

REGENCY MALL AREA DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made between CITY OF RACINE, WISCONSIN, a municipal corporation, whose address is 730 Washington Avenue, Racine, Wisconsin 53403 (“City”) and RACINE MALL, LLC (“Developer”), whose address is 1190 Interstate Parkway, Augusta, GA 30909 (together, the “Parties”).

WITNESSETH

WHEREAS, Developer proposes to refurbish and rehabilitate its currently underused commercial retail property located in the City of Racine (“Regency Mall”), more particularly described in Exhibit A (“Real Estate”);

WHEREAS, the goals for the Real Estate rehabilitation include encouraging private redevelopment and improvements that promote desirable and sustainable uses, which further serve the needs of the community and visitors as well as fulfilling aesthetic character standards of the City;

WHEREAS, the City finds it necessary to redevelop an area of the City within a newly created Tax Incremental District No. 20 (“TID 20”), in order to further redevelop an area of the City, eliminate blight, grow the tax base and provide a place for employment for citizens of the City and State (the “Project”);

WHEREAS, Wis. Stat. § 66.1105 empowers cities to assist redevelopment projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

WHEREAS, the Developer and the City agree that the development and improvement of the Regency Mall area shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base and job creation, and (2) comport with the Project Plan for TID 20 (Exhibit B);

WHEREAS, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions;

WHEREAS, in order to induce developer to undertake the redevelopment of the Real Estate, the City has agreed to manage and operate TID 20 and to provide other assistance to Developer as provided in this Agreement, all in accordance with the terms and conditions of this Agreement;

WHEREAS, the City finds and determines that certain cash grant payments as detailed in this Agreement are necessary and convenient to the implementation of the TID Project Plan;

WHEREAS, Developer declares that “but for” this Agreement, it would not undertake the redevelopment of the Real Estate;

WHEREAS, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights, and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1 Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the redevelopment of the Real Estate, to promote community development and job creation and to expand and enhance the tax base within the City, the City intends to manage and operate TID 20 and to provide an Annual Tax Increment Incentive to Developer over 13 years and up to maximum of \$3,500,000. The benefit to Developer is dependent on the Project generating positive increment, as set forth in this Agreement. The City intends to recover its costs through payments received from increased tax revenues generated by the Real Estate over time. The Parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein.

1.2 Land Affected. The parties acknowledge that the Project will encompass and/or affect the following Real Estate within the City of Racine, Wisconsin, consisting of five parcels, described as follows and also in Exhibit A:

- a. 5502 Durand Avenue (Parcel ID #23876050; more or less 42.20 acres);
- b. 5230 Durand Avenue (Parcel ID #23876020; more or less 5.165 acres);
- c. 5326 Durand Avenue (Parcel ID #23876041; more or less 1.121 acres);
- d. 5200 Durand Avenue (Parcel ID #23876031; more or less 2.494 acres); and
- e. 2721 South Green Bay Road (Parcel ID #23876037; more or less 0.4499 acres).

1.3 Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. **“Aggregate Minimum Project Costs”** means the minimum amount of equity Developer will invest to complete Phase 1 and Phase 2 the Project, which is Three Million Nine Hundred Ninety-Five Thousand and Sixty-Seven Dollars (\$3,995,067.00).
- b. **“Agreement”** means this Regency Mall Development Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- c. **“Annual Tax Increment Incentive”** means the yearly monetary payment to Developer provided in the Agreement that is payable until the Maximum

Cumulative Incentive Amount of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) is reached, or October 31, 2031 for tax year 2030, whichever is earlier.

