

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this "*Agreement*") is entered into as of the \_\_\_ day of June, 2022 (the "*Effective Date*"), by and between THE CITY OF TWO RIVERS, WISCONSIN, a Wisconsin municipal corporation (the "*City*"), having offices located at 1717 East Park Street, Two Rivers, Wisconsin 54241 and Wine Not, LLC, a Wisconsin a Wisconsin limited liability company, having offices at 1718 West Park Street, Two Rivers, Wisconsin 54241 ("*Developer*").

### WITNESSETH:

**WHEREAS**, the City of Two Rivers is aware of funding opportunities available through the Community Development Investment (CDI) Grant Program administered by the Wisconsin Economic Development Corporation (WEDC); and

**WHEREAS**, the CDI Grant Program's primary focus is to provide incentives for catalytic downtown redevelopment projects in communities across Wisconsin; and,

**WHEREAS**, the vacant former Wells Fargo building is located in the heart of the City's downtown Main Street District and a proposed redevelopment of this property has the potential to serve as a catalyst for other redevelopment in the Main Street corridor and surrounding areas; and

**WHEREAS**, such redevelopment is consistent with the City's Comprehensive Plan, with the City's goal of redeveloping idle sites (this property has been vacant since 2018), and with the City's goal of promoting redevelopment in the central business district; and

**WHEREAS**, the City of Two Rivers recognizes that the CDI grant reimburses expenses incurred and requires a minimum dollar for dollar match, which will be well exceeded by the total private investment of \$1,500,000 that the developers, Wine Not, LLC estimate will be required to redevelop this major downtown property;

**WHEREAS**, the Developer has agreed to provide WEDC and the City reports of expenditures related to the administration of the grant per the WEDC contract; and

**WHEREAS**, the Developer has represented, and hereby affirms, that the Project as defined below is contingent upon certain "*City Assistance*" as more fully described herein;

**NOW, THEREFORE**, the parties hereto agree as follows:

## 1. PRELIMINARY MATTERS

**A. Recitals.** The above recitals are hereby incorporated by reference.

**B. Certain Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms as used herein shall have the following meanings:

(1) **“City Assistance”** means a grant to the Developer, to be disbursed through the City, in the amount of \$250,000 from a CDI Grant being sought by the City through an application to the Wisconsin Economic Development Corporation, as described herein.

(2) **“Project”** means the improvement to, and rehabilitation of the former Wells Fargo Building located at 1718 West Park Street, along with related site improvements, including landscaping, parking, and site improvements on the Property,

(3) **“Project Completion”** means the date on which the Project is complete in accordance with the plans and specifications previously approved by the City,

(4) **“Tax Year”** means each calendar year for which real and personal property taxes are levied.

(5) **“Private Financing”** shall mean funding available to Developer for purposes of constructing the Project, from equity investors and conventional loan financing through a financial institution licensed to do business in the State of Wisconsin.

(6) **“Effective Date”** means the date in which this Agreement is fully executed by both parties.

(7) **“Project Start Date”** means April 12, 2022, the date the Project is allowed to incur costs incurred that count toward the CDI Grant Program.

(8) **“Project End Date”** means December 31, 2023, the date by which the Project will be complete and last date costs can be incurred against the CDI Grant Program.

**C. Effectiveness of this Agreement.** This Agreement shall be effective and its terms binding upon the occurrence of all the following pursuant to procedures set forth in applicable law, including but not limited to notice and public hearing, as required, and the following:

(1) Approval of this Agreement by the City Council of the City and executed by the by the authorized City staff.

(2) Execution of this Agreement by authorized representatives of the Developer.

## 2. CONDITIONS

### A. Obligations of the City

(1) Community Development Investment Grant **from the Wisconsin Economic Development Corporation (WEDC)**. The City has, as of March 2022, submitted a funding application for an Community Development Investment Grant to the WEDC. The City and Developer agree that, in addition to their respective responsibilities as described in this Agreement, the Project will benefit from a grant award in the amount of \$250,000, to assist in the funding of the Project.

Contingent upon the award of such a CDI Grant to the City for the Project, the City hereby agrees to provide the \$250,000 in City Assistance to Developer, subject to the terms of this Agreement, and also subject to any requirements of the Wisconsin Economic Development Corporation.

## **B. OBLIGATIONS OF DEVELOPER**

(1) Site and Architectural Plan Approval. The Developer shall submit Site and Architectural Plans for the Project for review and approval by the City's Plan Commission as provided in Section 11-1-10-C of City Ordinances Approval of such Site and Architectural Plans must be obtained prior to issuance of the building permit for the Project; such approval shall not be unreasonably withheld. The plans shall clearly identify, if applicable:

- i. Improvements and/or modifications to the building(s);
- ii. Improvements and/or modifications to the balance of the Development Site;
- iii. Other such essential items as may be reasonably determined by the Plan Commission to be appropriate.

(2) Building Permit. Following the approvals listed in (1) above, the Developer shall promptly and reasonably proceed to obtain a building permit for the Project.

(3) Completion of all Work Comprising the Project. Following issuance of a building permit, the Developer shall promptly and reasonably proceed to commence construction of the Project and, subject to the force majeure provisions contained herein, shall achieve Project Completion in a manner consistent with this Agreement and with all federal, state and local plan approvals.

Project shall be equipped and operational as brewery and restaurant space no later than December 31, 2023 which shall be considered the Project Completion Date for purposes of this Agreement. The Developer shall meet the conditions listed below. The improvements to be completed are identified in the Project Budget included as Exhibit B and are the basis for the Idle Site Grant

Notwithstanding the foregoing, the CDI Grant award is anticipated to be in the amount of \$250,000 based on the Developer's proposed investment as presented in the grant application, as itemized in Exhibit B and summarized below:

Building & Project Improvements Eligible in CDI Program:	\$ 1,386,000
Developer Investment Total: (Eligible +Ineligible)	\$ 1,850,000
WEDC CDI Grant Award (for Eligible Costs)	: \$ 250,000

At a minimum, the City requires the Developer to complete the tasks identified in Exhibit B and expend a documented cost of at least \$1,386,000 for eligible costs. If the Developer's documented investment for Eligible Costs falls short of \$1,386,000 then a pro-rated disbursement of the City Assistance will be provided, subject to WEDC rules and regulations.

(4) Operation and Maintenance of the Project. Following completion of the Project, the Developer will conform and comply with, will cause the Project to be in conformance and compliance with, and shall operate the Project in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, all environmental laws, rules, regulations and ordinances. The Developer shall always have in effect, all permits, approvals, and licenses as may be required by any governmental authority in connection with the development, construction, and operation of the Project.

The Project shall be operated as a restaurant and brewery and the Developer shall not modify the use of the Project without the City's prior written consent. The Developer is to maintain the physical condition of the Project and the Property in a reasonable manner.

