

RESOLUTION NO. 2011- 99

RESOLUTION BY THE EXECUTIVE COMMITTEE AUTHORIZING RACINE COUNTY TO ENTER INTO AGREEMENTS WITH RACINE HARBOR MARINA, LLC (RHM) AND ITS DESIGNEES, AGENTS AND TENANTS TO EFFECTUATE THE PURCHASE OF ALL IMPROVEMENTS AT REEFPOINT MARINA PURSUANT TO TERMS IN THE ORIGINAL LICENSE AGREEMENT AND ANY AMENDMENTS, AND ALL LEASES AND SUBLEASES INVOLVING RHM AND ITS TENANTS AND AUTHORIZING RACINE COUNTY TO TRANSFER UP TO \$5,000,000 FROM THE UNRESERVED UNDESIGNATED ACCOUNT AND USE PROCEEDS FROM THAT SOURCE TO EXECUTE THE PURCHASE AND TO ISSUE A TIMELY BOND TO REIMBURSE THE UNRESERVED UNDESIGNATED ACCOUNT

To the Honorable Members of the Racine County Board of Supervisors:

WHEREAS, on April 21, 1987, the County and Racine Marina Associates, Inc. (“RMA”) entered into a Marina Agreement (the “Marina Agreement”) that required RMA to develop and construct improvements on the land known as “Reefpoint Marina” consisting of piers, 921 boat slips, an administration building, various service center buildings, a fuel dock and parking lot (collectively, such improvements referred to herein as the “Marina”), and further required the County to execute and deliver to RMA the Marina License in the form attached to the Marina Agreement; and

WHEREAS, pursuant to the Marina Agreement, the County and RMA entered into the Marina License on April 30, 1987, and amendments thereto on November 15, 1987, May of 1995, November of 1995, and May of 1998 (collectively hereinafter referred to as the “Marina License”); and

WHEREAS, in the Marina License, among other things, the County grants RMA a license in the Marina and RMA agrees to operate the Marina and pay rent to the County in the form of a percentage of gross revenues for slip rentals until December 31, 2012 (collectively, the “License Payments”); and

WHEREAS, the Marina License also provides that negotiations for renewal of the license could commence December 31, 2010, but that if a new license is not negotiated by July 1, 2012, at the expiration of the Marina License, the County is obligated to purchase the Improvements pursuant to the terms of the Marina License; and

WHEREAS, in July, 2000, RMA was dissolved and, in connection therewith, assigned all of its rights, duties, and obligations contained in the Marina License, Marina Agreement, and Lease Agreement to RHM; and

WHEREAS, in 2007, in recognition of the approaching end of the marina license on December 31, 2012, and the prospect of the county’s purchase of the Reefpoint Marina improvements, the County Executive directed a thorough examination of all relevant factors, to include an evaluation of the of the improvements, evaluation of alternative business plans for continued marina operation, and generation of concepts for potential added economic activity in the marina area; and

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4 **WHEREAS**, working through retained outside counsel, Racine County was able to
5 secure the services of a team of consultants experienced in all aspects of marina design,
6 operations, management, marketing, and evaluation, as well as integration of marina
7 facilities into local economic activities; and

8 **WHEREAS**, that team of consultants reported, from time to time, to the County
9 Executive, senior county staff, and members of the leadership of the Racine County Board
10 of Supervisors and updated and refined its ideas and observations as requested by the
11 county; and

12 **WHEREAS**, Racine County was given an appraisal of the value of the Reefpoint
13 improvements as approximately \$7.9 million; and

14 **WHEREAS**, the consultants nonetheless advised that the Marina License's formula
15 for determining the value of the assets, in the absence of a negotiated price, presented a
16 serious risk of an appraised value substantially higher than that amount; and

17 **WHEREAS**, the County Executive determined that the County could not afford the
18 risk of having to pay a price substantially higher than the appraisal amount; and

19 **WHEREAS**, the County Executive determined that the County should pursue
20 acquisition of the Reefpoint improvements as early as possible, to prevent further
21 deterioration of the improvements and the potential loss of boaters before the 2013 boating
22 season; and

