

**DEVELOPERS AGREEMENT  
BETWEEN  
CITY OF RACINE AND RACINE HARBORSIDE, LLC  
@ NORTH BEACH REDEVELOPMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between RACINE HARBORSIDE LLC, a Wisconsin limited liability company, hereinafter called "DEVELOPER", and the CITY OF RACINE, a municipal corporation of the State of Wisconsin, located in Racine County, hereinafter called the "CITY".

**WITNESSETH:**

**WHEREAS**, the DEVELOPER 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 desires to develop SUBJECT LANDS as a Mixed-use Development consisting of up to two Phases generally as depicted on **EXHIBIT B** attached hereto. Phase I will consist of approximately 242 market-rate apartment units in two buildings, a 4400-sq. ft. restaurant and structured parking supporting approximately 232 stalls. Phase II, if developed, will consist of approximately 238 residential units in three buildings, a 4400-sq. ft. retail space and ground level parking for 80 stalls supporting the residential use, and an additional 38 angle stalls and 58 parallel stalls supporting commercial use. This phased development is referred to herein as the "PROJECT"; and

**WHEREAS**, Section 236.13 of the Wisconsin Statutes provides that as a condition of approval, the governing body of a CITY within which the SUBJECT LANDS lie may require that the DEVELOPER make and install any public improvements reasonably necessary and/or that the DEVELOPER provide financial security to ensure that the DEVELOPER will make these improvements within a reasonable time; and

**WHEREAS**, said SUBJECT LANDS are presently zoned           , which allows the above-described PROJECT; and

**WHEREAS**, the DEVELOPER shall be required to grant additional easements over a part of the SUBJECT LANDS for sanitary sewer, storm sewer and water; and

**WHEREAS**, the DEVELOPER and CITY desire to enter into this agreement in order to ensure that the DEVELOPER will make and install all public improvements which are reasonably

necessary and further that the DEVELOPER shall dedicate the public improvements to the CITY, provided that said public improvements are constructed to municipal specifications, all applicable government regulations, this agreement and as required by the CITY Engineer, without cost to the CITY; and

**WHEREAS**, this agreement is necessary to implement the CITY zoning ordinances; and

**WHEREAS**, the DEVELOPER agrees to develop the SUBJECT LANDS as herein described in accordance with this agreement, conditions approved by the CITY Plan Commission and CITY Common Council, all CITY ordinances and all laws and regulations governing said PROJECT; and

**WHEREAS**, the Plan Commission of the CITY has given conditional approval to the PROJECT, as shown on the document marked " \_\_\_\_\_ " on file in the CITY Clerk's office, conditioned in part upon the DEVELOPER and the CITY entering into a DEVELOPER's Agreement, as well as other conditions as approved by the CITY Common Council; and

**WHEREAS**, the CITY and DEVELOPER have entered into a Tax Incremental Financing Agreement ("TID Financing Agreement") to facilitate development of the Project; and

**WHEREAS**, the DEVELOPER is now seeking from the CITY Plan Commission, CITY Redevelopment Authority and CITY Common Council final approval for the PROJECT; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the DEVELOPER does hereby agree to develop SUBJECT LANDS as follows and as otherwise regulated by CITY ordinances and all laws and regulations governing said PROJECT, the parties hereto agree as follows:

## **DEVELOPER'S COVENANTS**

### **SECTION I. IMPROVEMENTS**

A. PUBLIC STREETS: The DEVELOPER hereby agrees that:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that all public street plans to be constructed by DEVELOPER are in conformance with all federal, state, county and CITY specifications, regulations and ordinances, and written proof from the CITY Engineer evidencing review and approval of said plans.

2. The DEVELOPER shall grade and install all planned public streets in accordance with the Certified Survey Map (“CSM”) and approved PROJECT plan of said PROJECT as the case may be and the plans and specifications on file in the CITY Clerk's office. The PROJECT plan shall include conduit for future installation of fiber optic cable.

3. Construction of the public streets providing access to and fronting the PROJECT will be completed by DEVELOPER commensurate with construction of the PROJECT, pursuant to DEVELOPER’S construction schedule as determined in DEVELOPER’S reasonable discretion.

4. The public streets will be presented to and accepted by the CITY Common Council.

6. The DEVELOPER shall furnish "as built" plans showing changes from the construction plans, pursuant to specifications reasonably approved by the CITY Engineer. Said "as built" shall be on digital file and shall include field locations and hydrant valves and curb stops, if any.

7. Contractors working on the PROJECT or on individual lots are required to clean up all mud, dirt, stone or debris on the streets no later than the end of each working day. In addition, the DEVELOPER shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the streets until such time as the final lift of asphalt has been installed by the DEVELOPER and accepted by the CITY Common Council. The CITY shall make a reasonable effort to require the contractor, who is responsible for placing the mud, dirt, stone or debris on the street, to clean up the same or to hold the SUBJECT LANDS owner who hired the contractor responsible. The DEVELOPER and/or SUBJECT LANDS owner shall clean up the streets within twenty-four (24) hours after receiving a notice from the CITY. If said mud, dirt, stone or debris are not cleaned up after notification, the CITY will do so at the DEVELOPER's and/or SUBJECT LANDS owner's expense, at the option of the CITY.