(5). Submittal of Information Required for Payment of Grant Funds. The Developer shall be eligible to receive the City Assistance in two draws:

i. Developer may request a draw of \$125,000 (50 percent) of the City Assistance after having expended funds for Eligible Costs as identified in Exhibit B, in the amount of at least \$693,000 (50 percent of Eligible Costs). To qualify for such draw, Developer shall provide the City with documentation to the City's satisfaction of funds expended for such Eligible costs, to include copies of all paid invoices and cancelled checks for payments made. Following receipt of such documentation, and its determination that such documentation is satisfactory, the City shall pay such draw to Developer within 15 days.

ii. Developer may request the remaining \$125,000 of the City Assistance following completion of the Project and following the City Building Inspector's final inspection of the premises at 1718 West Park Street and said Building Inspector's authorization of full occupancy of that premises for the project as described herein. The Developer shall provide the City with documentation to the City's satisfaction of all funds expended for completion of the project, including copies of paid invoices, cancelled checks and lien

waivers for all the activities comprising the Project. Such documentation shall reflect the expenditures listed in Section 2. B (3) and must include at least a total of \$1,386,000 expended for Eligible Costs. Failure to complete the project on or before the Project Completion Date of December 31, 2023 or to provide the City with full documentation of Project costs by January 31, 2024 shall cause the Developer to be ineligible for said City Assistance. (Also see Section 2. B.(3) of this Agreement, pertaining to a possible pro rating of the City Assistance if Developer's documented investment for Eligible Costs falls short of \$1,386,000.)

(6) To satisfy the requirements of the potential CDI Grant, the Developer will be required to meet the conditions listed in Section 2. B (3) of this agreement. The improvements anticipated to be completed are included and listed in Exhibit B and are the basis for the CDI Grant. The documentation to be provided to the City shall reflect these Project construction costs, including construction lien waivers.

(7) The Developer will conform and comply with, will cause the Project to be in conformance and compliance with, and shall operate the Project in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, all environmental laws, rules, regulations and ordinances. The Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority in connection with the development, construction and operation of the Project.

### **3. REPRESENTATIONS AND WARRANTIES**

**A. Representations and Warranties of the City.** The City makes the following representations and warranties:

(1) The City has the requisite power and authority and legal right to enter into this Agreement and to perform the transactions contemplated hereby.

(2) The individuals executing this Agreement on behalf of the City are duly empowered and authorized to execute this Agreement on behalf of the City and to deliver the same. Once this Agreement has been duly executed and delivered by all parties hereto, and becomes effective as set forth in Section 1.C above, it will constitute a binding obligation on behalf of the City subject to the terms and provisions hereof.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of the City's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting the City or by which it is bound.

**B. Representations and Warranties of Developer.** Developer makes the following representations and warranties:

(1) The Developer has the full power and authority to enter into this Agreement and to perform its obligations hereunder.

(2) The Developer is a Wisconsin limited liability company, duly organized, validly existing and in active status under the laws of that state. The execution of this Agreement as well as the performance of its obligations contained herein are not in violation of its organizational documentation. The individual executing this Agreement on behalf of the Developer is duly authorized to do so. Once this Agreement has been duly executed and delivered by all parties hereto and becomes effective as set forth in Section 1.C above, it will constitute a binding obligation on behalf of the Developer subject to the terms and provisions hereof.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of Developer's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting Developer or by which it is bound.

**4. DEFAULT; REMEDIES; FORCE MAJEURE**

**A. Notice of Default and Right to Cure.**

It shall constitute a Default if the Developer ceases to operate as a restaurant and brewery within five (5) years following the Effective date of the WEDC Executed Agreement. The agreement is in Exhibit C. In the event of any default in or any breach of this Agreement or any of its terms or conditions by any party hereto, the non-defaulting party shall give written notice of the default to the defaulting party. The defaulting party may then cure such default or breach within five (5) business days in the event of a monetary default or within thirty (30) days in the event of a non-monetary default after receipt of such notice. In the event the particular non-monetary breach or default cannot reasonably be cured within said thirty day period, the defaulting party shall not be in default hereunder if it timely commences to cure such default within said period of time and diligently pursues the cure and cures the same within a reasonable time thereafter. If the default or breach is not timely cured under this subsection, the non-defaulting party may exercise any right or remedy provided for herein.

**B. Remedies.** Subject to the notice of default and opportunity to cure provisions above, the parties may exercise any rights or remedies provided for by law or equity in the event of any default in or breach of this Agreement by the other party, including but not limited to termination of this Agreement, an action for specific performance and an action for the recovery of damages. All rights and remedies may be exercised independently or concurrently. The election of one remedy does not preclude the pursuit of other remedies, unless otherwise provided for by law.

**C. Waiver.** Any delay by a party in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such

rights or to deprive it of or to limit such rights in any way. The parties intend by this provision that no party should be constrained in its efforts to resolve any issues that may arise, and hereby intend to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches or otherwise, or to be compelled to exercise such remedy at a time when it may still hope otherwise to resolve the issue created by the default involved. No waiver in fact made by either party with respect to any specific default by the other party under this Agreement shall be considered or treated as the waiver of the rights of the non-defaulting party with respect to any other defaults by such defaulting party under this Agreement, or with respect to the particular default except to the extent specifically waived in writing.

**D. Rights Cumulative.** The rights and remedies of each party, whether provided by law, equity or this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either party.

**E. Enforcement Costs.** In the event any proceeding is commenced as a result of a default under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys' fees) incurred in enforcing the terms and provisions of this Agreement.

**F. Force Majeure.** For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, acts of adjoining property owners, governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, and unusually severe weather; it being the parties' purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the particular party shall be extended for the period of the enforced delay.

## 5. TERM

The term of this Agreement shall be for a period commencing upon the Effective Date of this Agreement and expiring on August 15, 2027.

## 6. NOTICES AND DEMANDS

A notice, demand or other communication under this Agreement by either Party to the other Party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and:

In the case of the Developer:                      Wine Not, LLC  
1718 West Park Street  
Two Rivers, WI 54241

Attn: Managing Member

In the case of the City:

City of Two Rivers  
1717 East Park Street  
Two Rivers, WI 54241  
Attn: City Clerk

## **7. ASSIGNMENT BY DEVELOPER**

During the term of this Agreement, Developer shall not have the right to assign this Agreement or directly or indirectly sell, assign, transfer or convey the Property to any other party without the prior written consent of the City; provided, however, that Developer shall have the right, without the City's consent but with notice to the City, to transfer this Agreement and/or the Property to an entity controlled by or under common control with Developer and shall have the right to mortgage or otherwise encumber the Property to finance the construction of the Project. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement.

