

07.10.2015



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LACROSSE COUNTY
REGISTER OF DEEDS
CHERYL A. MCBRIDE

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EXEMPT #:
PAGES: 8

**First Amendment to
Vacant Lot Purchase and Development
Agreement
(210 Jay Street Project)**

Document Number

Document Title

#112
Recording Area

Drafted by: *and Mail to:*
City Attorney / *Brenda Buddenhagen*
400 La Crosse Street
La Crosse, WI 54601

PIN:
See Exhibit A

The City of La Crosse, Wisconsin ("City"), and Weber Holdings, LLC ("Weber") entered into a Vacant Lot Purchase and Development Agreement (the "Agreement"), as of March 12, 2015, regarding a parcel of land approximately 1.202 acres in size, bounded by Jay Street to the north, King Street to the south, Second Street to the west, and an alley to the east, defined therein as the "Real Estate" (the "Real Estate") as described on Exhibit A. The Agreement was approved by the Common Council on March 12, 2015.

The Agreement was intended to operate both as a Purchase Agreement for the Real Estate ("Purchase Agreement") and a Development Agreement for the Real Estate ("Development Agreement"). As contemplated by the Agreement, Weber intends to transfer its rights to purchase and develop the Real Estate, to a new entity, created solely for the purpose of developing this particular Real Estate, and to add additional investors to that entity, to better carry out the obligations of Developer, and also wishes to make certain clarifications to the Agreement, which require notice to and/or the consent of the City. This Amendment ("Amendment") is intended to create that assignment, to grant consent to that assignment, and grant consent to those clarifications and changes to allow the Project to proceed forward.

Now therefore, for five thousand dollars (\$5,000.00) and other good and valuable consideration, the City and Weber agree as follows, which shall supersede any contrary provisions in the Agreement.

1. Land Affected. Exhibit A is clarified by adding a better copy of Exhibit A, attached hereto, in order to more clearly show the Real Estate which is being sold.
2. Developer. The definition of "Developer" in 1.3(c) shall be modified by adding "or such related entity as is approved by City from time to time, including specifically, 210 Jay Street, LLC, to which

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Weber intends to assign its interest under the Agreement and of which Donald Weber is the Manager.” The “Developer” shall be Weber, for purposes of this Amendment.

3. **Title Insurance.** Paragraph 2.1(b) is modified by adding that the title insurance commitment shall be secured from First American Title Insurance Company.

4. **Development.** Paragraph 2.1(c)(2) shall be clarified by adding at the end of that phrase, “in section 7.1(e).” Paragraph 2.1 is clarified to provide that Weber shall have the right to terminate the Agreement at any time prior to the closing date, after conferring with the City and providing written notice, if it determines that any title encumbrance, environmental or physical condition of the Real Estate will not, in Developer’s opinion, allow development of the Real Estate into the Project, or if before the closing date, Developer has not secured whatever permits, contracts and approvals it deems necessary to develop the Project. Developer shall have no obligation for any other terms of the Agreement if Developer terminates the Agreement in this manner, except to pay the City for its earned option fee, holding and administrative costs and lost income from the Real Estate, in the amount of \$50,000. Paragraph 2.2 of the Agreement shall be modified by adding, to the beginning of the first sentence: “If Developer does not terminate this Agreement as allowed in Section 2.1 above,…” The Real Estate shall be delivered to Developer on the closing date, with no leases, tenancies or rights of occupancy, including for parking and dumpsters.

5. **Safety.** The rights of access under Section 2.2(d) shall be subject to reasonable work safety rules for the construction site.

6. **Dedication.** Add, to the end of Section 2.2(e), and to paragraph 2.8 “, ... in the locations identified on the approved Site Plan.”

7. **PILOT.** It is clarified that transfer of parts of the Real Estate or personal property to the City, County or any utility company, to satisfy its requirements in this Agreement for easements or rights of way, shall not be a default under section 2.6(a), or any other prohibition against transferring property which becomes tax exempt. Whenever the term “or the life of TID #11” is used, it shall mean the current life of TID #11, and not any extensions made after this date. It is clarified that the subsections of Section 2.6, and the remedy in section 7.1(a)(5), are intended to represent alternative remedies to the City for recovering the equivalent of taxes on the Project, at the then-current mill rate, on an assessment of not less than \$7,000,000, for the time period stated (“Guaranteed Tax Amount”), and that the City may not recover more than the Guaranteed Tax Amount for any one tax year, including through payments from any insurance coverage identified in Section 2.9. This term is inserted to prevent any “double dipping” of payment under the alternative remedies.

8. **Transfer or Sale.** Section 2.7 (a), 6.13(a), and 8.1 are modified to provide that Developer shall have the right to assign this Agreement to a new limited liability company in which Developer or Donald Weber, personally, is a Member, and is the sole Manager (“Weber Control”), which shall then be known as the “Developer,” upon providing notice to the City of this transfer, and may transfer interests in Developer as long as it preserves Weber Control in that entity. No prohibition against transfer in the Agreement shall prevent contracting with a hotel company in a lease, management agreement, operating agreement or other agreement, to operate the hotel on the Real Estate. This provision shall be considered adequate notice under that section. Section 2.7 (c) is modified by adding, at the end “except as provided herein or is approved by the City.”

