

**DEVELOPMENT AGREEMENT BETWEEN
RMD DEVELOPMENT, LLC and
CITY OF LA CROSSE
(Magill Brothers Bank – Masonic Temple)
(800-802 Rose Street)**

This Development Agreement ("hereinafter "Agreement") is made by and among the **City of La Crosse**, Wisconsin, a Wisconsin municipal corporation (the "**City**"), and **RMD Development, LLC**, a Wisconsin limited liability company located at 319 Main Street, Suite 404, La Crosse, WI 54601 ("**Developer**").

WITNESSETH:

WHEREAS, the Developer proposes to own, revitalize, restore, improve and develop a residential / mixed use project on lands comprised of the former Magill Brothers Bank – Masonic Temple site, all as more particularly described herein and in **Exhibit B** (the "Project") to include first floor commercial space and two high end residential apartments on the second floor, on certain real property in the City of La Crosse, Wisconsin, more particularly described on **Exhibit A** ("Real Estate");

WHEREAS, the Real Estate is considered a historic landmark building;

WHEREAS, the goals for the Real Estate include encouraging private commercial and residential development and improvements and undertaking public improvements that promote desirable and sustainable uses, which further serve the needs of the community and residents as well as fulfilling the aesthetic character standards of the City;

WHEREAS, Section 66.1105, Wis. Stat., empowers cities to assist redevelopment projects by contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

WHEREAS, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral to the needs of City residents and the surrounding area; and (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement;

WHEREAS, the Developer and the City agree that the Real Estate's development and improvement shall (1) result in an economic and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with the Master Plan;

WHEREAS, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes within the City;

WHEREAS, in order to induce Developer to undertake the Project, the City has agreed to pay for certain costs included within the Project as may be agreed to in writing and as are attached to this Development Agreements as **Exhibit D** ("Public Improvements"), all in accordance with the terms and conditions of this Agreement;

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Parcel Identification Number/Tax Key Number

Tax ID 17-10014-30

WHEREAS, Developer declares that “but for” this Agreement, it would not undertake the Project; and

WHEREAS, the City and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project.

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:

ARTICLE I PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1 Land Affected. The parties acknowledge that the Project will encompass and/or affect the following real property:

A description of the real estate is attached hereto as **Exhibit A**.

1.2 Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry, job creation, and to expand and enhance the tax base and stimulate commercial and residential activity within the City, the City intends to undertake certain obligations necessary for the Project, all as set forth in this Agreement. The City intends to recover its costs through payments received under this Agreement including increased tax revenues generated by the Real Estate. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Developer and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein and as approved by the City.

1.3 Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. "Agreement" means this Agreement by and between the City and the Developer, as amended and supplemented from time to time.
- b. "City" means the City of La Crosse, a Wisconsin municipal corporation.
- c. "Construction Schedule" means the construction timetable set forth on **Exhibit F**.
- d. "Developer" means RMD Development, LLC, a Wisconsin Limited Liability Company.
- e. "Master Plan" means the Master Plan for the Real Estate as represented in the accepted proposal prepared by the Developer and approved by the Economic Development Commission, as well as all subsequent revisions thereto that is prepared by Developer and approved by the City in accordance with Section 2.2(g) of this Agreement.
- f. "Plans and Specifications" means the plans and specifications developed for the Project.
- g. "Project Cost Breakdown" means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and

indirect costs of construction of the Project, all as described in more detail on **Exhibit E** and in accordance with the Master Plan.

- h. "Public Improvements" means the public infrastructure improvements, if any, to be constructed by the City, at its expense, in connection with the Project, which are set forth in **Exhibit D**.
- i. "Project" means the development and improvement of the Real Estate by constructing, refurbishing, renovating currently underutilized property into first floor commercial space and two (2) high-end apartments on the second floor all as described in more detail on **Exhibit B** in accordance with the Master Plan. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning.
- j. "Real Estate" means the real property described in **Exhibit A**.
- k. "Signature Date" has the same meaning as provided in Section 8.21 of this Agreement.
- l. "Substantial Completion" means the completion of the improvements to the Real Estate pursuant to the Plans and Specifications, except for minor punch list items, and the issuance of a Certificate of Occupancy.