- d. **“City”** means the City of Racine, Wisconsin.
- e. **“Developer”** means Racine Mall, LLC, a Wisconsin limited liability company.
- f. **“Maximum Cumulative Incentive Amount”** means the total amount Developer may receive from City in accordance with and over the course of this Agreement -- \$3,500,000; however, in no instance shall any Annual Tax Incentive Amount be paid after October 31, 2031 for tax year 2030.
- g. **“Minimum Assessed Value”** means the minimum dollar amount assigned to Parcel ID #23876050 of the Real Estate by the City Assessor for the City of Racine.
- h. **“Phase 1”** means the period of time beginning on the Signature Date and ending not later than 12 months from the Signature Date.
- i. **“Phase 1 Improvements”** means all of the improvements and items listed in Exhibit C for the purpose of completing the Project, with a minimum cost to Developer of Three Million Nine Hundred Ninety-Five Thousand and Sixty-Seven Dollars (\$3,995,067.00).
 - a. Interior Phase 1 work shall include but is not limited to: drywall cover-up of vacant bays and installation of community photographs and murals; new ceiling, including raising the existing height of the ceiling; new lighting; new flooring (carpet); public restroom renovation; and asbestos survey and removal (if necessary).
 - b. Exterior Phase 1 work shall include but is not limited to: façade and entrance improvements for each mall entrance; pedestrian level lighting and plaza amenities; landscaping and irrigation improvements; and new mall signage.
- j. **“Phase 2”** means the period of time beginning with the Signature Date and ending not later than Seven Years from the Signature Date.
- k. **“Phase 2 Improvements”** means all of the improvements and items listed in Exhibit D for the purpose of completing the Project, with a minimum cost to Developer of Three Million Five-Hundred Thousand Dollars (\$3,500,000.00).
- l. **“Project”** means all of the work and items to be completed in Phase 1 and Phase 2, listed and described in more detail in in Exhibits C and D, on the parcels listed in Exhibit A.

- m. **“Project Budget”** means a document that details all sources of funds, use of funds, financing methods, a detailed pro forma, income and expense schedules, and an analysis of the Project’s financing.
- n. **“Project Cost” or “Project Costs”** means the amounts spent on Phase 1 and Phase 2 improvements collectively.
- o. **“Property Taxes”** means all real estate taxes, personal property taxes, special charges, special assessments, and any other tax or fee that may be chargeable to the tax roll for the Real Estate.
- p. **“Property Value”** means dollar amount assigned to the Real Estate by the City Assessor for the City of Racine.
- q. **“Public Improvements”** means any public infrastructure improvements constructed by the City.
- r. **“Real Estate”** means the property listed in Section 1.2a.-e. and described in Exhibit A.
- s. **“Signature Date”** has the same meaning as provided in Section 7.21 of this Agreement.
- t. **“Tax Increment”** means the difference between the base equalized assessed value and the current year’s equalized assessed value multiplied by the current year’s mill rate for participating jurisdictions.
- u. **“Tax Incremental Law”** means Wis. Stat. § 66.1105, as amended and superseded.
- v. **“TID 20”** means the Tax Incremental Financing District Number 20 for the City of Racine.
- w. **“TID Project Plan”** means the document attached hereto as Exhibit B, including, if any, all approved amendments thereto.

1.4. Exhibits. The following exhibits are hereby attached to and incorporated into this Agreement:

- a. **Exhibit A: Legal Descriptions**
- b. **Exhibit B: TID Project Plan**
- c. **Exhibit C: Phase 1 Estimated Project Costs**
- d. **Exhibit D: Phase 2 Estimated Project Costs**
- e. **Exhibit E: Incentive Payment Schedule**

ARTICLE II DEVELOPER OBLIGATIONS

2.1 Guarantee of Minimum Costs. Developer agree that the Aggregate Minimum Project Costs for Phase 1 of the Agreement shall not be less than Three Million Nine Hundred Ninety-Five Thousand and Sixty-Seven Dollars (\$3,995,067.00) and that projected costs for Phase 2 are not less than Three Million Five-Hundred Thousand Dollars (\$3,500,000.00). The Estimated Project Cost breakdowns are provided in Exhibits C and D, but Developer is bound by the total cost, not the individual line items or their individual costs.

Notwithstanding the above, Developer agrees that the estimated project cost stated on the permit applications submitted to the City Building Department or a similar question on any other governmental agency or department permit application shall be commensurate with the Project Costs outlined in Exhibits C and D, and such permit applications shall be one source used to verify Developer's costs on the Project. The parties acknowledge that certain soft costs of construction (i.e.: engineering, architectural, environmental, legal, supervision) are not typically reflected in building permit documents, and Developer shall provide sufficient evidence of these costs to the City of Racine Director of City Development for review and confirmation.

2.2. Fee. Developer agrees to pay City a one-time non-refundable fee of \$10,000.00 to cover City's costs for review and consideration of Developer's tax incentive application. Such fee shall be used to engage a financial consultant and legal counsel to conduct financial statement reviews, project estimates of tax incremental revenues to be generated by investments, develop and negotiate the development agreement, and perform other due diligence on Developer and is a Project Cost.

