MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (this "***Agreement***") is made and entered into as of the __ day of August, 2017, by and between the City of Port Washington, Wisconsin (the "***City***"), and Black Cap Halcyon, LLC, a Wisconsin limited liability company, and/or its Permitted Assigns ("***Developer***"). Developer and City are sometimes hereinafter referred to individually as a "***Party***" and collectively as the "***Parties***."

RECITALS

A. WHEREAS, on October 16, 2016, the City issued that certain *Request for Proposals for the Purchase and Development of City of Port Washington Owned Land*;

B. WHEREAS, the Developer intends to purchase 35.19 acres located along the east side of CTH C and the intersection of Sunset Road (the "***Land***") for Two Million Two Hundred Fifty-Seven Thousand Eighty-Six and 00/100's Dollars ($2,257,086.00) pursuant to the terms of that certain Land Purchase Agreement by and between City and Developer (the "***Land Purchase Agreement***"). The Land is more fully described in **Exhibit A** attached hereto;

C. WHEREAS, Developer is seeking to improve the Land (the "***Improvements***");

D. WHEREAS, Developer wishes to develop the Property substantially as described in **Exhibit B** (the "***Development Plan Concept***"). Collectively, the Land and Improvements constitute the "***Property***" that will comprise the mixed-use community to be known as "Prairie's Edge" (the "***Project***");

E. WHEREAS, the City has determined that the sale of the Land to Developer, and development of the Land substantially as shown in the Development Plan Concept, are consistent with and promotes the achievement of the goals and objectives of the City's comprehensive plan, and are otherwise in the public interest. The terms of the Land sale from the City to Developer are documented in the Land Purchase Agreement;

F. WHEREAS, except as otherwise provided in this Agreement, the City has agreed to provide municipal sewer and water to the lot line of the Land on or before July 1, 2018;

G. WHEREAS, the Parties have agreed to cooperate in obtaining available grants and funds from state, federal and private sources (the "***Available Grants***") to offset the costs of certain Improvements intended for public access and use, and primarily benefitting the public interest;

H. WHEREAS, the City Plan Commission recommends to the Common Council (1) a zoning change designating the Land as an Overlay Planned Development District; and (2) approval of a Master Plat (the "***Master Plat***") and individual plats

("***Phasing Plats***") for the Project on the condition that the Developer enter into Agreements with the City relative to the Land Purchase Agreement, and its development in accordance with this Agreement, the Development Plan Concept, and the Municipal Code of the City (the "***Municipal Code***");

I. WHEREAS, the Parties have entered into this Agreement for the purpose of describing the general terms and conditions pursuant to which the Development Plan Concept will be implemented. The Parties acknowledge and agree that the Improvements may be made by Developer in up to three (3) separate phases. Each specific phase implementing the Development Plan Concept (individually a "***Phase***" and collectively the "***Development***") are more specifically described in the Land Purchase Agreement executed by the Parties and incorporated herein by reference. The first phase of the Development shall be referred to as "Phase I", the second phase of the Development shall be referred to as "Phase II" and the third phase of the Development shall be referred to as "Phase III". Each Phase will be subject to further and special terms and conditions as set forth in various addenda (each an "***Addendum***" and together "***Addenda***") to this Agreement;

J. WHEREAS, the Parties agree to work together in good faith in order to fulfill the terms and conditions of this Agreement and to work together in good faith toward the successful completion of the Project in accordance with terms and conditions of this Agreement; and

K. WHEREAS, the Parties intend to be mutually bound by this Agreement and the various exhibits and addenda to this Agreement, in accordance with the terms and conditions described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are contractual, the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the City and Developer agree as follows:

ARTICLE I

Interpretation and General Standards

Section 1.1 **Role of Agreement.** This Agreement serves as a master development agreement and, as such, contains the general terms and conditions applicable to each Phase. Each Phase must be expressly authorized by the City through a separately executed Addendum as well as through necessary and appropriate City zoning and/or land division approvals. This Agreement consists of this document, together with all referenced exhibits, the Addenda, Addenda exhibits, and other such rules, regulations, codes, or statutes that may be referenced in the preceding documents. This Agreement and the provisions of each Addendum are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Agreement irreconcilably conflicts with a provision of an

Addendum, the Addendum shall govern; further, provided, however, if any provision of the Addendum irreconcilably conflicts with a provision of the Land Purchase Agreement, the Land Purchase Agreement shall govern.

Section 1.2 **Standards and Codes.** Whenever references are made in this Agreement to standards or ordinances in accordance with which the Development is to be performed, the version of the City's Municipal Codes in effect as of the date of this Agreement shall apply unless otherwise expressly stated. In case of conflict between any referenced standard or code and any provision of this Agreement or an Addendum to this Agreement, the requirement in place as of the date of this Agreement shall govern. All applicable laws, ordinances, statutes, rules, regulations, or orders in effect at as of the date of this Agreement (collectively, the "***Applicable Laws***") shall apply to Developer and its employees, representatives and subcontractors. Except as otherwise specified, Developer shall procure and pay for all permits, licenses, certifications and other applicable governing authority requirements and inspections and shall furnish necessary documentation, bonds, security or deposits required to permit completion of the Project.