1.4. Exhibits. The following exhibits are hereby attached to and incorporated into this Agreement:

- a. **Exhibit A.** Real Estate
- b. **Exhibit B.** Description of Project / Master Plan
- c. **Exhibit C.** Intentionally Omitted.
- d. **Exhibit D.** Public Improvements
- e. **Exhibit E.** Project Cost Breakdown
- f. **Exhibit F.** Construction Schedule

ARTICLE II DEVELOPER OBLIGATIONS

2.1. Acquire the Real Estate. The Developer will acquire the described Real Estate from the City, by Quit Claim Deed for the purchase price of ten dollars (\$10.00), paid at closing. Developer understands that the Real Estate will be sold in an "as is" condition, with no warranties whatsoever as to the condition or use of the property. Developer understands that it is solely responsible for conducting its own geotechnical investigation of any and all other testing necessary to determine if the lands meet the Developer's needs for the Project. The closing upon the property shall take place within 45 days of the Signature Date. City to provide evidence of title and shall provide an owner's policy of title insurance in the amount of the purchase price or minimal amount for which a policy can be written at City's expense. City shall pay closing costs.

2.2. Develop the Real Estate. Developer agrees to develop and improve the Real Estate by undertaking the Project, all in accordance with the Master Plan, the Project Cost Breakdown and the Construction Schedule as set forth below.

- a. **Site Preparation.** Developer shall prepare the Real Estate for construction and improvement, including, without limitation, any necessary Site Preparation Work. It shall also be the Developer's responsibility, at its own cost, to properly dispose of all solid waste, including removal and disposal of any hazardous or special solid waste created during the demolition process.
- b. **Construction Schedule.** The Developer will provide a proposed Construction Schedule for the improvements, set forth in the Master Plan representing the approved proposal, which is subject to approval by the City. The proposed schedule must be attached hereto as **Exhibit F** and as a minimum, meet the following deadlines. Developer shall commence construction as described in **Exhibit B** on or before October 1, 2017. Developer shall have Substantially Completed the Project within three (3) years of the Signature Date.
- c. **Guaranty of Minimum Construction Cost.** Developer agrees that the construction and improvement of the building and Project shall have an aggregate minimum construction cost of not less than three hundred ninety-two thousand dollars (\$392,000.00). The Project Cost Breakdown is provided on **Exhibit E**.
- d. **Rights of Access.** Developer shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in the Master Plan. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement.
- e. **Property for Public Streets and Public Improvements.** Upon request, Developer shall dedicate and/or transfer or convey all public streets, public rights-of-way and all necessary sewer and water utilities within the Real Estate and easements, as depicted in the Master Plan, as finalized, to the City at no cost to the City.
- f. **Master Plan.** Prior to obtaining any building or other permits and/or commencing any construction or development on the Real Estate, Developer shall submit a Master Plan setting forth all the details of construction and development to the City for its review and approval. Said Master Plan shall conform in all material respects to the provisions of this Agreement, all applicable federal, state and local laws, ordinances, rules and regulations and shall include preliminary and final building, site and operational Plans and Specifications, including, without limitation: (1) building plans and specifications; (2) architectural plans, renderings and specifications; (3) building material plans and specifications; (4) preliminary and final site plans; (5) landscaping plans; (6) grading, storm water and erosion control plans; (7) lighting plans; (8) traffic and circulation plans for pedestrians, bicyclists, transit riders, truck and delivery vehicles, and automobiles; (9) signage plans and specifications; (10) water and sewer plans; and (11) any other preliminary or final plans, specifications or other requirements as determined by the City Planner. The City Planner may determine, in his sole and absolute discretion, whether one or more of the above requirements is applicable to the Project's Master Plan.

2.3. Local Subcontractors. It is agreed by Developer, that Developer shall be endeavored to engage local subcontractors, as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1) (d), Wis. Stat. This Section does not apply to fixtures, furnishings and equipment.

2.4. Compliance with Planning and Zoning; Use. Developer, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental entity in connection with the Project. Any conditions imposed on Developer to obtain any approval, permit or license must be acceptable to the City. Developer will not initiate,

approve, consent to or participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in the Master Plan and this Agreement and as approved by the City including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

2.5. Maintenance and Repair. Developer agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.6. Taxes. It is understood that the land, improvements and personal property resulting from the Project shall be subject to property taxes. Developer shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