2.3. Minimum Assessed Value. Developer agrees that beginning January 1, 2018 and during the entire term of the agreement, the Minimum Assessed Value for Parcel ID #23876050 of the Real Estate (commonly known as 5520 Durand Avenue, Racine Wisconsin) shall never be less than Eight Million Nine Hundred and Fifty-Four Thousand Dollars (\$8,954,000.00). The Parties contemplate that the value of the Real Estate will increase over the Minimum Assessed Value over time as Developer makes improvements to the Real Estate.

2.4. Schedule. Developer agrees that all Phase 1 Improvements will be completed within one year of the Signature Date and that all Phase 2 Improvements will be completed within seven years of the Signature Date.

2.5. Rights of Access. Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in Exhibits C and D. No compensation shall be payable nor shall any charges be made in any form by any party for the access provided in this Agreement.

2.6. Compliance with Planning and Zoning; Use. Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate, approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent.

2.7 Maintenance and Repair. Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.8. Taxes. It is understood that the land, improvements, and personal property resulting from the Project shall be subject to Property Taxes. Developer shall, within thirty days of the Signature Date, pay all delinquent real estate taxes, special charges, special assessments, and personal property taxes related to the Real Estate. Additionally, Developer shall pay before delinquent all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project. All real estate taxes, special charges, special assessments, personal property taxes and any other municipally-charged tax or fee shall be PAID IN FULL prior to the disbursement of the tax incremental incentive to Developer, its successor or assignee.

- a. Reimbursement Guarantee.** As an additional inducement and in consideration for the City entering into the Agreement, Developer agrees that in the event that Developer, its successors, assigns, or lessees challenges or protests the City Assessor's determination of the Property Value of the Real Estate to the Circuit Court for the Real Estate owned by Developer, Developer agrees reimburse City 100% of the Annual Tax Increment Incentive paid to Developer during the year the assessment was challenged or protested. Developer further agrees that any such challenge or protest shall render this Agreement terminable at the City's sole discretion. This requirement shall be a lien running with the land while this Agreement is in effect and shall bind Developer's successors, assigns, and lessees.
- b. Deficiency.** In the event the assessed value of Parcel ID #23876050 is less than Eight Million Nine Hundred and Fifty-Four Thousand Dollars (\$8,954,000.00) as of January 1, 2018 or for any tax year thereafter during the term of this Agreement, or that TID 20 fails to generate positive Tax Increment, or if there is not enough annual Tax Increment generated from all the properties within TID 20 to fund sharing of an annual cash incentive within a given year, then the City shall have no obligation to share any Tax Increment with or make any payments to the Developer or its successors or assigns within that year. This requirement shall be a lien running with the land while this Agreement is in effect.
- c. Special Charge.** In the event there is a lack of compliance for payment of the Reimbursement Guarantee, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Wis. Stat. § 66.0627, prior to any first mortgage lien on the property for the delinquent amount as calculated herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further

agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

2.9 Transfer or Sale of Real Estate. Developer agrees that unless approved by the City, Developer shall maintain ownership of Parcel ID #23876050 of the Real Estate through the completion of the Phase 1 Improvements and until such time as occupancy of the Real Estate is stabilized (to be determined in the sole discretion of the City Assessor), property facility management is established (to be determined in the sole discretion of the Director of City Development), and that there has been an initiation of payment of Property Taxes based on an increased Property Value.

- d. Notice of Intent to Transfer.** Subject to the restriction above, Real Estate within the Project may not be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the Real Estate at least 45 days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate.
- e. No Transfer to Exempt Entities.** No portion of Parcel ID #23876050 of the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the City Attorney and the Director of City Development providing for payments in lieu of taxes to the City.
- f. Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written evidence satisfactory to the City Attorney that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer, or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder. Approved assignment for purposes of development shall be exempt from this subsection.
- g. Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.

2.10 Easements. If Developer requests the installation of Public Improvements by the City, Developer shall grant the City or any public utility, at no cost, such reasonable easements as are approved by City and are necessary for Public Improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate the installation of the Public Improvement within the Real Estate provided the easement(s) have reasonable relocation and containment provisions.