23 **WHEREAS**, having discussed the matter with members of the leadership of the
24 Racine County Board of Supervisors, the County Executive aggressively pursued
25 negotiations with RHM in late 2011 and early 2012; and

26 **WHEREAS**, those negotiations have resulted in signing by RHM of a Letter of Intent
27 to sell the Reefpoint improvements for a total price of \$6,701,251.48, as adjusted for
28 accrued interest at the date of closing; and

29 **WHEREAS**, pursuant to Resolution No. 97-305 and the subsequent Marina License
30 amendment dated May 1998, some License payments were deferred, it being mutually
31 agreed by the parties that the deferred amount and interest—now totaling \$2,522,744.92—
32 would be used as a credit toward purchase of the improvements by Racine County; and

33 **WHEREAS**, because of that credit, the amount actually to be paid out by the county
34 is \$4,178,505.56, as adjusted, of which \$3,928,506.56, as adjusted, will be paid to Wells
35 Fargo Bank in satisfaction of its loan to RHM, leaving a balance of \$250,000, as adjusted,
36 to be paid to RHM at closing..

37
38 **NOW THEREFORE, BE IT RESOLVED** by the Racine County Board of
39 Supervisors that the agreements necessary to execute the purchase of the assets
40 pursuant to the terms of the April 1987 License Agreement with Racine Marina Associates,
41 Inc. (RMA) - subsequently Racine Harbor Marina, LLC (RHM) - and all subsequent
42 amendments, at the earliest opportunity and under the general terms and conditions set
43 out in "Exhibit A", that is attached hereto and incorporated herein, are hereby authorized
44 and approved.

5 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
6 County is authorized to terminate the lease between RHM and the County for the
7 occupancy of Belle Harbor.
8

9 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
10 County is authorized to enter into a short-term agreement with Skipper Marine Holdings,
11 Inc. for service and delivery of boats currently being dry docked and or maintained at Belle
12 Harbor for a term to be negotiated by Corporation Counsel reflecting the date of the last
13 boat in storage to be launched.
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15 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
16 County is authorized to negotiate a new lease agreement with a prospective tenants at the
17 Marina administration building.
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19 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
20 transfer of up to \$5,000,000.00 from the Unreserved Undesignated Account to execute the
21 purchase of the improvements from RHM pursuant to the terms of the License Agreement
22 dated April 1987 and all subsequent Amendments is hereby authorized and approved.
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24 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
25 County is authorized to issue municipal bonds to reimburse the Unreserved Undesignated
26 Account at a time most advantageous to the County.
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28 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that the
29 County is hereby authorized to pursue all necessary due diligence in order to execute the
30 purchase with RHM.
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32 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that all
33 agreements shall incorporate such terms and conditions as the Corporation Counsel and
34 the Finance Director deem necessary and appropriate.
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36 **BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that any
37 two of the County Clerk, the County Executive and/or the County Board Chairman are
38 authorized to execute any contracts, agreements or other documents necessary to carry
39 out the intent of this resolution.

40 Respectfully submitted,

41
42 1st Reading _____

EXECUTIVE COMMITTEE

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44 2nd Reading _____

Peter L. Hansen, Chairman

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46 BOARD ACTION

47 Adopted _____

48 For _____

49 Against _____

50 Absent _____

Russell A. Clark, Vice-Chairman

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4 Robert N. Miller, Secretary

5 VOTE REQUIRED: 2/3 M.E.

6
7 Prepared by:
8 Corporation Counsel

Mike Dawson

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10
11 _____
Robert D. Grove

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13 _____
Jeff Halbach

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15 _____
Q. A. Shakoor, II

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17 _____
Daniel F. Sharkozy

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19 _____
Pamela Zenner-Richards

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25 **The foregoing legislation adopted by the County Board of Supervisors of**
26 **Racine County, Wisconsin, is hereby:**

27 **Approved:** _____

28 **Vetoed:** _____

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30 **Date:** _____,

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32 _____
33 **James A. Ladwig, County Executive**