**B. SANITARY SEWER: The DEVELOPER hereby agrees:**

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the CITY written certification from the DEVELOPER's Engineer that the sanitary sewer plans are in conformance with all Federal, State and CITY specifications, regulations, ordinances and guidelines and written proof that the CITY Engineer has approved said plans.

2. To construct, furnish, install and provide a complete sewerage system for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the CITY Clerk's office and all applicable Federal, State and CITY ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the CITY and as approved by the CITY Engineer. The DEVELOPER recognizes that the inspector works for the CITY and will be compensated for his services by the CITY. The DEVELOPER also recognizes that he/she shall reimburse the Racine CITY for this incurred expense upon being invoiced for such services.

3. To clean all sanitary sewers in the SUBJECT LANDS prior to acceptance of the improvements and issuance of occupancy permits by the CITY.

4. To furnish "as built" plans of the sanitary sewage system for the SUBJECT LANDS, including locations of laterals to lot lines, pursuant to specifications reasonably approved by the CITY Engineer prior to the issuance of occupancy permits.

5. To televise the sanitary sewer system for the SUBJECT LANDS, repair any defects as reasonably determined by the CITY Engineer, supply the video tape to the CITY and clean all sewer lines prior to the issuance of occupancy permits and acceptance of the improvements by the CITY; provided, however, CITY shall promptly reimburse DEVELOPER for all costs related to such sanitary sewer system inspection and repair work.

6. That no occupancy permits for the Project shall be issued until the sanitary sewer system for the SUBJECT LANDS has been dedicated to and accepted by the CITY.

C. WATER: The DEVELOPER hereby agrees:

1. Prior to the start of construction of improvements, DEVELOPER shall provide to the Racine Water Utility, (a department of the CITY) written certification from the DEVELOPER's Engineer that the water system plans are in conformance with all Federal, State and CITY and Utility specifications, regulations, ordinances and guidelines and written proof that the Utility Chief Engineer has approved said plans. In connection with the Developer's development of "@ North Beach" in the City of Racine, the Developer is required to construct and install local water facilities, as defined in the City Municipal Code and in accordance with Wisconsin Public Service Commission PSC 185.53

2. To construct, furnish, install and provide a complete water system for the SUBJECT LANDS, all in accordance with the plans, specifications and drawings on file in the CITY Clerk's office and all applicable Federal, State and CITY ordinances, specifications, regulations and guidelines for the construction of water systems in the CITY and as approved by the Utility Chief Engineer. DEVELOPER acknowledges that CITY Water Utility may contract separately for inspection of water mains, hydrants, valves and appurtenances installation. The DEVELOPER recognizes that the inspector works for the Racine Water Utility and will be compensated for his services by the Water Utility. The DEVELOPER also recognizes that he/she shall reimburse the Racine Water Utility for this incurred expense upon being invoiced for such services.
3. The DEVELOPER shall furnish "as built" plans showing changes from the construction plans, pursuant to specifications reasonably approved by the Utility Chief Engineer. Subject to intellectual property rights, said "as built" plans shall be in AUTOCAD digital file format, and shall include field locations and hydrant valves and curb stops, if any.
4. That no occupancy permits for the Project shall be issued until the water system for the SUBJECT LANDS has been dedicated to and accepted by the Racine Water Utility Chief Engineer.
5. Guarantee: The Developer hereby agrees to guarantee all work performed under this Agreement, for a period of two (2) years from the date of final acceptance with respect to local water facilities, to the Utility. Such guarantee shall be against defects in materials or workmanship providing the Developer uses granular backfill for filling trenches and for infrastructure installation. If such a defect should appear, the Developer agrees to make the required replacement or acceptable repairs at its own expense. The expense included total and complete restoration of any disturbed surface or component of the improvements to the standard provided in the plans and specifications, regardless of improvements on lands where the repair or replacement is required. If the Developer uses other than granular backfill, the guarantee will be for a period of three (3) years from the date of final acceptance by the Utility. In the event that valve boxes and/or stop boxes are damaged by grading contractors, the Developer shall restore damaged infrastructure to like new condition.

D. The DEVELOPER shall execute the Contract for Utility Improvements in form attached hereto as **EXHIBIT C. SURFACE AND STORM WATER DRAINAGE**: The DEVELOPER hereby agrees that:

1. Prior to the start of construction of improvements, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that all surface and storm water drainage facilities and erosion control plans are in conformance with all federal, state, county and CITY regulations, guidelines, specifications, laws and ordinances, and written proof that the CITY Engineer has reviewed and reasonably approved said plans.

2. The DEVELOPER shall construct, install, furnish and provide adequate facilities for surface and storm water drainage throughout the PROJECT with adequate capacity to transmit the anticipated flow from the PROJECT, in accordance with all plans and specifications on file in the CITY Clerk's office, and all applicable federal, state, county and CITY regulations, guidelines, specifications, laws and ordinances, and as reviewed and reasonably approved by the CITY Engineer including, where necessary, as determined by the CITY Engineer, curb, gutter, storm sewers, catch basins and infiltration/retention/detention basins.

3. The DEVELOPER agrees that the site grading and construction of surface and storm water drainage facilities shall be completed and accepted by the CITY before any occupancy permits for the PROJECT are issued.

