

**FIRST AMENDMENT TO THE
DURATECH DEVELOPMENT AGREEMENT
(3216 Commerce Drive)**

This First Amendment to the DuraTech Development Agreement (hereafter "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**"), **Commercial Properties Partners, LLC**, a Wisconsin Limited Liability Company with principal offices located at 3216 Commerce Street, La Crosse, Wisconsin 54603 ("**Owner**") and **DuraTech Industries, Inc.**, a Wisconsin corporation with principal offices located at 3216 Commerce Street, La Crosse, Wisconsin 54603 ("**Tenant**"). The Owner and Tenant are collectively referred to herein as "**Developer**."

WITNESSETH:

Whereas, the Parties entered into a DuraTech Development Agreement (the "Development Agreement") on May 1, 2017, which was subsequently recorded in the La Crosse County Register of Deeds on June 13, 2017 as Document No. 1694884 concerning real property located at 3216 Commerce Drive and more particularly described in the **Exhibit A** (the "Real Estate");

Whereas, the Parties have subsequently identified updated facts and circumstances underlying the Development Agreement and mutually desire to amend the Development Agreement as provided in this Amendment; and

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. Tax Guarantee. Section 2.6(b) of the Development Agreement shall be deleted and replaced with the following provision:

Guarantee. As an additional inducement and in consideration for the City entering into this Agreement, Developer guarantees faithful performance and compliance with all the terms, covenants, conditions and obligations to be kept and performed by Developer contained in this Agreement, including, without limitation, the obligation that the Project shall have an assessed value of not less than four million eight thousand two hundred dollars (\$4,008,200.00) beginning in tax year 2019 and for a period of twenty (20) years or the life of TID #13, whichever is longer. Developer agrees that this minimum assessed value on the Project shall remain a lien on the Real Estate and shall run with the land for a period of twenty (20) years or the life of TID #13, whichever is longer.

2. Deficiency PILOT. Section 2.6(c) of the Development Agreement shall be deleted and replaced with the following provision:

Deficiency PILOT. In the event the assessed value of the Project is less than four million eight thousand two hundred dollars (\$4,008,200.00) as of January 1, 2019 or for any tax year thereafter

This space is reserved for recording data

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City Attorney
400 La Crosse Street
La Crosse WI 54601

Parcel Identification Number/Tax Key Number

for a period of twenty (20) years or the life of TID #13, whichever is longer, then the Developer or the then current owner, or its successors or assigns agrees to pay a Deficiency PILOT to the City within sixty (60) days of receipt. Said Deficiency PILOT shall be calculated by first determining the difference between the guaranteed assessed value of the Project as provided in Section 2.6(b) of this Agreement less the actual assessed value of the Project for the tax year at issue, and multiplying said difference by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. This requirement shall be a lien running with the land for a period of twenty (20) years or the life of TID #13, whichever is longer.

3. Monetary Obligation Calculation. Section 1.3(i)(1) of the Development Agreement shall be deleted and replaced with the following provision:

Calculation. Effective September 1, 2019, the City shall be obligated to pay a Contribution calculated as the Tax Increment resulting from an increase in real property tax base from the Project not to exceed the lesser of: (a) two hundred seventy-five thousand dollars (\$275,000.00), or (b) seventy-five percent (75%) of the actual Tax Increment resulting from an increase in the real property tax base from the Project for tax years 2018-2022 as further defined in Section 3.1 of this Agreement. The difference, if any, between the actual Tax Increment resulting from an increase in the real property tax base from the Project for any tax year for which a Contribution would be paid and the maximum two hundred seventy-five thousand dollars (\$275,000.00), shall be retained by the City.

4. Administration. Section 1.3(i)(8) of the Development Agreement shall be deleted and replaced with the following provision:

Administration. The parties acknowledge and agree that the City incurs continuing administrative and professional service costs under this Agreement. Notwithstanding any provision of this Agreement, the City shall retain twenty-five percent (25%) of any Contribution to be made to Developer as calculated herein to offset said costs.

5. Exhibit G. Exhibit G from the Development Agreement shall be deleted and replaced with the updated **Exhibit G** attached to this Amendment.

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

7. Execution of Amendment. Developer shall sign, execute and deliver this 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. Developer's failure to sign, execute and cause this Amendment to be received by the City within said time period shall render the Amendment null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Amendment, the City shall sign and execute the Amendment.

8. Authority to Sign. The person signing this Amendment on behalf of Developer 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 Developer, on whose behalf the person is executing this 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

9. Miscellaneous. The Development Agreement, as amended by this Amendment, remains in full force and effect. The Development Agreement, as amended by this Amendment, is binding on the Parties' successors and assigns. This 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 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 Amendment to the other Party upon request.

IN WITNESS HEREOF, the parties have executed and delivered this Amendment effective the date set forth next to the City's signature below.

Dated this ____ day of ____, 2020

Dated this ____ day of ____, 2020

DuraTech Industries, Inc.

City of La Crosse

____, ____

Timothy Kabat, Mayor

____, ____

Teri Lehrke, City Clerk

Subscribed and sworn to before me this ____ day of ____, 2020.

Subscribed and sworn to before me this ____ day of ____, 2020.

Notary Public, State of Wisconsin
My Commission: _____

Notary Public, State of Wisconsin
My Commission: _____

Commercial Properties Partners, LLC

____, ____

____, ____

Subscribed and sworn to before me this ____ day of ____, 2020.

This Document Was Draft By:
Stephen F. Matty, City Attorney
City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601
608-789-7511

Notary Public, State of Wisconsin
My Commission: _____

CONSENT OF LENDER

The undersigned, BMO Harris Bank N.A., being the holder of certain mortgages on the Real Estate subject to the DuraTech Development Agreement, as amended and superseded hereunder, hereby consents to the terms and provisions of the Amendment.

Dated as of the ____ day of _____, 2020.

BMO HARRIS BANK N.A.

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me this
____ day of _____, 2020.

Notary Public, State of Wisconsin
My Commission: _____