- a. **PILOT Payment.** In the event that some or all of the Real Estate subject to this agreement becomes tax exempt, in whole or in part, under Ch. 70, Wis. Stats., as amended or superseded, or by any other statute, provision or reason, then Developer shall make an annual payment to the City in lieu of taxes ("Annual PILOT") for the services, improvements or facilities furnished to the Real Estate by the City and other taxing jurisdictions. By its execution of this agreement, the Developer acknowledges that the City and all other taxing jurisdictions provide or make available to and for the benefit of the Real Estate certain services and facilities, for which property taxes are generally assessed. The amount of the Annual PILOT shall be calculated by the City Assessor by multiplying the fair market value (using tax assessment definitions, rules and procedures) of the tax exempt portion of such property by the total tax rate of all taxing jurisdictions as shown on tax bills issued to taxpayers in the City. Developer, or the then current owner of the tax exempt property, its successors or assigns shall pay the Annual PILOT within sixty (60) days of receipt of a notice thereof. Developer shall have the right to appeal the determination of the City Assessor to the City Council. Any appeal shall specifically state the reasons, in writing, why the amount due as provided by the City Assessor is in error. No portion of an Annual PILOT shall be attributable to property taken by eminent domain by the United States, the State of Wisconsin or any other entity possessing condemnation powers.
- b. **Special Charge.** In the event there is a lack of compliance for payment of the Annual PILOT, then the City, in addition to any other remedy available at law or in equity, may levy a special charge or assessment under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property for the delinquent amount as calculated herein to enable the City to enforce performance of the Developer's obligations. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy and amount of the special charge or assessment.

2.7. Transfer or Sale of Real Estate.

- a. **Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Developer first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section shall not apply to nor restrict a transfer to Developer's financing entity, e.g. placing a mortgage on the Real Estate nor a residential or commercial lease agreement for individual residential living units or individual commercial lease spaces.
- b. **No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or

owner first executes a written agreement satisfactory to the Economic Development Commission providing for payments in lieu of taxes to the City.

- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. The Developer shall not sell or transfer any portion of the Real Estate to any entity unless and until the Developer has provided the City with written evidence satisfactory to the Economic Development Commission that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve the Developer of its obligations hereunder.
- d. **Subdivision.** Property within the Real Estate shall not be further subdivided beyond what is set forth in the project plan without approval of the City.

2.8. Easements. Developer shall grant the City or any public utility such easements as reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other need necessary to effectuate development of the Real Estate in accordance with the Master Plan at no cost to the City.

2.9. Insurance. Developer shall maintain, and shall require that any purchasers or transferees of any portion of the Real Estate maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, Developer shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply, any and all insurance proceeds to rebuild the Project, maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Developer shall provide to the City certificates of all such insurance.

2.10. Indemnity. Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the City on account of this Agreement, unless such claims, causes of action, or demands: (a) relate to the City failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of City. At City's request, Developer shall appear for and defend the City, at Developer's expense, in any action or proceeding to which the City may be made a party by reason of any of the foregoing.

2.11. Utilities.

- a. **Other Utilities.** Developer shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building in the Project. Plans indicating the proposed location of each such utility to service the Project shall be shown on the Master Plan and construction plans to be provided to the City for approval prior to the installation of the utility.
- b. **Water and Sewer.** Except for Public Improvements, Developer shall be solely responsible for and shall pay all costs of all laterals connecting water service to the Project. The Developer will pay all costs of sanitary sewer connections to the City sanitary sewer main.

2.12. Restrictions. Developer agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan businesses, payday lenders, tattoo parlors and/or off-premise signs for a period of twenty (20) years. "Payday lenders" and "car title loan businesses" shall exclude banks and credit unions. This shall be a deed restriction against the Real Estate and shall run with the land.

2.13. Record Retention. Developer understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer agrees to retain all records as defined by Wisconsin Statute §19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer agrees to assist the City in complying with any public records request that the City receives pertaining to this Agreement. Additionally, Developer agrees to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's actions or omissions which contribute to the City's inability to comply with the Public Records Law. In the event Developer decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.14. Repair and/or Replacement of Infrastructure. Developer shall repair and/or replace any damages to City infrastructure or other City property that may occur as a result of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

ARTICLE III CITY OBLIGATIONS

3.1. Zoning and Sale of City Owned Land. The City agrees to sell the Real Estate described herein upon the terms and conditions set forth in this Agreement. The City agrees to consider the rezoning of all lands, streets, alleys and right of ways contained within the described **Exhibit A**.