2.13 Utilities.

- a. Utilities.** To the extent Developer elects to have said utilities, Developer shall be responsible for and pay for electrical power, telephone facilities, cable TV lines, natural gas facilities, and similar utility and related installations or facilities to be installed in such a manner as to make proper and adequate service available to each building in the Real Estate.
- b. Water and Sewer.** To the extent Developer elects to have said utilities, Developer shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

2.14 Record Retention. Developer understands and acknowledges that the City is subject to the Wisconsin Public Records Law. As such, Developer and City each agree to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven years from the date of the termination of this Agreement. Likewise, Developer agrees to assist the City in complying with any public records requests that it receives pertaining to this Agreement. In the event Developer decides not to retain its records as stated above, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.15 Repair and/or Replacement of Infrastructure. Developer shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be accomplished to the satisfaction of the Director of Public Works.

ARTICLE III CITY OBLIGATIONS

3.1 TID Operation. City agrees to manage and operate TID 20 beginning January 1, 2018 and at a minimum until the earlier of (1) the full term of this Agreement (October 31, 2031) or (2) the maximum incentive amount of \$3,500,000.00 has been paid to Developer pursuant to the terms of the Agreement or (3) this Agreement is terminated. This provision shall not limit City from operating TID 20 for a longer period of time, in its sole discretion.

3.2 Incentive payment. Beginning in 2019, City will provide Developer a “pay-as-you-go” annual tax incentive in an amount, calculated as of September 30 of each calendar year, equal to 90% of the gross annual Tax Increment collected in such calendar year attributable to the gross Tax Increment produced by the five parcels within the Project, described in Exhibit A, for the immediately preceding calendar year (the “Annual Tax Increment Incentive”). The first installment will be based on the 2018 tax roll collected in 2019 and payable by October 31, 2019, and by October 31st of each year thereafter, until the termination of the Agreement. The annual incentive shall continue through year 2031 for the 2030 tax roll, or until the Maximum Cumulative Incentive Amount is reached, whichever is earlier. An Incentive

Payment Schedule is attached hereto as Exhibit E.

3.3 Incentive maximum. The Maximum Cumulative Incentive Amount payable to Developer shall be **\$3,500,000.00**. In the event that the Maximum Cumulative Incentive Amount is paid to Developer prior to October 31, 2031, or the termination of this Agreement, City's obligations shall be considered fulfilled and City shall have no further obligation to pay any additional incentives or TID revenues to Developer. In the event that the Maximum Cumulative Incentive Amount is not paid to Developer prior to the expiration or termination of this Agreement, City shall not be obligated to provide any additional incentives or TID revenues to Developer that do not accrue on or before October 31, 2031.

3.4 Shortfall. If at any time during this Agreement TID 20 does not generate positive Tax Increment, or if there is not enough annual Tax Increment generated from all properties within TID 20 to fund the sharing of an Annual Tax Increment Incentive within a given year, City shall not be obligated to share any increment with Developer.

3.5 Certificate of Completion. Upon completion of Phase 2 of the improvements by the Developer and review of the improvements by the City, the City shall provide the Developer, upon request, with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the project plans for said area and any amendment or modifications thereto. The parties agree that in the event the minimum amount listed for completion of Phase 1 or Phase 2 has not been spent by Developer within the time periods listed in this Agreement, Developer shall not be in default hereunder; however, City may notify Developer of the condition, and if Developer has not completed the applicable phase within 60 days after receipt of said notice, City may terminate this Agreement, and the parties shall have no subsequent obligations hereunder.

3.6 Assistance with Zoning Changes. If necessary, the City of Racine Department of City Development shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the property being developed by Developer so that the zoning for the development is in accordance with the City's comprehensive plan for the area.

3.7 City Performance Subject to Required Government Approvals. The Developer acknowledges that several of the specific undertakings of the City described in this Agreement may require approvals from the Common Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Agreement are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.8 Subsequent Phases. Any subsequent development of the Real Estate will be addressed in a separate development agreement or an amendment to this development agreement, as the circumstances require.

**ARTICLE IV
CONDITIONS PRECEDENT TO CITY OBLIGATIONS**

4.1 Existence. Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation or other business formation.

4.2 Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer has been duly authorized to enter into this Agreement and all other agreements, documents, and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

4.3 Project Budget. Developer shall submit a Project Budget that details sources of funds, use of funds, financing methods, a detailed pro forma, income and expense schedule(s), and an analysis of the Project's financing to the City's financial consultant for the consultant's review. City acknowledges that some or all of the information to be submitted under this section is or may be private financial information or proprietary information and is or may be therefore, protected from disclosure to any third party. In the event that a third party requests the release of such information, City will notify Developer of such request to provide Developer an opportunity to object to such release.

