

**UPPER FLOOR RENOVATION PROGRAM  
LOAN AND DEVELOPMENT AGREEMENT  
319 Main Street**

THIS AGREEMENT, dated the 3rd day of April 2017, by and between Batavian Building, LLC with its address at 319 Main Street, La Crosse, Wisconsin 54601, hereinafter referred to as the Debtor, and the City of La Crosse, Wisconsin, a municipal corporation of the State of Wisconsin, having its principal office at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601, hereinafter referred to as the City.

WITNESSETH:

WHEREAS, the City has funds available from the State of Wisconsin Board of Commissioners of Public Lands (State Trust Fund) to be used for the Upper Floor Renovation Program to renovate upper floors of buildings in Downtown La Crosse; and

WHEREAS, the Debtor desires to improve the economic environment in the central business district; and

WHEREAS, the Debtor wishes to borrow from the City the sum of up to Two Hundred Thousand Dollars(\$200,000) which will be applied toward the cost of the second floor renovations at 319 Main Street; and

WHEREAS, the City is willing to loan the total sum of up to Two Hundred Thousand Dollars (\$200,000) to the Debtor which will be applied toward the cost of second, third, fourth and/or fifth floor renovations at 319 Main Street, pursuant to the following terms and conditions; and

WHEREAS, prior to advancing funds to the Debtor, the City of La Crosse desires certain assurances as more fully set forth herein;

NOW, THEREFORE, in consideration of the mutual representations and agreements contained herein, and for other good and valuable consideration, it is agreed as follows:

**A. PROJECT**

1. The Debtor shall complete renovations on the second, third, fourth and/or fifth floor renovations at 319 Main Street in accordance with the application submitted to the City of La Crosse dated March 23, 2017. The land and building are described as:

ORIGINAL PLAT OF THE TOWN OF LA CROSSE W 86 FT LOTS 6 & 7 BLOCK 24 LOT SZ: 86 X 120

Property Address: 319 Main Street, La Crosse  
Tax Parcel No.: 17-20020-30

**B. PUBLIC BENEFIT**

Property value must increase at a rate of one and one fourth times the City's loan. The property

value must increase by \$250,000 to satisfy the public benefit test. The 2017 Assessor's Office Assessed Value for the properties is \$383,000, so the value after rehabilitation shall be a minimum of \$633,000 by the completion time stipulated in Section D of this document.

#### **C. THE LOAN**

1. The City agrees to lend to the Debtor a sum up to, but in no case more than, \$200,000 in Upper Floor Renovation Program funds for second, third, fourth and/or fifth floor renovations.
2. The Upper Floor Renovation Program loan shall be evidenced by the Debtor's execution and delivery to the City of a Promissory Note in substantially the form of the Promissory Note annexed hereto as Exhibit "A," and the loan shall be for the term, shall bear interest at the rate, shall be payable at the time and in the manner, and shall otherwise be governed by the provisions contained in the form of the Promissory Note and amortization schedule annexed hereto as Exhibit "B." The Debtor listed above shall be liable for payment of said Promissory Note.
3. Upper Floor Renovation Program loan and Promissory Note (Exhibit "A") shall be secured by a mortgage covering the premises located at 319 Main Street, La Crosse substantially in the form of the Mortgage annexed hereto as Exhibit "C," and shall be in favor of the City upon all lands, structures, and fixtures. The security position of the City may be subordinated to a first lien in an amount not to exceed \$343,000.00 to finance the improvements at the 319 Main Street.
4. No disbursement of the Upper Floor Renovation Program loan funds shall be made by the City unless and until the Debtor has furnished to the City a casualty or property insurance policy or policies duly endorsed to indicate the City's interest in the property as additional insured in an amount equal to at least \$200,000. Said insurance shall be maintained at all times during the term of the loan and shall be written by an insurance company licensed to do business in Wisconsin.
5. Upon any refinancing, sale in whole or in part or other disposition of the equipment, and/or bankruptcy during the term of the loan, any outstanding balance including interest shall become immediately due and payable to the City.
6. The Debtor may, at its option, at any time and from time to time, prepay the loan in part or in whole without premium or penalty. Any such partial prepayment shall be applied to the next installment(s) due.
7. The Debtor agrees that this agreement may be terminated or suspended in the event the Debtor fails to comply with the project activity time frame or in the event of default, inability or failure to perform as required by this or any accompanying agreements. The City may take appropriate and corrective action in order to insure compliance with this agreement. In the event of default hereunder, City shall give written notice thereof to Debtor whereupon Debtor shall have a period of ten (10) days during which to secure such default before City may proceed to foreclose on the Upper Floor Renovation Program loan, collect upon guarantees, or otherwise take such actions as City shall have available to it.

