



FIRST AMENDMENT TO  
AGREEMENT

Document Number

Document Title

1689271

LACROSSE COUNTY  
REGISTER OF DEEDS  
CHERYL A. MCBRIDE

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Name and Return Address

CITY ATTORNEY  
400 LACROSSE ST  
LACROSSE WI 54601

Parcel Identification Number (PIN)

DRAFTED BY: STEPHEN F. MATTY

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**FIRST AMENDMENT TO AGREEMENT TO PURCHASE UPON COMPLETION  
(Lot C Parking Ramp)**

**THIS FIRST AMENDMENT TO AGREEMENT TO PURCHASE UPON COMPLETION** (“Amendment”) is entered into by and between **Third and Pine, LLC** a Wisconsin limited liability company (“Seller”), and the **City of La Crosse**, a municipal entity (“City”) and is effective as of the 8<sup>th</sup> day of December, 2016.

**RECITALS:**

**WHEREAS**, Seller and City entered into an Agreement to Purchase upon Completion, dated as of December 10, 2015 (“Agreement”), regarding a Parking Ramp (as such term is defined in the Agreement) being built on the former Collins land more particularly described on Exhibit A, attached hereto and incorporated herein by this reference;

**WHEREAS**, the Agreement provided, in Section 2.2(c) that the Parking Ramp was to be bid and constructed in such a way as to allow additional use, based on future City needs, but understanding such options by the City would increase the Purchase Price of the Parking Ramp; that Section 2.2(h) identified a procedure that would be followed if the City elected to include a Retail Wing in the same building as the Parking Ramp, which required that a Change Order be executed electing to require the Retail Wing and adding its cost to the Purchase Price;

**WHEREAS**, the City participated in the design and planning for the Parking Ramp and has elected to have the Seller include a Retail Wing;

**WHEREAS**, the Seller is ready to execute a Change Order with its Contractor to agree to final plans and specs for the Parking Ramp, and to the increased expenses as a result of soil and site conditions of the development of the Parking Ramp that were in excess of the budget; and

**WHEREAS**, an Amendment to the Agreement is needed to finalize these changes.

**NOW THEREFORE**, the City and Seller do hereby amend the Agreement as follows:

1. **Definitions.** Capitalized terms not otherwise defined in this Amendment shall have the respective meanings ascribed to such terms in the Agreement.
2. **Election of Retail Wing.** City does hereby elect to have the Parking Ramp include the Retail Wing, as identified in the Plans and Specifications below.
3. **Final Plans and Specifications.** City and Purchaser agree that the plans and specifications for the Parking Ramp shall be as listed on Exhibit B, attached hereto and incorporated herein (“Final Plans”).
4. **Purchase Price.** The City and Seller agree that the Purchase Price for the Parking Ramp, with the options elected in the Final Plans, and excluding the Retail Wing, shall not exceed the Purchase Price calculated as either: (a) all of the Seller’s costs and expenses for the Parking

Ramp up to, and including, seventeen million dollars (\$17,000,000.00) plus fifty percent (50%) of such additional costs incurred that exceed seventeen million dollars (\$17,000,000.00); or (b) seventeen million two hundred thousand dollars (\$17,200,000.00), whichever is less. Notwithstanding any other provision of this Agreement, Amendment or any Exhibit, the Purchase Price shall not exceed seventeen million two hundred thousand dollars (\$17,200,000.00).

5. Condo. As required by Section 2.2(c) and (h) of the Agreement, prior to Closing, Seller shall record a condominium declaration against the property, separating the Parking Ramp from the Retail Wing, and will convey only the Parking Ramp condominium unit to City for the Purchase Price. Seller also confirms that Seller is solely responsible for the cost of building out the Retail Wing unit from the white box condition shown in the Final Plans, for use by tenants.

6. Amending Exhibit C. Exhibit C of the Agreement is hereby amended by deleting in its entirety and replacing it with Exhibit C.

7. Amending Exhibit F. Exhibit F of the Agreement is hereby amended by deleting in its entirety and replacing it with Exhibit D, attached hereto and incorporated herein.

8. General Provisions.

(a) All references in the Agreement, and in each agreement, certificate and instrument referred to therein or executed and delivered in connection herewith shall be deemed to, and are hereby amended to, refer to the Agreement, as amended hereby.

(b) Except as amended hereby, the Agreement shall remain unchanged and in full force and effect.

(c) All terms and provisions of this Amendment shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto, and their respective successors and assigns. This Amendment sets forth the entire understanding among the parties hereto in respect of the subject matter hereof and may not be modified, amended or terminated except by a written agreement executed by all parties hereto.

