

AMENDED DEVELOPMENT AGREEMENT

THIS AMENDED DEVELOPMENT AGREEMENT (“Amendment”) is made, entered into, and effective as of the date last executed by either party below, by and between **AKIL, LLC** (“Developer”) and the **REDEVELOPMENT AUTHORITY OF THE CITY OF RACINE**, a municipal entity located in Racine County, Wisconsin (the “City”).

RECITALS:

1. On or about November 16, 2012, Developer and the City entered into an agreement (“Development Agreement”) pertaining to Developer’s redevelopment of the parcel located at 1130 Washington Avenue, Racine, Wisconsin, which is identified by Racine County Parcel ID No. 276-00-00-08-658-001 (“Property”), and which is more particularly described in the attached Exhibit A.

2. The Development Agreement was recorded as Document No. 2336226 in the Racine County Register of Deeds Office on or about November 20, 2012. A copy of the Development Agreement is incorporated herein as Exhibit A.

3. During Developer’s redevelopment of the Property, Developer discovered certain significant, unanticipated subsurface conditions of the Property, including structures and debris, that were previously unknown to both Developer and the City (“Subsurface Conditions”).

4. Because of the presence of the Subsurface Conditions, the property’s redevelopment has taken longer and cost the Developer significantly more than either party had expected would be the case.

5. Accordingly, to afford Developer relief from certain deadlines contained in the Development Agreement and to financially assist Developer in completing the redevelopment of

the former brownfield Property in the manner desired by the City, the City and Developer have agreed to amend the Development Agreement as set forth herein.

In exchange for the consideration described herein, and in the Development Agreement, the exchange and adequacy of which the parties each acknowledge, **IT IS MUTUALLY AGREED AS FOLLOWS:**

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Revised Deadlines.** Notwithstanding the provisions of the Development Agreement, Developer shall not be deemed to be in default thereof due to:
 - (a) Developer's failure to begin construction within two months of taking title to the Property, as required by Paragraph 3 thereof;
 - (b) Developer's failure to have obtained occupancy permits for two of the three proposed commercial suites until November 27, 2013, instead of within one year of taking title, as required by Paragraph 3 thereof;
 - (c) Developer's failure to have provided the City with certificates of insurance in advance of beginning construction, as required by Paragraph 9 thereof;
 - (d) Developer's failure to have recorded the requisite use restrictions against the Property within 30 days of Developer's acquisition of the Property, as required by Paragraph 4 thereof. **However, no Additional Development Incentive shall be paid by City to Developer until Developer provides the City with a copy of the requisite use restrictions duly recorded against the Property and, if Developer fails to do so within thirty days after the effective date of this Amendment, Developer shall be in**

breach of the Development Agreement and of this Amendment, and the City shall have no further obligation to perform under the Development Agreement or this Amendment, including, without limitation, any obligation to advance any Development Incentive or any Additional Development Assistance, and the City may pursue such remedies as are available to it under the Development Agreement and/or this Amendment.

3. **Additional Development Assistance.** Due to the unexpected Subsurface Conditions, Developer may obtain additional financial assistance from the City to complete the Property's redevelopment as provided in this Paragraph and provided that Developer is and remains in compliance with the Development Agreement and the terms of this Amendment ("Additional Development Assistance"). Said Additional Development Assistance shall be in an amount of up to \$100,000, or the total amount of redevelopment-related costs allowed by this Paragraph, whichever amount is less. Said additional Development Assistance may be sought by Developer from the City only for (1) cost overruns incurred due to unanticipated Subsurface Conditions ("Cost Overruns") or (2) for costs of constructing the Property's: landscaping, retention wall, fencing, parking lot lighting, parking lot curbing, or storm water water quality catch-basin ("Required Development Features"), or both. Requests for said Additional Development Assistance shall be submitted to the City's Office of City Development as follows:

A. For Costs Overruns, the submittal shall include the contractors billing statements documenting the difference between the initial design costs and the actual cost attributable to unanticipated subsurface conditions.