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EXHIBIT "A"

January 10, 2012

RHM

Attn: Michael J. Pretasky Sr

Re: Reefpoint Marina

Letter of Intent

Racine County (hereinafter "Buyer") is pleased to submit this Letter of Intent ("LOI") to purchase the improvements contained within the above-referenced property. Buyer agrees to purchase the improvements contained within the subject property and Racine Harbor Marina, LLC (hereinafter "Seller") agrees to transfer said improvements to the Buyer in accordance with the following terms and conditions:

1. **Property:** The improvements contained on approximately 4.05 acres located within approximately 53.71 acres of the existing Reefpoint Marina, including the fixed and floating docks, an administration building with attached swimming pool and spa area, shower buildings, and accessory gas pumping station. Attached hereto as **Exhibit A** and incorporated by reference herein, is an overhead photograph of the Reefpoint Marina, and the improvements contained thereon.
2. **Buyer:** Racine County
3. **Seller:** Racine Harbor Marina, LLC
4. **Purchase Price:** Six Million Seven Hundred One Thousand Two-Hundred Fifty-one Dollars and 48/100 (\$6,701,251.48), which shall be paid as follows:
 - a. \$3,928,506.56 to Wells Fargo Bank in full satisfaction of Seller's note to Wells Fargo Bank which is served by a mortgage on the property.
 - b. \$2,522,744.92 of deferred revenue and interest owed to the Buyer by Seller shall be waived by the Buyer.
 - c. \$250,000.00 cash at closing paid to Seller.
5. **Slip Rental Deposits:** Buyer shall be awarded 75% of all deposits paid by tenants of the marina for the 2012 boating year as of the date of closing, and the Seller shall retain 25% of said deposits. In consideration for the 25% retainage, Seller agrees to be solely responsible for and shall launch all of the boats that are currently stored at the Belle Harbor Marina at the request of either the County or the owner of said boats pursuant to the terms of Seller's agreement with the tenants. Buyer's 75% portion shall be remitted by Seller at closing in the form of a bank check. All funds received by Seller after the date of closing shall be transferred to Buyer as received forthwith.
6. **Due Diligence Period:** Buyer shall have as much time as it determines in its sole and absolute discretion to investigate the issues regarding its purchase, including but not limited to, condition of property, soil conditions, environmental conditions,

financing, zoning, market feasibility, and County Board approval ("Due Diligence Period"). Absent County Board approval, Buyer may, in its sole discretion, terminate this LOI at any time.

7. **Due Diligence Materials:** Immediately upon request, Seller shall provide Buyer will all reports and information applicable to the condition of the property and the financial operation of the Reefpoint Marina.
8. **Entry onto the Property:** Buyer and its employees, representatives, agents and contractors may enter onto the Property for the purpose of obtaining information and conducting tests regarding the Property. Buyer agrees to hold Seller harmless for any loss, liability or damage resulting from such activity on the Property.
9. **Contingencies:** The transaction contemplated herein shall be subject to Buyer obtaining all governmental and county board approvals that are deemed necessary in the Racine County Executive's sole and absolute discretion.
10. **Closing:** The Purchase Agreement shall be fully executed, and the parties will be prepared to complete, at a minimum, a "soft" closing on or before January 31, 2012.
11. **Closing Costs:** Each Party shall pay its attorneys fees. Buyer shall pay all other closing costs, including but not limited to, the cost of all title polices and UCC searches.

All other terms and conditions shall be in accordance with the Purchase Agreement to be mutually agreed upon, executed and delivered by both parties. Buyer shall prepare said document within ten (10) days of Seller's execution of this LOI absent any delays realized during the execution of terms in Paragraph 6 above.

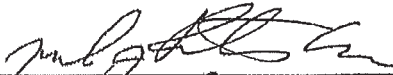
Sincerely,

RACINE COUNTY

Name: _____
Title: _____

ACCEPTED AND AGREED TO BY SELLER
THIS _____ DAY OF _____, 2012:

Racine Harbor Marina, LLC



Name: Mike Protski
Title: PRESIDENT

