

TAX INCREMENT DISTRICT NO. 8
DEVELOPMENT AGREEMENT

FIFTH AMENDED VERSION
(ALSO INCORPORATING IN PART THE FIRST, SECOND, THIRD AND FOURTH AMENDMENTS)
TO RIVERHEATH DEVELOPMENT AGREEMENT
ORIGINALLY DATED: July 15, 2009,

THIS AGREEMENT (the "Agreement") is dated as of the ____ day of _____, 2015 by and between RiverHeath LLC, a Wisconsin limited liability company (the "Developer") and the CITY OF APPLETON, a Wisconsin municipal corporation (the "City") and represents the most current version of the Agreement to date by incorporating in part the First, Second, Third and Fourth Amendments to the Agreement as well as a fifth set of amendments.

RECITALS

City and Developer acknowledge the following:

A. Developer owns the parcel of real property located in the City and described on Exhibit A, attached hereto (the "Property"). The Property is comprised of a former industrial site that requires significant infrastructure improvements prior to development.

B. In 2009 the City created Tax Increment District No. 8 (the "District") pursuant to Section 66.1105, Wis. Stat. (the "Tax Increment Law") and approve a plan for the redevelopment of the District (the "Project Plan"). The Property is located within the boundaries of the District.

C. Subject to obtaining the financial assistance set forth herein, Developer intends to undertake a mixed use development of the Property (the "Project") that will increase its

value and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole. The Project is consistent with the TIF Project Plan for TIF 8.

D. The City desires to encourage economic development including the elimination of slum and blight, expand its tax base, and create new jobs within the City, the District and the Property. The City finds that the development of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents and serve a public purpose in accordance with state and local law.

E. The Project would not occur without the use of Tax Incremental Financing.

F. The City, pursuant to Common Council Action dated July 15, 2009, has approved this Agreement and authorized the execution of the Agreement by the proper City officers on the City's behalf. Additional amendments as reflected in this most recent version of the Agreement have been approved pursuant to Common Council action dated October {insert date}, 2015. All other terms and conditions of the Development Agreement between RiverHeath, LLC and the City of Appleton, including previous amendments consistent with this Amendment, shall remain in full force and effect.

G. The Developer has approved this Agreement and authorized Mark Geall to execute this Agreement on the Developer's behalf.

H. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

ARTICLE 1
PURPOSES - DEFINITIONS

1.1 Purpose of Agreement. The parties have agreed upon a plan for a mixed use development comprised of residential, office and retail at the Development Area (the “Development”). The purpose of this Agreement is to formalize and record the understandings and undertakings of the parties, supplement previous amendments to this Agreement and provide an updated framework within which the redevelopment of the land will take place.

1.2 The terms listed below shall be defined for the purposes of this Agreement as follows:

1.2.1. **City** means the City of Appleton, a Wisconsin Municipal Corporation. The City may also be referred to as the City of Appleton.

1.2.2. **Closing** means the satisfactory completion, on the part of all parties, of all undertakings as specified in Section 3.9 as related to the Development.

1.2.3. **Development** means the overall construction of the improvements and uses anticipated by the Development Plan and this Agreement for the Development Area.

1.2.4. **Development Area** means the sum of all property described in Exhibit A, and constitutes the total boundaries of the project for which this Agreement is provided.

1.2.5. **Development Plan** means the Development as shown on Exhibit C as improved by the site improvements outlined in Exhibit B and as further described by this Agreement.

1.2.6. **Developer** means RiverHeath, LLC, a Wisconsin Limited Liability Company.

1.2.7. NOTE: City and Developer acknowledge that the terms and conditions of this section are satisfied as of the Fifth Amended Version of this Agreement. This section remains in the Agreement for historical purposes. *Phase 1 means the acquisition of the property, remediation, site preparation work including building demolition, development and construction of the temporary road to provide access to the site in 2009 when Banta Court is not available due to the College Avenue Bridge Construction, filling in the canal consistent with the terms of this Agreement.*

1.2.11. **Site Plan** means the specific physical layout of the Development Area as shown on the Development Plan.