**D. TIME FRAME**

The Debtor agrees that it will complete work on the Upper Floor Renovation Program assisted activities (the project) according to the following schedule:

Activity	Completion Date
Completion of Improvements	730 days from loan execution
Investment of Equity Funds	365 days from loan execution

**E. DEBTOR'S RESPONSIBILITIES**

Debtor Agrees to:

1. The City as the second mortgage holder, with first mortgage holder being Firefighters Credit Union
2. Allow the City or its representatives access to the project site at reasonable times for the purpose of observing project progress.
3. Provide, upon request, all information and data necessary to determine that time schedules are being met and proposed work is being achieved.

**F. CONFLICT OF INTEREST**

Except for approved eligible administrative and personnel costs, no member, officer, or employee of the City, its designees, or agents, no consultant, no member of the governing body of the City, and no other public official of the City, who exercise or who has exercised any functions or responsibilities with respect to the project during his/her tenure, or who is in the position to participate in a decision-making process or gain inside information with regard to the project, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, who are to perform in connection with the project business or in any activity for benefit therefrom, which is part of the project business at any time during such persons tenure or for one year thereafter.

**G. NOTICES**

Any notice, certificate, request, complaint, demand, communication, or other paper (collectively "Notices") shall be sufficiently given hereunder and shall be deemed given when delivered or mailed registered or certified mail, postage prepaid, or sent by telegram, addressed as follows:

If to the City:                      Planning and Development Department  
   City of La Crosse

400 La Crosse Street  
La Crosse, WI 54601

If to the Debtor:                      Batavian Building, LLC  
   Attention: Ken Riley  
   319 Main Street  
   La Crosse, WI 54601

The City and the Debtor may designate any further or different addresses to which subsequent Notices shall be sent.

**H.      SUCCESSORS AND ASSIGNS**

This agreement shall inure to the benefit of and shall be binding upon the City and the Debtors and their respective successors and permitted assigns.

**I.      SEVERABILITY**

In the event any provision of this agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative, invalid, or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same illegal, inoperative, invalid, or unenforceable to any extent whatever.

**J.      AGREEMENT AMENDMENT**

This agreement may not be amended, changed, modified, altered, or terminated without the written agreement signed by the party(s) against whom enforcement of any such amendment, change, modification, alteration, or termination is sought.

**K.      GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin applicable to agreements made and to be performed entirely within such State.

**L.      INDEPENDENT STATUS**

Nothing contained herein, nor any act of the City, the Debtor, or any other party, shall be deemed or construed by any party, or by any other third person, to create any relationship with third party beneficiary, principal, or agent, limited or general partnership, or joint venture, or of any association or relationship involving the City. The Debtor is at all times considered an independent agency and not an agency or branch of the City.