(d) Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(e) This Amendment shall be effective as of the date hereof.

(f) This Amendment shall be governed by and construed in accordance with the laws of the State of Wisconsin.

(g) This Amendment may be executed in two or more counterparts, each of which shall be deemed an original for all purposes, and together shall constitute one and the same Amendment.

(h) This Amendment as executed by any of the undersigned may be transmitted by facsimile machine and shall be treated in all manner and respects as an original document and an original signature.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

Third and Pine, LLC

By: *Donald Weber*  
Donald Weber  
Its Managing Member

City of La Crosse

By: *Timothy Kabat*  
Timothy Kabat, Mayor

Attest: *Teri Lehrke*  
Teri Lehrke, City Clerk

Subscribed & sworn to me  
on January 26, 2017  
*Brenda L. Bueckner*  
Brenda L. Bueckner  
State of WI  
My Comm. Expires 11-2-18

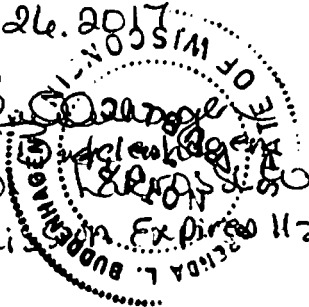


Exhibit A

The Legal Description of the Property is the following:

Lots 6,7,8,9 and 10 in Block 17 of the Original Plat of the Town of La Crosse, now <sup>located in the</sup> City of La Crosse, La Crosse, County, Wisconsin. *pl3*

Property Address: 222 Pine Street, 311 3rd Street N., and 325 N. 3rd Street, La Crosse, WI

Tax Key No: 17-2000-050

**Exhibit B**

**Listing of Final Plans Incorporating All City Options**

The Parking Ramp is defined to be a post tension concrete parking ramp as shown on the specifications and drawings prepared by Desman, as of the dates set forth below, and approved by the City.

- Bid Package #1 – Plans and Specifications dated June 29, 2016**
- Bid Package #2 – Plans and Specifications dated July 8, 2016**
- Bid Package #3 – Plans and Specifications dated August 1, 2016**
- Bid Package #4 – Plans and Specifications dated August 23, 2016**

Exhibit C

“EXHIBIT C

**CALCULATION OF PURCHASE PRICE OF PARKING RAMP**

The Purchase Price for the Parking Ramp shall be \$10.00 plus the following:

1. All costs and expenses incurred by Seller or Weber Holdings, LLC to purchase the Property, including the cost of the land, costs of due diligence, attorney’s fees, closing costs, and costs to clear title, rezone, and prepare the Property for development of the Parking Ramp, including all costs of demolition, utility termination, disposal of buildings and debris, investigating, remediating, and securing consent for capping or otherwise dealing with, environmental conditions on the Property (together “Land Costs”).
2. All costs and expenses incurred by Seller or Weber Holdings, LLC in the planning, construction, equipping, permitting, fixturing, and securing permits and approvals for, the construction of the Parking Ramp on the Property, including specifically architectural and engineering fees, costs of public bidding, costs of securing and connecting to utilities, costs of installing utilities and connections to utilities on and adjacent to the Property, costs of purchasing and installing signs and parking management equipment and costs of any bonding required by Purchaser, (together, “Construction Costs”).
3. All costs and expenses incurred by Seller or Weber Holdings, LLC in holding the ownership of the Property and Parking Ramp until Closing, including costs of real estate and personal property taxes, utilities, insurance, security, maintenance, and supervision, and (together, “Holding Costs”); and
4. All costs and expenses incurred by Seller or Weber Holdings, LLC in developing the Property and Parking Ramp, including overhead and development fees Construction Costs and Holding Costs.

Seller shall furnish Purchaser full access, at least 30 days before Closing, on a confidential basis, to all internal cost accounting records and all supporting project records, with respect to this Parking Ramp Project, in order to verify this Purchase Price. If a Guaranteed Maximum Price contract is signed with a contractor, the parties may agree to amend this Agreement to establish the Land Costs and the Construction Cost portions of the Purchase Price. In the event of any inconsistency between this Exhibit C and the Agreement to Purchase Upon Completion, then the Agreement to Purchase Upon Completion shall control. Seller and CD Smith as Seller’s Construction Manager have estimated the final Guaranteed Maximum Price for the Parking Ramp as defined herein, and additional costs associated with options the Purchaser has requested, which is shown on the attached page. The Purchase Price shall not exceed seventeen million, two hundred thousand dollars (\$17,200,000.00) as further defined and calculated in Section 4 of the First Amendment to Agreement to Purchase Upon Completion (Lot C Parking Ramp).