1.2.12. **Zoning Code** means Chapter 23 of the Code of Ordinances of the City of Appleton. The Zoning Code may also be referred to as the “Code”.

ARTICLE 2 DESCRIPTION OF DEVELOPMENT

2.1 Development Area. The Development includes the land area described in full in Exhibit A as previously defined in the Agreement as the Development Area. The Development Area will be redeveloped and improved with residential development, commercial/office and retail development, with site improvements as described and depicted in the attached Exhibit B.

ARTICLE 3 UNDERTAKINGS OF THE DEVELOPER

The Developer agrees that it shall:

3.1. Developer has commenced the Project and shall complete same in accordance with all applicable City zoning and building codes, fire codes, ordinances and regulations. The

general components of the Project are set forth on Exhibit B, attached hereto. All project costs expended by Developer, excluding temporary road and expenses incurred before the date of this Agreement, under this Article 3, and eligible for funding pursuant to §66.1105 of the Wisconsin Statutes, are referred to as “Developer Costs”. Developer Costs shall include, without limitation, costs for the construction of improvements, including hard and soft construction costs, architectural fees, construction period interest, civil engineering fees, general contractor fees, infrastructure improvements, environmental remediation costs, demolition, public parking facilities, and the clearing, grading and redevelopment of the Project, and other costs permitted pursuant to Section 66.1105, Wis. Stat.

3.2. Developer warrants and represents to the City that but for the assistance to be provided by the City under Article 4, herein, Developer would not be able to proceed with the Project.

3.3. [This section intentionally left blank.]

3.4. NOTE: City and Developer acknowledge that the terms and conditions of this section are satisfied as of the Fifth Amended Version of this Agreement. This section remains in the Agreement for historical purposes. *Prepare site plans, specifications, development timetables, closing timetables and budgets for redevelopment and construction work to be undertaken in Phase 1.*

3.5. Prepare site plans, specifications and budgets for redevelopment and construction work to be undertaken in order to complete components of the Development.

3.6. Developer shall have a traffic impact analysis (TIA) completed prior to February 1, 2016 by a qualified firm or individual mutually agreed upon by the Developer and City’s Public Works Director. It shall include an analysis of the anticipated impact due to an increase,

or projected increase, in the traffic generated at the John Street/Banta Court and Newberry Street/Walter Avenue intersections as a result of the full RiverHeath Development as well as new development or redevelopment in that vicinity.

3.7. [This section intentionally left blank.]

3.8. Developer has presented an Implementation Plan for the Project and an outline of a management plan and these are attached as Exhibits D and E respectively.

3.9. Secure financing in amounts necessary to complete the Development and Developer warrants and represents to the City that the taxable value increment increase for the project shall be at least Fifty Five Million Dollars (\$55,000,000).

3.10. The City recognizes that in the current economic environment, approval of a Tax Increment District and approval of a Development Agreement may be necessary prior to the Developer obtaining full financing for this project. For the purpose of facilitating this joint approval process, the City has approved the creation of Tax Increment District 8, and will approve this Development Agreement with the contingency that prior to the City incurring any obligation to the Developer pursuant to the terms of this Agreement, the following information and procedures shall occur:

3.10.1. NOTE: City and Developer acknowledge that the terms and conditions of this section are satisfied as of the Fifth Amended Version of this Agreement. This section remains in the Agreement for historical purposes. *The City shall review the final terms and conditions for any financing obtained. A copy of the final approval and conditions of the approval for financing shall be provided directly to the City from an independent lending provider, by certified mail, to the City's Director of Community Development and the City's Finance Director.*

3.11. Cooperate with the City to facilitate the City's performance under Article 4.

3.12. The developer shall submit expense information to the City's Director of Finance for approval by June 30th and December 31st of any given year.