Section 1.3 **Developer is Independent Contractor.** Notwithstanding any other provisions of this Agreement to the contrary, Developer is an independent contractor. Nothing contained in this Agreement shall alter Developer's status as an independent contractor, nor shall this Agreement be construed as creating any contractual relationship whatsoever between the City's consultants (planning, engineering, financial and legal) or any persons or entities other than the City and Developer.

ARTICLE II

Developer Obligations, Improvements and Dedicated Improvements

Section 2.1 **Development Plan Concept.** Developer retains the right to revise and amend the Improvements, the Project and the Development Plan Concept subject to the review and approval of the City's Plan Commission. Prior to construction commencement of each Phase of the Project, final plans and specifications, including any material revisions to the Project or the Development Plan Concept, shall be reviewed and approved by the City.

Section 2.2 **Starting and Completion Dates**. Developer agrees that no work shall be scheduled for the Improvements and no construction shall be commenced without the City's written approval of the starting date and the schedule for completion. The following are anticipated starting dates and completion dates for each Phase of the Project:

Phase One:	Anticipated Start Date: March, 2018 Anticipated Completion Date: June, 2019
Phase Two:	Anticipated Start Date: July, 2019 Anticipated Completion Date: June, 2020
Phase Three:	Anticipated Start Date: July, 2020 Anticipated Completion Date: June, 2023

Section 2.3 **Residential Buildings.** Upon final completion, it is anticipated that the Project will have a mix of residential uses and densities consisting of approximately the following:

(i) Approximately 132 multi-family residential units in two, 3-story buildings containing approximately 144,516 gross square feet in aggregate;

(ii) Approximately 24 multi-family residential units in one 3-story building containing two floors of residential space above one level of commercial space. In aggregate, the building will contain approximately 42,604 gross square feet including approximately 27,322 gross square feet for residential units;

(iii) Approximately 48 two-story townhome units averaging approximately 2,590 gross square feet in size and 124,320 gross square feet in aggregate; and

(iv) Approximately 34 detached residential homes approximately 1,728 square feet in size, on average, and containing approximately 58,752 square feet in aggregate.

Section 2.4 **Commercial and Office Buildings.** Upon final completion, it is anticipated the Project will have a mix of commercial and office uses consisting of approximately the following:

(i) Approximately 3 single-story commercial and/or office structures containing approximately 24,860 square feet in aggregate;

(ii) Approximately 15,282 square feet of commercial and office space on the ground floor of one 3-story structure containing approximately 24 residential units on the second and third floors (also described in Section 2.3(ii) above); and

(iii) Developer may request approval of the City Plan Commission for approximately 9,700 square feet of commercial and office space within a special use structure designed to accommodate public and private events on-site, with a maximum capacity of approximately 300 guests. Construction of the special use public and private event space may require a reduction in the aggregate count or square footage of other commercial, townhome, multi-family and/or single family structures to accommodate the building structure and required parking.

It is the express desire of Developer and the City to work collaboratively in finalizing the Development Plan Concept resulting in an acceptable aggregate profit margin envisioned by Developer. Notwithstanding anything contained herein to the contrary and absent a written agreement signed by the Parties indicating otherwise, in the event any provision of the Development Plan Concept irreconcilably conflicts with a provision of the Land Purchase Agreement, the Land Purchase Agreement shall control. In the event any provision of the Land Purchase Agreement irreconcilably conflicts with any provision of this Agreement or any

Addendum, the Land Purchase Agreement shall control. In the event any provision of the Development Plan Concept irreconcilably conflicts with any provision of this Agreement or any Addendum, the Development Plan Concept shall control.

Section 2.5 **Parking.** Upon final completion, it is anticipated that the Project will have a mix of covered and uncovered surface, below grade, and attached garage parking as follows:

(i) Approximately 236 parking spaces in two, single-level subterranean parking structures underneath the three, 3-story residential and mixed-use residential and commercial structures.

(ii) Approximately 101 uncovered surface parking spaces designed specifically for commercial use;

(iii) Approximately 96 attached, direct access spaces within the 48 townhome structures; and

(iv) Approximately 68 covered, attached spaces within the 34 single family residences.

Section 2.6 **Roads and Streets.** South Wisconsin Street is an existing to-be-dedicated roadway improved on the Land and consisting of approximately 1.09 acres. Developer shall dedicate South Wisconsin Street to the City as a public roadway on or before December 31, 2017, and City shall accept such dedication from Developer. With the exception of South Wisconsin Street, Developer, at Developer's expense, shall grade and improve all roads and streets substantially in accordance with the Development Plan Concept.