## **8. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

In consideration of the City's covenants under this Agreement and its application for the CDI Grant monies being disbursed to the Developer, the Developer and its Members, jointly and severally, agree to indemnify and hold the City harmless from any claim made by WEDC against the City arising from the Community Development Grant Agreement ("CDI Agreement") between the WEDC and the City pursuant to which monies are made available to the Developer hereunder or any alleged breach of the CDI Agreement by the City, any judgment or liability resulting therefrom and any costs or attorney's fees incurred by the City as a result of such claim.

The Developer and its members shall execute and deliver to the City the Indemnification and Hold Harmless Agreement, a copy of which is included in this agreement as Exhibit D.

The Developer shall also execute and deliver to the City a mortgage securing Developer's obligations under the Indemnification and Hold Harmless Agreement. A copy of such mortgage is attached as Exhibit F

## **9. MISCELLANEOUS**

**A. Approvals.** Whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the party's duly authorized representative. Except as otherwise set forth herein, wherever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld.

**B. Waiver; Amendment.** No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing.

**C. Entire Agreement.** This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

**D. No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.

**E. Severability.** If any provision of this Agreement is held invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement, which shall continue in full force and effect.

**F. Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective successors, transferees and permitted assigns. The obligations of Developer hereunder run with the land and bind any subsequent owners in title to the Property.

**G. Municipal Approvals; Compliance with Law.** The provisions of this Agreement shall not vest any rights on the Developer to any municipal approvals required under applicable law. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

**H. City's Right of Immunity.** Nothing contained in this Agreement constitutes a waiver of the City's ability to assert its rights of immunity to tort claims under applicable law. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

**I. Governing Law.** This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Manitowoc County, Wisconsin.

**J. Time is of the Essence; Deadlines.** Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

**K. Relationship of Parties.** This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.

**L. Captions and Interpretation.** The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

**M. Counterparts/Electronic Signature.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

**N.** The Parties shall execute and record with the Office of the Register of Deeds for Manitowoc County, Wisconsin, a Memorandum of this Development Agreement in substantially the form of Exhibit E of this agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

**DEVELOPER:**

Wine Not, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Managing Member

**CITY:**

THE CITY OF TWO RIVERS, WISCONSIN

By: \_\_\_\_\_

Name: Gregory E. Buckley

Title: City Manager

By: \_\_\_\_\_

Name: Jamie Jackson

Title: City Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE DEVELOPMENT SITE**

**ORIG PLAT LOTS 1 THRU 3 BLK 57**

**EXHIBIT B**

**Community Development Investment Grant Eligible Costs**

Cool City Brewery Eligible Uses							
<b>Heating - Electric - Plumbing</b>		<b>Building - Renovation- Construction</b>					<b>Total</b>
#112912 Manitowoc Heating	\$ 230,302.00	#21-0727 All States Rigging	\$ 6,370.10				
#616B Maritime Plumbing	\$ 107,650.00	#21-0762 All States Rigging	\$ 7,311.16				
#SP464 Hubbart Electric Inc	\$ 123,319.00	A-1 Elevator	\$ 36,795.00				
		W Asphalt Paving & Seal Coating, LLC	\$ 11,500.00				
		Wick's World of Wood, LLC	\$ 20,000.00				
		Fox Structures building est + fencing	\$ 235,000				
		2111-070636 Drexel - lumber - Materials	\$ 31,427.73				
		#CoolCity008092021 SmartBrew System	\$ 199,000.00				
		F2111-313 PACE Proposal Fire Protection	\$ 70,008.00				
		#1498 Matt Verheyen Painting	\$ 24,780.00				
		1 Kaeden Services	\$ 32,239.00				
		#040318-147 Garage Door Specialty Inc	\$ 11,750.00				
		#000076 LayerPro	\$ 29,542.00				
		Howard Company	\$ 13,200.00				
		#2864 Koeppel Concrete LLC	\$ 8,792.00				
		#2865 Koeppel Concrete LLC	\$ 38,236.00				
		#218323 Green AcresLandscaping	\$ 10,993.50				
		#21718 Becks Quality Cabinet Inc	\$ 78,397.90				
		#21-0439 Tri City Glass	\$ 2,710.00				
		#21-0439 Tri City Glass	\$ 21,875.00				
		Alberts Plaster	\$ 16,190.00				
		Roof Medic New Curb Flashing Flashing	\$ 4,500.00				
		Roof Medic New Curb Flashing Flashing	\$ 5,000.00				
		Roof Medic New Curb Flashing Flashing	\$ 5,500.00				
		Q-144515 Uperve Coffee House Program	\$ 4,130.80				
		Air compressor	\$ 349.00				
	<b>\$ 461,271.00</b>		<b>\$ 925,597.19</b>			<b>\$ 1,386,868.19</b>	

**Community Development Investment Grant Ineligible Costs**

Non-Eligible Costs							
<b>Property Acquisition</b>		<b>Professional Fees</b>		<b>Equipment</b>		<b>Total</b>	
City Property Record	\$ 183,750.00	Inv 847 Vision Arch	\$ 11,010.00	Crimson Cup Beg Inventory	\$ 24,255.09		
		Inv 861 Vision Arch	\$ 3,005.03	3 orders of Unikeg	\$ 25,074.00		
		Inv 809 Vision Arch	\$ 1,905.00	Kessenich's LTD	203768.33		
		Inv 831 Vision Arch	\$ 6,500.00				
		Inv 726 Vision Arch	\$ 2,000.00				
		Inv 756 Vision Arch	\$ 500.00				
		Logo - Design - Brand	\$ 1,400.00				
	<b>\$ 183,750.00</b>		<b>\$ 26,320.03</b>		<b>\$ 253,097.42</b>	<b>\$ 463,167.45</b>	

**EXHIBIT C**  
**WEDC CONTRACT**

**COMMUNITY DEVELOPMENT INVESTMENT GRANT AGREEMENT  
BETWEEN  
THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION  
AND  
CITY OF TWO RIVERS**

This Agreement is entered into pursuant to Chapter 238 of the Wisconsin Statutes between the Wisconsin Economic Development Corporation (“WEDC”), a public body corporate and politic authorized to grant funds for the purpose of economic development pursuant to Chapter 238 of the Wisconsin Statutes, and City of Two Rivers (“Recipient”). Certain capitalized terms are defined in Section 1 of the Agreement.

**WITNESSETH**

**WHEREAS**, the Recipient has submitted an Application to WEDC, requesting funds from WEDC’s Community Development Investment Grant Program (“CDI Funds”);

**WHEREAS**, WEDC has determined that the Recipient is an eligible recipient of CDI Funds; and

**WHEREAS**, in reliance upon the Application, WEDC has approved the Recipient for up to Two Hundred Fifty Thousand Dollars (\$250,000) in CDI Funds.