4.4 Market assessment. Developer shall submit a market assessment of retail conditions to assist City in determining the market worthiness of the TID 20 investment.

4.5 Summary letter. Developer shall submit a Summary Letter containing all of the following:

- a. Description of the project and Project Costs;
- b. Project start and end dates;
- c. Profitability;
- d. Public benefits, including job creation and retention;
- e. Overview of private sector financing;
- f. Summary of investment projections;
- g. "But for" analysis

4.6 Approvals and Permits. Developer shall at its expense obtain all necessary approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state, or federal approvals or permits.

4.7 Lien waivers. Prior to issuing the Annual Tax Increment Incentive to Developer, Developer agrees to provide to City releases of all liens arising out of any contractor's completed performance of the Phase 1 or Phase 2 work or receipt in full covering all labor and materials of the completed Phase 1 or Phase 2 Work for which a lien could be filed.

4.8 Compliance with Law. On the date of the Certificate of Completion, Developer shall

comply in all material respects with any and all applicable federal, state, and local laws, regulations, and ordinances.

4.9 Compliance with Agreements. On the date of the Certificate of Completion, Developer shall be in material compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Taxes. Developer has paid, and shall pay when due, all federal, state and local taxes, special charges and special assessments, and shall promptly prepare and file returns for accrued taxes.

5.2 Compliance with Zoning. Developer covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

5.3 Payment. All work performed and/or materials furnished for the Project, other than any Public Improvements, shall be fully paid for by Developer.

5.4 Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

5.5 Good Standing. Developer is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

5.6 Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principals of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority, and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

5.7 No Conflict. The execution, delivery, and performance of Developer's obligations

pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument, or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

5.8 No Litigation. There is no litigation or proceeding pending or, to Developer's knowledge, threatened against or affecting Developer, its affiliated company, HULL PROPERTY GROUP, LLC, or its members, HULL 2000, LLP and JAMES M. HULL or the Project that would adversely affect the Project, Developer, its affiliated company, HULL PROPERTY GROUP, LLC, or its members, HULL 2000, LLP and JAMES M. HULL or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

5.9 Certification of Costs. Developer covenants the Phase 1 Estimated Project Costs and Phase 2 Estimated Project Costs accurately reflects the Aggregate Minimum Project Costs of the Project (other than costs associated with any Public Improvements) that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Phase 1 Estimated Project Costs and Phase 2 Estimated Project Costs submitted by Developer for the aggregate minimum costs of the Project. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Phase 1 Estimated Project Costs and Phase 2 Estimated Project Costs.

5.10 Inspection of Project. Developer shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all materials relating to the development thereof, and (b) on reasonable notice, to inspect all of Developer's books and records pertaining to the Project. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement is being completed in accordance with the approved plans for Phase 1 and Phase 2 and the terms and conditions of this Agreement. Notwithstanding anything contained herein to the contrary, wherever it identifies that the Developer or Guarantor shall provide documents to the City, if such documents are of a sensitive or confidential nature about the finances of the Developer or Guarantor, such documents can be provided to the City's financial consultant, who will then certify to the City that the requirement has been met.

ARTICLE VI DEFAULT

6.1 Developer's Default

- a. Remedies.** In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder

which is not cured within 60 days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:

- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate, through legal process, for the purpose of correcting the default, and the City's reasonable costs in correcting same, plus interest at one and one-half percent per month, shall be paid by Developer to the City immediately upon demand;
- (2) Injunctive relief;
- (3) Action for specific performance;
- (4) Action for money damages;
- (5) To the extent the City proves its damages, obtain repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy of the amount of the special charge or assessment; and

b. Reimbursement. Any amounts reasonably expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorney's fees, and any amounts expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

c. Failure to Enforce Not a Waiver. Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.

6.2 City Default

a. Remedies. In the event of the City's default hereunder which is not cured within 60 days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:

- (1) Injunctive relief;

(2) Action for specific performance; and

(3) Action for money damages;

b. Remedies are Cumulative. All remedies provided herein shall be cumulative, and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

c. Failure to Enforce Not a Waiver. Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

6.3 Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall share the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence a court action.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Assignment. Except as provided in Section 2.9, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than 45 days advance written notice of any intended assignment.

