

—MEMORANDUM—

MEMO TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: September 22, 2023

SUBJECT: Proposed Amendment #2 to Agreement with Wine Not, LLC Regarding
The Purchase and Redevelopment of 2023 Washington Street

Early in 2022, the City Council approved the attached “Agreement for Sale of Real Estate” with Wine Not, LLC (developer) for that entity’s purchase and redevelopment of the long-vacant former gas station/c-store property at 2023 Washington Street.

Per the agreement, Wine Not LLC submitted Site and Architectural Plans for the project in October 2022. Those plans were approved by the Plan Commission in November 2022.

The developer began demolition activities this Spring but encountered some structural concerns with the building that have caused them to retain a structural engineer. As the result of evaluating the building with that engineer, the developer determined that it will be necessary to fully demolish the north half of the existing building and “build new” in that area.

Recognizing that this expansion in the scope of the project would result in a delay in both its start and completion dates, Curt Andrews of Wine Not, LLC appeared before the City Council on June 19, with a request that the project completion date be changed to December 31, 2023. He did not at that time request a change in the deadline date for providing documentation that at least \$100,000 had been invested in the renovation of the property, as Wine Not, LLC did not feel that such an extension was necessary. The City Council on June 19 approved the requested change in the completion date.

Since June 19, further engineering review and cost estimates for the redevelopment of this property have resulted in additional delays. Estimated cost for the project is now just over \$600,000, and the completion date will be some time in the first half of 2024. Wine Not, LLC has secured financing for this much-expanded project, including bank financing and a \$150,000 loan approved by the City’s Business and Industrial Development Committee (BIDC) on September 21.

At the September 25 meeting, I am asking that the City Council approve a second amendment to the “Agreement for Sale of Real Estate” with Wine Not, LLC for 2023 Washington Street, to make the following changes, shown as edits on the attached Agreement:

1. Deadline for documentation of project investment totaling at least \$100,000:
Move from September 30, 2023 to December 31, 2023
2. Deadline for project completion: Move from December 31, 2023 to July 31, 2024

Mr. Andrews of Wine Not, LLC will be in attendance to answer any questions.

AGREEMENT FOR SALE OF REAL ESTATE

Agreement for Sale of Real Estate made this 28th day of April, 2022, by and between the City of Two Rivers, Wisconsin, ("the City") and Wine Not LLC, ("the Buyer").

- 1. Property Sold.** The City agrees to sell and the Buyer agrees to buy on the terms set forth in this Agreement the real property located in the City of Two Rivers, Manitowoc County, Wisconsin, being parcel number 053-000-037-060.09, more particularly described as follows: Original Plat, Lot 6, Block 37 in the City of Two Rivers, Manitowoc County, Wisconsin.
- 2. Price and Terms.** The Purchase price of the Property shall be \$10,000.00, of which \$10,000.00 is paid at the time of the Buyer's signing of this Agreement by cashier's or certified check. This payment of \$10,000.00 shall be non-refundable.
- 3. Conveyance.** Conveyance is to be made by quit claim deed.
- 4. Contingencies.** Sale of the Property is subject to the following conditions:
 - A.** Approval of this Agreement by the Two Rivers City Council.
 - B.** Subject to and conditioned on compliance with the terms of the agreement the City and the WDNR entered into pursuant to Wis. Stat. § 75.106, a copy of which is attached hereto as Exhibit A and made a part hereof, and compliance with the terms of that statute. Buyer acknowledges the Property has been the subject of environmental contamination. [attach s. 75.106 agreement]
 - C.** Within 180 days from the execution of this Agreement, the Buyer shall submit Site and Architectural Plans, per Section 11-1-11 of the City's Municipal Code, to the Plan Commission for review and approval.
 - D.** By ~~September 30~~**December 31**, 2023, the Buyer shall provide to the City documentation reasonably satisfactory to the City that the Buyer invested \$100,000 in the Property. Such documentation can include contractor invoices, architect invoices, material and equipment costs or other documents establishing an investment of at least \$100,000 in value has been made by Buyer to the Property, to the City's reasonable satisfaction. Such investment may include Buyer's expenditures for materials and equipment necessary for Buyer's redevelopment of the property, and Buyer's expenditures for any contractor work done on the property by contractors *in which neither the Buyer nor any member of the Buyer has an ownership interest nor*

by which any member of the Buyer is employed. Any “in-kind” work done by the Buyer or by businesses in which the Buyer or any member of the Buyer has an ownership interest or by which any member of the Buyer is employed shall not be counted toward such investment. Also, Buyer’s purchase of the Property shall not be counted toward such investment.