4. To maintain roads free from mud and dirt from construction of the PROJECT. The CITY Common Council will not accept the surface and storm water drainage system for each phase of the PROJECT until the entire system for that phase is installed and landscaped in accordance with plans and specifications to the reasonable satisfaction of the CITY Engineer.

5. The DEVELOPER shall clean all storm sewers, if any, prior to issuance of occupancy permits and acceptance of improvements by the CITY Common Council.

6. The CITY retains the right to require DEVELOPER to install additional surface and storm water drainage measures if it is reasonably determined by the CITY Engineer that the original surface and storm water drainage plan as designed and/or constructed does not provide reasonable stormwater drainage within the PROJECT and surrounding area.

Any additional cost associated with such additional surface and storm water drainage measures shall be paid for by the CITY, and further, any such additional surface and storm water drainage measures shall be reasonably satisfactory to both CITY and DEVELOPER.

7. To furnish "as built" plans of the entire drainage system, pursuant to specifications reasonably approved by the CITY Engineer prior to the issuance of occupancy permits, if required by the CITY Engineer.

8. The DEVELOPER shall execute the Stormwater Management Agreement in form attached hereto as **EXHIBIT D. [CITY, PLEASE PROVIDE FORM OF STORMWATER MANAGEMENT AGREEMENT FOR DEVELOPER'S REVIEW.]**

E. GRADING, EROSION AND SILT CONTROL: The DEVELOPER hereby agrees that:

1. Prior to commencing site grading and excavation, the DEVELOPER shall provide to the CITY written certification from the DEVELOPER'S Engineer or Surveyor that said plan, once implemented, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including proof of notification of land disturbances to the State of Wisconsin Department of Natural Resources, if applicable, and written proof that the CITY Engineer and the Army Corps of Engineers, if applicable, have approved said plans.

2. The DEVELOPER shall cause all grading, excavation, open cuts, side slopes and other land surface disturbances to be so seeded and mulched, sodded or otherwise protected that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications reviewed and approved by the CITY Engineer and Army Corps of Engineers, if applicable.

3. All disturbed areas shall be restored to the satisfaction of the CITY Engineer within seven (7) days of disturbance. Any cash or letter of credit posted with the CITY will not be released until the CITY Engineer is satisfied that no further erosion measures are required.

F. LANDSCAPING AND SITE WORK: The DEVELOPER hereby agrees that:

1. The DEVELOPER, as required by the CITY, shall remove and lawfully dispose of buildings, destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish.
2. Landscaping and removal of unwanted items, including buildings, will be completed and certified as complete by the CITY Building Inspector prior to the issuance of any occupancy permits.
3. The CITY has the right to trim and remove any features which would interfere with safe operation and maintenance of the CITY rights-of- way and drainageways.

G. STREET SIGNS AND TRAFFIC CONTROL SIGNS: The DEVELOPER hereby agrees that:

1. Street signs, traffic control signs, culverts, posts and guard rails as required by the CITY shall be obtained and placed by the CITY, or by the DEVELOPER with approval of the CITY, and the cost thereof shall be paid by the DEVELOPER.
2. All traffic control signs and street signs, as required by the CITY will be installed within five (5) working days of completion of the public streets.
3. The DEVELOPER hereby agrees to install a street lighting system in the PROJECT according to a City plans and specifications prior to issuance of occupancy permits unless waived by CITY Staff.

H. ADDITIONAL IMPROVEMENTS. The DEVELOPER hereby agrees that if, at any time after plan approval and during construction, the CITY Engineer reasonably determines that modifications to the plans including additional improvements such as additional drainage ways, erosion control measures, and surface and storm water management measures are necessary in the interest of public safety, are necessary in order to comply with current laws or are necessary for implementation of the original intent of the improvement plans, the CITY is authorized to order DEVELOPER, at DEVELOPER'S expense, to implement the same. If DEVELOPER fails to construct the additional improvement within a reasonable time under the circumstances, the CITY may cause such work to be carried out and shall charge against the financial guarantee held by the CITY pursuant to this agreement.



## **SECTION II. CITY EXTRAORDINARY COSTS**

The CITY has requested that DEVELOPER incorporate “CITY Design Features” related to sanitary sewer, water and streets within the PROJECT that will benefit the general public and serve other private properties (“Extraordinary Costs”). In the event the Infrastructure Incentive is insufficient to pay PROJECT related costs for the Phase I and the Extraordinary Costs, CITY shall pay the Extraordinary Costs in excess of the Infrastructure Incentive associated with these CITY Design Features, which may include:

- A,     **SANITARY SEWER.**         The sanitary sewer may be constructed at a lower elevation and situated so as serve a future development to the south.
- B.     **WATER.**         The water infrastructure may be designed to complete a loop provide for additional fire hydrants.
- C.     **STREET DESIGN**     The streets may be constructed with concrete rather than bituminous asphalt, per CITY design standards.

The CITY reserves the right to require any or all of the above-referenced CITY Design Features, based upon cost. DEVELOPER shall prepare plans and bid specifications for these improvements with and without the CITY Design Features. The Extraordinary Costs, if any, shall be the difference between the bids received for the subject PROJECT element with and without the CITY Design Features. CITY shall pay reasonable engineering and design costs in connection with the Extraordinary Costs work.

