



**FIFTH AMENDMENT TO THE REDEVELOPMENT
AGREEMENT BETWEEN THE CITY OF LA CROSSE, THE
REDEVELOPMENT AUTHORITY OF THE CITY OF LA
CROSSE, AND RIVERSIDE CENTER, LLC.**

This Fifth Amendment to the Redevelopment Agreement between the City of La Crosse, the Redevelopment Authority of the City of La Crosse and Riverside Center, LLC ("Fifth 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 (the "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, LLC, a Wisconsin limited liability corporation with offices located at 328 Front Street South, La Crosse, Wisconsin, 54601 ("Riverside Center").

WITNESSETH:

Whereas, the City, Authority and Riverside Center entered into a Redevelopment Agreement (as amended by the First Amendment, the Second Amendment and the Third Amendment (as those terms are defined below), the "Phase 1 Agreement") on July 1, 2004 in Resolution No. 2004-04-032, which was recorded on May 31, 2005 as document no. 1422545;

Whereas, the parties entered into an Amended Phase 1 Agreement (the "First Amendment") on April 14, 2005 in Resolution No. 2005-04-043, which was recorded on August 15, 2007 as document no. 1482531;

Whereas, the parties entered into a Second Amendment of the Phase 1 Agreement (the "Second Amendment") on May 12, 2005 in Resolution No. 2005-05-019, which was recorded on August 15, 2007 as document no. 1482530;

Whereas, the parties entered into a Third Amendment of the Phase 1 Agreement (the "Third Amendment") on April 27, 2010 in Resolution No. 2010-04-053, which was recorded on July 30, 2010 as Document No. 1554621, signed by developer on May 25, 2010;

Whereas, the City and Authority approved a Fourth Amendment of the Phase 1 Agreement (the "Fourth Amendment") on July 2, 2014 in Resolution No. 14-0797, which was never signed by Riverside Center. The Fourth Amendment's reference in this document is only included for future tracking and references purposes.

Whereas, the real estate to which the Phase 1 Agreement, First, Second, Third, Fourth and Fifth Amendments apply is more particularly described in the attached Exhibit 1 (the "Project");

1645322
LACROSSE COUNTY
REGISTER OF DEEDS
CHERYL A. HCBRIDE

RECORDED ON
09/16/2014 10:38AM
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PAGES: 8

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City Attorney
400 La Crosse Street
Lacrosse WI 54601

#112

Parcel Identification Number/Tax Key Number

Whereas, the Third Amendment, among other things, provided for the creation of two thousand new jobs in collaboration with Riverside Center II, LLC and Riverside Center III, LLC by January 1, 2013;

Whereas, Riverside Center, in collaboration with Riverside Center II, LLC and Riverside Center III, 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 1 Agreement by adopting this Fifth Amendment in order to extend the timeline for the creation of jobs, address the job creation deficiency and clarify other matters from the Fourth Amendment; and

Whereas, the City, Authority and Riverside Center wish to set forth in this Fifth Amendment their respective commitments, understandings, rights and obligations as more fully described herein.

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.** Article VII of the Phase 1 Agreement, as amended and superseded, shall be further 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 Article VII of the Phase 1 Agreement, as amended and superseded, shall remain unchanged.

2. **Job Certification and Guarantee – Exhibit J.** The Phase 1 Agreement's Job Certification and Guarantee, identified as **Exhibit J** and incorporated through the Third Amendment, 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.** Riverside Center, jointly and severally with Riverside Center II, LLC and Riverside Center III, 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 fifty thousand dollars (\$750,000.00) to be paid to Riverside Center III, LLC as identified in Section 3.1(b) of the Amended and Restated Riverside Center Phase 3 Development Agreement recorded on July 30, 2010 as document no. 1554622. The City agrees that these payments are personal obligations of Riverside Center, Riverside Center II, LLC and Riverside Center III, LLC, and are not binding upon any one or more successors-in-interest of those parties. Notwithstanding, the City may, upon the failure of Riverside Center, Riverside Center II, LLC and/or Riverside Center III, LLC to timely pay liquidated damages, offset, withhold and receive payment of its liquidated damages through any cash grant or Contribution it is required to make through any development agreement it may have with Riverside Center, Riverside Center II, LLC, Riverside Center III, LLC, or one or more successors-in-interest of those parties.

4. **Other Provisions.** Except as described herein, all other terms, conditions, covenants and promises of the Phase 1 Agreement, First Amendment, Second Amendment, Third Amendment, and all exhibits thereto shall remain unchanged and in full force and effect.

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

6. Authority to Sign. The person signing this Fifth Amendment on behalf of the Riverside Center 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 the Riverside Center, on whose behalf the person is executing this Fifth Amendment. Riverside Center 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, Riverside Center 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.

