

PRE-DEVELOPMENT AGREEMENT

This **PRE-DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made and entered into by and between Red Granite DevCo LLC, a Delaware limited liability company, with its principal office located at 712 Main Street, Suite 3100, Houston, Texas 77002 (“**RED GRANITE**”), and the **CITY OF PORT WASHINGTON**, a Wisconsin body corporate and politic with those powers granted by law, with its principal office located at 100 West Grand Avenue, Port Washington, Wisconsin 53074 (the “**CITY**”). **RED GRANITE** and the **CITY** may be referred to herein, individually as a “**PARTY**”, or collectively as the “**PARTIES**”.

RECITALS

WHEREAS, RED GRANITE intends to acquire approximately 1,900 acres of land located primarily within the municipal boundaries of the Town of Port Washington and as is set forth on the map on **EXHIBIT A** attached and incorporated herein by reference (the “**Project Site**”);

WHEREAS, RED GRANITE intends to prepare the Project Site for future development, and the **CITY** intends to assist and support **RED GRANITE** in such preparations;

WHEREAS, the CITY owns and operates a sanitary sewer collection system that discharges sewage to a Wastewater Treatment Plant that the City owns and operates; and

WHEREAS, the CITY owns and operates a water utility which provides safe, clean water to visitors, businesses and residents of the City.

AGREEMENT

NOW, THEREFORE, in consideration of the terms contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The “Recitals” set forth above are incorporated herein and made an enforceable part of this Agreement.
2. **Obligations of the CITY.**
 - (a) **Extension of Utilities.** The **CITY** shall coordinate with **RED GRANITE** as to the design and location of any public infrastructure, such as roads, water and sanitary sewer extensions, to the Project Site. It is the Parties’ intention that construction for such extensions shall commence in 2025, with the final details and funding mechanisms to be negotiated and memorialized in a definitive development agreement (the “**Development Agreement**”) with **RED GRANITE** or the Project Site’s end user, as the case may be.
 - (b) **Annexation.** The **CITY** shall promptly pursue all legal avenues to annex the land within the Project Site pursuant to Chapter 66 of the Wisconsin Statutes and relevant agreements with the Town of Port Washington.
 - (c) **Creation of TIF District.** Upon **RED GRANITE’S** acquisition of the Project Site and the annexation described in Section 2(b) above, the **CITY** shall commence the statutory process to create a tax increment financing (“**TIF**”) district encompassing the Project Site pursuant to Wis. Stat. §66.1105.

(d) **Zoning and Permit Processing.** The CITY shall cooperate with RED GRANITE throughout the development of the Project Site and the term of this Agreement and shall reasonably and promptly review and process all submissions, applications and inspections, in accordance with applicable City ordinances.

3. **Obligations of RED GRANITE.**

(a) **Reimbursement of CITY Professional Service Costs.** RED GRANITE acknowledges that the CITY will engage professional services to assist with the implementation of this Agreement. Such professional services may include, but are not limited to, legal, financial, planning and engineering services. RED GRANITE shall reimburse the CITY for the reasonable professional service fees and out-of-pocket costs incurred by the CITY pursuant to this Agreement, in an aggregate amount not to exceed \$750,000.00, within thirty (30) days of the date of RED GRANITE'S receipt of invoices from the CITY. RED GRANITE shall have no obligation to reimburse the CITY for any fees or costs in excess of \$750,000.00, unless and until RED GRANITE provides written authorization to the CITY that an amount in excess of \$750,000.00 is authorized by RED GRANITE pursuant to this Agreement. The CITY shall use reasonable efforts to provide RED GRANITE written notice at least thirty (30) days' prior to the date when fees and costs in a cumulative total amount of \$750,000.00 are expected to have been incurred and seek written authorization from RED GRANITE to exceed that amount, which written authorization may or may not be provided by RED GRANITE in its sole discretion.

(b) **Default.** All amounts owed by RED GRANITE hereunder shall be due and payable in full within thirty (30) days of RED GRANITE'S receipt of invoices or written demand by the CITY. Any sum or sums not received by the CITY within thirty (30) days of RED GRANITE'S receipt of an invoice or written demand shall be charged interest at the rate of one percent (1.0%) per month for any month or portion of any month that such sums remain unpaid.

4. **Limitation of Approval.** The CITY has made no assurances to RED GRANITE that the CITY'S obligations, as set forth in this Agreement, will be approved by the relevant authorities necessary to secure various approvals. No liability of any nature shall inure to the CITY or its officers, employees, or agents or attorneys should the necessary approvals fail. The CITY agrees, however, to cooperate and assist RED GRANITE in facilitating and obtaining all necessary approvals in accordance with state laws and City ordinances.

5. **Development Agreement Required.** The Parties agree that, prior to the approval of any permits related to design, construction, inspection and occupancy of the Project Site, the Development Agreement (in a form mutually acceptable to the parties thereto and their respective counsel) must be approved and executed by the parties thereto.