**EXHIBIT "A"**

**PROMISSORY NOTE**

\$200,000 City of La Crosse, Wisconsin  
April 3, 2017

FOR VALUE RECEIVED, Batavian Building, LLC, with its address at 319 Main Street, La Crosse, WI 54601, hereinafter referred to as the "Debtor," promises to pay to the order of the City of La Crosse, Wisconsin, a municipal corporation duly organized and existing under the laws of the State of Wisconsin, having its principal office at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601, hereinafter referred to as the "City," at the City's said address, or at such other place or places as may from time to time be designated in writing by the holder hereof, the principal sum of up to One Hundred Twenty Thousand Dollars (\$200,000) principal in lawful money of the United States of America, together with interest thereon at rates in accordance with the schedule set forth below until said principal sum and interest shall have been paid in full.

Principal and interest shall be payable as follows:

- (a) Combined equal installments of principal and interest at the applicable rate set forth in the schedule below on such amount as would amortize the entire principal sum over a period of ten (10) years shall be payable to the City by the Debtors. Interest (calculated on a 360-day year), at the said annual rate prescribed below, shall commence to accrue the first day of the calendar month following the first disbursement of funds.

Payments of principal and interest shall be made commencing on the first day of June, and every first day of succeeding calendar months through the one hundred and twenty first (121th) month.

- (b) The schedule of Debtors' payments to the City is as follows:

Months one (1) through one hundred and twenty one (121): Equal monthly payments based on the scheduled interest rate (0% for years 1 and 3, 1.5% for year 3, 3.5% for the remainder of the loan), calculated on the total of funds drawn to amortize the entire loan amount over a period of ten (10) years.

Month one hundred and twenty one (121) the loan interest and principal balance is due.

Nothing contained herein between the parties, nor any act of the City or any of the parties, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, of principal or agent, of limited or general partnership, of joint venture, or of any association or relationship involving the City or the State of Wisconsin.

If any payment of principal or interest hereunder shall become due and payable on a Saturday, Sunday, or a legal holiday, such payment shall be deemed due and shall be made on the next succeeding business day.

This Note may be prepaid in whole or in part at any time without premium or penalty and without notice prior to its maturity date.

All notices, requests, demands, consents, approvals, statements, and other communications which may or

are required to be served, submitted, or given hereunder, (for the purpose of this paragraph collectively called "Notices"), shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the person or entity to receive such Notice at its address first above set forth or to such other address or addresses as either the Debtors or the holder hereof shall have designated in writing.

A copy of all notices to the City shall be sent concurrently to: City of La Crosse, Planning and Development Department, City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601.

Notices shall be deemed given one business day (excluding Saturdays, Sundays, and legal holidays) after the date so mailed.

This Note may not be changed, modified, or discharged orally, but only by an agreement in writing signed by the party or parties against whom enforcement of any change, modification, or discharge is sought.

This Note is made and issued pursuant to a certain Upper Floor Renovation Program Loan and Development Agreement dated April 3, 2017 between the City of La Crosse, Wisconsin and the Debtor.

This Note and the Upper Floor Renovation Program Loan and Development Agreement and all other documents executed in connection therewith or herewith have been made, executed, and delivered in the State of Wisconsin, and it is agreed that this Note and the Upper Floor Renovation Program Loan and Development Agreement and all other documents and transactions in any way relating to any of the foregoing, shall be construed in accordance with, and the validity and enforceability of the terms and conditions thereof shall be determined by the laws of the State of Wisconsin applicable to contracts made and entirely to be performed within such State.

In the event of default hereunder, City may give written notice thereof to Debtor whereupon Debtor shall have a period of ten (10) days during which to secure such default before City may proceed to foreclose on the State Trust Fund Loan, collect upon guarantees, or otherwise take such actions as City shall have available to it.

As an additional guaranty for performance of this agreement, Debtor shall personally guaranty the performance of this agreement.