## **SECTION III. TIME OF COMPLETION OF IMPROVEMENTS.**

The improvements set forth in Section I above shall be completed by the DEVELOPER in total for each phase of the PROJECT within eighteen (18) months of the date of commencement of work for each phase of the PROJECT except as otherwise provided for in this Agreement.

## **SECTION IV. FINAL ACCEPTANCE.**

Throughout this agreement, Phases I and II of the PROJECT will each require approval by the CITY. “Final Acceptance” as used herein shall be the ultimate acceptance of all of the

improvements in the completed phase of the PROJECT, and shall be granted specifically by separate resolution of the CITY Common Council. The Guarantee Period for each phase provided for in this Agreement shall not commence to run until Final Acceptance for that phase. The issuance of building permits and approval of various items of PROJECT shall not commence the Guarantee Period.

#### **SECTION V. DEDICATION OF IMPROVEMENTS.**

Subject to all of the other provisions of this agreement, the DEVELOPER shall, without charge to the CITY, upon completion of the above described improvements for each completed phase, unconditionally give, grant, convey and fully dedicate the public improvements to the CITY, its successors and assigns, forever, free and clear of all encumbrances whatever, together with and including, without limitation because of enumeration, any and all land, buildings, structures, mains, conduits, pipes, lines, plant machinery, equipment, appurtenances and hereditaments which may in any way be a part of or pertain to such improvements and together with any and all necessary easements for access thereto. After such dedication, the CITY shall have the right to connect or integrate other improvements as the CITY decides, with no payment or award to, or consent required of, the DEVELOPER.

Dedication shall not constitute acceptance of any improvement by the CITY Common Council. All improvements will be accepted by the CITY Common Council by separate resolution at such time as such improvements are in acceptable form and according to the CITY specifications. Said resolution shall be recorded, if needed, with the Racine County Register of Deeds. DEVELOPER will furnish proof to the CITY, prior to the dedication required, that the public land and improvements proposed for dedication are free of all liens, claims and encumbrances, including mortgages.

#### **SECTION VI. ACCEPTANCE OF WORK AND DEDICATION.**

When the DEVELOPER shall have completed the improvements herein required and shall have dedicated the same to the CITY as set forth herein, the same shall be accepted by the CITY Common Council if said improvements have been completed as required by this Agreement and as required by all federal, state, county or CITY guidelines, specifications, regulations, laws and ordinances and approved by the CITY Engineer.

#### **SECTION VII. APPROVAL BY CITY NOT TO BE DEEMED A WAIVER.**

The ultimate responsibility for the proper design and installation of streets, water facilities, drainage facilities, ditches, landscaping and all other improvements are upon the DEVELOPER. The fact that the CITY or its engineer, or its attorney, or its staff may approve a specific project shall not constitute a waiver, or relieve the DEVELOPER from the ultimate responsibility for the design, performance and function of the PROJECT and related infrastructure.

## **SECTION VIII. GUARANTEES OF IMPROVEMENTS.**

A. **GUARANTEES.** The DEVELOPER shall guarantee after Final Acceptance for each phase, the public improvements and all other improvements described in Section I hereof for that phase, against defects due to faulty materials or workmanship, provided that such defects appear within a period of one year from the date of Final Acceptance (such one-year period referred to herein as the “Guarantee Period”). The DEVELOPER shall pay for any damages to CITY property and/or improvements resulting from such faulty materials or workmanship or other defective conditions arising during the Guarantee Period. This guarantee shall not be a bar to any action the CITY might have for negligent workmanship or materials. Wisconsin law on negligence shall govern such situations.

Once the improvements are substantially complete, as defined in Wisconsin Statutes Section 236.13 (2) (am) 2., the DEVELOPER shall provide financial security in a form permitted by Wisconsin Statutes Section 236.13 (2) (am) 1m, and as acceptable to the CITY Administrator, in an amount equal to one hundred ten percent (110%) of the total cost to complete any uncompleted public improvements. Such security shall remain in effect, as financial security for the completion of such work; and the security provided by this Section is referred to herein as the “Post-substantial Security”). If the DEVELOPER fails to complete such work, the CITY may draw against the Post-substantial Security on file with the CITY to complete the work.

B. **OBLIGATION TO REPAIR.** The DEVELOPER shall make or cause to be made, at its own expense, any and all repairs which may become necessary under and by virtue of the DEVELOPER'S guarantee and shall leave the improvements in good and sound condition, satisfactory to the CITY Common Council at the expiration of the Guarantee Period.