9. **Certificate of Completion.** The City’s obligation to provide a Certificate of Completion in Section 3.1 shall also apply to the Developer’s obligations under Section 2.2, to confirm when those obligations have been satisfied. Similarly, it is clarified that Developer shall give City notice when all of

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the conditions precedent in Article IV have been satisfied, and when the City provides the certificate required in that section, Article IV shall be deemed to be satisfied and of no further force and effect. Developer shall also provide City with a confirmation that the Conditions Precedent in Article V have been satisfied or waived, and City shall include in its certification that it has received such waiver.

10. Representations. Section 6.4 is modified by adding “except to the extent such bills are being contested in good faith.” Section 6.10 is modified to provide that the stated costs shall be the minimum costs of the Project. Section 6.13(c) is modified by adding “City agrees to give notice of default to any construction lender and the same opportunity to cure default as granted to Developer. Developer shall provide the contact information for lender necessary for such notice.” Section 6.16 is clarified to apply only to documents executed with the City. The provisions of Sections 6.19 and 6.20 shall not apply to Weber Holdings, LLC, but only to the new entity formed for this Project.

11. Remedies. Section 7.1(a)(5) is subject to the same prohibition against “double dipping” as is contained in paragraph 7 above of this Amendment. Section 7.1(a)(6) is modified by adding “as detailed in (e) below.”

12. Reversion. The last sentence of Section 7.1(e)(1) is deleted and replaced with the following: “For this failure to commence construction, Title shall revert to the City upon payment of the Purchase Price less one hundred fifty thousand dollars (\$150,000.00), which shall be considered an earned option fee, holding costs, administrative costs and lost income by the City (“Land Price”).” Upon an exercise of this right of reverter, this Agreement shall terminate and Developer shall have no further liability under the Agreement. The third sentence of Section 7.1(e)(2)(b) is modified by inserting the same Land Price. The reversion rights shall only apply to failure to commence or complete construction as required herein and for no other defaults, and is subject to the Force Majeure provisions of Section 8.4.

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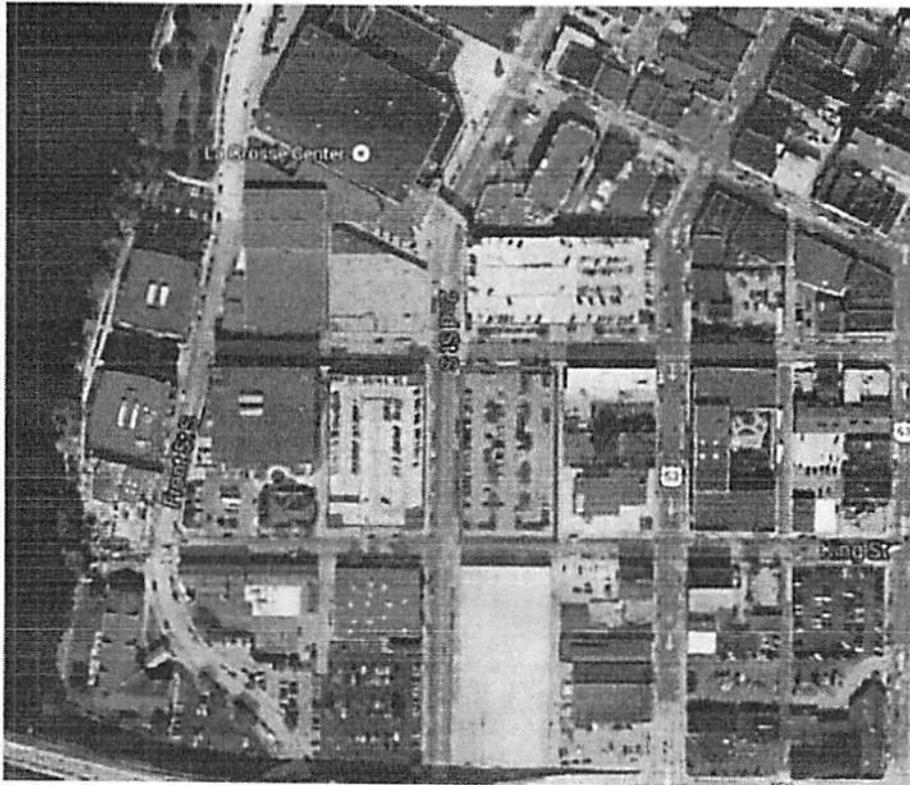


EXHIBIT A

Real Estate legal description

Lots 1, 2, 3, 4 and 5 of Block 8 located in Dunn, Dousman & Cameron's Addition to the City of La Crosse, La Crosse County, Wisconsin.