3.13. Design and construct, following City standards, the DNR required habitat enhancement and mitigation proposal approved by the Wisconsin DNR on June 14, 2011, solely at Developer's expense, as identified on amended Exhibit F.

3.14. Developer agrees to construct a riverfront trail in the area described in Exhibit G. Trails shall be constructed to ADA and City standards including a ten foot (10') minimum width paved with asphalt over a twelve foot (12') gravel base. Prior to the trail's construction, Developer agrees to provide the City's Director of Parks, Recreation and Facilities Management with construction specifications for review and approval. Also, prior to construction, City and Developer shall enter a trail maintenance agreement. Developer is responsible for obtaining any permits that may be required for the trail construction. The Developer agrees to grant the City an easement to the trail for pedestrian access. Granting of the easement and construction of the trail shall be completed by August 31, 2016. Subsequent to that date, if the terms of this section have not been met, the City reserves the right to withhold issuance of building and/or occupancy permits for the Development.

3.15. Developer shall be responsible for filling the canal as approved by the City of Appleton and described in the Developer's Chapter 30 permit, a copy of which is attached hereto as Exhibit H.

3.16. The Developer shall be solely responsible for the costs of the installation of streets within the Development except that portion being completed by the City as indicated in

Paragraph 4.7 as amended. Streets within the Development shall remain private streets except where specifically stated in this Agreement. In addition, all streets within the Development shall be constructed according to engineering plans and specifications that have previously been approved by the City. Plans and specifications for construction of streets shall not be amended except by written change orders, pursuant to mutual agreement.

NOTE: City and Developer acknowledge that the terms and conditions of section 3.17, inclusive of sections 3.17.1 through 3.17.6, are satisfied and remain in the Agreement only for historical purposes.

3.17. The Developer will construct the temporary road in the location identified as Newberry Extended.

3.17.1. The temporary road shall be constructed, and hereafter maintained by the Developer, as depicted in the Martenson & Eisele, Inc. drawing dated August 17, 2010, which drawing shall be on file at the Appleton Fire Department at 700 North Drew Street, Appleton, Wisconsin, as such drawing was revised on _____, to include road width dimensions every 300 feet. The temporary road may consist of paving, compacted stone, or a combination thereof. The minimum acceptable width of said road shall be 20 feet.

3.17.2. The Developer, or his designee, shall demonstrate by professional engineering, on plans stamped by a professional engineer, the capacity of the surface to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. These plans may include computer modeling, field analysis, or any combination thereof.

3.17.3. *The roadway shall be maintained by the Developer in all weather conditions, free of debris, obstructions, snow, ice or other impediments which the Fire Department might deem an impairment to servicing the RiverHeath development.*

3.17.4. *Appleton Fire Department shall provide conditional approval, contingent upon a successful passage of the roadway utilizing the heaviest Fire Department vehicle that may respond to RiverHeath.*

3.17.5. *Temporary access road (RiverHeath Way) shall be permanently paved, prior to the issuance of any occupancy permit for buildings in Phase 2b.*

3.17.6. *All other terms and conditions of the Development Agreement between RiverHeath, LLC and the City of Appleton, not inconsistent with this Amendment, shall remain in full force and effect.*

3.18. NOTE: City and Developer acknowledge that the terms and conditions of this section are satisfied as of the Fifth Amended Version of this Agreement. This section remains in the Agreement for historical purposes. *Prior to occupancy of Phase 2a, the Developer shall obtain a "Letter of Closure" from the WDNR indicating that remediation of the site has been completed to current standards for residential construction. A copy of said "Letter of Closure" is attached hereto as Exhibit L.*

ARTICLE 4 UNDERTAKINGS OF THE CITY

The City agrees that it shall:

4.1. Appropriate sufficient funds for the performance of its obligations under this Agreement as described in this section.