C. **NOTICE OF REPAIR.** If during said Guarantee Period, the improvements shall, in the reasonable opinion of the CITY Staff, require any repair or replacement which, in their judgment, is necessitated by reason of settlement of foundation, structure of backfill, or other defective materials or workmanship, the DEVELOPER shall, upon notification by the

CITY of the necessity for such repair or replacement, make such repair or replacement, at its own cost and expense. Should the DEVELOPER fail to make such repair or replacement within the time specified by the CITY in the aforementioned notification, after notice has been sent as provided herein, the CITY Common Council may cause such work to be done, but has no obligation to do so, either by contract or otherwise. Should the CITY incur any costs or expenses in repairing or replacing any portion of the improvements covered by this guarantee, then the DEVELOPER shall immediately pay to the CITY all cost or expense incurred in the correction process. Any such charge not paid by DEVELOPER within thirty (30) days of being invoiced may be imposed against the PROJECT land as a special charge pursuant to §66.0627, Wis. Stats. or assessed. Any such charges or assessments may be imposed on the SUBJECT LANDS or any portion thereof then owned by the DEVELOPER, or then owned by any successor or assign of the DEVELOPER including Lot owners. All improvements shall be maintained by the DEVELOPER, so they conform to the approved plans and specifications at the time of their Final Acceptance by the CITY Common Council. This maintenance shall include routine maintenance, such as crack filling, roadway patching and the like. In cases where emergency maintenance is required, the CITY Common Council retains the right to complete the required emergency maintenance in a timely fashion and bill the DEVELOPER for all such associated costs. Said bill shall be paid immediately by the DEVELOPER. The DEVELOPER'S obligation to maintain all improvements shall expire at the expiration of the Guarantee Period.

1. Street sweeping and dust suppression shall be done by the DEVELOPER upon a regular basis as needed to ensure a reasonably clean and safe roadway until Final Acceptance by the CITY Common Council. Should the DEVELOPER fail to meet this requirement, the CITY Common Council will cause the work to be done and will bill the DEVELOPER on a time and material basis. Said bill shall be paid immediately by the DEVELOPER.
2. In the event drainage problems arise within the SUBJECT LANDS or related activities on the SUBJECT LANDS, the DEVELOPER shall correct such problems to the satisfaction of the CITY Staff. Such correction measures shall include, without limitation because of enumeration, cleaning of soil, loose aggregate and construction debris from culverts, drainage ditches and streets; dredging and reshaping of siltation or retention ponds; replacing of siltation fences; sodding and seeding; construction of diversion ditches, ponds and siltation traps; and restoration of all disturbed areas. This responsibility shall continue until such time as the roads,

ditches, and other disturbed areas have become adequately vegetated and the CITY Common Council is satisfied that the DEVELOPER has restored all areas which were disturbed because of this PROJECT.

**SECTION IX. CITY RESPONSIBILITY FOR IMPROVEMENTS.**

The CITY shall not be responsible to perform repair, maintenance, or snow plowing, unless otherwise approved by the CITY Administrator, on any improvements until accepted by the CITY Common Council.

**SECTION X. BUILDING AND OCCUPANCY PERMITS.**

It is expressly understood and agreed that with respect to each phase, no occupancy permits shall be issued for any residential or commercial unit, until the CITY Engineer has determined that the following requirements which are deemed to be related to public safety, are met with respect to that phase:

- A. The installation of the first lifts of asphalt of the public street(s) providing access to and fronting a specific phase of the PROJECT for which an occupancy permit is requested has been completed and accepted by the CITY Common Council.
- B. The site grading and construction of surface and storm water drainage facilities required to serve such phase are completed, are connected with an operating system as required herein, are cleaned as needed, and are accepted by the CITY Common Council.
- C. All landscaping and removal of unwanted items, including buildings, has been certified as complete by the CITY Engineer.
- D. All required grading plans have been submitted to, reviewed by and approved by the CITY Engineer.
- E. The DEVELOPER has paid in full all permit fees as required by this agreement.
- F. All destroyed trees, brush, tree trunks, shrubs and other natural growth and all rubbish are removed from the PROJECT and disposed of lawfully.
- G. All required "as built" plans for the SUBJECT LANDS have been submitted and approved by the CITY Engineer.

- H. All public and private utilities have been installed in the SUBJECT LANDS, including street lighting fixtures (unless waived by the CITY Administrator), the sanitary sewer system, and the water system.
- I. The DEVELOPER is not in default of any aspect of this agreement.
- J. There is no default of any aspect of this agreement as determined by the CITY Administrator.

**SECTION XI. VACANT LOT MAINTENANCE EASEMENT.**

Developer hereby grants a vacant lot maintenance easement to the CITY. The easement grants the CITY the right (but not the obligation) to enter upon any vacant Lot in the SUBJECT LANDS in order to inspect, repair, or restore the property so that it is in compliance with all applicable provisions of the CITY Municipal Code. A vacant lot shall include any lot that does not have an occupied principal structure that is used for single family purposes at the time of inspection, repair or restoration. All costs incurred by the CITY in exercising its right to inspect, repair or restore the Lot shall be borne by the owner of the Lot necessitating such inspection, repair or restoration and if not paid for by such Lot owner within forty- five (45) days of receipt of any invoice therefore, may be placed against the tax roll for the Lot and collected as a special charge by the CITY.

