

**AGREEMENT IN LIEU OF BOARD OF APPEALS CONSIDERATION OF AN APPEAL  
TO THE CITY OF RACINE BOARD OF APPEALS**

**WHEREAS**, Adams Outdoor Advertising, Inc. and Adams Outdoor Advertising Limited Partnership (collectively “Adams”) and the City of Racine (“City”) desire to enter into an agreement (“Agreement” or “the Agreement”) in lieu of Adams filing an appeal with the City of Racine Board of Appeals;

**WHEREAS**, Adams is in the business of constructing, maintaining and operating outdoor advertising signs;

**WHEREAS**, Adams asserts that it leases property at a mall located at 5200 Durand Avenue, Racine, Wisconsin (the “Property”) on which it desires to construct an outdoor advertising sign;

**WHEREAS**, the Property is zoned in the B2 District by the City.

**WHEREAS**, by applications dated August 20, 2013, Adams applied for both a conditional use permit (“CUP Application”) and a building permit (“Building Permit Application”) for the construction of an outdoor advertising sign on the Property;

**WHEREAS**, there is an existing conditional use permit for the Property (the “Regency Mall Conditional Use Permit”);

**WHEREAS**, on or about August 21, 2013 Adams’ CUP Application was denied by Department of City Development staff without public hearing or review by the City Plan Commission or Common Council on the basis that the proposed use was not a permitted or an allowable conditional use under B2 zoning;

**WHEREAS**, Adams’ Building Permit Application was initially granted but later cancelled by Department of City Development staff on the basis that the proposed use was not a permitted or an allowable conditional use under B2 zoning;

**WHEREAS**, on September 6, 2013 Adams filed an administrative appeal of the denial of the CUP Application to the Board of Appeals (“BOA Appeal”);

**WHEREAS**, the Board of Appeals did not consider the BOA Appeal;

**WHEREAS**, on September 26, 2013, Adams initiated a lawsuit in Racine County Circuit Court seeking judicial review of the City’s actions and decisions described in the previous paragraphs (“the Lawsuit”);

**WHEREAS**, Adams and the City stipulated to dismissal of the Lawsuit without prejudice to allow for the Board of Appeals to hear the BOA Appeal;

**WHEREAS**, Adams acknowledges this Agreement and the Conditional Use Permit must be approved by the Common Council;

**WHEREAS**, in lieu of the Board of Appeals considering the BOA Appeal, the City consents to and Adams agrees to proceed with Adams submitting a CUP Application to be processed as a request to amend the Regency Mall Conditional Use Permit, which will be considered by the Plan Commission and Common Council;

**NOW, THEREFORE**, Adams and the City stipulate as follows:

1. Proposed Amendment to Mall Conditional Use Permit. The CUP Application shall be processed as a request to amend the existing conditional use permit for the Property in accordance with the processes set forth in Racine Municipal Ordinance secs. 114-146, *et seq.*;

2. Conditions. The conditions of the Conditional Use Permit to be considered are contained in Appendix A, attached hereto. The City and Adams stipulate that the proposed conditions contained in Appendix A represent the full and final limits of the conditions to be considered thereunder, and Adams agrees not to pursue additional conditions during the legislative process, unless such conditions are material to the fulfillment of proposed conditions previously negotiated hereunder.

3. Time. Upon approval and issuance of the Conditional Use Permit, Building Permit(s), and any other documents requiring City approval, said documents shall be void until such time as the commencement of demolition at 1601 Racine Street (Parcel ID 09088000). Adams shall fulfill all of the conditions stated in Paragraph f. of the Conditional Use Permit . Should Adams violate the terms of this provision, Adams shall be considered in default of this Agreement and shall be subject to liability for breach of contract as well as remedies for failure to comply with the terms of a Conditional Use Permit.

4. Settlement of all claims. Upon approval and issuance of the Conditional Use Permit, Building Permit(s), and any other documents requiring City approval, Adams agrees to release the City and its officers, elected officials, agents and employees from all claims it had, has now, or may have in the future, related to the City's denial of Adams' Conditional Use Permit Application and Building Permit Application, including any claims arising out of any zoning, conditional use and building permits for the Property or at 1601 Racine Street (Parcel ID 09088000) issued in connection with this agreement, provided that such permits comply with the terms of this agreement, including Appendix A. However, in the event the City does not approve and issue the Conditional Use Permit or other documents required for Adams's use as specified in Appendix A, Adams reserves the right to reassert its claims against the City, including, but not limited to, those claims that were or could have been alleged in the Lawsuit.

5. Type of sign. The display that Adams may erect on the Property as may be authorized by the proposed Conditional Use Permit shall, consistent with the terms that may be approved with the proposed Conditional Use Permit, be a static display and in no case shall be a digital billboard. After 5 years, Adams may apply for a major amendment to the Conditional Use Permit to convert it to electronic digital signage. Adams would be subject to all applicable ordinances and regulations in effect at the time of its application. Nothing in this agreement shall be construed as permission to erect such signage, and nothing in this agreement obligates the City to approve such application for the same.

6. Denial of Liability. Nothing contained herein shall at any time be construed as an admission of any wrongdoing or liability by Adams or the City.

7. Construction and Venue. Any dispute arising under this Agreement shall be resolved under Wisconsin law. The venue for any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

8. Binding Effect and Integration. This Agreement represents the entire agreement between the parties, is intended to integrate fully all terms between the parties and supersedes all prior negotiations, representations or agreements between the parties, either written or oral. This Agreement may be amended only by written instrument designated as an amendment hereto and executed by the signatories or their successors. This Agreement is meant to be a compromise between the parties to facilitate review and consideration of the CUP Application and to avoid unnecessary hearings and process and thus is inadmissible under Sec. 904.08, Wis. Stat. except to prove the intent of the parties to preserve the rights of the parties as set forth under Paragraphs 3 and 4.

9. Execution of the Agreement. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all, when taken together, constitute one in the same Agreement. Facsimile or electronic mail signatures shall be effective to bind each of the parties.

10. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

**Adams Outdoor Advertising, Inc.**  
Adams Outdoor Advertising Limited  
Partnership

**City of Racine**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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Title: \_\_\_\_\_

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