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, WEDC and the Recipient agree as follows:

**1. Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Agreement” means this agreement, to include all documents required to be delivered contemporaneously with the execution and delivery of this Agreement, and the attached Exhibits, together with any future amendments executed in compliance with Section 21 of this Agreement.

(b) “Application” means the materials submitted by the Recipient to WEDC relating to this allocation of CDI Funds.

(c) “CDI Funds” means the grant monies the Recipient is eligible to receive from WEDC’s Community Development Investment grant program in accordance with this Agreement.

(d) “Effective Date” means the date on which this Agreement is fully executed by both parties.

(e) “Eligible Project Costs” means costs for which CDI Funds and Matching Funds may be used, as outlined in Section 3(b) of this Agreement, which the Recipient incurs between the Project Start Date and Project End Date.

(f) “Ineligible Costs” means costs for which CDI Funds and Matching Funds may not be used, means costs incurred prior to the Project Start Date; costs for acquisition; costs related to grant applications or bid preparation; costs which may be covered by other grant or statutory programs; permits; Phase I and II environmental studies; Lien claims of the Department of Natural Resources and Environmental Protection Agency; performance and payment bonds; contingencies; developer fees; insurance premiums; supplies and the purchase of moveable equipment; signage and advertising; financing fees, interest payments, or the assumption of debt; relocation fees; accounting, legal, appraisal, and architectural fees; mergers and acquisitions; project administration fees, including costs associated with WEDC compliance reporting, schedules of expenditures, and payment requests.

(g) “Leverage” means all funding provided for the Project other than CDI Funds, including Matching Funds.

(h) “Matching Funds” means non-WEDC funds secured by the Recipient to meet the match requirement of CDI Funds under this Agreement. Eligible Matching Funds must be incurred between the Project Start Date and Project End Date. In order to receive the full amount of CDI Funds contemplated under this Agreement, Matching Funds must be at least Seven Hundred Fifty Thousand Dollars (\$750,000). No more than Fifty Percent (50%) of the Matching Funds may consist of other state and/or federal grants. Matching Funds must be cash and may not be in-kind.

(i) “Project” means the Recipient assisting in the renovation of a vacant former bank building, in accordance with the Application and the terms of this Agreement.

(j) “Project End Date” means December 31, 2023, the date by which the Project will be complete and the last day which the Recipient may incur costs against CDI Funds and Matching Funds.

(k) “Project Location” means the site or sites at which the Project will take place, specifically 1718 West Park Street, Two Rivers, Wisconsin.

(l) “Project Start Date” means April 12, 2022, the date on which the Project begins and the Recipient may start incurring costs against CDI Funds and Matching Funds.

(m) “Recipient” means City of Two Rivers.

(n) “WEDC” means the Wisconsin Economic Development Corporation, together with its successors and assigns.

**2. CDI Funds.** Subject to the terms and conditions set forth in this Agreement, and in Wisconsin law, WEDC shall provide to the Recipient a grant of up to Two Hundred Fifty Thousand Dollars (\$250,000) in CDI Funds.

**3. Recipient’s Obligations.** The Recipient will or will ensure that:

(a) The Project is completed as it is contemplated in the Application and in accordance with the terms of this Agreement.

(b) CDI Funds and Matching Funds are used for Eligible Project Costs, incurred between the Project Start Date and Project End Date, as outlined in the following budget:

USES		SOURCES			TOTAL
Budget Code	Eligible Project Costs	CDI Funds	Private Funds	Public Funds	
0385	Renovation	\$250,000	\$1,226,871	\$10,000	\$1,386,871

(i) Eligible Project Costs to be applied to CDI Funds for renovation include specifically renovation of the building including exterior, interior, site prep, building fixtures, elevator and all building systems including restaurant and brewing equipment. Labor expenses incurred by Fresh Coast Construction, LLC shall not be considered Eligible Project Costs.

(ii) Eligible Project Costs to be applied to Matching Funds for renovation include specifically renovation of the building including exterior, interior, site prep, building fixtures, elevator, and all building systems including restaurant and brewery equipment. Labor expenses incurred by Fresh Coast Construction, LLC shall not be considered Eligible Project Costs.

(c) CDI Funds or Matching Funds are not used for Ineligible Costs.

(d) Matching Funds from non-WEDC sources are secured sufficient to achieve the match requirement of the CDI Funds under this Agreement. Matching Funds must equal at least Seven Hundred Fifty Thousand Dollars (\$750,000) in order for the Recipient to obtain the maximum amount of the CDI Funds, and must be documented prior to the final reimbursement.

(e) WEDC's participation in the Project is acknowledged in any signage at the Project Location and any planning and feasibility documents related to the Project.

(f) Reports are provided to WEDC as further described in Section 5 of this Agreement, in such form as required by WEDC.

**4. Release of Funds.** WEDC will release the CDI Funds contemplated by this Agreement to the Recipient on a disbursement basis. The Recipient may request CDI Funds in up to Three (3) disbursements and each disbursement will be contingent on the following:

(a) The Recipient submitting to WEDC a request for payment of funds in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit A.

(b) Recipient creating a Bill.com account unless Recipient has an existing account with Bill.com. Instructions for creating a Bill.com account will be provided by WEDC under separate cover. Recipient shall provide their Payment Network ID to WEDC with each request for payment.

(c) The Recipient submitting to WEDC a summary report of the Eligible Project Costs incurred against both the CDI Funds and Matching Funds. The amount of Matching Funds incurred

for any request must be in an amount pro rata with the amount incurred against the CDI Funds being requested.

(d) The Recipient submitting to WEDC documentation evidencing that the Eligible Project Costs incurred at the Project Location against both the CDI Funds and the Matching Funds covered by the request have been purchased or will be purchased through an invoice, receipt, registration form, or other third-party documentation that contains the following information:

- (i) Vendor name and contact information;
- (ii) Description of the item(s) purchased;
- (iii) Cost of purchase;
- (iv) Date of purchase (invoice date or date received, not date ordered unless it is the same).

(e) The Recipient being in compliance with this Agreement, and with any other agreements by and between the Recipient and WEDC.

(f) The Recipient requesting all CDI Funds no later than February 29, 2024.

**5. Reporting.** The Recipient shall provide reports and information to WEDC according to the following requirements:

(a) Performance reports, due according to the Schedule of Reporting set forth in Section 5(b) below, in such form as required by WEDC. The report shall include information required by WEDC to determine Project performance which shall include, at a minimum, a financial overview and narrative summary on the progress of the Project to date, Project expenditures, and the Recipient's progress on achieving the goals related to the following Project-specific metrics:

Metric	Goal*
Taxable Property Value	\$1,050,000
Capital Investment	\$1,570,621
Leverage – Total	\$1,600,038

\*These goals represent anticipated Project outcomes and failure to achieve these goals will not constitute an Event of Default, unless they are noted as a requirement elsewhere in the Agreement.