4.2. City shall cooperate with Developer throughout the development of the Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

4.3. City has created Tax Increment District No. 8 (TID) to support the project at the Development Area.

4.4. Subject to all of the terms, covenants and conditions of the Agreement and applicable provisions of law, and as inducement by the City to Developer to carry out the Project, the City will provide payments to the Developer solely from future Tax Increments to assist with the Developer Costs. Upon approval of financing as outlined in paragraphs 3.9 and 3.10, TIF eligible activities performed subsequent to May 21, 2009 may be counted as reimbursable expenses. City and Developer agree that there shall be no reimbursement for activities prior to creation of the TID and the signing of the Development Agreement. The total aggregate principal amount of the City's payment to the Developer shall not exceed Nine Million Seven Hundred Fifty Thousand Dollars (\$9,750,000) (the "City Contribution").

4.5. The Developer shall submit copies of original invoices to the City's Director of Finance for payment. Costs eligible for reimbursement shall be determined by the City, from expense information submitted by the Developer, as of June 30th and December 31st of any given year. The Developer shall be entitled to interest on the City's Contribution, only if Developer has outstanding loans to finance the Development. Interest on the City's Contribution shall begin to accrue effective on July 1st and January 1st of any given year for approved expenses, upon determination of expense eligibility. Interest on the City's Contribution shall be the lesser of 1.) the interest paid by the Developer to any lender, as

evidenced by the note indicating the loan amount; or 2.) seven and one-half percent (7½%). Payment of the City's Contribution to the Developer shall be made to RH Ventures, Inc., or Developer's assignee and shall be made on October 1 of each year from tax increment payments actually received by the City.

4.6. Payments pursuant to this Agreement shall be made on October 1 for approved expenses, solely from tax increments attributable to the property actually received by the City by each payment date. Interest rate payments shall be limited to the rate the Developer obtains for financing, as previously indicated. Developer shall provide a copy of the TIF financing indicating the interest rate on the phase. In no event shall the City's payment to the Developer exceed the total amount of tax increment generated by the property. The City Contribution, as evidenced by this Agreement, shall be a special and limited obligation of the City and not a general obligation.

4.6.1 The City's Contribution shall be calculated as follows:

The Developer shall be eligible for 90% of tax increment subject to the City's Contribution being limited to no more than Nine Million Seven Hundred Fifty Thousand Dollars (\$9,750,000).

4.7. City will construct the publicly dedicated portion of a concrete road, RiverHeath Way, from Banta Court to the north approximately 600' to connect with the Newberry Street Extension. A 10' wide concrete sidewalk will be constructed along the westerly side of RiverHeath Way and also along the west/north side of the Newberry Street extension. On-street parking shall be prohibited on the Newberry Street Extension. Both the streets and sidewalks will be placed in public right-of-way and remain public streets. The City agrees that

parking along RiverHeath Way will remain unmetered. That portion of RiverHeath Way from the intersection of RiverHeath Way and Banta Court north to the intersection of RiverHeath Way and Newberry Street Extension shall be constructed to City standards.

The City shall publicly bid and hold the contracts for the construction of the publicly dedicated portion of RiverHeath Way. The street will be constructed in stages.

4.7.1. The City will publicly bid, hold the contracts for, and manage the installation of one lift station and force main, the location of which shall be as indicated on Exhibit J attached hereto and incorporated herein by reference. The force main and lift station shall be privately owned, maintained and serviced by the Developer. The cost of said force main and lift station, purchase and installation, shall be included in the \$1.6 million identified in Paragraph 4.9.1 below.

The City shall be responsible for the installation of said lift station and force main only. The lift station shall be capable of accommodating the full build out density of the Development. Any upgrades or improvements to the lift station shall remain the sole responsibility of the Developer and the City shall have no responsibility for said improvements or upgrades.

