

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

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between:

Ashley Capital, 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 Enterprise Business Park Phase II in the Village of Sturtevant, 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 Village of Sturtevant, 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 (The Developer's consultant) as shown on the invoice amount.
3. Said fees are estimated by the Utility to be \$20,000 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.

Ashley Capital, LLC

CITY OF RACINE

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

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

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

Title: Mayor, John Dickert

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

ATTEST:

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

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

Janice Johnson-Martin  
Title: City Clerk

APPROVED AS TO FORM:

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

(OTHER SIGNATURES)

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