(b) Schedule of Reporting:

PERIOD COVERED	DOCUMENTATION	DUE DATE
See Section 6 Below	Schedule of Expenditures	See Section 6 Below
April 12, 2022-March 31, 2023	Performance Report	June 1, 2023
April 12, 2022-December 31, 2023	Performance Report	March 1, 2024

(c) Within Thirty (30) days, notify WEDC in writing of any event or occurrence that may adversely impact the completion of the Project as represented in Recipient's Application. Adverse

impacts include, but are not limited to, lawsuits, regulatory intervention, and inadequate capital to complete the Project.

**6. Schedule of Expenditures.** Consistent with Wis. Stat. § 238.03(3)(a), the Recipient must submit to WEDC, within 120 days after the end of the Recipient's fiscal year in which any grant or loan funds were expended, a schedule of expenditures of the grant or loan funds, including expenditures of any matching cash or in-kind match, signed by the director or principal officer of the recipient to attest to the accuracy of the schedule of expenditures. The Recipient shall engage an independent certified public accountant to perform procedures, approved by WEDC and consistent with applicable professional standards of the American Institute of Certified Public Accountants, to determine whether the grant or loan funds and any matching cash or in-kind match were expended in accordance with the grant or loan contract. The Recipient must make available for inspection the documents supporting the schedule of expenditures.

**7. Event of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" for the purposes of this Agreement:

(a) The Recipient ceases the Project within Five (5) years of the Effective Date of this Agreement and commences substantially the same economic activity outside of Wisconsin.

(b) The Recipient supplies false or misleading information to WEDC in connection with this Agreement, without providing a satisfactory explanation, in WEDC's sole discretion, for the false or misleading information.

(c) The Recipient fails to comply with or perform, in any material respect, any of its obligations under this Agreement, without providing a satisfactory explanation, in WEDC's sole discretion, for the noncompliance.

(d) The Recipient is in default under any other agreement between WEDC and the Recipient.

## **8. Remedies in Event of Default.**

(a) Upon the occurrence of any Event of Default, WEDC shall send a written notice of default to the Recipient, setting forth with reasonable specificity the nature of the default. If the Recipient fails to cure any such Event of Default to the reasonable satisfaction of WEDC within Thirty (30) calendar days, WEDC may extend the cure period if WEDC determines, in its sole discretion, that the Recipient has begun to cure the Event of Default and diligently pursues such cure, or, without further written notice to the Recipient, declare the Recipient in default. The cure period shall in no event be extended more than Ninety (90) days. In the Event of Default, WEDC shall terminate the Agreement and recover from the Recipient:

(i) One Hundred Percent (100%) of the funds disbursed to the Recipient under this Agreement;

(ii) All court costs and attorneys' fees incurred by WEDC in terminating this Agreement and recovering the amounts owed by the Recipient under this provision;  
and

(iii) A financial penalty of up to One Percent (1%) of the CDI Funds.

(b) These amounts shall be paid to WEDC within Thirty (30) calendar days of demand by WEDC hereunder. If the Recipient fails to pay these amounts to WEDC as and when due, the Recipient will be liable for the full unpaid balance plus interest at the annual rate of up to Twelve Percent (12%) from the date of the notice of Event of Default.

(c) Upon an Event of Default, WEDC shall, without further notice, withhold remaining disbursements of the CDI Funds.

**9. Recipient's Warranties and Representations.** In addition to the other provisions of this Agreement, the Recipient hereby warrants and represents to the best of its knowledge that as of the Effective Date and as long as Recipient has obligations under of this Agreement:

(a) The Recipient is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it, the violation of which would have a material adverse effect on the Recipient's ability to perform its obligations under this Agreement or to otherwise engage in its business.

(b) The Recipient is not in default under the terms of any loan, lease or financing agreements with any creditor where such default would have a material adverse effect on the Recipient's ability to fulfill its obligations under this Agreement.

(c) The financial statements and other information provided by the Recipient to WEDC are complete and accurate in accordance in all material respects with Generally Accepted Accounting Principles where applicable and have been relied on by WEDC in deciding whether to enter into this Agreement with the Recipient.

(d) There are no actions, suits or proceedings, whether litigation, arbitration, or administrative, pending or threatened against or affecting the Recipient or the Project which, if adversely determined, would individually or in the aggregate materially impair the ability of the Recipient to perform any of its obligations under this Agreement or adversely affect the financial condition or the assets of the Recipient.

(e) The Recipient is unaware of any conditions which could subject it to any damages, penalties or clean-up costs under any federal or state environmental laws which would have a material adverse effect on the Recipient's ability to comply with this Agreement.

(f) The Recipient has, or will acquire before commencing any work for which they are required, all necessary permits, licenses, certificates or other approval, governmental or otherwise, necessary to operate its business and own and operate its assets, all of which are in full force and effect and not subject to proceedings to revoke, suspend, forfeit or modify.

(g) The Recipient has filed when due all federal and state income and other tax returns required to be filed by the Recipient and has paid all taxes shown thereon to be due. The Recipient has no knowledge of any uncompleted audit of the returns or assessment of additional taxes thereon.

(h) The Recipient and the undersigned officer thereof has all necessary or requisite power and authority to execute and deliver this Agreement.

(i) The execution and delivery by the Recipient of this Agreement has been duly authorized by all necessary action of the Recipient and no other proceedings on the part of the Recipient are necessary to authorize this Agreement or to consummate the transactions contemplated hereby.

(j) The Recipient has available or has the capacity to secure funds necessary to cover, as and when incurred, the costs and expenditures necessary for completion of the Project, as identified in the Application and this Agreement.

(k) The Recipient is not making these representations and warranties specifically based upon information furnished by WEDC.

(l) These warranties and representations herein are true and accurate as of the Effective Date of this Agreement, and shall survive the execution thereof.

(m) The information disclosed to WEDC in the course of WEDC's evaluation of the Recipient's eligibility for the Program does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole and in light of the circumstances under which they were made, not misleading.

**10. Wisconsin Public Records Law.** The Recipient understands that this Agreement and other materials submitted to WEDC may constitute public records subject to disclosure under Wisconsin's Public Records Law, Wis. Stats. §§ 19.31-39, and any successor statutes and regulations.

