

**SECOND AMENDMENT TO THE
DEVELOPMENT AGREEMENT BETWEEN
SPIES CONSTRUCTION, LLC AND THE CITY
OF LA CROSSE**

This Second Amendment to the Development Agreement between Spies Construction, LLC and City of La Crosse, (the “**Second Amendment**”), is made and among the City of La Crosse, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 (the “**City**”) and **Spies Construction, LLC**, a Wisconsin limited liability company with offices located at 2011 Liberty Street, La Crosse, WI 54603 (the “**Developer**”).

WHEREAS, the parties entered into an agreement (the “Development Agreement”) in May 2018 and recorded on May 14, 2018 as document no. 1710192.

WHEREAS, the parties entered into a First Amendment to the Development Agreement, (the “First Amendment”) in January 2019 and recorded in document no. 1722212.

WHEREAS, Developer has requested that real property at the site, which was previously designated for a memorial in Res. No. 2006-07-024, be transferred to the Developer for the benefit of the Project.

WHEREAS, the City determines that a transfer of the real property would increase the value of the Project as well as further benefit the community.

WHEREAS, it is necessary to amend the Development Agreement.

WHEREAS, the parties wish to set forth in the Second Amendment their respective commitments, understandings, rights and obligations as more fully described herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

1. **Acquisition of Real Property.** The Developer agrees to acquire the real property, or part thereof, from the City at a price of _____ dollars (\$_____) per square foot. The real property is more particularly described in the attached **Exhibit A**. The sale of the real property is limited by the following conditions precedent:
 - a. Prior to any sale, the Common Council shall decide by separate legislation, subsequent to this Second Amendment, whether to sell the real property, or part thereof. The Common Council will make its decision, in its sole and absolute discretion, based upon information provided to it about the status and progress of the memorial since the adoption of Res. No. 2006-07-024.

This space is reserved for recording data
Drafted by and when recorded return to:
City Attorney 400 La Crosse Street Lacrosse WI 54601
Parcel Identification Number Tax Key Number

- b. Prior to any sale, the Common Council shall memorialize its decision to release, waive or otherwise vacate the memorial dedication, or part thereof, in writing.
- c. Prior to any sale, a court, tribunal or other authoritative review body, if necessary, shall determine the memorial designation is to be removed.
- d. Any such sale of the real property, or part thereof, shall be by quitclaim deed from the City to the Developer, with any transactional costs to be paid by Developer.
- e. The real property, or part thereof, to be sold is more particularly described in the attached **Exhibit A**. If the Common Council, court, tribunal or other authoritative review body determines an area less than the area described in **Exhibit A** is to be sold, then the Developer will not have any claim or right to the remainder of the property described in **Exhibit A**, or for additional compensation or damages. The Developer expressly agrees to waive any such claims, rights or damages. If the Developer determines that an area less than the real property described in **Exhibit A** is too small for its requested purposes, then the Developer will provide written notice to the City within thirty (30) days and the Developer will have no further obligation to complete the purchase.

2. **Execution of Agreement.** Developer shall sign, execute and deliver this Second Amendment to the City on or before the close of regular City Hall business hours twenty (20) days after its final adoption by the City. Developer's failure to sign, execute and cause this Second Amendment to be received by the City within said time period shall render the Second Amendment null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Second Amendment, the City shall sign and execute the Second Amendment.

3. **Authority to Sign.** The person signing this Second Amendment on behalf of Developer certifies and attests that the respective Articles of Organization, Articles of Incorporation, By Laws, Member's Agreement, Charter, Partnership Agreement, Corporate or other Resolutions and/or other related documents of Developer give full and complete authority to bind Developer, on whose behalf the person is executing this Second Amendment. Developer assumes full responsibility and holds the City harmless for any and all payments made or any other actions taken by the City in reliance upon the above representation. Further, Developer agrees to indemnify the City against any and all claims, demands, losses, costs, damages or expenses suffered or incurred by the City resulting from or arising out of any such payment or other action, including reasonable attorney fees and legal expenses.

4. **Miscellaneous.** The Development Agreement, as amended by this Second Amendment, remains in full force and effect and is binding on the parties, successors and assigns. This Second Amendment may be executed in any number of counterparts, all of which are considered one and the same amendment notwithstanding that all parties hereto have not signed the same counterpart. Signatures of this Second Amendment, which are transmitted either or both by electronic or telephonic means (including, without limitation, facsimile and email) are valid for all purposes. Any party shall, however, deliver an original signature of this Second Amendment to the other party upon request.

IN WITNESS, the parties to this Second Amendment have caused this instrument to be signed and sealed by duly authorized representatives of Developer and the City this ____ day of _____, 2023.

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SPIES CONSTRUCTION, LLC.

CITY OF LA CROSSE

BY: _____
Delores Spies, Member

BY: _____
Mitch Reynolds, Mayor

BY: _____
Raymond Spies, Member

BY: _____
Nikki Elsen, City Clerk

Subscribed and sworn to before me this
____ day of _____, 2023.

Subscribed and sworn to before me this
____ day of _____, 2023.

Notary Public, State of WI
My Commission: _____

Notary Public, State of WI
My Commission: _____