4.8. NOTE: City and Developer acknowledge that the terms and conditions of this section are satisfied as of the Fifth Amended Version of this Agreement. This section remains in the Agreement for historical purposes. *By the end of 2014, the Newberry Street Extension, as identified on Exhibit I attached hereto, shall be constructed with concrete pavement on a location identified by the City. The City shall publicly bid and hold the contracts for the construction of the Newberry Street Extension. This street shall remain a public street.*

4.9. The City shall publicly bid, hold the contracts for, and manage the construction of the publicly dedicated portion of RiverHeath Way, as identified in paragraph 4.7, Newberry Street extension construction as identified in paragraphs 4.7 and 4.8 and lift station and force main as identified in paragraph 4.7.1.

The construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension and lift station and force main shall occur in two stages. The components of each stage shall be as indicated on Exhibit K attached hereto and incorporation herein reference. Stage 1 shall be completed in 2013. Stage 2 shall be completed in 2014.

4.9.1. The City shall issue debt to pay for construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension and the lift station and force main pursuant to the contract bids. Debt will be issued in two separate years. Debt for Stage 1 was issued in 2012. Debt for Stage 2 shall be issued in 2014. The Developer shall be responsible for repaying the City's contribution for the construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension, lift station and force main.

Developer has agreed to pay 200 basis points above the all-inclusive cost interest rate on the general obligation notes that include this project, with the entire amount of both loans being repaid in nine (9) years.

Developer agrees that the City is a lender and the Third Amendment to the Development Agreement is a note indicating loan amount for purposes of determining interest on the City's contribution, as provided for in Paragraph 4.5 of this Agreement.

If the cost of the public portion is below the \$1.6 million loan amount, the Developer shall use the remaining loan proceeds towards the completion of the remaining public infrastructure on site i.e., the trail.

If the cost to the City for the construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension, and the private lift station and force main, exceeds the \$1.6 million loan amount provided to the Developer, the Developer shall escrow an amount sufficient to cover the remaining cost for Stage 2 prior to the City awarding a contract for said construction. The funds so escrowed shall be sufficient to cover the balance of Stage 2 costs as determined by the BID responses prior to the final award of the contract. The Developer shall place the funds in an escrow account held by the City of Appleton. No interest shall be earned on the escrowed funds. If there is a shortfall on the construction, Developer shall be billed. If there are excess funds, any excess shall be returned to the Developer upon final contract payment by the City.

4.9.2. Developer shall make payments to the City to repay the City's loan to the Developer to finance the construction of the publicly dedicated portions of RiverHeath Way, the Newberry Street extension, lift station and force main as described above. The Developer shall make payments for the debt issued for Stage 1 beginning in 2013. The Developer shall make interest only payments on the Stage 1 loan in 2013, 2014, 2015, and 2016. Beginning in 2017, and continuing in 2018 and 2019, the Developer shall make three equal payments of principal, in addition to interest due. All payments shall be made to the City on or before April 1 of each year. The City's loan to the Developer to finance construction of Stage 1 shall be paid in full by April 1, 2019.

The Developer shall make payments for the debt issued for Stage 2 beginning in 2015. The Developer shall make interest only payments on the Stage 2 loan in 2015, 2016, 2017, and 2018. Beginning in 2019, and continuing in 2020 and 2021, the Developer shall make three equal payments of principal, in addition to interest due. All payments shall be made to the City on or before April 1 of each year. The City's loan to the Developer to finance construction of Stage 2 shall be paid in full by April 1, 2021.

4.10. Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the City Contribution, Developer's recovery of the full amount of the City Contribution, plus interest thereon, depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Property, the failure of the Property to generate the Tax Increments at the rate expected by Developer, reduction in Tax Increments caused by revenue-sharing, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

4.11. Payment of the City's Contribution to the Developer shall be made on October 1 of each year.

4.12. City covenants to Developer that:

4.12.1. City shall not use more than the ten percent (10%), as previously indicated, for the purposes other than to pay the City Contribution, plus the allocable interest thereon.