B. For assistance with Required Development Features, submittal shall include contractor's invoices.

For all requests for assistance, Developer must also provide the City with copies of all lien waivers evidencing that Developer has paid for all Property redevelopment work. Each said Additional Development Assistance request shall be reviewed, approved, and paid, in whole or in part, by the City based on the extent to which the Office of City Development, or its designee, determines that the request is for allowable Cost Overruns or Required Development Features and also consistent with all prior City approvals for the Property's redevelopment, including, without limitation, those conditions contained in the conditional use permit for the redevelopment and those conditions imposed by the Access Corridor Development Review Committee. The decision of the Office of City Development with respect to any specific request for said Additional Development Assistance shall be final. The Office of City Development shall not consider any request for Additional Development Assistance that is filed with the City any later than July 31, 2014.

4. **Clarification as to Tax Reimbursement Development Incentive.** Due to delays caused by the unanticipated Subsurface Conditions, the tax reimbursement

Development Incentive identified in Paragraph 3 of the Developer's Agreement shall apply to the 2014 and 2015 tax years.

5. **Development Agreement Remains in Effect.** Except as otherwise provided in this Amendment, the Development Agreement shall remain in full force and effect, and any breach thereof, or of this Amendment, shall be subject to cure and remedy as provided in the Development Agreement. Developer shall further remain in compliance with all federal, state, and local laws, regulations, ordinances, approvals and permits, and Developer, shall during the term of this Amendment and the Development Agreement, have no delinquent fines, penalties or financial obligations whatsoever, including without limitation taxes owed to the federal government, the State of Wisconsin, the County of Racine, Wisconsin, the City, or any other government agency or entity on a federal, state or local level. Any breach of the Development Agreement or of this Amendment which is not timely cured by Developer shall relieve the City of any obligation to make any Development Incentive payments under the Development Agreement or any Additional Development Assistance payments described herein to Developer under this Amendment and shall further require Developer to return to the City, within 30 days, all Development Incentive and all Additional Development Assistance payments described herein and previously made by the City to Developer. Developer further agrees that, if Developer fails to timely repay any Development Incentive or Additional Development Assistance payments described herein due to the City under this Paragraph, the City may place such amount on the current or next year's tax rolls as a special tax against the Property,

and Developer waives any procedural rights incidental to the levy of such a special tax as well as any rights to appeal therefrom.

[INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date(s) indicated below.

Dated this _____ day of _____, 2014.

AKIL, LLC

By: _____
Akil Ajmeri, Member

Attest: _____

Title: _____

Dated this _____ day of _____, 2014.

**RACINE REDEVELOPMENT AUTHORITY
OF THE CITY OF RACINE**

By: _____
James Spangenberg, Chairperson

Attest: _____

Brian O'Connell, Executive Director

APPROVED AS TO FORM:

(date)
Robert Weber
City Attorney

COUNTERSIGNED FOR CITY OF RACINE:

Provision has been made to pay the liabilities that will accrue under this Agreement.

(date)
David Brown
City Finance Director

Exhibit A – Legal Description of Property
Exhibit B – Development Agreement

Drafted by Christopher A. Geary, Pruitt, Ekes & Geary, S.C.

EXHIBIT A – LEGAL DESCRIPTION

Lot 1 of Certified Survey Map No. 3066, recorded in the office of the Register of Deeds for Racine County, Wisconsin on November 13, 2012 in Volume 9 of Certified Survey Maps, page 976, as Document No. 2335621 and being a part of Block 68 of Section 16, Township 3 North, Range 23 East, as returned by the appraisers of school and university lands to the Office of the Secretary of the State of Wisconsin. Said land being in the City of Racine, Racine County, Wisconsin.

Tax Key No. 08658001

EXHIBIT B – DEVELOPMENT AGREEMENT