



**SECOND AMENDMENT TO THE AMENDED AND
RESTATED RIVERSIDE CENTER PHASE 3
DEVELOPMENT AGREEMENT**

This Second Amendment to the Amended and Restated Riverside Center Phase 3 Development Agreement ("Second Amendment") is made by 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"), the Redevelopment Authority of the City of La Crosse, a Wisconsin public body corporate with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("Authority"), and Riverside Center III, LLC, a Wisconsin limited liability corporation with offices located at 328 Front Street South, La Crosse, Wisconsin, 54601 ("Riverside Center").

WITNESSETH:

Whereas, on April 23, 2009, the Developer, City and Authority entered into the Riverside Center Development Agreement (Phase 3), which was recorded on May 7, 2009 as document no. 1525652, in order to eliminate blight, increase tax base and provide a place of employment within downtown La Crosse;

Whereas, on May 25, 2010, the parties entered into an Amended and Restated Riverside Center Phase 3 Development Agreement (the "Phase 3 Agreement"), which amended and superseded the Riverside Center Development Agreement (Phase 3). The Phase 3 Agreement was recorded on July 30, 2010 as document no. 1554622;

Whereas, the parties negotiated a First Amendment to the Amended and Restated Riverside Center Phase 3 Development Agreement (the "First Amendment") but that Amendment was never executed. The First Amendment's reference in this document is only included for future tracking and reference purposes.

Whereas, the real estate to which the Phase 3 Agreement, First Amendment and Second Amendment apply is more particularly described in the attached Exhibit 1.

Whereas, the Phase 3 Agreement, among other things, provided for the creation of two thousand (2,000) new jobs in collaboration with Riverside Center, LLC and Riverside Center II, LLC by January 1, 2013;

Whereas, Riverside Center, in collaboration with Riverside Center, LLC and Riverside Center II, LLC, has created between one thousand four hundred (1,400) and one thousand eight hundred (1,800) new jobs at various times between January 1, 2013 through the summer 2014;

1645320
LACROSSE COUNTY
REGISTER OF DEEDS
CHERYL A. HCBRTOE

RECORDED ON
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City Attorney
400 La Crosse Street
Lacrosse WI 54601

#112

Parcel Identification Number/Tax Key Number

17-20026-060

Whereas, it is necessary to amend the Phase 3 Agreement by adopting this Second Amendment in order to extend the timeline for the creation of jobs, address the job creation deficiency and clarify other matters from the Second Amendment; and

Whereas, the City, Authority and Riverside Center wish to set forth in this 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. Jobs. Section 2.15 of the Phase 3 Agreement, as amended and superseded, shall be further amended to allow the creation of two thousand (2,000) jobs to occur on or before January 1, 2016, rather than January 1, 2013. All other provisions of Section 2.15 of the Phase 3 Agreement, as amended and superseded, shall remain unchanged.

2. Job Certification and Guarantee – Exhibit J. The Phase 3 Agreement's Job Certification and Guarantee, identified as Exhibit J, shall be amended to extend the time allowed to create two thousand (2,000) jobs to occur on or before January 1, 2016, rather than January 1, 2013. All other provisions of the Job Certification and Guarantee shall remain unchanged.

3. Payment. Riverside Center, jointly and severally with Riverside Center, LLC and Riverside Center II, LLC, shall pay liquidated damages to the City in the amount of two million seven hundred and fifty thousand dollars (\$2,750,000.00) over the course of two (2) years, specifically, one million dollars (\$1,000,000.00) on or before January 15, 2015, one million dollars (\$1,000,000.00) on or before January 15, 2016, and the waiver of seven hundred fifty thousand dollars (\$750,000.00) as identified in Section 3.1(b) of the Phase 3 Agreement. The City agrees that these payments are personal obligations of Riverside Center, Riverside Center II, LLC and Riverside Center, LLC, and are not binding upon any one or more successors-in-interest of those parties. Notwithstanding, the City may, upon the failure of Riverside Center, Riverside Center II, LLC and/or Riverside Center, LLC to timely pay liquidated damages, offset, withhold and receive payment of its liquidated damages through any cash grant or Contribution it is required to make through any development agreement it may have with Riverside Center, Riverside Center II, LLC, Riverside Center, LLC, or one or more successors-in-interest of those parties.

4. Other Provisions. Except as described herein, all other terms, conditions, covenants and promises of the Phase 3 Agreement, and all exhibits thereto shall remain unchanged and in full force and effect.

5. Execution of Amendment. Riverside Center shall sign, execute and deliver this Second Amendment to the City on or before the close of regular City Hall business hours forty-five (45) days after its final adoption by the City and/or Authority, whichever occurs later. Riverside Center'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 and Authority. After Riverside Center has signed, executed and delivered the Second Amendment, the City and Authority shall sign and execute the Second Amendment.