4.12.2. Until the City Contribution, plus interest thereon, has been paid in full, the City shall not close the District prior to the Expiration Date. Upon the Expiration Date, the

City shall be entitled to close the District and no liability shall remain from the City to the Developer upon expiration of the District.

4.13. The City shall, upon Developer's request, provide to the Developer an accounting of the status of the District including, but not limited to, the outstanding principal balance of the City Contribution and annual Tax Increments received from the Property.

ARTICLE 5 TAX STATUS

5.1 As long as the District is in existence, the Property and all buildings and improvements thereon shall be owned and taxable for real estate tax and special assessment purposes. The City may waive any or all of the restrictions upon execution of a payment in lieu of taxes (PILOT) agreement on a form acceptable to the City. This paragraph shall be a covenant running with the land.

ARTICLE 6 NO PARTNERSHIP OR VENTURE

6.1 Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE 7 CONFLICT OF INTEREST

7.1 No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE 8
WATER AND WATER RELATED PUBLIC IMPROVEMENTS

8.1 The City shall furnish water to the boundary of the Development. The City agrees that it shall be responsible for providing and maintaining such water utility improvements to the Development, recouping the costs of the improvements through normal City assessment procedures. The Developer shall be solely responsible for the installation and maintenance of utility improvements to provide water service within the Development and necessary looping as specified by the Department of Public Works. Water service within the Development shall remain a private service. Private hydrants cannot be used for any purposes other than fire protection.

All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Development shall be subject to the approval of the City's Department of Public Works prior to the beginning of construction. Such approval shall not be unreasonably withheld.

8.2 In instances where this Agreement, or the ordinances of the City or the rules and regulations of the City do not set forth criteria for particular uses for the water supplied to the Development by the City, the criteria for uses may be proposed by Developer subject to the City's approval utilizing generally accepted criteria, which approval shall not be unreasonably withheld.

8.3 The parties agree to cooperate fully in all matters concerning the development of the water system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements necessary for such water service. It is agreed that the obtaining of such rights-of-way and easements outside the boundary of the Development is the responsibility of the City whether by voluntary agreement or condemnation. It is further agreed that the providing of such rights-of-way and easements is the responsibility of the Developer within the boundaries of the Development.

ARTICLE 9 SANITARY SEWER

9.1 The City shall provide such sewer utilities improvements up to the Development as may be required recouping the cost of same through normal City assessment procedures. The Developer shall be solely responsible for installing and maintaining sanitary sewer infrastructure on the Development including any necessary lift stations and force mains except as provided in paragraph 4.7.1. Sanitary sewer service within the Development shall remain a private service. The Developer shall be responsible for providing a lift station(s) that can accommodate the full buildout density of the development.

9.2 Under any of the circumstances set forth herein, the City shall permit the Owner/Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

9.3 The parties agree to cooperate fully in all matters concerning the development of the sanitary sewer system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements. It is agreed that the

providing of such rights-of-way and easements is the responsibility of the Developer within the Development area.

9.4 The Developer shall provide the City with all cost information relating to the installation of the sanitary sewer system within the Development.

ARTICLE 10
STORMWATER MANAGEMENT

10.1 The Developer shall follow all applicable State and City Stormwater Ordinances. The Developer shall be solely responsible for installing and maintaining all on-site stormwater management practices. The Developer shall provide the City with all cost information relating to the installation of any on-site stormwater management practices which will become City assets. Stormwater management within the Development shall remain a private service.

10.2 Prior to the occupancy of any buildings, the Developer shall provide to the City of Appleton's Department of Public Works an emergency flood plan for the Development Area.

ARTICLE 11

*Note: This Article 11, Public Land Dedication, was deleted by the Third Amendment to Development Agreement.