7. Jobs Requirement. The following provisions pertain to the jobs requirement under the Development Agreements.

A. The "Development Agreements" are collectively:

1. the **Phase 1 Agreement**, as amended by the First Amendment, Second Amendment, Third Amendment and this Fifth Amendment ;
2. the Riverside Center II, LLC – Phase II Development Agreement, dated April 19, 2007, approved by Resolution #2007-04-069, recorded May 15, 2007 as Document No. 1474123 and amended by the April 10, 2008 First Amendment to Riverside Center II, LLC Phase II Development Agreement, approved by Resolution #2008-03-024, recorded May 12, 2008 as Document No. 1501807, the March 12, 2009 Second Amendment to Riverside Center II, LLC – Phase II Development Agreement, approved by Resolution #2009-03-024, signed by developer on April 23, 2009, and the July 30, 2010 Third Amendment to Riverside Center II, LLC – Phase II Development Agreement approved by Resolution #2010-04-054, signed by developer on May 25, 2010, recorded July 30, 2010 and as amended by a Fifth Amendment to the Riverside Center II, LLC - Phase II Development Agreement (as so amended, the "**Phase 2 Agreement**"), by and between the City, the RDA and Riverside Center II, LLC; and
3. the Amended and Restated Riverside Center Phase 3 Development Agreement, by and between the City, the RDA and Riverside Center III, LLC., approved by Resolution #2010-04-055, recorded July 30, 2010 as Document No. 1554622 and as amended by a Second Amendment to the Amended and Restated Riverside Center Phase 3 Development Agreement dated on even date herewith (the "**Phase 3 Agreement**")

B. **Liquidated Damages Prior to the Date Hereof.** The City agrees that the payments made under Section 3 above are in full satisfaction of all damages, including, without limitation, the liquidated damages, payable by Riverside Center, jointly and severally with Riverside Center II, LLC and Riverside Center III, LLC in connection with the Development Agreements as of the date hereof.

C. **Liquidated Damages On and After the Date Hereof.** The City agrees that the liquidated damages payable on and after the date hereof under the Developments Agreements are based on the number of Jobs employed collectively by Riverside Center, Riverside Center II, LLC and Riverside Center III, LLC between January 1, 2016 and December 31, 2025 , and will be determined pursuant to the procedure set forth in Section 7(E) below. The City agrees that the liquidated damages determined in accordance with Section 7(E) below is the sole and exclusive remedy for the Riverside Center, Riverside Center II, LLC and Riverside Center III, LLC's failure to meet the Employment Level.

D. **Jobs Accounting.** The City agrees that Riverside Center is only required to report to the City by June 15 the number of Jobs at the Project during the previous year, and that Riverside Center may use commonly accepted accounting practices, may rely in good faith on information provided by tenants to calculate the number of Jobs and, in the absence of information from tenants, may make good faith estimates regarding tenant employment levels. The City has the right to audit Riverside Center's books and records regarding Riverside Center's determination of the employment levels of Riverside Center and its affiliated business (as opposed to the employment levels of tenants unrelated to Riverside Center and its affiliated business, which are not subject to audit). The City may only conduct one audit per calendar year. The City must give Riverside Center reasonable prior written notice before conducting any such audit. The results of employment audits conducted by the City shall be final and not subject to challenge except in the event of fraud.

E. **Determination and Payment of Liquidated Damages.** Liquidated damages under Section 7(C) above will be determined and paid pursuant to the provisions of this Section 7(E).

1. The "**Actual Jobs Count**" is actual number of Jobs for any calendar year from 2016 through 2025 as determined on the last regular payroll date of the calendar year in question.
2. The "**Lowest Jobs Count To Date**" is the lowest Actual Jobs Count for any calendar year after 2015 and prior to the then-current calendar year.
3. The "**LD Payment**" is the amount payable under Section 7(C) above as determined under this Section 7(E); however if the LD Payment, as calculated in accordance with this Section 7(E), is equal to, or less than, \$0.00, then no LD Payment is required for that calendar year, and the City is not required to refund any previous LD Payments made to it.
4. The LD Payment for calendar year 2016 is the product of
 - (a) the Employment Level (i.e., 2,000 Jobs) less the 2016 Actual Jobs Count; times
 - (b) \$3,500.