**SECTION XII. MISCELLANEOUS REQUIREMENTS:**

The DEVELOPER shall:

- A. **EASEMENTS.** Provide any easements including vision easements on SUBJECT LANDS deemed necessary by the CITY Engineer before the CSM is signed or on the CSM and such easements shall be along lot lines if at all possible. Similarly, upon request of Developer, CITY will grant necessary easements over adjoining lands controlled by the CITY necessary or required for the development and operation of the PROJECT.
- B. **MANNER OF PERFORMANCE:** Cause all construction called for by this agreement to be carried out and performed in a good and workerlike manner.
- C. **SURVEY MONUMENTS:** Properly place and install any lot, block or other monuments required by State Statute, CITY Ordinance or the CITY Engineer.
- D. **[INTENTIONALLY OMITTED]**

- E. RESERVE CAPACITY ASSESSMENTS - SANITARY SEWER. The CITY hereby waives any and all assessments otherwise due under CITY ordinances.
- F. RESERVE CAPACITY ASSESSMENTS – WATER. The CITY agrees to pay a reserve capacity assessment respecting Phase I & II as required in Section 22.23(2)(b) and other relevant sections of the CITY Code, to be used for the costs of reserve capacity created by the CITY in the CITY's water system for the benefit of the DEVELOPER. The DEVELOPER agrees to pay a reserve capacity assessment respecting Phase III, if constructed, in an amount not to exceed \$58,000.
- G. UNDERGROUND UTILITIES. Install all electrical, telephone, cable and gas utilities underground. Coordination of installation and all costs shall be the responsibility of the DEVELOPER.
- H. PERMITS. Provide and submit to the CITY requesting the same, valid copies of any and all governmental agency permits.
- I. REMOVAL OF TOPSOIL. The DEVELOPER agrees that no topsoil shall be removed from the SUBJECT LANDS without approval from the CITY Engineer.
- J. PARK AND PUBLIC SITE DEDICATION IMPACT FEES. The CITY waives any and all park and site dedication fees otherwise due under applicable CITY Ordinance.
- K. PREVAILING WAGE RATES AND HOURS OF LABOR. If any aspect of the PROJECT involves a project of public works that is regulated by Wisconsin Statutes Section 66.0903, then: (1) The Developer shall pay wage rates not less than the prevailing hourly wage rate as described and regulated pursuant to such statutes and related laws; and (2) The Developer shall comply with the prevailing hours of labor as described and regulated pursuant to such statutes and related laws; and (3) The Developer shall fully comply with the reporting obligations, and all other requirements of such laws; and (4) The Developer shall ensure that the Developer's subcontractors also fully comply with such laws. The Developer's General Indemnity obligation of this Agreement shall apply to any claim that alleges that work contemplated by this Agreement is being done, or has been done, in violation of prevailing wage rates, prevailing hours of labor, or Wisconsin Statutes Section 66.0903, for any work arising out of this agreement.

- L. NOISE. Make every effort to minimize noise, dust and similar disturbances, recognizing that the SUBJECT LANDS are located near existing residences. Construction of improvements shall be conducted during hours authorized under City ordinance.
- M. DEBRIS. Have ultimate responsibility for cleaning up debris that has blown from buildings under construction within the SUBJECT LANDS until such time as all improvements have been installed and accepted by the CITY Common Council. The CITY shall make a reasonable effort to require the contractor, who is responsible for the debris, to clean up the same or to hold the subject property owner who hired the contractor responsible. The DEVELOPER and/or subject property owner shall clean up the debris within forty-eight (48) hours after receiving a notice from the CITY Engineer. If said debris is not cleaned up after notification, the CITY will do so at the DEVELOPER'S and/or subject property owner's expense.
- N. DUTY TO CLEAN ROADWAYS. The DEVELOPER shall be responsible for cleaning up the mud and dirt on the roadways until such time as the final lift of asphalt has been installed. The DEVELOPER shall clean the roadways within forty-eight (48) hours after receiving a notice from the CITY Engineer. If said mud, dirt and stone is not cleaned up after notification, the CITY will do so at the DEVELOPER's expense. The CITY will do its best to enforce existing ordinances that require builders to clean up their mud from construction.
- O. PUBLIC CONSTRUCTION PROJECTS. If any aspect of the PROJECT involves a public construction project subject to the State law, all requirements of the State Public Construction Bidding Law must be satisfied, including but not limited to, providing a performance bond.
- P. ZONING CODE. The DEVELOPER acknowledges that the lands to be developed are subject to the CITY Zoning Code.
- Q. DIGGERS HOTLINE. The DEVELOPER shall become a member of Diggers Hotline and provide evidence such membership to the CITY Clerk before commencing any land disturbing activities on the Subject Lands. The DEVELOPER shall maintain said membership until all subsurface improvements required under Section I have received final acceptance from the CITY as provided in Section III.

**SECTION XIII. PAYMENT OF COSTS, INSPECTION & ADMINISTRATIVE FEES.**



The CITY waives any and all fees, expenses, costs and disbursements which shall be incurred by the CITY in connection with this PROJECT or relative to the construction, installation, dedication and acceptance of the PROJECT improvements covered by this agreement, including without limitation by reason of enumeration, design, engineering, review, supervision, inspection and legal, administrative and fiscal work which otherwise may be due from DEVELOPER under applicable CITY ordinances.