5. **No Representations/ "As Is" Condition.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY IN “AS IS” CONDITION, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE CONDITION OF THE PROPERTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, AND INCLUDING BUT NOT LIMITED TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR WHETHER IT CONTAINS ANY UNLAWFUL AMOUNTS OF ASBESTOS OR ANY OTHER HAZARDOUS SUBSTANCES AS DEFINED IN FEDERAL OR STATE LAW. BUYER HAS MADE ALL INSPECTIONS OF THE PROPERTY IT DEEMS NECESSARY TO SATISFY BUYER REGARDING THE CONDITION OF THE PROPERTY FOR THE USE INTENDED BY BUYER, AND IS FULLY SATISFIED AND RELIES SOLELY ON THE RESULTS OF ITS OWN INVESTIGATION IN PURCHASING THE PROPERTY DESCRIBED IN THIS AGREEMENT.
6. **Failure to Comply with Contingencies in Section 4.** If any contingency is not satisfied, this Agreement shall be voidable by the City on written notice given to the Buyer by personal delivery to Wine Not LLC or sent to the following email addresses:
curt@sc3keys.com.
6. **Date of Closing.** Closing will take place within 60 days of the execution of this agreement. Closing will occur at the Two Rivers City Hall.
8. **Date of Completion.** The development of the Property is consistent with Site and Architectural Plans as approved by the City Plan Commission and is in compliance with any Building Permits or other permits required for such development shall be completed by ~~December 31, 2023~~ **July 31, 2024**.

If that does not take place, title to the property may revert to the City based on the failure to complete such development. Title to the Property shall revert to the City upon written notice to the Buyer given in the manner set forth in Section 6 of this Agreement, and upon such notice Buyer shall promptly sign and deliver to the City a warranty deed to the Property free of any lien or encumbrance. If Buyer shall fail to do so, it is agreed that the

City may obtain a court judgment assigning title to the City and injunctive relief compelling delivery of an appropriate deed if needed. Buyer agrees that if the City is required to take legal action to enforce reversion of title Buyer shall be responsible for reimbursement to the City of its reasonable expenses and attorney's fees incurred in such legal action. This Section of the Agreement shall survive the closing of the sale of the Property to the Buyer.

Not later than ~~September 30~~ **December 31**, 2023, Buyer shall provide the City with documentation, to the City's reasonable satisfaction, of expenditures made in satisfaction of the investment requirements stated in Section 4.D of this Agreement. Should such documented investment total less than \$100,000, the Buyer shall be required to pay to the City a sum equal to the difference between \$100,000 and the amount of said documented investment, such sum to be paid within 30 days following written demand by the City.

9. Inability to Perform. If a Buyer is unable to perform any of its obligations under the Offer for reasons beyond the control of the Buyer, the Buyer may terminate the Offer if the Buyer provides written notice of termination to the City/Seller at least 60 days prior to the Date of Completion, ~~December 31, 2023~~ **July 31, 2024**, or Buyer may request in writing an extension of time regarding this Agreement at least 60 days prior to the Date of Completion. The City may grant or deny any request for extension in its sole discretion. Buyer's notice shall specify the cause related to its inability to perform its obligation(s). If the Agreement is terminated as provided in this Section, then title to the Property shall revert to the City as provided in Section 8.

10. Closing Costs and Title Insurance. The Buyer shall be responsible for payment of any real estate taxes on the Property which are levied and assessed after the date of closing. The City, at its expense, shall obtain a title commitment, which shall be available to the Buyer at least 10 days prior to the date of closing. If such commitment shows the existence of any defects in title, the Buyer shall advise the City of the same within 10 days of Buyer's receipt of the commitment, and the Seller shall then have 10 days to remedy any such defect, and closing shall be extended accordingly. If such defect cannot be cured, then this Agreement is voidable at the option of the Buyer. Buyer is responsible for payment of any transfer tax payable, and fees associated with the recording of the Property.

11. Possession. The Buyer will have legal possession and occupancy of the Property as of the date of closing.

12. Survival. The provisions of this Agreement which by their terms extend beyond the date of closing will survive closing.

13. Entire Agreement. This Agreement contains the entire agreement of the parties regarding

this transaction. All prior negotiations and discussions have been merged into this Agreement.

14. Authority. The undersigned represent and warrant that they have full authority to sign and enter into this Agreement on behalf of City and the Buyer, and that the actions necessary to grant them such authority have been duly taken by the City and the Buyer.

15. Legal Counsel. This Agreement has been drafted by the attorney for the City acting solely on behalf of the City. If the Buyer desires legal counsel regarding this Agreement or the conveyance contemplated in the Agreement, the Buyer will retain a separate attorney.

16. Binding Agreement. This Agreement, as approved by the City Council on February 7, 2022, shall bind, and inure to the benefit of the parties, the City, hereto, the legal representatives, successors and assigns.

SIGNED AND DATED EFFECTIVE AS OF THE DATE SET FORTH ABOVE:

The City of Two Rivers

By: _____

Gregory E. Buckley, City Manager

By: _____

Jamie Jackson, City Clerk

Date: _____

Buyer(s):

By: _____

By: _____

Date: _____