envelope commish (2pts)
12	2		Credit	Optimize Energy Performance	18	18% 8pts, 24% 10 pts, 29% 12 points, 35% 14 pts, 50% 18pts
1			Credit	Advanced Energy Metering	1	submeter a load that uses >10% of building energy
		2	Credit	Demand Response	2	smart meters reduce peaks
1	2		Credit	Renewable Energy Production	3	1% 1pt, 5% 2pts, 10% 3 points (1pt w/ PV, 4 more points with purchasing RECS v4.1)
1			Credit	Enhanced Refrigerant Management	1	Geothermal or VRF will help secure this + process
	2		Credit	Green Power and Carbon Offsets	2	RECS v4.1 now eligible for 5pts by combining Renewable Energy Production

8	4	1	Materials and Resources		13	Notes
Y			Prereq	Storage and Collection of Recyclables	Required	
Y			Prereq	Construction and Demolition Waste Management Planning	Required	
3	1	1	Credit	Building Life-Cycle Impact Reduction	5	Based on 50% of reused historical building. 4 points for 75%
1	1		Credit	Building Product Disclosure and Optimization - Environmental Product Declarations	2	Extreme vetting of products (v4.1 needs 10 EPDS)
1	1		Credit	Building Product Disclosure and Optimization - Sourcing of Raw Materials	2	Extreme vetting of products
1	1		Credit	Building Product Disclosure and Optimization - Material Ingredients	2	Extreme vetting of products (v4.1 needs 10 EPDS)
2			Credit	Construction and Demolition Waste Management	2	Recycle 75% of waste & 4 different waste streams. (Comingled my not do it)

13	3	0	Indoor Environmental Quality		16	Notes
Y			Prereq	Minimum Indoor Air Quality Performance	Required	
Y			Prereq	Environmental Tobacco Smoke Control	Required	
1	1		Credit	Enhanced Indoor Air Quality Strategies	2	Walk off mats, merv 13 filters, 1pt, increased ventilation, CO2 monitor, outdoor sources 2pts
3			Credit	Low-Emitting Materials	3	Need 5 categories w/ low VOCs

1			Credit	Construction Indoor Air Quality Management Plan	1	IAQ plan
2			Credit	Indoor Air Quality Assessment	2	1 pt for flushout OR 2 points for air testing (\$10,000 for 2pts)
1			Credit	Thermal Comfort	1	Controls for 50% of occupants (not including guest rooms)
2			Credit	Interior Lighting	2	Lighting controls for 90% occupants, not including rooms. Need multi light settings for task lights
2	1		Credit	Daylight	3	75% 2pts 90% 3pts. Need light testing consultant
	1		Credit	Quality Views	1	Doubtful
1			Credit	Acoustic Performance	1	55 STC or under

1	4	0	Innovation		6	Notes
	4		Credit	Innovation	5	RECS, Air Testing Exemp, Green Cleaning, Green Purchasing
1			Credit	LEED Accredited Professional	1	

3	1	0	Regional Priority		4	Notes
1			Credit	Regional Priority: Energy Performance > 7pts	1	
1			Credit	Regional Priority: Surrounding density and diverse uses > 3 pts	1	
1			Credit	Regional Priority: Access to quality transit > 3 pts	1	
	1		Credit	Protect/restore habitat OR Sensitive land protection OR High Priority Site	1	

65	29	9	TOTALS		Possible Points:	110
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Certified: 40 to 49 points, **Silver:** 50 to 59 points, **Gold:** 60 to 79 points, **Platinum:** 80 to 110

Exhibit E

500 Main Street / Racine Hotel Commitment to Racine Works Program Hunzinger's Participation Plan

COMMITMENT

The Main Attraction, LLC and Hunzinger Construction Company ("Hunzinger") are unequivocally committed to the efforts of the City of Racine to maximize the participation of City of Racine residents in the construction of the 500 Main Street / Racine Hotel. We shall exercise reasonable good faith efforts to achieve the goal that Racine Residents complete 20% of the onsite work hours included in the Project costs, but excluding all non-construction Project costs. Hunzinger may develop, in conjunction with the City of Racine, a city resident utilization plan and gap analysis of workforce capabilities and capacities on a trade by trade basis. This analysis shall be performed both prior to commencement of construction bidding and again following construction bidding and shall be utilized to adjust Racine Works Program percentages for specific trades involved in the construction of the Project, if necessary, with such percentages determined by the City of Racine and the entities responsible for the preparation of the gap analysis.

The Main Attraction LLC and Hunzinger are committed to furthering responsible sustainable and green building practices. We commit to exercise reasonable good faith efforts to achieve United States Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) Gold Certification on the Project. In lieu of City of Racine residents without the necessary USGBC Green Associate (GA) or Accredited Professional (AP) certifications necessary to work on this specialized Project, we will offer training sessions for unemployed and underemployed workers so that they can earn the accreditation (see attached proposal).