**SECTION XIV. GENERAL INDEMNITY.**

In addition to, and not to the exclusion or prejudice of, any provisions of this agreement or documents incorporated herein by reference, the DEVELOPER shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the CITY, its officers, agents, employees and independent contractors growing out of this agreement by any party or parties 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 does not apply to any claims arising out of the CITY's negligence or willful acts of bad faith. The DEVELOPER shall also name as additional insureds on its general liability insurance the CITY, its officers, agents, employees and any independent contractors hired by the CITY to perform services as to this PROJECT and give the CITY evidence of the same upon request by the CITY.

**SECTION XV. CITY RESPONSIBILITY.**

A. The CITY agrees to pay for the following oversizing costs, if it is determined by the CITY that the oversizing is necessary. The oversizing costs shall be calculated by viewing bids for similar improvements to determine the cost differences between the stated sizes and shall include design, engineering and other soft costs reasonably allocated to such work. The CITY reserves the right to determine the bid amounts to be used in this calculation.

1. Cost of increasing the size of the water main from [\_\_\_\_\_] inches to a larger size, including the cost of larger gate valves.
2. Cost of increasing the size of the sewer main from [\_\_\_\_\_] inches to a larger size.
3. A reasonable allowance for DEVELOPER'S costs to remove and haul away contaminated soils, if applicable.

B. The CITY agrees to allow the DEVELOPER to connect to the CITY's municipal water system and sewerage system at such time as the water system and sanitary sewer system required herein has been dedicated to and accepted by the CITY of SECTION XIX. INSURANCE: The DEVELOPER, its contractors, suppliers and any other individual working on the SUBJECT LANDS in the performance of this agreement shall maintain at all times until the expiration of the guarantee period, insurance coverage in the forms and in the amounts as required by the CITY.

**SECTION XVI. EXCULPATION OF CITY CORPORATE AUTHORITIES.**

The parties mutually agree that the Mayor, the Common Council, and/or the Clerk, entered into and are signatory to this agreement solely in their official capacity and not individually, and shall have no personal liability or responsibility hereunder; and personal liability as may otherwise exist, being expressly released and/or waived.

**SECTION XVII. GENERAL CONDITIONS AND REGULATIONS.**

All provisions of the CITY Ordinances are incorporated herein by reference, and all such provisions shall bind the parties hereto and be a part of this agreement as fully as if set forth at length herein. This agreement and all work and improvements required hereunder shall be performed and carried out in strict accordance with and subject to the provisions of said Ordinances.

**SECTION XVIII. ZONING.**

The CITY does not guarantee or warrant that the SUBJECT LANDS will not at some later date be rezoned, nor does the CITY herewith agree to rezone the lands into a different zoning district. It is further understood that any rezoning that may take place shall not void this agreement.

**SECTION XIX. COMPLIANCE WITH CODES AND STATUTES.**

The DEVELOPER shall comply with all current and future applicable codes of the CITY, County, State and federal government and, further, DEVELOPER shall follow all current and future lawful orders of any and all duly authorized employees and/or representatives of the CITY, County, State or federal government.

**SECTION XX. AGREEMENT FOR BENEFIT OF PURCHASERS.**

The DEVELOPER agrees that in addition to the CITY'S rights herein, the provisions of this agreement shall be for the benefit of the purchaser of any lot or any interest in any lot or parcel of land in the SUBJECT LANDS.

**SECTION XXI. ASSIGNMENT.**

The DEVELOPER shall not assign this agreement without the written consent of the CITY. If required by the CITY, the assignee must agree to all terms and conditions of this document in writing.

**SECTION XXII. PARTIES BOUND.**

The DEVELOPER or its assignees shall be bound by the terms of this agreement.

**SECTION XXIII. HEIRS & ASSIGNS.**

This agreement is binding upon the DEVELOPER, owners, their successors and assigns, and any and all future owners of the SUBJECT LANDS (the "successors"). This Section allows for CITY enforcement of the terms and conditions of this agreement against all such successors, as though such successors were the DEVELOPER.

**SECTION XXIV. SALES OF LOTS.**

No lots in the SUBJECT LANDS may be sold until Final Acceptance of all public improvements have been granted by the CITY, unless otherwise expressly approved in writing by the CITY Common Council.

**SECTION XXV. MORTGAGEE CONSENT.**

The undersigned mortgagee of the property identified in **EXHIBIT A**, consents to this Developer's Agreement, and agrees that its lien of mortgage shall be subordinate to the rights of the CITY granted by this Developer's Agreement.

**SECTION XXVI. RECORDING.**

This agreement shall be recorded against the SUBJECT LANDS, and shall run with the land.

**SECTION XXVII. AMENDMENTS.**

The CITY and the DEVELOPER, by mutual consent, may amend this Developer's Agreement at any meeting of the CITY Common Council. The CITY shall not, however, consent to an amendment until after first having received a recommendation from the CITY'S Plan Commission.

**IN WITNESS WHEREOF**, the DEVELOPER and the CITY have caused this agreement to be signed by their appropriate officers and their corporate seals (if any) to be hereunto affixed in three original counterparts the day and year first above written.

