

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

This First Amendment to the Amended and Restated Riverside Center Phase 3 Development Agreement ("First 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 ("**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 ("**Developer**").

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an Amended and Restated Riverside Center Phase 3 Development Agreement (the "Phase 3 Agreement"), which amended and superseded the Riverside Center Development Agreement (Phase 3).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 real estate to which the Phase 3 Agreement and First 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, Developer, 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;

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

Whereas, the City, Authority and Developer wish to set forth in this First Amendment their respective commitments, understandings, rights and obligations as more fully described herein; and

This space is reserved for recording data

Return to

City Attorney
400 La Crosse Street
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

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 shall be 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 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.** Developer, 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 and fifty thousand dollars (\$750,000.00) to be paid to Developer as identified in Section 3.1(b) of the Phase 3 Agreement.

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.** Developer shall sign, execute and deliver this First 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. Developer's failure to sign, execute and cause this First Amendment to be received by the City within said time period shall render the First Amendment null and void, unless otherwise authorized by the City and Authority. After Developer has signed, executed and delivered the First Amendment, the City and Authority shall sign and execute the First Amendment. The final signature date of the City and/or Authority shall be the signature date ("Signature Date").

6. **Authority to Sign.** The person signing this First Amendment on behalf of the Developer certifies and attests that the Developer's 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 Developer, on whose behalf the person is executing this Amendment. Developer 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, Developer 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.

IN WITNESS WHEREOF, the parties to this First Amendment have caused this instrument to be signed and sealed by duly authorized representatives of Developer, Authority and the City this _____ day of _____, 2014.

Riverside Center III, LLC

City of La Crosse, Wisconsin

Donald J. Weber, Managing Member

Timothy Kabat, Mayor

Attest: Teri Lehrke, City Clerk

Subscribed and sworn before me
this ____ day of _____, 2014.

Subscribed and sworn before me
this ____ day of _____, 2014.

Notary Public, State of _____
My Commission: _____

Notary Public, State of Wisconsin
My Commission: _____

Redevelopment Authority

Edward R. Przytarski, Chairman

Lawrence Kirch, Executive Director

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

Subscribed and sworn before me
this ____ day of _____, 2014.

Notary Public, State of Wisconsin
My Commission: _____

LEGAL DESCRIPTION

Lots 1, 2, 3, 7 and 8 in Block 5 of C. & F.J. Dunn, H.L. Dousman & Peter Cameron's Addition to the Town of La Crosse, now in the City of La Crosse, La Crosse County, Wisconsin.



**EXHIBIT
JOB CERTIFICATION AND GUARANTY**

This Job Certification and Guaranty (the "Guaranty") is entered into this ____ day of _____, 2010, by and between the City of La Crosse, a Wisconsin municipal corporation (the "City"), the Redevelopment Authority of the City of La Crosse, Wisconsin, a public body corporate and politic (the "RDA"), Riverside Center, LLC, a Wisconsin limited liability company, Riverside Center II, LLC, a Wisconsin limited liability company and Riverside Center III, LLC, a Wisconsin limited liability company (collectively referred to as the "Guarantors").

WHEREAS, Riverside Center, LLC, Riverside Center II, LLC, and Riverside Center III, LLC each is a party to an agreement between the City, the RDA and itself for redevelopment projects which together comprise the facilities known as "Riverside Center," and

WHEREAS, each separate agreement between Riverside Center, LLC, Riverside Center II, LLC and Riverside Center III, LLC and the City and the RDA include in one manner or another provisions addressing the creation of jobs at the Riverside Center, and

WHEREAS, the parties hereto desire to commit any job creation obligations of Riverside Center, LLC, Riverside Center II, LLC, and Riverside Center III, LLC to a consolidated obligation on behalf of the Guarantors for the creation of 2,000 total full-time jobs by a date certain.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Riverside Center, LLC, Riverside Center II, LLC and Riverside Center III, LLC are jointly and severally responsible for the creation and maintenance of 2,000 full-time employment positions in the three buildings constituting Riverside Center by January 1, 2013 as more particularly described in their Development Agreements. The Development Agreements between the City and RDA on one hand, and Riverside Center, LLC, Riverside Center II, LLC and Riverside Center III, LLC on the other hand each include an obligation for the creation and maintenance of a specific targeted number of full-time employment positions, and for an identification of the value of damages the particular Riverside Center entity shall pay the City in the event that the number of jobs required to be created and maintained is not achieved for certain periods of time through January 1, 2023.

2. By virtue of this Guaranty, Riverside Center, LLC, Riverside Center II, LLC and Riverside Center III, LLC agree to be bound jointly and severally, to each job creation and maintenance provision contained in each Development Agreement with the City and the RDA. In the event that the employment level included in any Development Agreement between the parties hereto is not achieved for any reason whatsoever, the Guarantors guarantee the payment of any and all damages to which the City and/or the RDA are entitled under the various Riverside Center Development Agreements and at law, together with all allowable costs and fees in enforcing this Guaranty.

3. As further explanation, each Development Agreement includes a targeted employment level for the specific building owned by that Riverside Center business entity. The purpose of this Guaranty, and its true effect upon execution by the parties, is to make Riverside Center, LLC, Riverside Center II, LLC and Riverside Center III, LLC each a joint and several guarantor for the other with regard to the employment level provision of each Development Agreement. In the event that the employment level(s) set forth in any Riverside Center Development Agreement is not achieved, the parties hereto agree that each Guarantor will be responsible in its own right for the full value of the damages to which the City and/or the RDA is entitled. In the event the damages are not initially satisfied through shared payment by the Guarantors, it will be the responsibility of the guarantor that makes payment to receive any contribution from the others. Any one Riverside Center entity may be held liable for the full amount of damages until the City and/or the RDA is fully compensated under the employment level provisions of its separate Riverside Center Development Agreements.



4. This Guaranty will remain in full force and effect through one year past the final date of employment level requirements, unless amended in writing by all of the parties to this Guaranty.

Dated this 2nd day of July, 2010.

Riverside Center, LLC

[Signature]
Donald J. Weber, Managing Member

Dated this 2nd day of June, 2010.

City of La Crosse, Wisconsin

[Signature]
Mathias Harter, Mayor

[Signature]
Attest: Teri Lehrke, City Clerk

Subscribed and sworn before me
this 25th day of May, 2010.

[Signature]
Notary Public, State of WI
My Commission: Personnel

Subscribed and sworn before me
this 2nd day of June, 2010.

[Signature]
Notary Public, State of Wisconsin
My Commission: 1-30-11

Riverside Center II, LLC

[Signature]
Donald J. Weber, Managing Member

Redevelopment Authority

[Signature]
Edward R. Pzytarski, Chairman

[Signature]
Lawrence Kirch, Executive Director

Subscribed and sworn before me
this 25th day of May, 2010.

[Signature]
Notary Public, State of WI
My Commission: Personnel

Subscribed and sworn before me
this 28th day of May, 2010.

[Signature]
Notary Public, State of Wisconsin
My Commission: 1-30-11

Riverside Center III, LLC

[Signature]
Donald J. Weber, Managing Member

Subscribed and sworn before me
this 25th day of May, 2010.

[Signature]
Notary Public, State of WI
My Commission: Personnel