3.2. City Performance Subject to Required Government Approvals. The Developer acknowledges that several of the specific undertakings of the City described in this Agreement require approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Agreement are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.3. Assistance with Zoning Changes. If necessary, the City Planning Department shall assist with the rezoning process in accordance with the City's zoning code to attempt to provide appropriate zoning for the property being developed by Developer so that the zoning for the development is in accordance with the City's comprehensive plan for the area.

3.4. Certificate of Completion. Upon completion and review of the improvements by the City, the City shall provide the Developer with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the project plans for said area and any amendment or modifications thereto.

3.5. Public Improvements. City has agreed to pay for certain costs included within the Project as may be agreed to in writing and as are attached to this Agreement as **Exhibit D** ("Public Improvements"), all in accordance with the terms and conditions of this Agreement.

ARTICLE IV

CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions then the conditions shall be deemed satisfied. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

4.1. Existence. Developer shall have provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of Developer's incorporation. If the Developer is an out-of-state corporation, the Developer will submit the name and address of its registered agent in the State of Wisconsin.

4.2. Incumbency; Due Authorization. Developer shall provide the City with a current list of its corporate officers and the offices they fill and shall amend said list, from time to time, in the event of changes. It shall also provide evidence in the form of a corporate resolution that Developer is duly authorized to enter into this agreement, denoting the officers authorized to execute it on its behalf.

4.3. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts. Developer shall not be in material default under the terms of any other agreement or instrument to which Developer is a party or an obligor. Developer shall be in material compliance with all provisions of this Agreement.

4.4. Financing Commitment. Developer shall have obtained a written financing commitment from a conventional lender, which is sufficient to fund the construction, furnishing, equipping and installation of improvements and called for in the Master Plan and the purchase price of the Real Estate.

4.5. Plans and Specifications. Developer shall have provided the Master Plan representing the approved proposal, which Master Plan must be acceptable in all respects to the City and shall have been approved by the City.

4.6. Intentionally Omitted.

4.7. Insurance. Developer shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

4.8. Acquisition of Real Estate. The Developer shall have acquired fee simple title to the Real Estate in the time frames set forth in this Agreement.

4.9. Approvals and Permits. The Developer shall at its expense have obtained all necessary approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

4.10. Compliance with Law. Developer shall comply with all applicable federal, state and local laws, regulations and ordinances.

4.11. Compliance with Agreements. Developer shall be in compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V CONDITIONS PRECEDENT TO DEVELOPER'S OBLIGATIONS

Developer's obligations under this Agreement are conditioned upon the following:

5.1. Acquisition of Real Estate. The Developer shall have acquired the Real Estate from the City under the terms and conditions of this Agreement. If this condition is not met, then this Agreement shall terminate without further action of either the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other.

5.2. Loan. The Developer shall have obtained a loan in the amount of two hundred thousand dollars (\$200,000.00) from the City under its Upper Floor Renovation Loan program within sixty (60) days of the Signature Date. If this condition is not met, then this Agreement shall terminate without further action of either the City or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligation to the other.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City and the City represents and warrants to and covenants with Developer as respectively follows:

6.1. Project. The Developer is guaranteeing completion of the improvements called for in the Master Plan.

6.2. Taxes. Developer has paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Developer shall pay when due all payments in lieu of taxes and special charges required under the terms of this Agreement.

6.3. Compliance with Zoning. Developer covenants that the Real Estate, upon completion of the Project, shall conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

6.4. Payment. All work performed and/or materials furnished for the Project, other than Public Improvements, shall be fully paid for by Developer. The Developer shall not allow or suffer liens of any kind to be placed upon City property as a result of its material or labor contracts.

6.5. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

6.6. Good Standing. Developer is a Limited Liability Company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.7. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary corporate action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

6.8. No Conflict. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer.

6.9. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project or any guarantor that would adversely affect the Project, Developer or any guarantor or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

6.10. Certification of Costs. Developer covenants the Project Cost Breakdown accurately reflects all costs of the Project that will be incurred by Developer in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Developer. Developer knows of no circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

6.11. No Default. The Developer represents that it is not in default under any other agreement nor has it been placed on notice of alleged defaults under other agreements which would practically or financially impede or prevent its fulfillment of its obligations to the City under this agreement as of the time of execution hereof.

6.12. Fees and Commissions. The City shall not be liable for any broker fees or commissions incurred by the Developer in connection with any transactions contemplated by this Agreement.

