

**DEVELOPER INCENTIVE AGREEMENT
AJAX SITE**

THIS AGREEMENT made this ____ day of _____, 2019, by and between CARDINAL CAPITAL MANAGEMENT, INC. a Wisconsin corporation, (“DEVELOPER”), the REDEVELOPMENT AUTHORITY OF THE CITY OF RACINE, a municipal entity created under Wisconsin statute §66.1333 (“AUTHORITY”) and the CITY OF RACINE, a municipal corporation of the State of Wisconsin, located in Racine County, hereinafter (“CITY”).

WITNESSETH:

WHEREAS, the AUTHORITY is the owner of land in the CITY, said land being described on **EXHIBIT A** attached hereto and incorporated herein, hereinafter called "SUBJECT LANDS"; and

WHEREAS, the DEVELOPER is the owner of land in the CITY, said land being known as the “Pabst Pub” and described on **EXHIBIT A** attached hereto and incorporated herein, included in the "SUBJECT LANDS"; and

WHEREAS, the DEVELOPER desires to develop SUBJECT LANDS through the demolition of buildings, environmental remediation of the site, development of two new buildings; the first, a new, market rate residential development consisting of 87 apartments; with 130 parking spaces (55 surface, 75 underground) (the "Market Rate Development") and the second a new Affordable (LIHTC) Housing development consisting of 54 apartments and 75 parking spaces (39 surface, 36 underground) (the “Affordable Development”) and the rehabilitation of the Pabst Pub;; (collectively known as the **Project**) all as depicted on and **EXHIBIT B** attached hereto; 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 and conditions for the provision of the DEVELOPMENT INCENTIVE by the CITY.

NOW, THEREFORE, the parties hereto agree as follows:

1. DEVELOPMENT AGREEMENT. Prior to commencement of construction of the PROJECT, DEVELOPER shall enter one or more development agreements (the “DEVELOPMENT AGREEMENT(S)”) with the CITY. Any DEVELOPMENT AGREEMENT with respect to land that is subject to this INCENTIVE AGREEMENT, shall, at a minimum, include terms and conditions for construction of public infrastructure including but not limited to right-of-way and traffic improvements, sanitary sewer and public water improvements, stormwater management improvements, fiber optic and conduit and other site improvements, and will incorporate the CITY contributions towards the infrastructure improvements and fees under this Agreement, all to be accordance with plans to be approved and stamped “Construction Plans of Record” signed by the City Engineer, all to be on file with the Engineering Department.

2. DEVELOPER INCENTIVE.

INCENTIVES. As an incentive for DEVELOPER to undertake the PROJECT, the CITY and AUTHORITY shall provide to DEVELOPER a REDEVELOPMENT INCENTIVE. The REDEVELOPMENT INCENTIVE shall consist of:

A. **CITY CONVEYANCE.** CITY, through the AUTHORITY, shall convey the portion of the SUBJECT LANDS at a purchase price of \$10,000 with an allocation of Market Rate Parcel for \$9,999 and the Affordable Parcel for \$1. Developer shall have the right to purchase the land(s) from RDA subject to the terms detailed herein following execution of the final TID incentive Agreement. It is anticipated that the Market Rate Parcel shall be conveyed in December, 2019 and the Affordable Parcel shall also be conveyed in December, 2020, subject to the reasonable satisfaction to the City that financing is being secured and finalized. First American Title Company shall serve as the escrow agent for the transaction.

B. **SITE REMEDIATION AND PARKING DEVELOPMENT INCENTIVE.** CITY will provide site remediation and parking development incentives totaling \$1,000,000. \$701,650 shall be expended for environmental remediation and demolition on the Affordable Parcel (payable to CCM-Racine AJAX II, LLC or assigns) and \$298,350 shall be contributed for the construction of 74 structured internal on-site parking stalls for the

Market Rate Parcel (\$4,032 per stall). These development incentives shall be payable as follows:

1. \$900,000 shall be paid at the closing of the construction financing and land closing. This sum shall be comprised of \$500,000 in 2019 I.G. Funds, to be paid as a grant, and \$400,000 to be tendered as an interest free unsecured short term loan from the AUTHORITY.
2. The \$100,000 balance shall be paid as follows. On or before April 30, 2020, CITY shall pay DEVELOPER \$500,000 in 2020 I.G. Funds and DEVELOPER shall simultaneously repay the CITY \$400,000 to retire the interest free short term loan.