SIGNATURE PAGES ON NEXT PAGE

**DEVELOPER:**

**RACINE HARBORSIDE, LLC**

By: Royal Capital Group, LLC, Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF MILWAUKEE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of Royal Capital Group, LLC, the manager of Racine Harborside, LLC.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

**CITY OF RACINE:**

By: \_\_\_\_\_  
Cory Mason, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF WISCONSIN    )  
  ) SS  
COUNTY OF RACINE    )

Personally came before me this \_\_\_\_ day of, \_\_\_\_\_, 2019, the above-named Cory Mason, Mayor, and \_\_\_\_\_, City Clerk, of the City of Racine, and to me known to be such Mayor and 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**

**SUBJECT LANDS**

**EXHIBIT B**

**PROJECT**



**EXHIBIT C**  
**CONTRACT FOR UTILITY IMPROVEMENTS**  
**[see attached]**

**DEVELOPER'S AGREEMENT**  
**CONTRACT FOR UTILITY IMPROVEMENTS**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between:

RACINE HARBORSIDE, LLC , hereinafter referred to as the "Developer" and the Racine Water Utility, Racine County, Wisconsin, hereinafter referred to as the "Utility", whose offices are located at 800 Center Street, Room 227, Racine, Wisconsin 53403.

**WITNESSETH:**

WHEREAS, in connection with the Developer's anticipated development of "@ North Beach" in the City of Racine, the Developer is required to construct and install local water facilities, as defined in the City Municipal Code and the Retail Water Service Agreement dated December 19, 2006 and in accordance with Wisconsin Public Service Commission PSC 185.53

NOW, THEREFORE, in consideration of said approval, and contingent upon the Developer's procurement of a separate Developer's Agreement with the City of Racine, the Developer agrees as follows:

**ARTICLE I: GENERAL CONDITIONS**

A. **Engaging Qualified Contractors**

The Developer agrees to engage contractors for all work included in this Agreement who are qualified to perform such work, and for local water facilities shall engage only those contractors and engineers approved for such work by the Utility (such approval not to be unreasonably withheld).

B. **Work According to Approved Plan and Specifications**

The Developer agrees to use materials and make the various installations, in accordance with the forthcoming approved plans and specifications, made a part hereof and incorporated by reference, including those standard specifications for local water facilities, in accordance with plans and specifications approved by the Utility.

C. **Payment of Review and Inspection Fees**

1. The Developer and Utility agree that there will be no charges assessed by Utility beyond the fees invoiced to Utility for professional inspection and construction review services, including preparation of as-built drawings and pressure testing of the water facilities.

2. Those costs and fees that originate from non-City of Racine employees, such as private engineering firms, shall be the actual costs as billed to the Utility by the private firm hired to perform construction inspection and management services as shown on the invoiced amount.
3. Said fees are estimated by the Utility to be \$\_\_\_\_\_ in connection with this Agreement, and the remainder shall be payable within thirty (30) days of each invoice rendered by the Utility to the Developer. Unless otherwise stated here, the Utility will invoice the Developer at monthly intervals.
4. The foregoing fee estimate represents Utility's best judgment, but the parties agree it is not a binding quotation. If the Utility becomes aware that the estimate is substantially in error, it shall immediately notify the Developer so that an addendum to the Agreement may be negotiated.

## **ARTICLE II: DEDICATION AND GUARANTEE**

### **A. Dedication and Acceptance of Public Facilities**

1. The Developer agrees that all dedications to the public of lands, easements and improvements covered by the accompanying Agreement are made without conditions, and shall provide evidence that such dedications, grants of easements or other property interests are unencumbered, excepting for any encumbrances specifically permitted with respect to local water facilities by the Utility.
2. The Developer further agrees that no improvements may be offered to the Utility for acceptance of the dedications unless all review and inspection fees identified under Article I - Paragraph C, are paid in full, and that all contractors who have performed work hereunder have received payment in full for their materials and services, certified in the form of waivers, copies of which shall be presented to the Utility including as-built drawings of installed water facilities. The Utility requires AutoCAD electronic as-built drawings to incorporate into the Utility GIS.

### **B. Guarantee**

The Developer hereby agrees to guarantee all work performed under this Agreement, for a period of two (2) years from the date of final acceptance with respect to local water facilities, to the Utility. Such guarantee shall be against defects in materials or workmanship providing the Developer uses granular backfill for filling trenches and for infrastructure installation. If such a defect should appear, the Developer agrees to make the required replacement or acceptable repairs at its own expense. The expense included total and complete restoration of any disturbed surface or component of the improvements to the standard provided in the plans and specifications, regardless of improvements on lands where the repair or replacement is required. If the Developer uses other than granular backfill, the guarantee will be for a period of three (3) years from the date of final

acceptance by the Utility. In the event that valve boxes and/or stop boxes are damaged by grading contractors, the Developer shall restore damaged infrastructure to like new condition.

The Developer or its contractor shall provide the Utility with a letter of credit or other form of security satisfactory to the Utility in the amount of 10 percent of the total water main construction cost. Utility must approve of the method of security prior to construction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

RACINE HARBORSIDE, LLC

CITY OF RACINE

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: Mayor, Cory Mason

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

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

Tara Coolidge

Title: Assistant City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott Letteney, City Attorney

(OTHER SIGNATURES)

\_\_\_\_\_  
David Brown  
Finance Director

\_\_\_\_\_  
Racine Water Utility  
Keith Haas, General Manager

**EXHIBIT D**  
**STORMWATER MANAGEMENT AGREEMENT**  
**[see attached]**

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