Section 2.7 **Stormwater Management.**

(i) Developer acknowledges the City's requirement to manage the storm water runoff for new developments and agrees that prior to any earthwork or construction, a stormwater management plan (the "***Stormwater Management Plan***") shall be prepared at Developer's expense, in accordance with applicable Municipal Codes, the City's Stormwater Management Policies and Guidelines Manual, and all applicable state, county, and local stormwater management requirements. The Stormwater Management Plan shall meet necessary regulatory requirements, and must be reviewed and approved by the Public Works Committee. Developer shall reimburse the City for reasonable costs and expenses incurred (including professional fees) in reviewing the plans and such costs and expenses shall be included in the maximum amount set forth in Section 4.1(i) below.

(ii) Developer shall, at Developer's expense, perform all work and make all improvements as set forth in the approved Stormwater Management Plan. Large-scale grading of the Land shall be performed in accordance with a master grading plan (the "***Master Grading Plan***") approved by the City's Public Works Committee and performed in accordance with the approved Stormwater

Management Plan and Erosion Control Plan as further discussed in Section 2.14 herein.

(iii) Developer shall, at Developer's expense, grade and improve the Land with the Master Grading Plan, approved by the Public Works Committee. At the conclusion of grading and prior to the issuance of building permits, Developer shall, at Developer's expense, supply the City with a hard copy document (and electronic format as requested by the City) prepared by Developer's engineer or surveyor, certifying to the extent reasonable that the grading work is in general compliance with the Master Grading Plan and that the Stormwater Management Plan is anticipated to perform as designed.

(iv) Per Municipal Code Chapter 18.15.080, developer shall provide at developer's expense a maintenance agreement for the required stormwater management practices beyond the duration of the permit.

Section 2.8 **Sanitary Sewer.** The City shall, at its expense, extend its municipal sewer to the Land on or before July 1, 2018 contingent upon DNR approval. Absent any Force Majeure Event (as defined in Section 5.6), the Land purchase price shall be reduced by an amount equal to $100.00 for each day after July 1, 2018 that the sanitary sewer is not extended to the lot line of the Land. Developer shall, at Developer's expense:

(i) Construct, install, furnish and provide a complete sanitary sewage collection system throughout the Project including laterals completed to the lot line, as approved by the City Engineer and the Public Works Committee all substantially prepared in accordance with the plans, specifications and drawings to-be-prepared by Developer, and provided to and approved by the City Engineer.

(ii) Complete punch list items and provide "as-builts" prior to the issuance of building permits.

(iii) Clean the sanitary sewer system, and supply to the City reports that shall contain the location of all wyes, structures and any known defects. Developer shall, at Developer's expense, repair any known defects, as determined by the City Engineer, prior to the issuance of building permits.

(iv) Provide easements for future maintenance of sanitary sewer mains on the final plat as approved by the City Engineer.

Section 2.9 **Water Distribution**. The City shall, at its expense, extend its municipal water service to the Land on or before July 1, 2018. Absent any Force Majeure Event, the Land purchase price shall be reduced by an amount equal to $100.00 for each day after July 1, 2018 that municipal water service is not extended to the lot line of the Land. Developer shall, at Developer's expense**:**

(i) Furnish, construct and install the water main for each Phase substantially in accordance with the design plans to-be-prepared by Developer and provided to and approved by the City Engineer.

(ii) Install water service laterals to serve each lot of each Phase.

(iii) Water main and service lateral construction shall be completed by Developer consequent to the start of work for each Phase of the Project as set forth in Section 2.9(ii) herein but in each case prior to the application of the first lift of asphalt street paving for each Phase.

(iv) Provide easements for future maintenance of water mains on the final plat as approved by the City Engineer.

Section 2.10 Park Fees or Dedication. In accordance with Section 18.08.030B of the Municipal Code, Developer is dedicating to the City 5.09 acres of land for park, recreation and general open space in lieu of a park dedication fee, located between the top of the Lake Bluff and the Recreational Trail (and including the trail itself).

Section 2.11 Impact Fees. The Developer acknowledges that upon the issuance of a building permit for each new separate building or structure upon any lot or lots within the Development, an impact fee shall be determined and paid by the permitee to the City. Said impact fee shall be calculated and imposed to cover the capital costs necessary to provide new, expanded or improved public facilities that are required to serve land development within the City, including the City's wastewater treatment plant, fire station, police station and public library, among other public facilities.