## **11. Additional Requirements.**

(a) Project Records and Financial Records. The Recipient shall prepare, keep and maintain such records as may be reasonably required by WEDC to validate the Recipient's performance under this Agreement, whether held by the Recipient or by a third-party conducting Project-related activities on behalf of the Recipient, and the performance reports provided to WEDC. All of the Recipient's financial records shall be complete and accurate, and prepared, kept, and maintained in accordance with Generally Accepted Accounting Principles. The Recipient shall provide such records to WEDC during the term of this Agreement as may be requested by WEDC. Such materials shall be retained by the Recipient for a period of at least Three (3) years after March 1, 2024.

(b) Inspection.

(i) WEDC and its respective agents, shall, upon Forty-Eight (48) hours' advance written notice to the Recipient, have the right to enter the Recipient's premises, during normal business hours, to inspect the Recipient's operations documentation relating to this Agreement, provided, however, that such access does not unreasonably disrupt the normal operations of the Recipient.

(ii) The Recipient shall produce for inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement,

whether held by the Recipient or by a third-party conducting Project-related activities on behalf of the Recipient.

(iii) WEDC reserves the right to conduct physical site visits of the Project during the term of this Agreement.

(c) Authorization to Receive Confidential Information. The Recipient hereby authorizes WEDC to request and receive confidential information that the Recipient has submitted to, including any adjustments to such information by, the Wisconsin Department of Revenue (“DOR”) and the Wisconsin Department of Workforce Development (“DWD”), and to use such information solely for the purposes of assessing the Recipient's performance for the duration of the Project and ensuring that WEDC is properly administering or evaluating economic development programs. With regard to the information contained in the DWD unemployment insurance files, WEDC may access the following for the Eight (8) most recent quarters: the quarterly gross wages paid to the Recipient's employees; the monthly employee count; and the Recipient's FEIN, NAICS code, and legal and trade names. The Recipient also authorizes WEDC to share information submitted to WEDC by the Recipient with the DOR and DWD and to redisclose to the public the information received from the DOR and DWD used to evaluate the Recipient's performance under their specific economic development program and the impact of WEDC economic development programs. Records exempted from the public records law by Wis. Stat. § 19.36(1) will be handled by WEDC in accordance with that law.

(d) Consolidation or Merger. During the term of this Agreement, the Recipient shall provide written notice to WEDC within Thirty (30) days of any consolidation or merger with or into any other unrelated corporation or business entity.

(e) Public Announcement. The Recipient agrees to cooperate with WEDC in making a public announcement of this Agreement.

(f) Insurance. The Recipient covenants that it will maintain insurance in such amounts and against such liabilities and hazards as customarily is maintained by other companies operating similar businesses.

(g) Online Portal and Document Delivery. Recipient agrees to respond timely to any invitation sent by WEDC to create an online account for use with WEDC's online customer portal (“Portal”). Upon opening the account, Recipient hereby agrees to use the Portal to submit any required performance reports, schedule of expenditures and supporting documentation, unless WEDC directs otherwise. Recipient further agrees to identify appropriate assigned users, duly authorized by Recipient, to serve as contacts, to execute necessary documents, and to support specific tasks Recipient must complete in the Portal. WEDC may, in its sole discretion, rely on any document, performance report, schedule of expenditures, financial statement, tax return, agreement or other communication (“Document”) physically delivered to WEDC by mail, hand delivery, delivery service, email, facsimile, the Portal or other electronic means which WEDC in good faith believes was sent by Recipient or any representatives or employees of Recipient. WEDC may treat any Document as genuine and authorized to the same extent as if it was an original document validly executed or authenticated as genuine by Recipient. WEDC may from time to time in its sole discretion reject any such Document and require a signed original or require Recipient to provide acceptable authentication of any such Document before accepting or relying on the same. Recipient understands and acknowledges that there is risk that Documents sent by

electronic means may be viewed or received by unauthorized persons and Recipient agrees by sending Documents by electronic means that Recipient shall be deemed to have accepted this risk and the consequences of any such unauthorized disclosure. Recipient also agrees to create an account with Bill.com and provide a Payment Network ID in order to receive any payments from WEDC. Recipient accepts any risk associated with creating an account with Bill.com and releases WEDC from any liability related thereto.

**12. Conflicts.** In the event of any conflict between the provisions of this Agreement and any accompanying documents, the terms of this Agreement control.

**13. Choice of Law. THIS AGREEMENT AND ALL MATTERS RELATING TO IT OR ARISING FROM IT – WHETHER SOUNDING IN CONTRACT LAW OR OTHERWISE – SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED PURSUANT TO, THE LAWS OF THE STATE OF WISCONSIN.**

**14. Venue, Jurisdiction.** Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **EACH PARTY HEREBY CONSENTS AND AGREES TO JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES OR OBJECTIONS THAT IT MAY HAVE ON PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS.**

**15. Waiver of Right to Jury Trial. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN WEDC AND THE RECIPIENT CONCERNING OR RELATING TO THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEYS' FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE RECIPIENT HEREUNDER. THIS JURY TRIAL WAIVER CONSTITUTES A SUBSTANTIAL CONSIDERATION FOR AND INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.**

**16. Limitation of Liability. RECIPIENT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER FROM WEDC ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR DAMAGES OF ANY OTHER NATURE OTHER THAN ACTUAL DAMAGES INCURRED OR SUFFERED BY RECIPIENT.**

**17. Severability.** If any provision of this Agreement is held invalid or unenforceable by any Governmental Body of competent jurisdiction, such invalidity or unenforceability shall not invalidate the entire Agreement. Instead, this Agreement shall be construed as if it did not contain the particular provision or provisions held to be invalid or unenforceable, and an equitable adjustment shall be made and necessary provisions added so as to give effect to the intention of the parties as expressed in this Agreement at the time of the execution of this Agreement and of any amendments to this Agreement. In furtherance of and not in limitation of the foregoing, the parties expressly stipulate that this Agreement shall be construed in a manner which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law. "Governmental Body" means any federal, state, local, municipal, foreign or

other government; courts, arbitration commission, governmental or quasi-governmental authority of any nature; or an official of any of the foregoing.

**18. WEDC Not a Joint Venturer or Partner.** WEDC shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Recipient or any beneficiary thereof.

**19. Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

**20. No Waiver.** No failure or delay on the part of WEDC in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such power or right preclude any other exercise of any other power or right.

**21. Entire Agreement.** This Agreement embodies the entire agreement of the parties concerning WEDC's and the Recipient's obligations related to the subject of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Recipient and WEDC. This Agreement supersedes all prior agreements and understandings between the parties related to the subject matter of this agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, WEDC and the Recipient have executed and delivered this Agreement effective the date set forth next to WEDC's signature below.