ARTICLE 12
WRITTEN NOTICES

12.1 Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE CITY:

City of Appleton

Community Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attention: Karen E. Harkness

With a copy to:

City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attn: Attorney James P. Walsh

DEVELOPER:

RiverHeath LLC
c/o Mark Geall
RiverHeath Sales Office
201 South RiverHeath Way
Appleton, WI 54915

With a copy to:

Nathan Wautier, Esq.
Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street
P.O. Box 2018
Madison, WI 53701

ARTICLE 13 ASSIGNMENT AND SUBORDINATION

13.1 Assignment. The rights, duties and obligations of the Developer hereunder may be assigned by Developer provided that prior to any such assignment Developer procures the written consent of the City to the assignment, which consent shall not be unreasonably withheld and which shall be deemed granted if not withheld by written notice to Developer from City given on or before thirty (30) days after Developer requests in writing that City

consent to an assignment of this Agreement. This provision shall not apply to assignments by partners, shareholders or members of the Developer nor shall it apply to a sale or transfer of less than a majority interest of the Developer.

13.2. Subordination. This Development Agreement and any interest the City may have in and to the Development is and at all times shall remain subordinate to any mortgages or other liens which Developer may now or hereafter place against the Development for the purpose of financing the construction and operation of the Development including any refinancing or renewals of any such mortgage(s). This subordination provision shall be self-operative and no other instrument shall be deemed necessary or required to effectuate its intent and purpose. Notwithstanding the foregoing, the City agrees to execute on or before ten (10) days after written request from Developer a written Subordination Agreement in confirmation of and in conformance with the terms of this paragraph in such form as Developer or its mortgagees may reasonably request.

The City shall not institute any judicial action with respect to the Development without the prior written consent of the primary mortgage holders or unless all indebtedness secured by liens to which the City's rights are subordinated hereunder has been paid in full.

ARTICLE 14 DEVELOPER'S RIGHT TO CANCEL

14.1 Notwithstanding anything set forth in this Agreement to the contrary, Developer's obligations under this Agreement are contingent upon Developer receiving the necessary rezoning and other approvals to commence Phase I. Accordingly, if Developer has not received such approvals thirty (30) days after Common Council approval, Developer may, by

delivery of written notice to the City within thirty (30) days after such date, terminate this Agreement by delivery of written notice to the City, in which case this agreement shall be null, void and of no further force and effect whatsoever. *NOTE: City and Developer acknowledge that the terms and conditions of this section are no longer applicable and this section remains in the Agreement only for historical purposes.*

ARTICLE 15 ADDITIONAL PROVISIONS

15.1 This Agreement shall be governed by the laws of the State of Wisconsin, Outagamie County.

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

CITY OF APPLETON:

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Jamie L. Griesbach, Deputy City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2011, Timothy M. Hanna, Mayor and Jamie L. Griesbach, Deputy City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin

My commission is/expires: _____

APPROVED AS TO FORM ONLY:

James P. Walsh, City Attorney

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[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

DEVELOPER:

RIVERHEATH, LLC

By: _____
Mark Geall, Member

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2011, Mark Geall, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My commission is/expires: _____

SCHEDULE OF EXHIBITS

(Amended as part of the Second Amendment to Development Agreement and Further Amended as part of the Fifth Amended Version of the Development Agreement)

- A. Legal Description of the Property
- B. Amended Project Timetable
- C. Amended Project/Concept Plan
- D. Amended Implementation Plan Document for Planned Development
- E. Amended Management Plan
- F. Habitat Enhancement and Mitigation Proposal as approved June 14, 2011
- G. Pedestrian Trail Access Easement Legal Description and Reference Drawing (to be provided by Developer)
- H. Chapter 30 Permit: Wisconsin Department of Natural Resources Revised June 14, 2011
- I. Newberry Street Exhibit Drawing
- J. Omni Associates Drawing indicating the Location of the Lift Station and Force Main
- K. Construction Stage Outline
- L. DNR Letter of Closure for Remediation of Development Site