Section 2.12 Recreational Trail. Developer shall, at Developer's expense (less all available grants awarded to the City; provided, however, that such grants allow the funds to be paid or reimbursed to Developer for construction), construct, install and maintain an improved pedestrian-only public access trail 8 feet in width and including 3-foot-wide unimproved margins on either side (being 14' in total width) (the "***Recreational Trail***") within the Project substantially in accordance with the Development Plan Concept. The Recreational Trail shall be limited to non-motorized pedestrian use and shall be accessible by the general public from dawn to dusk. In the event Developer does not construct the Recreational Trail by June 30, 2024, the City may construct the Recreational Trail and levy special assessments against the Property pursuant to Wis. Stat. § 66.0703 (2015-16, and as amended) for the reasonable costs it incurs for such construction work or improvement. Developer waives notice and hearing of said special assessments pursuant to Wis. Stat. § 66.0703(7)(b), and further agrees that it shall not challenge or appeal the City's right to levy said special assessments or the amount of said special assessments, pursuant to Wis. Stat. § 66.0703(12). Developer may from time to time promulgate rules and requirements for ongoing use, operation, maintenance and upkeep of the Recreational Trail. The Recreational Trail is more fully described in the Development Plan Concept.

Section 2.13 Lighting Street and Walkway Lighting. The City shall not require Developer to install street lamps or pedestrian pathway lighting. Developer may, at Developer's sole cost and expense, install street lamps and pedestrian pathway lighting including ornamental

poles, ornamental fixtures, wiring and restoration. Lighting may be placed at intervals and in locations as set forth on a detailed street lamp and lighting plan approved by the City. In addition, Developer may, at Developer's option and Developer's expense, install a yard light on the lot of each residential townhome or single-family home. The homeowner whose lot it serves, or the Common Area Association as outlined in Section 2.16, shall energize each yard light. All maintenance and electrical costs shall be the responsibility of the individual homeowner or Common Area Association. The Common Area Association shall be responsible for ensuring proper maintenance of each yard light fixture, including the prompt replacement of burned out bulbs with similar bulbs.

Section 2.14 Street Signs. The Developer shall install, maintain, repair and replace all street name and traffic control signs. Developer shall name the streets subject to City ensuring that the same street names are not being used in any jurisdictions served by City protective services.

Section 2.15 Erosion Control Measures.

(i) Developer shall, at Developer's expense, submit to the City, an application for an Erosion Control Permit and an Erosion Control Plan (the "***Erosion Control Plan***") in accordance with the requirements of the Municipal Code. No construction or grading shall begin until the City issues said permit.

(ii) Developer shall, at Developer's expense, construct, install, furnish and provide a complete system of erosion control devices or measures in specified areas of the Project, as approved by the City Engineer and the Building Inspection Department in accordance with the Municipal Code, the approved Erosion Control Plan, and all applicable state, county, and local requirements (collectively "***Erosion Control Devices***").

(iii) Prior to any grading work, Developer shall, at Developer's expense, install and maintain the Erosion Control Devices in conformance with the approved Erosion Control Plan. Developer shall, at Developer's expense, maintain such Erosion Control Devices until such time as vegetative cover is established in the Project.

(iv) Upon a written notice to Developer from the City Engineer or Building Inspector involving non-compliance with the Municipal Code, the non-compliant item(s) will be corrected within three (3) business days following receipt of such notice of non-compliance. Developer shall be afforded additional time as may be reasonably necessary to correct any issue of non-compliance provided Developer is diligently pursuing efforts to correct such items of non-compliance.

Section 2.16 Covenants, Conditions and Restrictions. To maintain the ongoing aesthetic quality and character of the Project and to ensure its perpetual use consistent with the Development Plan Concept, Developer shall cause to be formed a Common Area Association that shall govern the ongoing use, operations, maintenance and upkeep throughout the Project which shall be specified in the Covenants, Conditions and Restrictions Agreement (the "***CC&R***"). The Common Area Association shall require all residents, tenants, homeowners and

users to adhere to regulations and requirements set forth within the CC&R, and it shall have the power to assess charges or fines for non-compliance, and to assess charges or levies for maintenance of the Project common areas.

Section 2.17 Standard of Care for Dedicated Improvements. In performing its obligations under this Agreement for Dedicated Improvements, Developer shall exercise the degree of care, skill, prudence, judgment and diligence under the circumstances then prevailing that a professional developer of projects similar to the Project would exercise in the performance of development activities of a like character. Developer shall perform its obligations for Dedicated Improvements in accordance with (1) this Agreement, (2) the Applicable Laws, (3) any approved budgets between the City and Developer, and (4) the Development Plan Concept (collectively with the preceding sentence, the "***Standard of Care***").