WITNESS:

\_\_\_\_\_

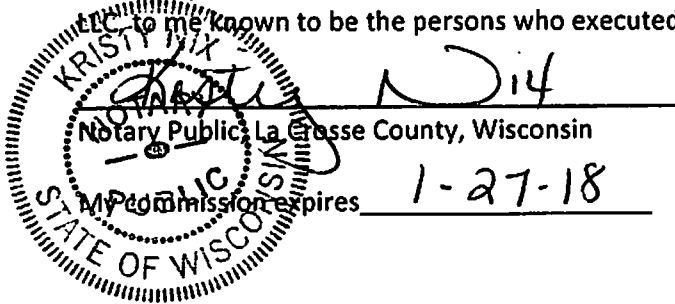
  
Ken Riley  
Batavian Building, LLC

STATE OF WISCONSIN )

) ss.

COUNTY OF La Crosse )

Personally came before me, this 4<sup>th</sup> day of March, 2017, the above named representative of RRJ Holdings LLC, to me known to be the persons who executed the foregoing as their own free act and deed.





**EXHIBIT "C"**

**PURCHASE--MONEY MORTGAGE**

THIS INDENTURE OF MORTGAGE, made this \_\_\_\_ day of March, 2017, between Batavian Building, LLC, with its address at 319 Main Street, La Crosse, Wisconsin 54601 (hereafter called "MORTGAGOR"), and the City of La Crosse, Wisconsin, a municipal corporation of the State of Wisconsin, having its principal office at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601 (hereinafter called MORTGAGEE");

**Return to**

City Planning Department  
400 La Crosse St.  
La Crosse, WI 54601

Parcel No.: 17-20017-20

WITNESSETH THAT, the said Mortgagor, in consideration of the sum of Two Hundred Thousand Dollars (\$200,000) principal to Mortgagor in hand paid by said Mortgagee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey a security interest unto said Mortgagee, its successors and assigns, forever, all that certain tract or parcel of land lying and being in the City of La Crosse, County of La Crosse, and the State of Wisconsin as more fully described as:

The West 86 feet of Lots 6 and 7 in Block 24 of the Original Plat of the Town (now City) of La Crosse, La Crosse County, Wisconsin.

Property Address: 319 Main Street, La Crosse  
Tax Parcel No.: 17-20020-30

TO HAVE AND TO HOLD THE SAME, together with all the rents, profits, fixtures, and appurtenances thereto belonging to Mortgagor, unto Mortgagee, its successors and assigns. Mortgagor for itself, successors, and assigns, does covenant with said Mortgagee, its successors, and assigns, as follows:

That Mortgagor is lawfully seized of said premises and has good right to sell and convey the same; the same is free from all encumbrances, except a certain first mortgage lien in the principal amount not to exceed \$343,000.00 favor of Firefighters Credit Union and a certain second mortgage lien in the principal amount not to exceed \$200,000 in favor of the City of La Crosse, which loan from the Upper Floor Renovation program shall be used for improvements to above property.

Mortgagor will warrant and defend the title to same against all lawful claims not hereinbefore expressly excepted.

PROVIDED, NEVERTHELESS, if the said Mortgagor, its permitted successors, and assigns shall pay to the Mortgagee all sums of principal and interest due and payable pursuant to a certain Promissory Note more fully described as follows:

Promissory Note of even date herewith in the principal amount of Two Hundred Thousand Dollars (\$200,000) with interest thereon at zero percent (0%) for the first two years, one and one half percent (1.5%) for the third year, and three and a one half percent (3.5%) for the remainder of the

loan, as scheduled therein, due and payable in full, as provided for in the Promissory Note, and not later than ten (10) years and one (1) month from loan commence date. Mortgagor shall also pay all sums advanced by Mortgagee in protecting the lien of this Mortgage, in payment of taxes on said premises, insurance premiums covering the buildings thereon, principal or interest on any prior liens, expenses, and reasonable attorneys' fees as herein provided for and keep and perform all covenants and agreements herein contained, then this second mortgage shall be null and void and it shall be released by Mortgagee.