GOALS

The goal of the Racine Works Program for the Project is to maximize opportunities and achieve legitimate participation of Racine residents in all aspects of the Project's construction activity whenever possible and to educate on green building practices. We will work to include local workers on the project where ever available. We will offer training classes for people in the WRTP/Big Step and/or YMCA training programs to assist them in becoming LEED GA accredited.

ORGANIZATION

Hunzinger's Participation Program is set up so that the Project can achieve the stated goals.

Hunzinger has dedicated a staff person, Joan Zepecki, to serve as Diversity and Inclusion Coordinator for this project. Zepecki is Director of Corporate Affairs at Hunzinger and has vast

experience working to involve local workforce and minority-owned and women-owned firms in the construction industry. Ms. Zepecki will work closely with the development team to maximize local workforce participation by disseminating information about opportunities relating to the Project and working closely with staff from the City of Racine and WRTP/Big Step and/or YMCA (First Choice).

If Ms. Zepecki is at any point no longer serving Hunzinger, then Hunzinger will appoint a replacement person of similar skills and authority to oversee the Plan described in this document.

RACINE RESIDENT PROGRAM MANAGEMENT PLAN AND IMPLEMENTATION

Procurement

Hunzinger will proactively contact interested subcontractors committed to hiring City of Racine Residents and share the established goal of 25% utilization of Racine Resident utilization for the Project. Hunzinger will require all bidding subcontractors to complete Form A, Racine Resident Construction Hours Calculation and Form B, an affidavit confirming Racine Residency (see attached).

If a Trade Contractor subcontracts a portion of its work to a subcontractor or material supplier, the Trade Contractor shall have their subcontractors utilize City of Racine Residents to meet the mutually agreed upon participation goals.

Because the 500 Main Street / Racine Hotel Project “requires special skill or experience” (see Sec. 46-41. - Racine Works Program. Section (c) Applicability; exceptions), all of our Project’s Superintendent hours and any worker that will be working directly on elements impacting the ability to obtain USGBC LEED Gold Certification, will be exempt from the denominator of total onsite work hours. The total hours exempted, as related to LEED-certified work effort, and as measured as a percentage of total project hours worked, shall not exceed forty-two percent (42%). Developer shall, in addition, make best efforts to minimize total hours exempted. Further, following the conclusion of the construction project and a determination of the total project hours worked, as well as the total hours exempted; Developer agrees to make up for the total hours exempted by hiring and maintaining a number of permanent, operational employees of the Hotel who shall be “City of Racine Residents “ As defined under the Racine Works Ordinance, at individual base wages not less than \$15.00/hr., for an aggregate total number of work hours which shall equal or exceed twenty percent (20%) of the number of total hours exempted times 200% (2.00). For purposes of compliance with the residency hiring requirements of The Racine Works Ordinance, compliance shall not be achieved until all such hours have been worked, whether as part of the project construction, or as permanent operational employees of the Hotel. To this end, Developer agrees to continue to provide electronic data to City’s Human Resources Department regarding permanent employees residency and hours worked consistent with that required for construction-related work and consistent with the requirements of the Racine Works Ordinance until all make-up hours are accounted for.

*example: 75,000 total work hours (42% exempt = 31,500 exempt hours x .2). Perm. Hotel employees = 6,300 hrs. x 2.00 = 12,600 hours @ \$15.00/hr.

Community Involvement

Hunzinger realizes the importance of this Project to the community and the incredible impact the Hotel will have on the Racine area. Following are examples of initiatives we utilize to reach out to the community to maximize Racine resident involvement:

- Facilitate meetings with subcontractors, and representatives with approved pre-apprentice programs and union representatives to discuss workforce community hiring opportunities to encourage City of Racine Residents workforce hiring (i.e. apprenticeship initiative);
- Working to ensure that the workforce on the project reflects the diversity of the community, with a focus on residents from the Racine area;
- Assist in hiring of local community residents whenever possible (union journey workers, apprentices, and laborers);
- Maximize apprenticeship opportunities to create long-term career options for area residents screened and referred by established community organization partners;
- Establish processes and procedures to identify hiring opportunities;
- Conduct outreach to trade unions and community organization partners, and conduct outreach events if necessary;
- Review field employee head counts, verify residency, and conduct dialogues with foremen and superintendents to ensure that new hires, when anticipated, are processed through their hiring initiative program to ensure that Racine area residents are given priority consideration.
- We will work with the network of community based organizations in Racine to connect people to employment and careers.