7.2 Nondiscrimination. In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction, as defined herein, and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the forgoing grounds. Discriminate, discrimination, and restriction refer to any type of act or refusal to act that is based to any degree on a consideration by the actor of the age, sex, race, color, veteran's status, disabled veteran's status, religion, disability, national origin, marital status, sexual orientation, or familial status of any person.

7.3 No Personal Liability. Under no circumstances shall any elected and appointed official, officer, employee or authorized representative or volunteer of the City, and each of them, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

7.4 Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of

enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than 90 days.

7.5 Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association, or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

7.6 Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum 90 days. The Department of City Development shall otherwise oversee the day-to-day operation of this Agreement.

7.7 Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) 5 days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) 3 business days after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

- To the City: Attn: City Clerk
 City of Racine
 730 Washington Avenue
 Racine, WI 53403

- with copy to: Attn: Executive Director
 Department of City Development
 City of Racine
 730 Washington Avenue
 Racine, WI 53403

- To the Developer: Attn: James M. Hull
 Racine Mall, LLC
 1190 Interstate Parkway
 Augusta, GA 30909

7.8 Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be

instituted exclusively in the courts of the State of Wisconsin and venued in Racine County. Each part waives its right to change venue.

7.9 Conflict of Interest. Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer is familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, and other provisions of the City of Racine Code of Ethics, which Code of Ethics is found in Chapter 2, Article VII, of the City of Racine Municipal Code. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement.

7.10 Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

7.11 Disclaimer Relationships. Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal, or agent limited or general partnership, or joint venture, or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, or subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees, and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

7.12 Severability. Should any part, term, portion, or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into the first instance.

7.13 Termination. Except for those Sections herein which survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate on October 31, 2031. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City) and Section 7.9 (Conflict of Interest) hereof, and because it is a "pay as you go" TID, Developer may terminate the Agreement at any time, and the parties shall be released from any obligations that subsequently accrue. Any payment of Tax Increment for the year of termination shall be paid, but subsequent payments shall not, and Developer shall provide a plan of payment designating the payee of any outstanding payments of Tax Increments for approval by City.

7.14 Covenants Running with Land. All of the covenants, obligations, and promises of

Developer set forth herein shall be deemed to encumber and run with the Real Estate and shall bind any successor, assignee, or transferee of Developer in such parcel until such time as this Agreement is terminated.

7.15 Amendments. No agreement or understanding changing, modifying, or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

7.16 Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday, or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

7.17 JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

7.18 Construction. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents, and captions contained in the Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

7.19 Incorporation of Proceedings and Exhibits. All motions previously adopted, approvals previously granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

7.20 Entire Agreement. This writing including all exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby

terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

7.21 Execution of Agreement. Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours within 30 business days after its final adoption by the City. Developer’s failure to sign, execute and cause this Agreement to be received by the City within this time period shall render the Agreement null and void unless otherwise authorized by the City. After Developer has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of the Agreement (“Signature Date”).

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City’s signature below.

Dated this ____ day of _____, 2017.

CITY OF RACINE

By: _____
Dennis Wiser, Mayor

By: _____
Janice M. Johnson-Martin, City Clerk

STATE OF WISCONSIN)
)SS
RACINE COUNTY)

Personally came before me this _____ day of _____, 2017, the above named Dennis Wiser as Mayor, and Janice M. Johnson-Martin as City Clerk of the City of Racine, to me known to be the person(s) who executed the foregoing instrument.

Print Name: _____
Notary Public, State of Wisconsin
My commission: _____

Approved as to Form:

Provision has been made to pay the liability that will accrue under the above Agreement.

Scott R. Letteney, City Attorney

David L. Brown, Finance Director

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RACINE MALL, LLC

By: _____

Print Name: James M. Hull

Title: Manager

STATE OF WISCONSIN)
)SS
RACINE COUNTY)

Personally came before me this _____ day of _____, 2017, the above named James M. Hull, Manager of Racine Mall, LLC, to me known to be the person(s) who executed the foregoing instrument.