C. TID DEVELOPMENT INCENTIVE. A tax increment developer-funded pay-as-you-go TID DEVELOPMENT INCENTIVE of up to \$3,000,000 shall be paid to DEVELOPER. As the sole source of payment for the TID DEVELOPMENT INCENTIVE, the CITY agrees to pay DEVELOPER ninety percent (90%) of all Tax Increment attributable to the Market Rate Development for a period of eleven (11) years (i.e. 2020 through 2031). The Payment Dates shall be thirty (30) days after receipt of tax payments each year during the life of the TID. The DEVELOPMENT INCENTIVE shall be a special and limited obligation to the CITY, and not a general obligation. The TID DEVELOPMENT INCENTIVE shall be capped at no more than \$3.0M, even if the full 11-year TID support period has not expired. The CITY shall receive the remaining 10% of property tax increment capture attributed to the Market Rate Development and 100% of the tax increment capture attributed to the Affordable Development as received up to a total of \$1,000,000 in repayment of the site remediation and parking development incentives.

D. CITY LOAN. Upon verification satisfactory to CITY that DEVELOPER has secured construction financing necessary for the PROJECT to proceed, and provided that CITY secures a \$900,000 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 (secondary only to the DEVELOPER’s construction financing)) to the DEVELOPER in the amount of \$900,000. The loan shall be secured by a Cardinal Capital Corporate Guaranty. The loan shall bear interest at the rate equal to the interest rate provided to the City by BPCL. The Note 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 monthly installments of interest only.

In the event of default, the CITY may suspend its performance under this Agreement, providing DEVELOPER thirty (30) days to cure the default. In the event the default is not cured through actions commenced by DEVELOPER within thirty (30) days and continued unabated for a reasonable period of time until cured, the City may cancel the Agreement and DEVELOPER shall repay to the CITY all REDEVELOPMENT INCENTIVES received by it pursuant to this Agreement. Further, the CITY may take any action, in law or equity, which it deems necessary or desirable related to any default.

E. CDBG LOAN. Subject to underwriting and approval by the City Loan Committee, CD Committee, and Common Council, CITY will provide DEVELOPER a \$600,000 CDBG multiple-family Housing low-interest loan for the affordable property. The \$600,000 in CDBG funds to be structured as a loan over 20 years with a 1% interest rate. The loan shall be cash flow dependent, but the balance will be due and payable at the end of the term.

F. GRANT ASSISTANCE. To the extent reasonably practicable, CITY will assist the developer in attempting to secure \$500,000 in grant funds from WEDC or WDNR to offset the cost of demolition and remediation.

G. WATER UTILITY IMPROVEMENTS. City will construct upgrades to the publicly dedicated water transmission line servicing the PROJECT within Clark Street, utilizing Water Utility funds.

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

3. DEVELOPER OBLIGATIONS

A. FINANCING. DEVELOPER shall provide proof of fully committed private (or WHEDA) financing of the Affordable, Market Rate and Pabst Pub Developments and

DEVELOPER and third party equity of at least 15% to complete the PROJECT in its entirety.

B. WHEDA CREDITS. DEVELOPER has applied for low income housing tax credits from WHEDA in the 2018-2019 round for the affordable housing development and has been awarded 4% tax credits for the Affordable portion of this development.

C. MINIMUM INCREMENT GUARANTY. For the property tax years commencing in 2022 and continuing through the termination of the TID, DEVELOPER and its successors and assigns shall guaranty a minimum assessed value of the PROJECT OF \$12,000,000 (“Minimum Increment Guaranty”). DEVELOPER and its successors and assigns shall pay property taxes in an amount of not less than the property tax rate applied against the Minimum Increment Guaranty (the “Minimum Required Tax Payment”). For any tax year during such period in which the property taxes paid by the DEVELOPER are less than the Minimum Required Tax Payment, the DEVELOPER covenants and agrees to make a payment in lieu of taxes to the City in an amount equal to the shortfall between the Minimum Required Increment and the amount of property taxes actually paid by the Corporation. Said payment shall be due with the Corporation or Assign’s final installment payment of property taxes each year.