AND, THE MORTGAGOR, for itself, its successors, and assigns does hereby covenant and agree with the Mortgagee, its successors, and assigns as follows:

1. To pay the principal sum of money and interest pursuant to the Note above specified.
2. To pay, before they become delinquent, all taxes and assessments and other charges now due or that may hereafter be levied or assessed against the property described above.
3. Insurance. Mortgagor shall keep the improvements on the property insured against loss or damage occasioned by fire, extended coverage perils, and such other hazards as Mortgagee may require, through insurers approved by the Mortgagee, in an amount not less than the unpaid balance of the Note due Mortgagee, and shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of the Mortgagee and, unless Mortgagee otherwise agrees in writing, the original of all policies covering the property shall be deposited with the Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. All proceeds from such insurance shall be applied, at Mortgagee's option, to the installments of the Note in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the property.
5. Condition and Repair. To keep the property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures.
6. Liens. To keep the property free from liens and encumbrances superior to the lien of this mortgage except the lien of the Firefighters Credit Union.
7. Prior Mortgages. To perform all of the Mortgagor's obligations and duties under any mortgage or security agreement with a lien which has priority over this Mortgage and any failure to do so shall constitute a default under this Mortgage.
8. Waste. Not to commit waste or permit waste to be committed upon the property.
9. Conveyance. Not to sell, assign, mortgage, convey, or otherwise transfer any legal or equitable interest in all or part of the property, by deed, land contract, option, or in any other way, or to permit the same to occur without the written consent of the Mortgagee unless the indebtedness secured by this Mortgage is first paid in full. Upon any such sale, conveyance, or transfer, the entire indebtedness shall become due and payable.
10. Alteration or Removal. Not to remove, demolish or materially alter any part of the property without Mortgagee's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility.

11. **Condemnation.** To pay to Mortgagee all compensation received for taking of the property, or any part, by condemnation proceedings (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the property, or any part. The compensation shall be applied in such manner as Mortgagee determines to rebuilding of the property or to installments of the Note in the inverse order of their maturities (without penalty for prepayment).
12. **Ordinances; Inspections.** To comply with all laws, ordinances, and regulations affecting the property. Mortgagee and its authorized representatives may enter the property at reasonable times to inspect it and, at Mortgagee's option, repair or restore it.
13. **Authority of Mortgagee to Perform for Mortgagor.** If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Mortgagee may perform the duties or cause them to be performed, including paying any amount so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at a rate not in excess of the maximum rate permitted by law from the date of expenditure by Mortgagee to the date of payment by Mortgagor.
14. **Default; Acceleration; Remedies.** If, a) there is a failure to make a payment under the Note when due and such default continues for a period of ten (10) days, b) Mortgagor fails timely to observe or perform any of the Mortgagor's covenants contained in this Mortgage, Promissory Note, or Loan and Development Agreement; c) any representation or warranty made in this Mortgage or otherwise to induce Mortgagee to extend credit to Mortgagor is false in any material respect when made, or d) Mortgagor for the Note dies, ceases to exist or becomes insolvent or the subject of bankruptcy or other insolvency proceedings, the Note will, at the option of the Mortgagee be payable immediately, and Mortgagee may collect the same in a suit at law or by foreclosure of this Mortgage by action or advertisement or by the exercise of any other remedy available at law or equity.
15. **Waiver.** Mortgagee may waive any default without waving any subsequent or prior default by Mortgagor.
16. **Power of Sale.** In the event of foreclosure, Mortgagee may sell the property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.
17. **Receiver.** Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Mortgagee under it, without regard to the adequacy or inadequacy of the property as security for the Note, the court may appoint a receiver of the property without bond, and may empower the receiver to take possession of the property and collect the rents and profits of the property, and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents and profits, when so collected, to be held and applied as the court may direct.
18. **Expenses.** To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses, including without limitation, attorneys' fees and expenses of obtaining title evidence, incurred by Mortgagee in foreclosing this Mortgage.
19. **Severability.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