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

7. Jobs Requirement. The following provisions pertain to the jobs requirement under the Development Agreements.

A. The "Development Agreements" are collectively:

1. the Redevelopment Agreement between the City of La Crosse, the Redevelopment Authority of the City of La Crosse and Riverside Center, LLC dated July 1, 2004, approved by Resolution #2004-04-032, recorded May 31, 2005 as Document No. 1422545; Amended Redevelopment Agreement between the City of La Crosse, the Redevelopment Authority of the City of La Crosse and Riverside Center, LLC dated April 14, 2005, approved by Resolution 2005-04-043, recorded August 15, 2007 as Document No. 1482531; Second Amendment to Development Agreement between the City of La Crosse, Redevelopment Authority of the City of La Crosse and Riverside Center LLC., dated May 12, 2005, approved by Resolution #2005-05-19, recorded August 15, 2007 as Document No. 1482530; Third Amendment to the Development Agreement between the City of La Crosse, the Redevelopment Authority of the City of La Crosse and Riverside Center, LLC dated April 27, 2010 approved by Resolution #2010-04-053, signed by developer on May 25, 2010, recorded July 30, 2010 as Document No. 1554621 and, as amended by a Fifth Amendment to the Redevelopment Authority Between the City of La Crosse, the Redevelopment Authority of the City of La Crosse, and Riverside Centr, LLC date of even date herewith (as so amended, the "Phase 1 Agreement").
2. the Riverside Center II, LLC – Phase II Development Agreement, dated April 19, 2007, approved by Resolution #2007-04-069, recorded May 15, 2007 as Document No. 1474123 and amended by the April 10, 2008 First Amendment to Riverside Center II, LLC Phase II Development Agreement, approved by Resolution #2008-03-024, recorded May 12, 2008 as Document No. 1501807, the March 12, 2009 Second Amendment to Riverside Center II, LLC – Phase II Development Agreement, approved by Resolution #2009-03-024, signed by developer on April 23, 2009, and the July 30, 2010 Third Amendment to Riverside Center II, LLC – Phase II Development Agreement approved by Resolution #2010-04-054, recorded July 30, 2010, signed by developer on May 25, 2010 and as amended by a Fifth Amendment to the Riverside Center II, LLC - Phase II

Development Agreement (as so amended, the "Phase 2 Agreement"), by and between the City, the RDA and Riverside Center II, LLC; and

3. the Phase 3 Agreement, as amended by this Second Amendment.

B. **Liquidated Damages Prior to the Date Hereof.** The City agrees that the payments made under Section 3 above are in full satisfaction of all damages, including, without limitation, the liquidated damages, payable by Riverside Center, jointly and severally with Riverside Center II, LLC and Riverside Center, LLC in connection with the Development Agreements as of the date hereof.

C. **Liquidated Damages On and After the Date Hereof.** The City agrees that the liquidated damages payable on and after the date hereof under the Developments Agreements are based on the number of Jobs employed collectively by Riverside Center, Riverside Center II, LLC and Riverside Center III, LLC between January 1, 2016 and December 31, 2025, and will be determined pursuant to the procedure set forth in Section 7(E) below. The City agrees that the liquidated damages determined in accordance with Section 7(E) below is the sole and exclusive remedy for the Riverside Center, Riverside Center, LLC and Riverside Center III, LLC's failure to meet the Employment Level.

D. **Jobs Accounting.** The City agrees that Riverside Center is only required to report to the City by June 15 the number of Jobs at the Project during the previous year, and that Riverside Center may use commonly accepted accounting practices, may rely in good faith on information provided by tenants to calculate the number of Jobs and, in the absence of information from tenants, may make good faith estimates regarding tenant employment levels. The City has the right to audit Riverside Center's books and records regarding Riverside Center's determination of the employment levels of Riverside Center and its affiliated business (as opposed to the employment levels of tenants unrelated to Riverside Center and its affiliated business, which are not subject to audit). The City may only conduct one audit per calendar year. The City must give Riverside Center reasonable prior written notice before conducting any such audit. The results of employment audits conducted by the City shall be final and not subject to challenge except in the event of fraud

E. **Determination and Payment of Liquidated Damages.** Liquidated damages under Section 7(C) above will be determined and paid pursuant to the provisions of this Section 7(E).

1. The "Actual Jobs Count" is actual number of Jobs for any calendar year from 2016 through 2025 as determined on the last regular payroll date of the calendar year in question.
2. The "Lowest Jobs Count To Date" is the lowest Actual Jobs Count for any calendar year after 2015 and prior to the then-current calendar year.
3. The "LD Payment" is the amount payable under Section 7(C) above as determined under this Section 7(E); however if the LD Payment, as calculated in accordance with this Section 7(E), is equal to, or less than, \$0.00, then no LD Payment is required for that calendar year, and the City is not required to refund any previous LD Payments made to it.