**WISCONSIN ECONOMIC DEVELOPMENT CORPORATION**

By:  06/15/2022  
Melissa L. Hughes, Secretary and CEO Date

**CITY OF TWO RIVERS**

By:  June 8, 2022  
Greg Buckley, City Manager Date

Notices to the Recipient hereunder shall be in writing and shall be deemed to have been given: (i) at the time it is sent, as recorded by the WEDC's system, when sent by electronic mail during a business day or, if sent after the close of normal business hours on a business day or sent on a non-business day, at the start of normal business hours on the next business day or (ii) Three (3) Business Days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

Notices to WEDC hereunder shall be in writing and shall be deemed to have been given: (i) at the time it is sent, as recorded by Recipient's system, when sent by electronic mail during a business day or, if sent after the close of normal business hours on a business day or sent on a non-business day, at the start of normal business hours on the next business day or (ii) Three (3) Business Days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows:

City of Two Rivers  
1717 East Park Street  
Two Rivers, WI 54241  
Attn: Elizabeth Runge  
Email: erunge@two-rivers.org

Wisconsin Economic Development Corporation  
Division of Credit & Risk  
P.O. Box 1687  
Madison, WI 53701  
Attn: Community Development Investment  
Email: legal@wedc.org  
Contract # CDI FY22-53218

**EXHIBIT A  
REQUEST FOR WEDC PAYMENT**

Award Number: CDI FY22-53218		Rep:	Recipient: City of Two Rivers
FEIN #	Bill.com Payment Network ID (PNI):	Request Number:	
Program: Community Development Investment		Award Type: Grant	
Funding Period Covered by this Request From: _____ To _____			

**PROJECT EXPENSES INCURRED/PAID DURING THIS PERIOD (see attachment)**

Budget Code	Description Line Item	WEDC Funding This Period	+	Matching Funding This Period	=	Total This Period
0385	Renovation					
<b>TOTAL:</b>						

Check here if this is the Final Request for Payment. If there is a balance remaining on the Project it may be lapsed.

**PAYMENT/PROJECT EXPENSE/MATCH DESCRIPTION - Disbursement**

Prior to the release of funds, the following requirements must be met (to be initialed by WEDC staff):

- Recipient creating a Bill.com account unless Recipient has an existing account with Bill.com. Instructions for creating a Bill.com account will be provided by WEDC under separate cover. Recipient shall provide their Payment Network ID to WEDC with each request for payment. \_\_\_\_\_
- The Recipient submitting to WEDC a summary report of the Eligible Project Costs incurred against both the CDI Funds and Matching Funds. The amount of Matching Funds incurred for any request must be in an amount pro rata with the amount incurred against the CDI Funds being requested. \_\_\_\_\_
- The Recipient submitting to WEDC documentation evidencing that the Eligible Project Costs incurred at the Project Location against both the CDI Funds and Matching Funds covered by the disbursement request have been purchased or will be purchased through an invoice, receipt, registration form, or other third-party documentation that contains the following information: Vendor name and contact information; Description of the item(s) purchased; Cost of purchase; Date of purchase (invoice date or date received, not date ordered unless it is the same). \_\_\_\_\_
- The Recipient being in compliance with this Agreement, and with any other agreements by and between the Recipient and WEDC. \_\_\_\_\_
- The Recipient requesting all CDI Funds no later than February 29, 2024. \_\_\_\_\_

I hereby certify that the expenses reported on this form are in accordance with the terms of the Agreement and that complete and accurate records are being kept to substantiate such expenses.	
_____ <b>Authorized Recipient Signature</b>	_____ <b>Date</b>

\_\_\_\_\_  
WEDC Division VP or Designee

\_\_\_\_\_  
Date

---

WEDC Servicing

---

Date

---

WEDC Controller or Finance Department

---

Date

Retain a copy of the completed form for your records and email a copy of the original and documentation to:  
[disbursements@wedc.org](mailto:disbursements@wedc.org). The hard copy maybe required to be sent upon request.

## EXHIBIT D

### INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT entered into effective this \_\_\_ day of August, 2022 by Wine Not, LLC (“Wine Not”) and its members for the benefit of the City of Two Rivers, Wisconsin (“City”).

WHEREAS, contemporaneously with the execution of this Agreement, Wine Not has entered into a Development Agreement (“Development Agreement”) with the City; and

WHEREAS, in consideration of the City’s entry into the Development Agreement and the covenants made therein, and the City’s application for a for a Community Development Investment Grant for the benefit of Wine Not, and the City’s entry into a Community Development Investment Grant Agreement (“Grant Agreement”) with the Wisconsin Economic Development Corporation (“WEDC”), Wine Not agreed that it and its members would indemnify and hold the City harmless from any claims, judgments or damages arising from the Grant Agreement or any breach of the Grant Agreement by the City;

NOW THEREFORE the undersigned Wine Not and its members jointly and severally hereby agree to indemnify and hold the City harmless from any and all claims, demands, actions, judgments, liabilities and obligations of any nature whatsoever (“claims”) by WEDC arising from the Grant Agreement, including but not limited to those arising from the claimed breach of the Grant Agreement by the City. This indemnification and hold harmless shall include the costs of defense against any claim, including reasonable attorney’s fees.

This Agreement shall be binding upon Wine Not and its members’ successors and assigns and inure to the benefit of the City’s successors and assigns. This Agreement shall survive the completion of Wine Not’s obligations under the Development Agreement.

This Agreement is secured by a mortgage on the property located at 1718 E. Park St., Two Rivers, WI, subordinate only to the mortgage of \_\_\_\_\_.

**EXHIBIT E**

**MEMORANDUM OF AGREEMENT**

**EXHIBIT F**  
**MORTGAGE**

EXHIBIT F

W.B.A. 428B (6/13) 11429  
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DOCUMENT NO. \_\_\_\_\_

REAL ESTATE MORTGAGE

(Use Only to Secure Business Transactions)

Wine Not, LLC, a Wisconsin Limited Liability Company

("Mortgagor," whether one or more), whose address is \_\_\_\_\_  
3625 Tannery Rd., Two Rivers, WI 54241  
mortgages, conveys, assigns, grants a security interest in and warrants to \_\_\_\_\_  
CITY OF TWO RIVERS, WISCONSIN ("City"),  
whose address is \_\_\_\_\_  
1717 East Park Street, Two Rivers, WI 54241, Attention: City Clerk

in consideration of the City's application for a grant in the amount of \$250,000 for the benefit of sum of Mortgagor from the Wisconsin Economic Development Corporation ("WEDC") and disbursement of that grant to Mortgagor pursuant to the terms of a Development Agreement between Mortgagor and the City, and in addition the City's entry into a Grant Agreement with the WEDCO to acquire the amount of the grant, the real estate described below,

together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, all existing and future improvements and all goods that are or are to become fixtures (all called the "Property").

