

**460 W 1st St. – RESIDENTIAL SINCLE FAMILY / DUPLEX LOT**

**(ZONED R2)**

**DEVELOPER’S AGREEMENT**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by and between the CITY OF RICHLAND CENTER, a municipal corporation of the State of Wisconsin, hereinafter called “City” and \_\_\_\_\_, hereinafter called “Developer”.

WHEREAS, Developer has purchased or acquired certain land owned by the City, hereinafter called the “Development Parcel”. The Development Parcel includes the lot at **460 W. 1<sup>st</sup> Street of the SCHOOLCRAFT BLOCK 84 E 1/2 OF LOTS 7 & 8** located in the City of Richland Center, Richland County, Wisconsin, and as further described [legal description] attached hereto and labeled as Exhibit No. 1; and

WHEREAS, Developer plans to improve the Development Parcel and the City imposes certain requirements which must be provided for; and

WHEREAS, City, at the **Tuesday, August 1<sup>st</sup>, 2023** Common Council meeting, has given approval for the execution of this agreement for the purpose of development,

NOW, THEREFORE and in consideration of the approval of the City to sell the Development Parcel property, the Developer and City promises, covenants and agrees as follows:

**SECTION 1. PARTIES BOUND**

This Agreement shall be binding upon the Developer, its heirs, executors, administrators, successors or assigns.

A "Notice of Developer's Agreement" or the “Developer’s Agreement” shall be recorded at the Register of Deeds Office, Richland County, Wisconsin, which shall be legal notice of this agreement.

This Agreement is made in conjunction with the Offer to Purchase (alternatively referred to as “Sales Contract”) and made a part hereof and incorporated by reference herein as part of this Agreement.

## **SECTION 2. CONSTRUCTION REQUIREMENTS**

### **2.1 - Restricting Type of Development upon Lot.**

This lot may be used for the development of a **single family or a duplex home.** (Subject to City Zoning Ordinances).

### **2.2 - Minimum Building Standards.**

Developer agrees to construct the Development according to the following minimum building standards:

- Minimum roof pitch of 4/12;
- Exterior finishes and architectural design elements of front elevation must include multiple design features that may include architectural millwork, window and door trim, shutters, or multiple siding finishes including brick, stone or architectural siding.
- Color of finishes shall be substantially similar or complement the surrounding homes.
- Modular and prefabricated homes shall be allowed.
- Manufactured housing and single or double wide structures with permanent metal frames will not be allowed.

### **2.3 – Development Review and Approval.**

The following items must be reviewed and approved by the **Economic Development Director, the City Zoning Staff, and the City Building Inspector** prior to the commencement of construction:

- Building Design – Site Plan, Elevations, Construction Plans
- Height of concrete wall or footing above curb elevation
- Exterior Finish Types
- Color Schedules

## **2.4 – Time of Performance.**

The developer shall perform all acts necessary and in good faith to complete construction of the Development within the following schedule:

- A. Developer shall acquire a **building permit** for the Development **within 272 days** from the date of execution of this Agreement.
- B. Developer shall **complete excavation, installation and backfill of the building foundation** within **365 days** from the date of execution of this Agreement.
- C. Developer shall **have construction completed, indicated by the issuance of an occupancy permit by the City of Richland Center Building Inspector** **within 545 days** from the date of execution of this Agreement.
- D. Time is of the essence.
- E. Failure of Developer to meet the agreed upon completion dates may result in liquidated damages charged against Developer's Performance Deposit as outlined in Section 3 below.

## **SECTION 3. PERFORMANCE DEPOSIT.**

Upon execution of the Development Agreement and Sales Contract, Developer shall deliver to the **City a Performance Deposit in the amount \$10,000.00**. The Performance Deposit shall be retained by the City as security for the faithful performance of Developer's obligations pursuant to the Development Agreement.