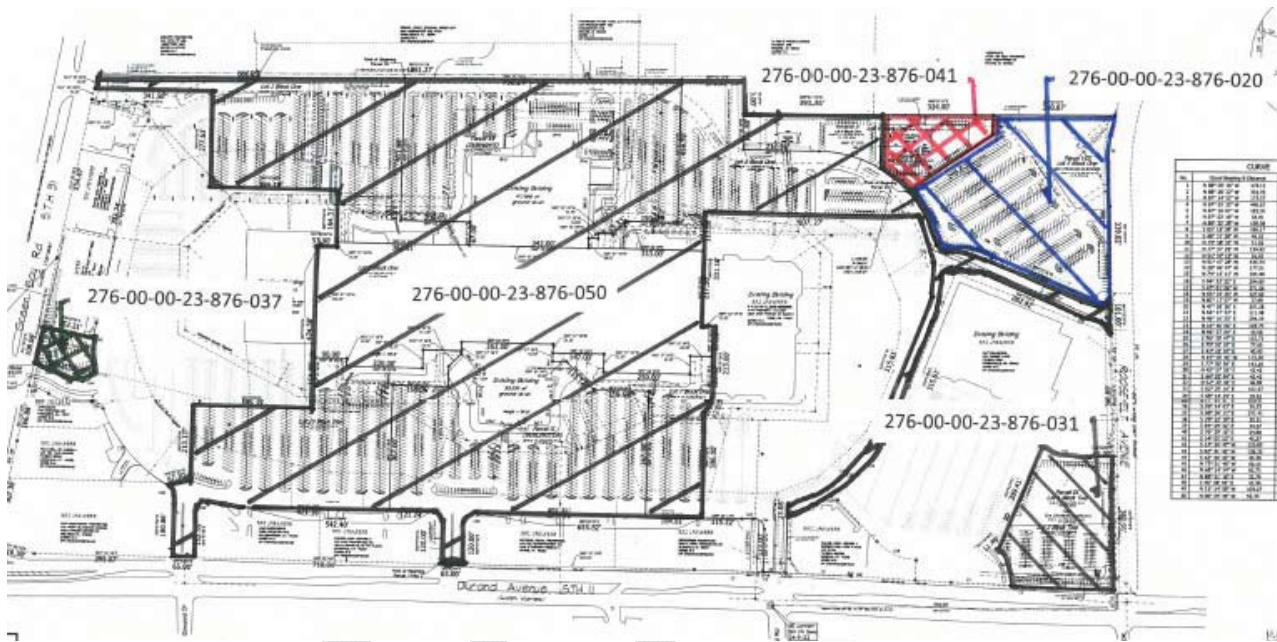
Print Name: _____
Notary Public, State of Wisconsin
My commission: _____

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Exhibit A

Legal Descriptions

The Real Estate comprises the five parcels located along Durand Avenue located near the intersection with Green Bay Road, identified as Parcel ID #23876050, Parcel ID #23876020, Parcel ID #23876031, Parcel ID #23876037 and Parcel ID #23876041 and configured as shown below.



DK

Exhibit B

TID #20 Project Plan

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Exhibit C

Phase 1 Estimated Project Costs

Phase I: Regency Mall Interior & Exterior Renovation Estimated Project Costs

ITEM	#	UNIT	COST/UNIT	TOTAL COST
Interior Renovations				
Interior Common Area Renovations	65,712	SF	\$30.86	\$2,027,609
Mall Restroom Upgrades	2	EA	\$78,400	\$156,800
Drywall vacant bays + murals	1	LS	\$100,800	\$100,800
Asbestos Survey/Abatement	1	LS	\$11,200	\$11,200
Total Interior Renovations				\$2,296,409
Exterior Renovations				
Façade Improvements (Front Left)	105.0	SF	\$1,568	\$164,640
Façade Improvements (Front Right)	70	SF	\$1,568	\$109,760
Façade Improvements (Back left)	66	SF	\$1,568	\$103,488
Façade Improvement (Back left)	66	SF	\$1,568	\$103,488
Pedestrian Lighting	16	EA	\$3,640	\$58,240
Monument Signage @ Main Entrances	6	EA	\$50,400	\$302,400
Communication Board (reader board)	1	EA	\$403,200	\$403,200
Total Exterior Renovations				\$1,245,216
Site Work				
Landscaping & Irrigation	1	Estimate	\$151,200	\$151,200
Concrete and Asphalt Improvements	1	Estimate	\$112,000	\$112,000
Total Site Work				\$263,200
Project Contingency				
Based upon 5% of all Project Costs	5%			\$190,241
Total Contingency				\$190,241
TOTAL PHASE I COSTS				\$3,995,067

Exhibit D

Phase 2 Estimated Project Costs

In Phase II of the project, the developer would look to recruit new tenants by providing incentives for new tenant build-outs of 20,000 s.f. of space within the mall. Each specific new tenant has specific requirements, which are unknown until a lease is signed. According to the Hull Group, the new tenant buildouts cost approximately \$125/s.f. to “white box” and outfit a new tenant space, which include:

- \$80/s.f. for buildout costs (e.g., ceilings, walls, floor coverings, and entrance facades) to provide each tenant with a “white box.”
- \$45/s.f. for a tenant allowance (e.g., paid to tenant for fixtures, display cases, and signage).