D. DEVELOPER guarantees that it shall invest a minimum of \$21,000,000 in hard construction costs related to the PROJECT. Proof of construction costs shall be submitted in form and substance reasonably acceptable to the City Engineer.

E. CITY ORDINANCES AND POLICIES. DEVELOPER shall fully comply with all CITY rules, regulations, policies and Ordinances provisions, including the “Racine Works” Ordinance which requires construction work hours to include 20% qualified and eligible low-income City residents, and shall comply with all City Zoning Ordinances, Building Codes, and Design Standards.

F. ENERGY EFFICIENCY AND SUSTAINABILITY GOALS. DEVELOPER shall seek and achieve Enterprise Green Communities (Green Certification) Standards designation for the PROJECT. To attain this designation, DEVELOPER shall incorporate into the PROJECT the enumerated scoring elements detailed in “**EXHIBIT G**” attached. CITY agrees to work with DEVELOPER to assist in seeking available and grant funds which may be available to aid in DEVELOPER’s efforts. Further, Developer shall install

and maintain electric vehicle charging infrastructure accessible to not fewer than 3% of the developed on-site parking spaces/stalls.

G. CITY USE OF PABST PUB. DEVELOPER agrees to make a portion of the Pabst Pub building available to the Racine Community Outpost for a lease rate of \$10 month, for use by the Racine Police Department as an addition to its “C.O.P. (Community Oriented Policing) House” program for a term of not less than the 11-year life of the T.I.D. The City shall, at all times, maintain insurance coverage related to the use of property and operations in form and substance equal to Racine Police Department operations.

4. BINDING EFFECT. The provisions of this INCENTIVE AGREEMENT apply to the PROJECT. The covenants, agreements, restrictions and provisions contained in this INCENTIVE AGREEMENT constitute covenants running with the land and shall be binding on 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 hereby.

5. INDEMNITY. In addition to, and not to the exclusion or prejudice of, any provisions of this INCENTIVE AGREEMENT, or any documents incorporated herein 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. In every case in which the DEVELOPER is liable pursuant to this Paragraph and a judgment is recovered against the CITY, if written notice and opportunity to defend has been given to the DEVELOPER of the pendency of the suit within twenty-one (21) days after its commencement, the judgment shall be conclusive upon DEVELOPER not only as to the amount of damages, but also as to DEVELOPER’s liability to the CITY.

6. **NOTICES.** All notices, requests, demands and other communication (collectively, "Notices") hereunder 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 the following addresses or at such other addresses the parties may designate by notice given 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: Cardinal Capital Management, Inc
901 S. 70th Street
West Allis, WI 53214
Attn: General Counsel

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.

7. **TAX-EXEMPT COVENANT.** For a period of 15 years, 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. ~~In the event any court finds the Tax Exempt Covenant is not valid or enforceable or if for any reason the Tax Exempt Covenant is terminated,~~ ~~then~~ The DEVELOPER, or its successors and assigns, shall make payments in lieu of taxes to the CITY in an amount equal to the amount of 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.

8. RECORDING. This INCENTIVE AGREEMENT shall be recorded in the office of the Register of Deeds of Racine County, Wisconsin, prior to the recording of any other mortgage or security on the PROPERTY, it being understood by the parties that 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 so as 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 time period indicated.

9. 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.

10. AUTHORITY. Each of the individuals and officers who have executed this INCENTIVE AGREEMENT represent and warrant that he or she is duly authorized to execute this INCENTIVE AGREEMENT on behalf of the CITY or DEVELOPER, as the case may be, and that all action necessary for said party to so execute and perform the terms of this INCENTIVE AGREEMENT have been duly taken by said 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.

11. 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 in favor of or against any party.

12. ADDITIONAL AGREEMENT. It is recognized by both parties that an additional Development Agreement may be necessary prior to 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:

CARDINAL CAPITAL MANAGEMENT, INC.

By: _____
President

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

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

Notary Public, State of Wisconsin
My commission expires: _____

CITY OF RACINE:

By: _____
Cory Mason, Mayor

By: _____
Tara Coolidge, City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me this ____ day of, 2018, 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 _____, 2018.

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

[see attached]

EXHIBIT B

Project Plan

[see attached]