Cost Summary Page of Exhibit C  
Including "Project Total" number



3rd and Vine Parking Structure  
11/9/2016

	Contract 12/9/15	Budget 11/09/16	Subcontractor
1 Land Acquisition	1,500,000	1,500,000	
2 Development Finance Fees	467,000	467,000	
3 Development Fee	400,000	400,000	
4 Developer Legal Fees	38,000	38,000	
5 Payment and Performance Bonds	90,000	90,000	APUC states bond is needed
6 Design Fees and Builders Risk Insurance	741,600	521,500	
7 Desman		360,000	
8 Excel		14,500	
9 Muermann		36,000	
10 Builders Risk		11,000	
11 Reimbursable		50,000	
12 Design Contingency		50,000	
13 Demolition and Contaminated Soils Allowance	615,000	1,121,345	
14 Bid Package #1-(7/14/16) - Demolition		557,000	McHugh
15 Unsuitable Soil Allowance in Bid		260,000	McHugh
16 Unsuitable Soil Allowance above 10,000 CY		25,000	
17 Utility Relocation		279,345	Charter, Xcel, Century Link, Windstream
18			
19 General Construction & Sitework	11,383,000	12,165,000	
20 Bid Package #2-(8/3/16) - Site Utilities		121,565	McHugh
21 Bid Package #2-(8/3/16) - Earthwork and Earth Retention		478,550	McHugh - Bid Number of 738,550 - 260,000 for unsuitable soils in number
22 Stromtrap System		32,436	
23 Bid Package #2-(8/3/16) - Footings and Foundations		1,140,000	C.D. Smith
24 Bid Package #2-(8/3/16) - Elevator		276,954	OTIS
25 Bid Package #3 - (8/23/16) - Electrical		372,378	P&T Electric
26 Bid Package #3 - (8/23/16) - Plumbing		111,157	Hengel
27 Bid Package #3 - (8/23/16) - HVAC		44,260	Schneider Heating
28 Bid Package #3 - (8/23/16)- Fire Protection		82,700	Fireline Sprinkler
29 BP#4 - ( 9/22/16) - Final Bid Items		9,475,000	C.D. Smith
30 BP#5- Signage		30,000	Allowance
31 CM General Conditions	820,000	820,000	
32 Project Management/CM Fees/General Liability Insurance	745,400	745,400	
33 Project / Design Contingency	200,000	150,000	
34			
35 Total GMP CONTRACT VALUE	17,000,000	18,018,245	
36			
37 Value Engineering Options			
38 Eliminate Performance Bond		-	
39 Eliminate Grilles and Screens on west elevation shown on A202		(81,200)	
40 Revise Asphalt scope to patching allowance at Street from \$75,000.00 to \$25,000.00		(50,000)	
41 Revise epoxy mesh and rebar at Precast Panels to plain steel as approved by structural engineer		(16,707)	
42 Use Tile Brick Units in lieu of Cut Brick Units		(41,500)	
43 Eliminate level 4 parking above retail space . 606 total stalls - 19 stalls on 4th level + 4 added at drive lanes = 591 stalls		(185,379)	



44	At both north and south stair towers, add horizontal tube steel for reinforcing and change to storefront framing from curtain wall		(71,874)	
45	Eliminate aluminum window frames without glass at north and south elevations		(36,400)	
46	Eliminate the Louvers/ Add 1" insulated glass- Install louvers as required by tenants as designed (east retail windows)		(34,407)	
47	Curtain Wall to Storefront- Add Steel tube support		(57,558)	
48	Eliminate Awnings to be part of retail buildout expense		(36,962)	
49	Eliminate Window Washing System Supports		(6,258)	
50				
51	<b>Project Total</b>		<b>17,400,000</b>	

Exhibit D

## "EXHIBIT F

## CONSTRUCTION SCHEDULE AND COMPLETION DATE

**Milestone****Schedule****START****COMPLETE**

1	Executed City of La Crosse Agreements		12/15/16
2	Land Acquisition		5/31/2016
3	Complete Schematic Design		6/1/16
4	Soil Borings		3/24/16
5	Engineering Drawings	6/1/16	9/20/16
6	Local / State/ DNR Permitting	6/4/16	11/15/16
7	Demolition	6/4/16	8/18/16
8	Subcontractor Bidding	5/9/16	9/20/16
9	Construction Commencement / Substantial Completion	6/4/16	9/18/17
10	Project Closeout		9/18/17