All contractors, subcontractors and material suppliers performing services in connection with Developer shall be selected by Developer and shall be acceptable to the City, in its reasonable discretion. The following additional provisions shall apply:

(i) **Standards.** The Improvements to be dedicated to the City (the "***Dedicated Improvements***") shall be constructed in a good and workmanlike manner and in accordance with the approved plans and specifications ("***Plans***"). The Plans for the Improvements must be approved by appropriate regulatory agencies, including the City Engineer, Department of Public Works and Plan Commission. The Plans shall be delivered to the City and approved in writing prior to the commencement of any construction associated with the Improvements. No material change may be made to the Plans without the prior written approval of the City. If construction of the Improvements does not commence within twelve (12) months of Plan approval, plans for Improvements shall be resubmitted for review and approval. The Improvements shall be subject to any new ordinances or construction standards approved by City in effect at the time of approval in all cases. For and with respect to any Dedicated Improvements, the City may designate agents to provide construction observation and testing during the construction of the Dedicated Improvements. Reasonable materials testing may be performed as deemed necessary by the City during the construction of the Dedicated Improvements. The reasonable and actual costs of observation and testing shall be borne by the Developer. Construction observation and testing shall not relieve Developer of any obligation under this Agreement, nor shall the observation and testing impose any obligations or liability upon the City, its officers, agents or consultants with respect to the Dedicated Improvements.

(ii) **Acceptance of Dedicated Improvements.** Developer agrees that the Dedicated Improvements will not be accepted by the City until all of the following occur or become true:

(a) satisfactory completion of the Dedicated Improvements as specified in this Agreement, including any work necessary to adequately address the issues outstanding at the time of conditional approval of the Dedicated Improvements;

(b) all outstanding charges to be paid by Developer under the Municipal Code or as required by this Agreement have been paid in full;

(c) any restrictive covenants required by City have been approved by the City and recorded in the Office of the Ozaukee County, Wisconsin Register of Deeds;

(d) all utility or other required easements for or related to the public sanitary sewer, Stormwater Management Plan and water supply mains have been recorded;

(e) affidavits and lien waivers are received by the City verifying that all Developer contractors providing work, services or materials in connection with the Dedicated Improvements have been paid in full for all such work, services and materials;

(f) the City has received evidence satisfactory to it that no liens (except those approved in writing by the City the approval of which shall not be unreasonably withheld) encumber the Dedicated Improvements;

(g) City has determined that all the Dedicated Improvements have been constructed and installed in a good and workmanlike manner; and

(h) Developer has provided the City with an affidavit stating that Developer has complied fully with the requirements of applicable State of Wisconsin statutes, and copies of any affidavits received from subcontractors pursuant to applicable State of Wisconsin statutes.

Developer shall be entitled to request partial acceptance of the Dedicated Improvements. To request partial or final acceptance by the City, Developer shall submit a written request to the City that includes evidence of the completion of the above items. Developer's submission shall be made at least seven (7) days prior to the meeting at which the City's approval is sought. Final acceptance of the Dedicated Improvements is subject to the approval of the City.

(i) **Contractor Insurance.** Developer shall ensure that the general contractor maintains sufficient comprehensive general liability and other insurance as determined by the City to be appropriate for the Dedicated Improvements being performed and as will adequately protect the City from liability for personal injury, death, property damage, workers' compensation or any other damages arising out of the work to be performed, whether caused by the acts or omissions of the general contractor, any subcontractor, any person directly or indirectly employed by them or for any other person for whom they might be liable. Limits of coverage shall be in amounts as determined by the City for each Phase. Developer shall require the general contractor to provide to the City a current Certificate of Insurance to evidence compliance with this Agreement naming the City and their

consultants as an additional insured before any work is commenced on the Dedicated Improvements.

(j) **Indemnification.** Developer shall, and shall require all contractors engaged in the construction of the Dedicated Improvements to indemnify, defend and hold the City, its agents, employees and officials harmless from and against any and all claims, losses, damages, costs and expenses relating to the Dedicated Improvements. Such indemnification shall be in a form and content acceptable to the City Attorney and shall be included in each agreement between the Developer and its contractors.

(k) **Guaranty of Dedicated Improvements.** Developer agrees to guaranty work performed in association with any Dedicated Improvements against defects in workmanship or materials for a period of two (2) years from the date of acceptance by the City. Street trees and all other vegetation planted by Developer on public rights-of-way or public lands (*e.g.*, median or roundabout plantings) shall be guaranteed for one calendar year after planting, and Developer shall be responsible for mulching, and replacement of any dead, diseased or otherwise unhealthy trees, during the guaranty period if any defect should appear during the applicable guaranty period provided, however, that the City shall be responsible for the necessary watering. Developer agrees to make any and all required replacements or repairs of the defective work as determined by the City at Developer's own expense. This expense includes total and complete restoration of any disturbed surface in a good and workmanlike manner and to the standards provided in this Agreement. Each repair or replacement performed pursuant to this paragraph shall be guaranteed on the same terms and conditions (including the guaranty of all future corrections of defects) for a period equal to the original guaranty applicable to the specific to the Dedicated Improvements from the completion thereof.

(l) **Pre-Construction Meeting.** A pre-construction meeting shall be scheduled among Developer, the contractors and the City prior to the commencement of any construction within any Phase of the Improvements. Furthermore, Developer shall, prior to such meeting, notify all utilities of the planned construction and the date and location of the pre-construction meeting.