ADMINISTRATION AND ENFORCEMENT OF THE Plan of Action for Minority and Workforce Inclusion

The Racine Works Inclusion Plan we developed is required to be followed by all subcontractors working on the project. We will ensure that implementation of the plan is consistent with efficient contract performance. In addition, we will perform the following key functions to guarantee that opportunities are available, and that participation of Racine Residents are stressed throughout the procurement stages of the project:

- Conduct training for our project management team on the Racine Works Inclusion Plan to ensure that team members are knowledgeable about the goals and objectives and are actively involved in program implementation;

- Establish and maintain records and data in support of the plan and to support efforts to maximize local workforce participation under the plan;
- Cooperate with and utilize any available support facilities, such as local associations, as tools for enhancing participation of local workforce participation;
- Review Bid Documents to verify that statements and clauses that include the 20% Racine Resident Workforce Goal for this Project;
- Actively participate and/or arrange for participation in trade fairs, industry meetings, business opportunity workshops, etc.;
- Advertise in industry and local small business publications;
- Monitor compliance with Plan and progressive status of goals on a continual basis;
- Facilitate participation of diverse contractors, when possible and appropriate;

COMPLIANCE MONITORING AND REPORTING SERVICES

Hunzinger understands the local workforce utilization efforts do not end at procurement. Listed below are some of the activities that will be ongoing throughout the project:

- Follow up regularly with subcontractors to obtain all necessary reporting documents including weekly certified payrolls via monthly pay application process and Racine Resident Affidavit created to indicate a City of Racine Worker for EACH Racine Resident working;
- Check appropriate contract documents to verify that the subcontractors originally identified at the award of the contract are continually utilized at the committed amount and are using best efforts to hire City of Racine Residents;
- Track the appropriate Exhibits (i.e. waivers of liens, certified payroll, sworn statements, etc.) upon receipt of a pay request to determine whether subcontractors and their workers have been compensated for work performed in a timely manner in accordance with our prompt payment initiative.

ACCOUNTABILITY

On a regular basis, typically at monthly meetings, Joan Zepecki and the Hunzinger Project Management Team, will meet to review the project status relative to meeting the local workforce hiring goals. Diversity and Inclusion Coordinator Joan Zepecki will report on procurement activities, respond to external requests for information, address any problematic issues or trends, and, identify additional opportunities for local workforce participation. If there are any potential challenges in meeting the established goals, Hunzinger will discuss what, if any, remedial action should take place.

FORM A

Racine Works Program Specifically for 500 Main Street / Racine Hotel Project Construction Racine Residents Hours Calculation

RWP Goal 20%

Total Construction "Worker Hours" includes work performed by persons filling apprenticeship and on-the-job training programs.	
Multiplied by 20%	
Applicable RWP Goal	
Total RWP Construction Hours	
RWP Hour Surplus/Shortfall	
RWP Percentage (Total RWP Construction Hours/Total Construction Hours Worked)	

FORM B

FORM RWP (Rev. 09/19)

Contractor Name

Development Project Name

Employee Affidavit

Racine Residents Preference Program

I certify that I maintain my permanent residence in the City of Racine and that I vote, pay personal income tax, obtain my driver’s license, etc. at

_____, Racine, WI _____
(Address) (Zip Code)

Residency status:

To verify my resident status, attached please find the following (check *two*)

- Copy of my voter’s certification form.
- Copy of my last year’s Form 1040.
- Copy of my current Wisconsin Driver’s License or State ID.
- Copy of Other (i.e., Utility bill, Lease, etc.)

AND

Unemployment status:

I certify that I have been unemployed as follows: (Check those that apply)

- I have worked less than 1,200 hours in the preceding 12 months.
- I have not worked in the preceding 30 days.

OR

Underemployed status:

I certify that based on the attached chart (Income Eligibility Guidelines), I am underemployed

Print Name

Sign Name

Social Security Number

Home Telephone Number

Subscribed and sworn to me this _____ day
Of _____, _____ A.D.

My Commission Expires _____.

Notary Public _____ County

Document comparison by Workshare 9.5 on Friday, October 25, 2019 7:11:40 AM

Input:	
Document 1 ID	netdocuments://4811-6695-4377/6
Description	Zahns Incentive Agreement
Document 2 ID	C:\Users\HDK\AppData\Roaming\ndOfficeEcho\VAULT-GXWWFJ0T\Zahns Incentive Agreement 4811-6695-4377 v.9.docx
Description	C:\Users\HDK\AppData\Roaming\ndOfficeEcho\VAULT-GXWWFJ0T\Zahns Incentive Agreement 4811-6695-4377 v.9.docx
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	529
Deletions	35
Moved from	1
Moved to	1
Style change	0
Format changed	0

Total changes	566
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