6. **Hold Harmless and Indemnification Agreement.** Subject to Wisconsin's comparative negligence law and the laws of contribution and indemnification, RED GRANITE agrees to indemnify and hold harmless the CITY, and all of its officers, employees, agents, and attorneys, from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, which arise out of, relate to or result from, this Agreement, except to the extent caused by the CITY. This Section 6 shall survive any termination of this Agreement for a period of three years. This Section 6 does not waive or forfeit any governmental or sovereign immunity of the CITY with respect to RED GRANITE or any third parties. The CITY retains all applicable governmental immunities, defenses, and statutory limitations available, including but not limited to, Wis. Stat. §§ 893.80, 895.52, and 345.05.

7. **Term.** The term of this Agreement shall commence upon the date of execution of this Agreement by both Parties and shall continue in full force and effect until the later to occur of (a) the date **RED GRANITE** has paid all reimbursements due to the **CITY** under Section 3 above and has determined, in **RED GRANITE'S** sole discretion, that it will be infeasible to enter into the Development Agreement as contemplated in Section 5 above, or (b) the effective date of the Development Agreement as contemplated in Section 5 above. The Parties agree on behalf of themselves and their successors in interest and assigns, notwithstanding any contrary provision of law or equity, that this Agreement shall continue in effect throughout its term.

8. **Miscellaneous Provisions.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. This Agreement shall not be altered or amended, except by agreement in writing, executed by the Parties.

(b) **Severability.** If any provisions, or portions thereof, of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected hereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) **Binding Effect.** This Agreement and each and all of the terms, covenants, and conditions hereof, shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and/or assigns, and no third party, other than such heirs, personal representatives, successors and/or assigns, shall be entitled to enforce any term, covenant or condition of this Agreement or have any rights hereunder. Until this Agreement is terminated, all of the covenants, agreements, terms and conditions of this Agreement shall inure to the benefit of and be binding upon the **CITY** and **RED GRANITE**, their respective agents or affiliates, and their respective successors and assigns. Notwithstanding the foregoing, the Parties acknowledge that **RED GRANITE** may transfer the Project Site to another entity that will construct and commence operations at the Project Site and that **RED GRANITE** may assign this Agreement to such entity, and, if so assigned, such entity will assume, **RED GRANITE'S** rights and obligations under this Agreement and the Development Agreement (if applicable).

(d) **Survival.** All of the terms, conditions, covenants and provisions of Sections 6 and 8 are intended to survive termination of this Agreement.

(e) **Time is of Essence.** The times of performance of the terms and requirements of this Agreement and of the satisfaction and waiver of the conditions hereof are essential to the whole of this Agreement.

(f) **Waiver.** No delay or omission by any of the Parties, or their heirs, successors and/or assigns, to exercise any right or power accruing upon any noncompliance or failure of performance by the other Party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party, or its heirs, successors and/or assigns, of any of the covenants, conditions or agreements hereof to be performed by the other Party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

(g) **Force Majeure.** Performance of the obligations of either Party hereunder shall be suspended to the extent that such Party is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, pandemics, fires, storms, accidents or any cause whatsoever beyond the reasonable control of such Party. Matters of RED GRANITE'S finances shall not be considered a Force Majeure.

(h) **Headings.** The headings in this Agreement are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

(i) **Notices.** Any notice, demand or statement required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given or served if: (i) personally delivered to the other Party; (ii) sent by overnight courier; or (iii) deposited in the United States mail, postage prepaid and addressed to the address set forth below:

IF TO RED GRANITE:

Red Granite DevCo LLC
Attn: Aaron Bilyeu & Katie Wiley
712 Main Street, Suite 3100
Houston, Texas 77002

IF TO THE CITY:

City of Port Washington
Attn: Melissa Pingel, City Administrator
100 West Grand Avenue
Port Washington, Wisconsin 53074

WITH A COPY TO:

Attorney Christopher R. Smith
von Briesen & Roper, S.C.
411 E. Wisconsin Ave.
Suite 1000
Milwaukee, Wisconsin 53202

(j) **Change of Address.** Any Party may change the address set forth above to which notices to such Party shall be sent, by written notice to the other Party given in accordance with this Agreement. At such time as a Party assigns this Agreement to a third party, such Party or third party shall send notice to the other Party of the name and address to which notice to such third party shall be sent or delivered. Until such time as such notice is given, the assigning Party shall be deemed to be the agent for such third party for purposes of receipt of service of notices.

(k) **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any action to enforce

or concerning this Agreement shall be brought in the Circuit Court for Ozaukee County, Wisconsin.


(l) **Immunity.** Nothing contained in this Agreement constitutes a waiver of the CITY'S sovereign or governmental immunities under applicable law.


(m) **Authority.** The persons executing this Agreement represent that they have the legal authority to bind the respective Party for which such signature is made.

[Signature pages follow]

CITY:
City of Port Washington

By: 
Print Name: Ted Nitzke
Its: Mayor

Dated: January 7, 2025 
~~December~~

Attest: 
Print Name: Susan L. Westerbeke
City Clerk

Drafted by:

Attorney Christopher R. Smith
von Briesen & Roper, SC
411 E. Wisconsin Avenue
Suite 100
Milwaukee, WI 53202
T: (414)287-1499
E: christopher.smith@vonbriesen.com

EXHIBIT A

Map of Project Site