4. The LD Payment for calendar year 2016 is the product of
 - (a) the Employment Level (i.e., 2,000 Jobs) less the 2016 Actual Jobs Count; times
 - (b) \$3,500.
5. The LD Payment for each of calendar years 2017 through 2025 is determined as follows:
 - (a) If the Actual Jobs Count for the calendar year in question is equal to, or greater than, the Lowest Jobs Count to Date, then the LD Payment is \$0.00;
 - (b) if the Actual Jobs Count for the calendar year in question is less than the Lowest Jobs Count to Date, then the LD Payment is the product of
 - (i) the Lowest Jobs Count to Date less the Actual Jobs Count for the calendar year in question, times
 - (ii) \$3,500.
6. The following examples are included for clarification:
 - (a) For example: if the 2016 Actual Jobs Count is 1,600 Jobs, the LD Payment is \$1,400,000 (the product of 400 Jobs (the Employment Level of 2,000 Jobs less the 2016 Actual Jobs of 1,600 Jobs) times \$3,500).
 - (b) For example: if the 2017 Actual Jobs Count is 1,500 Jobs, the Lowest Jobs Count to Date is 1,600 (the 2016 Actual Jobs), and the LD Payment is \$350,000 (100 Jobs (the 2016 Actual Jobs Count of 1,600 Jobs less the 2017 Actual Jobs Count of 1,500) times \$3,500).
 - (c) For example: if the 2018 Actual Jobs Count is 1,800 Jobs, the LD Payment is \$0.00 because the 2018 Actual Jobs Count of 1,800 Jobs is greater than the Lowest Jobs Count to Date, which is 1,300 Jobs (i.e., the 2017 Actual Jobs Count).
7. Riverside Center shall pay the LD Payments to the City within thirty (30) days after the date of the City's written demand for the respective payments.

8. **Riverside Center, LLC - Phase I Agreement.** Notwithstanding the fact that Riverside Center is not a party to, and did not execute the Phase 1 Agreement, Riverside Center hereby consents to,

ratifies, joins in and agrees to be bound by the terms, conditions and obligations set forth in the Phase 1 Agreement, as the same may be amended from time-to-time.

9. Riverside Center II, LLC – Phase II Development Agreement. Notwithstanding the fact that Riverside Center is not a party to, and did not execute, the Phase 2 Agreement, Riverside Center hereby consents to, ratifies, joins in and agrees to be bound by the terms, conditions and obligations set forth in the Phase 2 Agreement, as the same may be amended from time-to-time.

10. Consent to Assignment. The City and Authority hereby expressly consent to Riverside Center's assignment of all of its rights to, obligations under, the Development Agreements to one or more purchasers of the Project, and such purchaser's respective successors, assigns, nominees, designees, and buyers of it or any part of the Project; provided, however, that: such purchaser (nor its respective successors, assigns, nominees, designees, and buyers of it or any part of the Project) is not responsible in any manner whatsoever for the payments that Riverside Center is required to make under Section 3 of this Second Amendment, except as provided in Section 3 of this Second Amendment.

11. Miscellaneous. The Phase 3 Agreement, as amended by this Second Amendment, remains in full force and effect. The Phase 3 Agreement, as amended by this Second Amendment, is binding on the parties' successors and assigns except to the extent expressly stated in this Second Amendment. 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 by either or both 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.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties to this Second Amendment have caused this instrument to be signed and sealed by duly authorized representatives of Riverside Center, Authority and the City this 11th day of Sept., 2014.

Riverside Center III, LLC

Donald J. Weber
Donald J. Weber, Managing Member

City of La Crosse, Wisconsin

Timothy Kabat
Timothy Kabat, Mayor

Teri Lehrke
Attest: Teri Lehrke, City Clerk

Subscribed and sworn before me
this 12th day of Sept., 2014,

Subscribed and sworn before me,
this 11th day of Sept., 2014.

Rebecca L. Martin
Notary Public, State of WI
My Commission: 10/11/15
Rebecca L. Martin

Brenda L. Buddenhagen
Notary Public, State of Wisconsin
My Commission: _____
Brenda L. Buddenhagen
Redevelopment Authority

Edward R. Przytarski
Edward R. Przytarski, Chairman

Amy Peterson
Amy Peterson Executive Director

This Document Was Drafted By:
Stephen F. Mally, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601
608.789.7511

Subscribed and sworn before me
this 11th day of Sept., 2014.
Brenda L. Buddenhagen
Brenda L. Buddenhagen Notary Public, State of Wisconsin
My Commission: 11-2-14

Exhibit 1

Legal Description

Lot 1 of La Crosse County Certified Survey Map filed in Volume 12, on Page 76, as Document No. 1423251, La Crosse County, Wisconsin.