Section 2.18 <u>Installation of Dedicated Improvements</u>. The City may replace, repair or construct, or arrange for the replacement, repair or construction, of any Dedicated Improvements not installed, not timely installed or improperly installed by Developer in accordance with this Agreement and the City's standard specifications. Prior to proceeding with such replacement, repair or construction, the City shall give Developer written notice of any deficiency in Developer's performance and shall allow not less than twenty (20) days for Developer to correct such deficiency. The City may not commence with any such replacement, repair or construction provided Developer has made, and continues to make diligent efforts to do so. Developer shall

promptly reimburse the City for costs incurred by the City related to such replacement, repair or construction.

ARTICLE III

Approval and Transfer of the Dedicated Improvements City

Section 3.1 **Inspections**. All Dedicated Improvements may be inspected and tested by the City Engineer or a consultant retained by the City Engineer to assure that it complies with all construction and improvement requirements of the City. Prior to the City Engineer's inspection and approval of the sanitary sewer, the Developer shall have performed, at its expense, a television inspection of that utility. Before any sureties or other financial guarantees are released to the Developer, the City Engineer shall report the satisfactory completion and recommend acceptance of the Dedicated Improvements to the Board of Public Works and Common Council. The Developer shall pay the reasonable and actual cost of such inspections and such costs shall be included in the maximum amount set forth in Section 4.1(i) below and as may be required by Chapter 18 of the Municipal Code.

Section 3.2 **As-Built Survey(s)**. Following completion of all Dedicated Improvements for each Phase of the Development, and after final acceptance of said Dedicated Improvements by the City, the City or its consultant shall provide inspector's daily reports to the Developer's engineer who shall be responsible to create as-built documents for incorporation into its GIS at the sole expense of the Developer. The Developer shall provide the "as-builts" to the City using the required format(s) (below).

(i) "As-built" surveys:

City requires a spatial/geographical digital record based on NAD 27 Datum. The record shall include x, y and z coordinates for the following: Sanitary manhole rims, and invert elevations, catch basins (inlets) top of curb and invert elevations, culvert sizes, material and invert elevations, curb stops, water valves, and hydrants. The City will provide I.D.'s for each item. In addition, the City requires, and the Developer shall provide, the following:

(a) Distances between all structures;
(b) Calculation of all pipe grades;
(c) Setting of benchmarks on all hydrants for City use; and
(d) A set of State of Wisconsin Professional Engineer stamped paper record drawings (also in Adobe Acrobat (PDF) format).

The City requires that spatial/geographic digital data provided to the City by the Developer meet the following criteria:

(ii) Point, Line and Polygon Information:

(a) Data shall be delivered in vector format. The preferred format is AutoCAD versions 2010 or later. Other acceptable formats include Microstation DGN, ESRI Shape files and ESRI Geodatabases. Scanned

images as raster files and Adobe Acrobat PDF files will not be accepted for this type of data;

(b) The coordinates in the data set shall be based on to the Wisconsin State Plane Coordinate System, South Zone, (NAD27 Datum), grid (preferred) or ground. Scale factor must be submitted with ground-based coordinates. Vertical datum (NGVD) shall be based on mean sea level, 1929 Adjustment; and

(c) Exceptions to these requirements will be considered on a case-by-case basis upon the Developer or its agents submitting a written statement of reasons for such non-compliance. Written approval for any exception must be obtained from the City at the start of the Development.

Section 3.3 **Dedication.** Subject to all of the other provisions of this Agreement and the exhibits hereto attached, the Developer shall, upon completion of all Dedicated Improvements, unconditionally, and without charge to the City, give, grant, convey and fully dedicate the same to the City, together with all mains, conduits, pipes, lines, equipment appurtenances and habiliments which may in any way be a part of or pertain to such Dedicated Improvements, together with any and all necessary non-exclusive easements for access thereto.

Section 3.4 **Acceptance**. Following completion and dedication of the Dedicated Improvements and upon written request by the Developer, the City Engineer shall forthwith inspect the Dedicated Improvements and if the Dedicated Improvements meet all requirements, the City Engineer shall report completion of the Dedicated Improvements to the Board of Public Works and Common Council. The City shall thereupon accept such to be dedicated improvements in accordance with Chapter 18 of the Municipal Code. The City shall thereafter have the right to connect or integrate other utility facilities with the facilities provided hereunder without payment or award to, or consent required of, the Developer. The City Clerk shall provide the Developer with a certified copy of the Common Council resolutions accepting the Dedicated Improvements hereunder, which the Developer may, at Developer's expense, record to evidence compliance with this Agreement.

Section 3.5 **Improvement Guarantee.** For each Phase of the Development**,** the Developer shall guarantee all Dedicated Improvements against defects which appear within a period of two (2) years from the date of acceptance of said Dedicated Improvements by the City as herein provided, and shall pay for any damages resulting therefrom to City property.