PIN #: 17-20027-090



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Assignment

Weber Holdings, LLC, ("Weber") does hereby assign to 210 Jay Street, LLC ("Jay Street"), all right, title and interest of Weber in and to the Vacant Lot Purchase and Development Agreement (the "Agreement"), between Weber and the City of La Crosse, Wisconsin ("City") dated as of March 12, 2015, ("Agreement"), regarding a parcel of land approximately 1.202 acres in size, bounded by Jay Street to the north, King Street to the south, Second Street to the west, and an alley to the east, in the City of La Crosse, Wisconsin, defined therein as the "Real Estate" (the "Real Estate"), as amended by an Amendment dated August 13, 2015. The Agreement was approved by the Common Council on March 12, 2015, and the Amendment on August 13, 2015.

Weber and Jay Street do hereby certify to the City that Weber, and/or Donald Weber, personally, are members of Jay Street, and that Donald Weber is the sole Manager of Jay Street.

Dated this 1st day of Sept., 2015

Weber Holdings, LLC

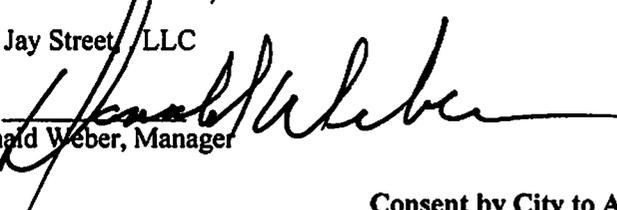
By: 
Donald Weber, Managing Member

Assumption

210 Jay Street, LLC ("Jay Street") does hereby assume from Weber Holdings, LLC, ("Weber") all right, title and interest of Weber in and to the Vacant Lot Purchase and Development Agreement (the "Agreement"), between Weber and the City of La Crosse, Wisconsin ("City") dated as of March 12, 2015, ("Agreement"), regarding a parcel of land approximately 1.202 acres in size, bounded by Jay Street to the north, King Street to the south, Second Street to the west, and an alley to the east, in the City of La Crosse, Wisconsin, defined therein as the "Real Estate" (the "Real Estate"), as amended by an Amendment dated August __, 2015. The Agreement was approved by the Common Council on March 12, 2015, and the Amendment on August __, 2015.

Dated this 1st day of Sept., 2015

210 Jay Street, LLC

By: 
Donald Weber, Manager

Consent by City to Assignment

The City of La Crosse, Wisconsin consents to the above Assignment and Assumption.

Dated this __ day of August, 2015.
City of La Crosse, Wisconsin

By: _____
Timothy Kabat, Mayor

Attest: _____
Teri Lehrke, City Clerk

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Assignment

Weber Holdings, LLC, ("Weber") does hereby assign to 210 Jay Street, LLC ("Jay Street"), all right, title and interest of Weber in and to the Vacant Lot Purchase and Development Agreement (the "Agreement"), between Weber and the City of La Crosse, Wisconsin ("City") dated as of March 12, 2015, ("Agreement"), regarding a parcel of land approximately 1.202 acres in size, bounded by Jay Street to the north, King Street to the south, Second Street to the west, and an alley to the east, in the City of La Crosse, Wisconsin, defined therein as the "Real Estate" (the "Real Estate"), as amended by an Amendment dated August 13, 2015. The Agreement was approved by the Common Council on March 12, 2015, and the Amendment on August 13, 2015.

Weber and Jay Street do hereby certify to the City that Weber, and/or Donald Weber, personally, are members of Jay Street, and that Donald Weber is the sole Manager of Jay Street.

Dated this __ day of _____, 2015

Weber Holdings, LLC

By: _____
Donald Weber, Managing Member

Assumption

210 Jay Street, LLC ("Jay Street") does hereby assume from Weber Holdings, LLC, ("Weber") all right, title and interest of Weber in and to the Vacant Lot Purchase and Development Agreement (the "Agreement"), between Weber and the City of La Crosse, Wisconsin ("City") dated as of March 12, 2015, ("Agreement"), regarding a parcel of land approximately 1.202 acres in size, bounded by Jay Street to the north, King Street to the south, Second Street to the west, and an alley to the east, in the City of La Crosse, Wisconsin, defined therein as the "Real Estate" (the "Real Estate"), as amended by an Amendment dated August __, 2015. The Agreement was approved by the Common Council on March 12, 2015, and the Amendment on August __, 2015.

Dated this __ day of _____, 2015

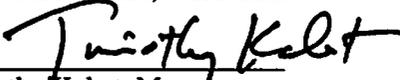
210 Jay Street, , LLC

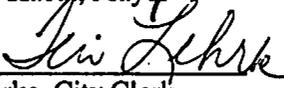
By: _____
Donald Weber, Manager

Consent by City to Assignment

The City of La Crosse, Wisconsin consents to the above Assignment and Assumption.

Dated this ^{Sept.} 2nd day of August, 2015.
City of La Crosse, Wisconsin

By: 
Timothy Kabat, Mayor

Attest: 
Teri Lehrke, City Clerk