5. The LD Payment for each of calendar years 2017 through 2025 is determined as follows:
 - (a) if the Actual Jobs Count for the calendar year in question is equal to, or greater than, the Lowest Jobs Count to Date, then the LD Payment is \$0.00;
 - (b) if the Actual Jobs Count for the calendar year in question is less than the Lowest Jobs Count to Date, then the LD Payment is the product of
 - (i) the Lowest Jobs Count to Date less the Actual Jobs Count for the calendar year in question, times
 - (ii) \$3,500.
6. The following examples are included for clarification:
 - (a) For example: if the 2016 Actual Jobs Count is 1,600 Jobs, the LD Payment is \$1,400,000 (the product of 400 Jobs (the Employment Level of 2,000 Jobs less the 2016 Actual Jobs of 1,600 Jobs) times \$3,500).
 - (b) For example: if the 2017 Actual Jobs Count is 1,500 Jobs, the Lowest Jobs Count to Date is 1,600 (the 2016 Actual Jobs), and the LD Payment is \$350,000 (100 Jobs (the 2016 Actual Jobs Count of 1,600 Jobs less the 2017 Actual Jobs Count of 1,500) times \$3,500).
 - (c) For example: if the 2018 Actual Jobs Count is 1,800 Jobs, the LD Payment is \$0.00 because the 2018 Actual Jobs Count of 1,800 Jobs is greater than the Lowest Jobs Count to Date, which is 1,300 Jobs (i.e., the 2017 Actual Jobs Count).
7. Riverside Center shall pay the LD Payments to the City within thirty (30) days after the date of the City's written demand for the respective payments.

8. Riverside Center II, LLC – Phase II Development Agreement. Notwithstanding the fact that Riverside Center is not a party to, and did not execute, the Phase 2 Agreement, Riverside Center hereby consents to, ratifies, joins in and agrees to be bound by the terms, conditions and obligations set forth in the Phase 2 Agreement, as the same may be amended from time-to-time.

9. Amended and Restated Riverside Center Phase 3 Development Agreement. Notwithstanding the fact that Riverside Center is not a party to, and did not execute the Phase 3 Agreement, Riverside Center hereby consents to, ratifies, joins in and agrees to be bound by the terms, conditions and obligations set forth in the Phase 3 Agreement, as the same may be amended from time-to-time.

10. Consent to Assignment. The City and Authority hereby expressly consent to Riverside Center's assignment of all of its rights to, obligations under, the Development Agreements to one or more purchasers of the Project, and such purchaser's respective successors, assigns, nominees, designees, and

buyers of it or any part of the Project; provided, however, that such purchaser (nor its respective successors, assigns, nominees, designees, and buyers of it or any part of the Project) is not responsible in any manner whatsoever for the payments that Riverside Center is required to make under Section 3 of this Fifth Amendment except as provided in Section 3 of this Fifth Amendment.

11. Miscellaneous. The Phase 1 Agreement, as amended by this Fifth Amendment, remains in full force and effect. The Phase 1 Agreement, as amended by this Fifth Amendment, is binding on the parties' successors and assigns except to the extent expressly stated in this Fifth Amendment. This Fifth 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 Fifth 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 Fifth Amendment to the other party upon request.

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IN WITNESS WHEREOF, the parties to this Fifth Amendment have caused this instrument to be signed and sealed by duly authorized representatives of Riverside Center, Authority and the City this 11th day of Sept, 2014.

Riverside Center, LLC

City of La Crosse, Wisconsin

[Signature]
Donald J. Weber, Managing Member

[Signature]
Timothy Kabat, Mayor

[Signature]
Attest: Teri Lehrke, City Clerk

Subscribed and sworn before me
this 12th day of Sept, 2014,

Subscribed and sworn before me
this 11th day of Sept, 2014

[Signature]
Notary Public, State of WI Rebecka L. Martin
My Commission: 10/11/15

[Signature]
Notary Public, State of Wisconsin
My Commission: 11-2-14

Brenda L. Buddenhagen
Redevelopment Authority

[Signature]
Edward R. Przytarski, Chairman

[Signature]
Amy Peterson, 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 11th day of Sept, 2014

[Signature]
Brenda L. Buddenhagen Notary Public, State of Wisconsin
My Commission: 11-2-14

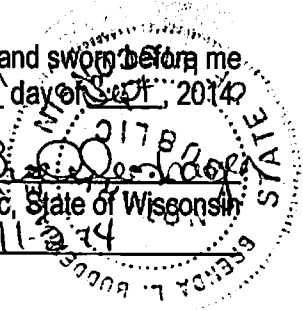
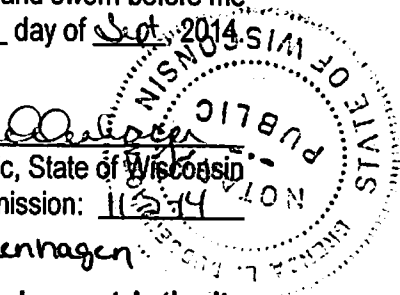
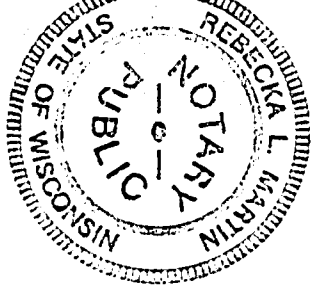


Exhibit 1

Legal Description

Lot 1 of La Crosse County Certified Survey Map filed in Volume 12, on Page 76, as Document No. 1423251, La Crosse County, Wisconsin.