Prior to recording of the Master Plat, Phasing Plat or other plat or survey, the Developer shall provide the City with evidence reasonably acceptable to the City showing that the Developer has full right and authority to make the agreements, warranties, consents and waivers set forth in this Agreement, and that upon recording the City will have good, indefeasible title to all interests in land dedicated or conveyed to the City, if any, pursuant to the Development Plan Concept.

ARTICLE IV

Reimbursement of City Costs, Financial Security

Section 4.1 **Developer to Reimburse City Costs**. Developer shall timely reimburse City for reasonable costs incurred by the City for fees (including professional fees), costs and expenses reimbursable under this Agreement, incurred in accordance with the City's Municipal Code and in accordance with rates approved or used by the City for other projects. The Developer's duty to reimburse the City shall include, subject to the following, costs incurred due to the involvement of City personnel and costs incurred through the reasonable use of outside personnel. The City's costs shall be determined as follows:

(i) The cost of the City's engineers, planners and attorneys for time engaged in: (aa) the preparation, review, evaluation, alteration, approval and enforcement of the plans, this Agreement or any other plans or agreements connected with the Project or the Improvements; (bb) the construction, observation, coordination and materials testing, or inspection of the Dedicated Improvements or any activity associated with their construction; and (cc) the enforcement of this Agreement or any City ordinance or other regulation relating to the Dedicated Improvements. Developer's reimbursement obligation is based on the actual amount properly charged to the City based on the hourly rate paid to the employee multiplied by the actual number of hours worked, in full or in 10-minute increments, solely on the Project. Notwithstanding the above, Developer and the City agree that Developer's total obligations under this Agreement to reimburse or pay for review fees and costs sustained by City employees, the City's outside consultants, engineers, and attorneys shall be limited to a maximum aggregate amount of $75,000.00 and shall be invoiced in accordance with the hourly rates set forth on the Schedule of Fees attached hereto as **Exhibit C** and subject to an annual rate adjustment of not more than 2%.

Section 4.2 **Life Insurance Policy**. At Closing, Developer, at Developer's expense, shall have obtained, and provided the City with written verification of, the existence of a term life insurance policy issued by an insurer licensed to do business in the state of Wisconsin, on the life of the Developer's principal, Anthony D. Polston, in an amount not less than the outstanding balance due the City from the Developer under the Promissory Note provided for in Section 2(d) of the Land Purchase Agreement (the "***Promissory Note***"), naming the City as sole, irrevocable primary beneficiary, for purposes of providing security for the payment, repayment and performance of Developer's financial obligations under the Promissory Note. Said life insurance policy shall be maintained in force by the Developer, at Developer's expense, and reviewed annually for adjustment as Developer's financial obligations to the City under the Promissory Note are paid. At the City's request, Developer shall provide the City with written verification of the existence of such term life insurance policy.

Section 4.3 **Remedies**. Notwithstanding anything to the contrary contained herein, in the event of a breach of this Agreement, the Parties may use any remedy available to the Party under this Agreement or in law or equity.

Section 4.4 **Available Grants; Cooperation; City Review.** The Parties shall reasonably cooperate with each other to obtain the Available Grants and agree to provide requested information necessary to obtain the Available Grants as expeditiously as possible, within seven (7) business days where commercially reasonable. The City agrees to diligently assist Developer in obtaining, as expeditiously as possible, all necessary permits, approvals, variances, licenses, certificates, inspections and consents that may be necessary or desirable to enable Developer to commence and carry out the obligations and actions under this Agreement. In addition, Developer shall not be obligated to reimburse the City for its assistance or costs in this regard. Notwithstanding anything contained herein to the contrary, Developer acknowledges and agrees that the City makes no representation, warranty or guarantee of any kind regarding the Available Grants and whether the Available Grants will be available for use by, or payable to, the Developer for the Project.

The City shall conduct its reviews, hearings and approvals of all materials and/or applications provided by Developer for the City's review, as required by the City, in a diligent and timely manner. Provided that Developer has provided the City with all requested and information reasonably necessary to do so, the City shall conduct its reviews, hearings and approvals within 15 business days or shall notify Developer, in writing, of the City's inability to complete its review within such timeframe, which notice shall delineate the specific reasons why such timeframe is infeasible. If Developer has not provided the City with all requested and necessary information the City shall immediately notify Developer of those incomplete or missing items and Developer shall provide them within two (2) business days or the City's review period shall be extended by such time until Developer provides the information to the City. Developer acknowledges and agrees that the City shall conduct its reviews, hearings and approvals of all materials and/or applications in strict accordance with Applicable Laws.

ARTICLE V

General Provisions

Section 5.1 **General Provisions.** This Agreement is subject to the following additional general provisions:

(i) Time is of the essence. The Parties acknowledge and agree that time is of the essence with respect to each and every term and provision hereof.

(ii) Nothing set forth in this Agreement shall be construed as, nor is intended to be, a waiver or release of any obligations imposed upon Developer or the City by the Applicable Laws.

