



## LEGAL DEPARTMENT

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November 16, 2011

International Business Park Owners

RE: Process to change protective covenants of the International Business Park

Dear Owners:

On September 13, 2011, the City of La Crosse received a petition from River States Truck and Trailer, Inc. et al (collectively "River States") seeking the City of La Crosse to enforce the International Business Park Protective Covenants against Martin Warehousing, LLC ("Martin"). River States submitted its petition pursuant to Section 15(A) of the Protective Covenants. The Common Council considered this request and directed the Legal Department to issue this communication to explain how the City interprets the restrictive covenants and the use of property by Martin.

### **1. The City determines the number of property owners based upon the date of application.**

In order to amend the Protective Covenants, Section 14(B) requires that there must be written affirmative vote of 51% of the total number of property owners in the Park. In order to determine whether Martin obtained the required 51% threshold, the City shall use the date of the application to determine ownership. To determine ownership based upon a different date permits the absurd result that one property owner could create multiple entities in order to stack the vote in its favor. Indeed, this is the strategy employed by River States in an attempt to ensure that it could thwart anyone from reaching the 51% threshold. On August 29, 2011, the City received word that River States created two additional River States entities, which attempted to triple its voting power on this matter.

On June 2, 2011, Martin submitted its original request for amendments to the Protective Covenants. At this time, there were nine property owners within the International Business Park, specifically, (1) Martin Warehousing, LLC; (2) River States Truck and Trailer; (3) JJJ Properties, LLC (Stansfield); (4) Walnut Street Apartments, LLC; (5) M&M of Neshonoc, LLC

(Decker); (6) Lyon Investments, LLC; (7) TCI Developers; (8) Fiber Pro, Inc.; and (9) the City of La Crosse. Based on these ownership interests, five voted in favor and four opposed to the proposed changes to the covenants.

**2. In order to determine whether the 51% threshold is met, each lot receives one vote.**

Likewise, another absurdity exists that could improperly skew voting power. Unless each lot in the Park is granted a single vote, an infinite number of joint ownership interests could be created on a single parcel. Again, the practical result would be that a single property owner, through the use of creating multiple legal entities under its control, could predetermine the result of any proposed change to the Protective Covenants. As such, each property owner is able to vote based on the number of lots the owner controls. Indeed, this would also remove the need to create separate legal entities as shown by River States in the current situation.

Given that joint ownership interests on a single lot may exist for reasons other than trying to skew votes in the favor of such owners, the joint owners of such a lot must file with the City Clerk a notice and contact information of its agent who is authorized to exercise said vote. The joint owners can designate a different agent by simply submitting updated information to the City Clerk. The joint owners are responsible amongst themselves for determining how the agent should vote for a given request. If the joint owners are unable to agree to a particular agent or are unable to inform the agent on how to vote and thus, no vote is cast, then the vote shall not assist in reaching the 51% threshold. A vote by said agent shall be final and conclusive proof of the joint owners' intent for said lot.

Here, the Park has 26 lots and 4 outlots. Since an outlot is an undevelopable parcel of land, an outlot shall not be counted in determining ownership and number of votes. Of the 26 lots, the following table explains the votes as of September 8, 2011, the date of final action by the Common Council subject to the ownership determination on June 2, 2011, the date of application.

<b>Outlot Owner:</b>	<b>Outlot Numbers:</b>	<b>Total votes:</b>	<b>Consent:</b>
City of La Crosse	1, 3 2 (partial with BTK Investments) 4 (partial with River States)	0 (outlots do not vote) 0 0	Yes
BTK Investments	2 (partial with City of La Crosse)	0 (outlots do not vote)	
River States Truck & Trailer Real Estate II LLC	4 (partial with City of La Crosse)	0 (outlots do not vote)	No

Lot Owner:	Lot Numbers:	Total Votes:	Consent:
M&M of Neshonoc, LLC (Decker)	1, 2	2	No
Walnut St. Apts.	3	1	Yes
JJJ Properties LLC (Stansfield)	5	1	No
Martin Warehousing, LLC	10	1	Yes
River States Truck & Trailer, Inc.	14, 15, 16, 19	4	No
Lyon Investments LLC	12 13 (partial with City)	1 0 (City and Lyon did not agree)	No
River States Truck & Trailer Real Estate I LLC	20, 21	2	No
Fiber Pro Inc.	23, 24	2	Yes
TCI Developers	25	1	Yes
City of La Crosse	4, 6, 7, 8, 9, 11, 17, 18, 22, 26 13 (partial with Lyon)	10 0 (City and Lyon did not agree)	Yes

Summary:			
Favor	3, 4, 6, 7, 8, 9, 10, 11, 17, 18, 22, 23, 24, 25, 26	15 (or 57.7%)	Yes
Opposed	1, 2, 5, 12, 14, 15, 16, 19, 20, 21,	10 (or 38.5%)	No
Not voting	13	1 (or 3.8%)	N/A

**3. For purposes of determining whether the 51% threshold has been met in the future, the City shall provide notices to the owners' agents.**

In an effort to remove confusion from proposed future amendment changes, the City shall provide a copy of the proposed changes to the Protective Covenants to the agent for each lot on record with the City Clerk. To this end, each lot owner shall file a notice of its agent and agent's contact information. Between the times of the application submittal through the close of business day prior to final vote of the Common Council on the proposed change, the agents of the non-City lots may file their votes with the City Clerk on this matter. Each vote filed shall be considered a public record and may be disclosed upon request after the appropriate analysis under the Public Records Law. The failure of an agent to file the vote by this deadline shall mean that it shall not count toward any affirmative 51% threshold required to change the Protective Covenants. Any vote of the City shall be determined by resolution of the Common Council.

**4. The City of La Crosse declines to commence an enforcement action against Martin Warehousing, LLC.**

In accordance with the principles established above, the City shall not commence any enforcement action against Martin notwithstanding the petition from River States. In accordance with Section 15(A) of the Protective Covenants, River States may commence an action or proceeding against the violating property owner for enforcement. If such an action or proceeding is commenced, the City reserves the right to intervene in said action or proceeding and/or take any other actions it deems necessary to protect its interests as well as the interests of its taxpayers.

Very truly yours,



Stephen F. Matty  
City Attorney

cc:           City Clerk  
              Mayor  
              Council Members  
              City Planner  
              Atty. Thomas J. Kieffer  
              Atty. Sean O'Flaherty  
              County Administrator