The 20,000 total square feet will be divided into various stores of differing sizes. The Hull Group feels it must “jump start” the re-tenanting of the mall with aggressive lease terms and a minimum of 20,000 sq ft of shops to show positive momentum.

The co-investment applies to anchor stores. According to Hull Group, after the mall owners, with TID assistance, has made significant sacrificial investments into the transformation of Regency Mall, they wish to engage with the anchor stores and ask them to improve their stores. The Hull Property Group, through a TID incentive, will match their investment dollar-for-dollar, up to \$500,000 each. Specifically, Hull Group will require that lighting and flooring improvements be made as these are the most notable changes customers will notice.

The developer also wishes to encourage existing tenants to improve their spaces and re-invest in their rented spaces. Co-investments are another way of saying “developer incentives” to encourage existing stores to stay in their location. The developer believes that most of the anchor tenants will stay in their existing locations and would be encouraged to reinvest in their stores if there is an incentive provided to the companies.

Phase II: New Tenant Build-outs and Co-investment Estimated Project Costs

ITEM	#	UNIT	COST/UNIT	TOTAL COST
New tenant buildouts	20,000	SF	\$125.00	\$2,500,000
Co-investment #1	1	EA	\$500,000	\$500,000
Co-investment #2	1	EA	\$500,000	\$500,000
TOTAL PHASE II COSTS				\$3,500,000

EXHIBIT E
Incentive Payment Schedule

Contract Year	YEAR	1-Jan	31-Jul	15-Aug	30-Sep	31-Oct	15-Dec
	2017 Base Valuation Year						
	2018	Developer: 2017 taxes due	2017 Property taxes settled with County				2018 tax bills go out
1	2019	Developer: 2018 taxes due	2018 Property taxes settled with County	City: Determine payment for 2018	City: Cut Check to Developer		2019 tax bills go out
2	2020	Developer: 2019 taxes due	2019 Property taxes settled with County	City: Determine payment for 2019	City: Cut Check to Developer		2020 tax bills go out
3	2021	Developer: 2020 taxes due	2020 Property taxes settled with County	City: Determine payment for 2020	City: Cut Check to Developer		2021 tax bills go out
4	2022	Developer: 2021 taxes due	2021 Property taxes settled with County	City: Determine payment for 2021	City: Cut Check to Developer		2022 tax bills go out
5	2023	Developer: 2022 taxes due	2022 Property taxes settled with County	City: Determine payment for 2022	City: Cut Check to Developer		2023 tax bills go out
6	2024	Developer: 2023 taxes due	2023 Property taxes settled with County	City: Determine payment for 2023	City: Cut Check to Developer		2024 tax bills go out
7	2025	Developer: 2024 taxes due	2024 Property taxes settled with County	City: Determine payment for 2024	City: Cut Check to Developer		2025 tax bills go out
8	2026	Developer: 2025 taxes due	2025 Property taxes settled with County	City: Determine payment for 2025	City: Cut Check to Developer		2026 tax bills go out
9	2027	Developer: 2026 taxes due	2026 Property taxes settled with County	City: Determine payment for 2026	City: Cut Check to Developer		2027 tax bills go out
10	2028	Developer: 2027 taxes due	2027 Property taxes settled with County	City: Determine payment for 2027	City: Cut Check to Developer		2028 tax bills go out
11	2029	Developer: 2028 taxes due	2028 Property taxes settled with County	City: Determine payment for 2028	City: Cut Check to Developer		2029 tax bills go out
12	2030	Developer: 2029 taxes due	2029 Property taxes settled with County	City: Determine payment for 2029	City: Cut Check to Developer		2030 tax bills go out
13	2031	Developer: 2030 taxes due		City: Determine payment for 2030	City: Cut Check to Developer		2031 tax bills go out

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