This mortgage is given to secure the Obligations of Mortgagor and its members under an Indemnification and Hold Harmless Agreement of even date with this Mortgage, and is subordinate solely to the mortgage described in Section 2 hereof.

Recording Area  
Name and Return Address

City of Two Rivers  
1717 East Park Street  
Two Rivers, WI 54241  
Attn: City Clerk

Parcel Identifier No. 053-234-303-020-05  
This Property **IS NOT** the homestead of Mortgagor.  
(is) (is not)

1. Description of Property.

Lot Six (6) in Block Thirty-Seven (37) in the Original Plat of the City of Two Rivers, Manitowoc County, Wisconsin, according to the recorded plat thereof.

2. Title. Mortgagor warrants title to the Property, excepting only restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and a mortgage to Nicolet Bank ("Bank") in an amount not to exceed \$1,500,000.00 (the "Private Mortgage"), and any interest which may accrue thereon and any late charges assessed due to default of the loan given by the Bank in that principal amount or any refinancing of such loan. The mortgage of the City shall not be subordinate to the Bank's mortgage to the extent the Bank's mortgage secures any subsequent, other or additional loan made by the Bank or any increase of the Bank's loan above the amount of \$1,500,000.00. For example, if the Bank makes a loan to the Debtors of \$50,000.00 after it makes the loan of \$1,500,000, the City's mortgage shall not be subordinate to the Bank's mortgage to the extent it secures the \$50,000.00 loan

3. Additional Provisions. This Mortgage includes the additional provisions on pages 2 and 3, which are made a part of this Mortgage.

## EXHIBIT F

### ADDITIONAL PROVISIONS

**4. Mortgage as Security.** This Mortgage secures prompt payment to Lender of under the terms of the Indemnification and Hold Harmless Agreement referred to in the first paragraph of this Mortgage, plus interest and costs and attorney's fees as set forth in that Agreement, plus (c) all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage. **This Mortgage does not secure and Lender disclaims this Mortgage as security for any consumer credit transaction governed by the Wisconsin Consumer Act, any loan governed by Chapter 428, Wisconsin Statutes, and any loan governed by the Federal Truth-in-Lending Act.** Unless otherwise required by law, City will satisfy this Mortgage upon request by Mortgagor if (a) the Obligations have been paid according to their terms, and (b) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

**5. Taxes.** To the extent not paid to City under paragraph 8(a), Mortgagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, or upon City's interest in the Property, and deliver to City receipts showing timely payment.

**5. Insurance.** Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, flood, extended coverage perils and such other hazards as City may require, through insurers approved by City, in amounts, without co-insurance, not less than the unpaid balance of the Obligations or the full replacement value, whichever is less, and shall pay the premiums when due. The policies shall contain the standard mortgagee and lender loss payee clauses in favor of City, shall insure City notwithstanding any defenses of the insurer against Mortgagor and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Mortgagor is free to select the insurance agent or insurer through which insurance is obtained. Mortgagor shall promptly give notice of loss to insurance companies and Lender. All proceeds from such insurance shall be applied, at City's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property, and City may require that such proceeds of insurance be deposited with it for these purposes. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee. If Mortgagor fails to keep any required insurance on the Property, City may purchase such insurance for Mortgagor, such insurance may be acquired by Lender solely to protect the interest of City (it will not cover Mortgagor's equity in the Property), and Mortgagor's obligation to repay City shall be in accordance with paragraph 10.

**7. Mortgagor's Covenants.** Mortgagor covenants and warrants:

(a) **Escrow.** ~~If an escrow is required by Lender, to pay Lender sufficient funds, at such times as Lender designates, to pay when due (1) the estimated annual real-estate taxes and assessments on the Property, (2) all property and hazard insurance premiums, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, (5) the estimated costs to keep the Property in good and tenable condition and repair, and to restore and replace damaged or destroyed improvements and fixtures if it is reasonably determined by Lender that Mortgagor has failed to comply with the covenant under paragraph 8(b) below, and (6) other items agreed to be included in the escrow. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagor for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagor in writing, and Mortgagor shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law;~~

(b) **Condition and Repair.** To keep the Property in good and tenable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;

(c) **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 2;

(d) **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;

(e) **Waste.** Not to commit waste or permit waste to be committed upon the Property or abandon the Property;

(f) **Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of City and, without notice to Mortgagor, City may deal with any transferee as to its interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or the Obligations;

(g) **Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without City's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;

(h) **Condemnation.** To pay to City all compensation received for the taking of the Property, or any part, by condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as City determines to rebuilding of the Property or to the Obligations in the inverse order of their maturities (without penalty for prepayment);

(i) **Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it, and at City's option to repair or restore the Property and to conduct environmental assessments and audits of the Property;

(j) **Laws.** To comply with all laws, ordinances and regulations affecting the Property;

(k) **Subrogation.** That City is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement(s) identified in the first paragraph of this Mortgage; and

(l) **Leases.** To pay and perform all obligations and covenants under and pursuant to the terms of each lease of all or any part of the Property required of Mortgagor, and to not cancel, accept a surrender of, modify, consent to an assignment of the lessee's interest under, or make any other assignment or other disposition of, any lease of all or any part of the Property or any interest of Mortgagor in the lease and to not collect or accept any payment of rent more than one month before it is due and payable.

**8. Environmental Laws.** Mortgagor represents, warrants and covenants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner or person using the Property; (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks; (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

**9. Authority of Lender to Perform for Mortgagor.** If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, including without limitation, preserving and insuring the Property, not committing waste or abandoning the Property, keeping the Property free of liens or encumbrances other than those approved by City, keeping the Property in good and tenable condition and repair, and complying with all laws, ordinances and regulations affecting the Property, City may after giving Mortgagor any notice and opportunity to perform which are required by law, perform the covenants or duties or cause them to be performed, or take such other action as may be necessary to protect City's interest in the Property and to secure and repair the Property. Such actions may include, without limitation, assessing the value of the Property, paying liens that become superior to this Mortgage and making any other payments required, signing Mortgagor's name, engaging an attorney, appearing in court and paying reasonable attorneys' fees, and entering the Property to make repairs, change locks, replace and board up doors and windows, drain water from pipes, eliminate building code violations and dangerous conditions and maintain appropriate utilities to the Property. Any such amounts expended by City shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by City to the date of payment by Mortgagor.

**10. Default; Acceleration; Remedies.** If (a) there is a default under any Obligation secured by this Mortgage, or (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants, warranties or duties contained in this Mortgage, then, at the option of Lender each Obligation will become immediately due and payable unless notice to Mortgagor or Borrower and an opportunity to cure are required by applicable law or the document evidencing the Obligation and, in that event, the Obligation will become due and payable if the default is not cured as provided in the document evidencing the Obligation or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

Real Estate Mortgage

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