- A. Failure by Developer to perform in accordance with Section 2.4 above, shall result in liquidated damages charged against Developer's Performance Deposit as follows:
  - 1. Failure to perform according to Section 2.4 A, shall result in liquidated damages of **\$1,500.00**.
  - 2. Failure to perform according to Section 2.4 B, shall result in liquidated damages of **\$2,500.00**.
  - 3. Failure to perform according to Section 2.4 C, shall result in liquidated damages of **\$4,500.00**.
  - 4. In addition, each subsequent month Developer remains in breach by failing to perform according to Section 2.4 C. shall result in liquidated damages of

**\$500.00 per month.** If said breach continues monthly for a period of time in which the entire Performance Deposit amount is expended, Developer promises and agrees to pay City liquidated damages of \$500.00 per month, such damages remaining in effect until such time Developer performs according to Section 2.4 C.

5. If Developer fails to perform and the City exercises the right to claim the liquidated damages, the City shall notify Developer of the failure to perform and state the amount of liquidated damages charged against Developer.

B. If Developer performs in accordance with Section 2.4 above, the City shall release an amount of the Performance Deposit to Developer as follows:

1. Upon performance of Section 2.4 A the City shall release to Developer \$1,500.00.
2. Upon performance of Section 2.4 B the City shall release to Developer \$2,500.00.
3. Upon performance of Section 2.4 C the City shall release to Developer \$4,500.00.

C. Notwithstanding subsections A and B above, failure by Developer to perform in accordance with any other provision of this Agreement shall entitle the City to charge liquidated damages against Developer from the Performance Deposit in an amount reasonably related to the monetary loss suffered by the City. In addition, the City shall have the right to pursue all claims allowed by law.

#### **SECTION 4. NON-ASSIGNMENT.**

Without limiting the rights of the Developer under this Agreement, the Developer agrees that this Agreement and the rights, duties and obligations hereunder, including the grant of a security interest in any portion of the Property to any construction or permanent lender in order to secure indebtedness, may not and shall not be assigned by the Developer without the prior written approval of the City, which approval will not be unreasonably withheld, conditioned or denied.

In the case of a request for approval, any proposed transferee shall have all of the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations of the Developer, and, if the proposed transfer relates to a portion of the Property on which the Project is underway, such obligations to the extent that they relate to such property. Any proposed transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City and assume all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Property, such obligations, conditions and restrictions to the extent that they relate to such portion). In the event this Agreement is assigned in whole as provided in this Section, the Developer shall be released from any further obligations set forth in this Agreement accruing after the date of such assignment.

#### **SECTION 5. FORCE MAJEURE.**

If a Force Majeure Event prevents a party from complying with any one or more obligations under this Agreement, then that inability to comply will not constitute breach if: (a) that party uses reasonable efforts to perform those obligations, (b) that party's inability to perform those obligations is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (2) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (c) that party complies with its obligations under the sentences that follow. If a Force Majeure Event occurs, the non-complying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the non-complying party expects it to last. Thereafter the non-complying party shall update that information as reasonably necessary. During a Force Majeure Event, the non-complying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

#### **SECTION 6. LAW APPLICABLE**

This Agreement shall be construed under the laws of the State of Wisconsin.

**SECTION 7. RECORDING OF AGREEMENT**

The City will record, at its expense, a copy of this Agreement, or notice of this Agreement, with the Register of Deeds for Richland County.

**SECTION 8. NOTICE & DEMANDS**

All notices, demands or other communications under this Agreement shall be sufficiently given or delivered when hand-delivered or when mailed by first class mail, postage prepaid, to the parties at the addresses indicated below:

City:           Richland Center City Clerk  
                  450 South Main Street  
                  Richland Center, WI 53581

Developer:

**SECTION 9. AGREEMENT BINDING.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and each party's respective representatives, successors, and assigns.

**SECTION 10. SEVERABILITY OF PROVISIONS**

In the event that one portion of this Agreement, or the application of this Agreement to any extent is deemed invalid or unenforceable by a court of competent jurisdiction, then (unless in the judgment of the Party adversely affected thereby such provision was a material part of the consideration for their entering into this Agreement that without it they would not have entered into the Agreement) the remainder of this Agreement or the application of such provision shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 11. THIRD PARTIES**

This Agreement is made for the exclusive benefit of the Parties and is not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other party.