6.13. Financing Accommodation.

- a. **No Assignment.** Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement. The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Developer, its successors, assigns or transferees, as the case may be, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect.
- b. **No Subordination.** The City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action of said request. Said subordination may only be approved by the City Council.
- c. **Developer Financing.** Notwithstanding this Section 6.13, Developer may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event of a foreclosure against Developer by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of Developer under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council

approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

6.14. Commencement and Completion. Developer shall commence and complete construction of the Project in accordance with the terms of this Agreement.

6.15. Compliance with Plans. Developer shall cause the Project to be constructed in accordance with the Master Plan and shall promptly correct any defects in construction or deviations from the Master Plan.

6.16. No Changes. After Developer has submitted to the City the final version of all documents and agreements, Developer shall not, without City's prior written consent: (i) consent to any amendments to any documents delivered to City pursuant to this Agreement; (ii) approve any changes in the Project or the Master Plan or permit any work to be done pursuant to any changes; (iii) modify or amend the Project Cost Breakdown.

6.17. Inspection of Project. Developer shall permit City, its inspector and/or its construction consultant, at all reasonable times and at no cost to inspect the Project and all matters relating to the development thereof. City assumes no obligation to Developer for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City. The fact that City may make such inspections shall in no way relieve Developer from its duty to independently ascertain that the construction of the Project and Developer's compliance with this Agreement are being completed in accordance with the approved Master Plan and the terms and conditions of this Agreement.

6.18. Notification. Developer shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer contained in this Agreement to be untrue.
- c. Notify City, and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.19. Unrelated Activity. It is the intention of Developer and City that the sole business of Developer shall be the construction, ownership and operation of the Project, and Developer shall take no action inconsistent with such intention, including without limitation the acquisition by Developer of real or personal property unrelated to the Project, investment by Developer in the assets or stock of any other person, joining by Developer with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Developer unrelated to the Project that would prevent Developer from engaging in this Project.

6.20. No Indebtedness. Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Developer shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "Indebtedness" shall mean any liability or obligation of Developer: (a) for borrowed money or for the

deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (e) secured by any security interest or lien on assets of Developer, whether or not the obligations secured have been assumed by Developer.

6.21. Correction of Defects. Developer shall, upon demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any material defect, structural or otherwise, in the Project or any departure from the Master Plan.

6.22. Not for Speculation. Developer represents and warrants that its acquisition of the Real Estate and its undertakings pursuant to this Agreement shall be for the sole and express purpose of the redevelopment of the Real Estate consistent with the Master Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings.

ARTICLE VII DEFAULT

7.1 Developer's Default.

a. Remedies. In the event (i) any representation or warranty of Developer herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:

- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City immediately upon demand;
- (2) Injunctive relief;
- (3) Action for specific performance;
- (4) Action for money damages;
- (5) Repayment by Developer of any incentives and damages via special assessment or special charge under Section 66.0627, Wis. Stat., prior to any first mortgage lien on the property. The owners of the Real Estate and their successors and assigns further agree that they waive any objection to the City making said special charge or assessment; however, they still retain their right to object to the accuracy of the amount of the special charge or assessment; and
- (6) Any other remedy in this Agreement.

b. Reimbursement. Any amounts expended by the City in enforcing this Agreement and the obligations of Developer hereunder, including reasonable attorney's fees, and any amounts

expended by the City in curing a default on behalf of Developer, together with interest at one and one-half percent (1.5%) per month, shall be paid by Developer to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

- c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.

7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
 - (1) Injunctive relief;
 - (2) Action for specific performance; and
 - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

7.3 Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. In the event of impasse at mediation, the aggrieved party may then commence an action. However, the parties shall be bound to agree to alternative dispute resolution as ordered by the Court.

7.4. Construction Obligation and Repurchase Rights.

- a. **Construction Obligation.** Developer shall promptly begin, diligently pursue and ultimately complete construction and redevelopment of the building and improvements on its site pursuant to this Agreement.

In the event that construction and redevelopment of the building and improvements has not been commenced within one (1) year of the Signature Date, then, until such construction is commenced, the City shall have the option of repurchasing the Real Estate from Developer (the "Commencement Option"). To exercise the Commencement Option, the City shall provide written Notice of Exercise of Option to Developer, including the date of repurchase closing. The repurchase, as described in Section 7.4, shall occur within sixty (60) days of delivery of the Notice of Exercise of Option.