(iii) Developer shall have the right, after giving written notice to City, to assign its rights under this Agreement to any entity controlling, controlled by, or under common control of, Developer ("***Permitted Assigns***") provided that Developer first provides the City with written evidence of such control in a form and substance reasonably satisfactory to the City.

(iv) Nothing in this Agreement is intended to be construed so as to make Developer or its contractors, agents of the City, nor as making the City, its employees, officers, agents or consultants agents of Developer. The Parties hereto agree that Developer and contractors are independent contractors.

(v) This Agreement is intended solely to regulate the obligations of the Parties hereto with respect to one another. Nothing in this Agreement is intended to create, admit or imply any liability to any third-party nor to provide any benefit to any person, firm, corporation or governmental or non-governmental entity not a party to this Agreement.

(vi) Any notice required hereunder shall be given in writing, signed by the Party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, with an electronic copy of such notice also e-mailed, to the following:

To Seller: City of Port Washington
Attn: City Administrator
100 W. Grand Avenue
P.O. Box 100
Port Washington, WI 53074

Copy to: Antoine, Hoeft & Eberhardt S.C.
Attn: Eric E. Eberhardt
2560 State Road 32
Port Washington, WI 53074
with an electronic copy to:
eberhardt@wislawfirm.com

To Developer: Black Cap Halcyon, LLC
Attn: Mr. Anthony Polston
342 N. Water Street, Suite 600
Milwaukee WI 53202
with an electronic copy to:
Anthony@blackcaphalcyon.com

Copy to: Brian G. Carroll, Esq.
Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite 1
Waukesha, WI 53188
with an electronic copy to:
bcarroll@reinhartlaw.com

(vii) If one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision. If any such provision is held

to be invalid as applied to any property or circumstances, such determination shall not affect the applicability of such provision to any other property or circumstances.

(viii) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. A facsimile signature is deemed the equivalent of an original signature.

(ix) Either Party may record a copy of this Agreement or a memorandum of this Agreement with the Register of Deeds for Ozaukee County, Wisconsin.

(x) The Parties acknowledge that this Agreement is the product of negotiations among the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel. Nothing in this Agreement shall be construed more strictly for or against any Party because that Party's attorney drafted this agreement or any part hereof.

Section 5.2. **Casualty Insurance.** Developer shall obtain, at Developer's sole cost and expense, and shall maintain through completion of the final Phase of the Project, an all-risk casualty insurance policy naming Developer as the insured.

Section 5.3. Management Fee. Anthony D. Polston shall be deemed to earn a management fee of $56,427.00 upon execution of this Agreement. Said fee shall be paid in three (3) installments. The first installment of $ 10,000.00 shall be paid at the time building permits are issued for Phase I of the Project; the second installment of $16,427.00 shall be paid at the time building permits are issued for Phase II of the Project; and the third installment of $30,000.00 shall be paid at the time building permits are issued for Phase III of the Project; provided, however, that the Developer is not in default, and Anthony D. Polston is actively rendering managerial services on the Project, at the time each installment payment is due.

Section 5.4. Restrictions on Transfer of Property. Neither Developer, nor its assigns nor future owners may sell, transfer or convey any interest in the Property or any portion thereof to a tax-exempt entity without first receiving written permission from the City. Notwithstanding anything contained herein to the contrary, Developer or its assigns or future owners may lease the Property, including any portion thereof, to a tax-exempt entity.

Section 5.5. Default. Except where another period is expressly provided in this Agreement, Developer shall not be in default of any of its obligations under this Agreement provided that any default is cured within twenty (20) days of Developer receiving written notice from the City or Developer is diligently pursuing efforts to cure the default.

Section 5.6. Force Majeure. Neither Party shall be responsible for any suspension of or delay in the commencement, progress or completion of their obligations under this Agreement if such suspension or delay is caused by an occurrence beyond such Party's reasonable control ("***Force Majeure Event***") including, but not limited to: (i) flood, acts of God or other unusually

severe weather conditions; (ii) fire, theft, strikes, riots, terrorism, war, acts of governmental authorities, or labor or material shortages; or (iii) acts or omissions of the other Party or anyone for whose acts or omissions the other Party may be liable. Upon the occurrence of a Force Majeure Event, the other Party shall be promptly notified in writing and the completion date shall be extended for a duration equal to the length of any suspension or delay.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

DEVELOPER:

BLACK CAP HALCYON, LLC

By: BCH Management, LLC
Its: Manager

Date: _____

By: _____
Anthony D. Polston
Its: Founder and Principal

CITY OF PORT WASHINGTON

Date: _____

By:_____
Name:_____
Title:_____

CITY OF PORT WASHINGTON

Date: _____

By:_____
Name:_____
Title:_____

EXHIBIT A

Land Purchase Agreement

EXHIBIT B

Development Concept Plan

EXHIBIT C

Schedule of Fees