If after commencing construction and redevelopment, the construction and redevelopment ceases for a period of one hundred eighty (180) consecutive days at any time before the Substantial Completion ("Cessation of Construction"), the City shall have an option to repurchase the Real Estate at any time within one (1) year of Cessation of Construction (the "Construction Option"). To exercise such Construction Option, the City shall provide Developer with notice as set forth above. Repurchase, as described in Section 7.4, shall occur within sixty (60) days of notice on the date specified in the notice.

If Developer does not reach Substantial Completion of the Project within three (3) years of the Signature Date, the City shall have an option to repurchase the Real Estate (the "Completion Option"). To exercise the Completion Option, City shall provide written notice as set forth above within one hundred eighty (180) days after the expiration of the three (3) year period. Repurchase, as described in Section 7.4, shall occur within sixty (60) days of notice on the date specified in the notice.

- b. Terms of Repurchase.** If the City exercises any of the options described in Section 7.4, at repurchase closing, the Developer shall tender a warranty deed free and clear of all liens and encumbrances except municipal and zoning ordinances, recorded easements for public utilities and covenants approved by the City, in exchange for a sum equal to Developer's purchase price for the Real Estate less any unpaid real estate taxes, the proration for the then current year's real estate taxes, and the title insurance premium. Developer shall provide the City with a title insurance policy for the purchase price or minimum amount for which a policy can be written at Developer's expense. Developer shall be deemed to consent to enforcement of the options described in Section 7.4 on the above terms by specific performance.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Assignment. Except as provided in Sections 2.7 and 6.13, Developer may not assign its rights or obligations under this Agreement without the prior written consent of the City. Developer shall provide not less than forty-five (45) days advance written notice of any intended assignment.

8.2 Nondiscrimination. In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

8.3 No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

8.4 Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required

environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

8.5 Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

8.6 Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The City Planning department shall otherwise oversee the day-to-day operations of this Agreement.

8.7 Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn: City Clerk
 400 La Crosse Street
 La Crosse, WI 54601

With a copy to: Attn: City Planner
 400 La Crosse Street
 La Crosse, WI 54601

To the Developer: Attn: _____
 RMD Development, LLC
 319 Main Street, Suite 404
 La Crosse, WI 54601

8.8 Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of both parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County.

8.9 Conflict of Interest. Developer shall avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer agrees not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

8.10 Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

8.11 Disclaimer Relationships. Developer acknowledges and agrees that nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer, in the performance of the work and services of this Project shall not act as an agent or employee of the City and neither the Developer nor its officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer hereby expressly waives any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

8.12 Severability. Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

8.13. Termination. Except for Sections 2.10 (Indemnity), 2.6 (Annual PILOT), 2.13 (Record Retention) and 8.5 (Survival), which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, shall terminate twenty (20) years after the Substantial Completion. This Agreement may also be terminated as provided elsewhere in this Agreement.

8.14. Memorandum of Agreement. Promptly upon its acquisition of the Real Estate and prior to the recording of any mortgage or other security instrument against any portion of the Real Estate, the Developer agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Developer.

8.15. Covenants Running with Land. All of the covenants, obligations and promises of Developer set forth herein shall be deemed to encumber the Development and run with the land described in **Exhibit A** and shall bind any successor, assignee or transferee of Developer until such time as this Agreement is terminated.

8.16. Amendments. No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City and Developer.

8.17. Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

8.18. Construction. This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the contest may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

8.19. Incorporation of Proceedings and Exhibits. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Developer whether or not herein enumerated.

8.20. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

8.21. Execution of Agreement. Developer shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours forty-five (45) days after its final adoption by the Common Council. Developer's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of the Agreement ("Signature Date").

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed and sealed by duly authorized representatives of Developer and the City this _____ day of _____, 2017.

DEVELOPER:
RMD Development, LLC.

BY: _____

BY: _____

STATE OF WISCONSIN)
) S.S.
 LA CROSSE COUNTY)

Personally came before me this ____ day of _____, 2017, the above-named _____, and _____, the managing members of the Developer, RMD Development, LLC to me known to be the persons who executed the foregoing instrument and acknowledged the same.

 Notary Public - State of Wisconsin
 My Commission expires: _____.

CITY OF LA CROSSE, WISCONSIN: (SEAL)

 Mayor

Countersigned:

City Clerk

STATE OF WISCONSIN)
) S.S.
LA CROSSE COUNTY)

Personally came before me this _____ day of _____, 2017, the above named Timothy Kabat, Mayor and Teri Lehrke, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same,

Notary Public - State of Wisconsin
My Commission expires: _____

DRAFT