

—MEMORANDUM—

MEMO TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: June 30, 2023

SUBJECT: Amendment to Tax Incremental Financing, Cash Grant and Developer's Performance Agreement ("Development Agreement") for the West River Lofts Project

The July 5 City Council Agenda includes consideration of an amendment to the above-referenced agreement to add two provisions that were discussed at the June 19 meeting where it was approved. Those provisions were not added to the motion to approve, so I am bringing them back for the Council's consideration. Both are in the City's interest.

Those added provisions appear in red on pages 8 and 9 of the attached, revised version of the agreement. They pertain to:

1. Clarifying language on the two easements being granted to the city by the Developer and granting the City an Option to purchase the area identified in the second easement—a portion of the Development Site next to the CN railroad trestle.
2. Providing for a payment in lieu of taxes on the Development, should the Development become tax-exempt, for a period extending 20 years beyond the term of the Agreement

**TAX INCREMENTAL FINANCING,
CASH GRANT AND DEVELOPER'S AGREEMENT
RE: MULTI-FAMILY DEVELOPMENT BY THE WEST RIVER LOFTS LLC
WEST TWIN RIVER WATERFRONT DEVELOPMENT, CITY OF TWO RIVERS, WISCONSIN**

This TAX INCREMENTAL FINANCING AND DEVELOPER'S PERFORMANCE AGREEMENT (this "**Agreement**") is entered into as of the day of June , 2023 (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 West River Lofts LLC, a Wisconsin limited liability company, having offices at 1420 W Center Street, Suite 2, Milwaukee, Wisconsin 53206 ("**Developer**").

WITNESSETH:

WHEREAS, the City Council has by resolutions dated September 6, 2022 (the **TID 17 Creation Resolutions**"), adopted the City of Two Rivers Tax Incremental District 17 and **TIF 17 Project Plan**, which is a blight elimination TID and identifies the redevelopment project (the "Project") at a location on the West Twin River, shown in **Exhibit A** (the "**Development Site**") as well as provides for certain other expenditures within one-half mile of the boundaries of TID 17; and

WHEREAS, Developer has proposed to construct the **Project** described herein on the Development Site and has represented, and hereby affirms, that the Project is contingent upon certain "**City Assistance**" described herein; and

WHEREAS, Section 66.1105 Wis. Stats., authorizes the City to incur project costs, as defined therein, in the discretion of its City Council, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans; and

WHEREAS, the City believes that the Project, more fully described in this Agreement, will promote the revitalization and economic stability of the City.

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) "Annual Cost of Funds Payment" means an amount intended to cover the City's annual debt service cost on a 20-year borrowing of \$350,000 for public improvements identified in the **TID 17 Project Plan**, including improvements to the seawall, public trail and related facilities proposed to be located within an Easement Area to be granted by the Developer to the City, as addressed

herein. Said annual debt service cost is \$33,000, which is the City's estimate for annual debt service on a 20-year, \$350,000 borrowing at 7 percent annual interest.

(2) "Available Tax Increment" means, for any given Revenue Year, an amount equal to: the Tax Increment attributable to the Development Site minus (a) any past-due Shortfall Payment amounts (or unpaid interest owed on any Shortfall Payment) as of January 1 of such Revenue Year, minus (b) Annual Cost of Funds Payment. In the event of a negative number, the Available Tax Increment for such Revenue Year shall be \$0.

(3)"Base Taxes" means the real property taxes payable for Tax Year 2023 based on the assessed value of the Development Site as of January 1, 2023.

(4)"City Assistance" means the TIF Grant and the TIF Affordable Housing Grant, both described herein.

(5)"Development Site" is defined in the Recitals above, and is shown in the attached **Exhibit A**.

(6)"Memorandum" means a short form memorandum of this Agreement recorded in the real estate records. The parties agree that the form of memorandum attached hereto as **Exhibit B** is acceptable to both parties.

(7) "Private Financing" means funding available to Developer for purposes of constructing the Project, from equity investors, conventional loan financing through a financial institution licensed to do business in the State of Wisconsin and any other non-City sourced construction financing, as well as permanent phase financing to take-out any sources of financing limited to the construction-phase of the Project.

(8)"Project" means the construction of an affordable, 54 unit, multi-family development, called the West River Loft, on the Development Site, consistent with the Site and Architectural Plans approved by the Plan Commission .

(9) "Project Commencement Deadline" means August 15, 2023

(10) "Project Completion" means Substantial Completion of the Project, in accordance with the plans and specifications previously approved by the City, except for minor punch list items. "Substantial Completion" shall include certification by the Project's architect of substantial completion and full authorization for occupancy of the building(s) by the City's Building Inspector.

(11) "Project Completion Deadline" means December 31, 2024.

(12) "Project Cost Breakdown" means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect

costs of development, construction and installation of the Project in accordance with the Project plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.

(13) "Revenue Year" means any calendar year in which the City is reasonably expected to receive the revenue for such calendar year by reason of the actual payment of real estate taxes. By way of example, 2026 is the Revenue Year for the 2025 Tax Year based on the real estate valuation as of January 1, 2025.

(14) "Guaranteed Revenue" means for Revenue year 2026 through Revenue year 2046, annual receipt by the City of net property taxes attributable to the Development Site equal to the sum of (i) the Base Taxes PLUS (ii) the Annual Cost of Funds Payment. The parties agree that the Guaranteed Revenue bears a rational relationship to the City's estimated costs in connection with this Agreement.

(15) "Shortfall Payment" means a payment, if any, to be made by Developer to the City, in the amount of the shortfall of the actual net property taxes received by the City as compared with the Guaranteed Revenue amount for any Revenue Year. The Shortfall Payment is only applicable in Revenue Years 2026 through 2046.

(16) Shortfall Payment Deadline" means June 1 of each Revenue Year.

(17) "Tax Year" means each calendar year for which real and personal property taxes are levied.

(18) . "TIF Grant" means a "pay as you go" grant of the Available Tax Increment for development of the Project in an amount of and not to exceed Five Hundred Thousand Dollars (\$500,000). Said TIF Grant is subject to an interest rate of 6.5%, which shall accrue starting January 1, 2025. Said TIF Grant is to be paid in annual installments to the Developer starting in the year 2026 from the Available Tax Increment.

(19) "TIF Grant Installment Amount" for each Revenue Year (commencing in Revenue Year 2026) means the Available Tax Increment for such Revenue Year which has been appropriated by the City Council to make a payment of the TIF Grant or interest on the TIF Grant; provided, however, that in no event shall the cumulative total of all such TIF Grant Installment Amount payments exceed the total TIF Grant plus applicable interest.

(20) "TIF Grant Payment Deadline" means December 1, 2026, for Revenue Year 2026, and on each anniversary thereof for each subsequent Revenue Year.

(21) "TIF Extension for Affordable Housing" is a one-year extension of tax incremental districts beyond the normal retirement date, under Wisconsin Statute 66.1105(6)(g), and permits the use funds captured during this additional year to assist with affordable housing activities.

(22) "TIF Affordable Housing Grant" a grant from the City's TIF Affordable Housing Fund for the Project in the amount of \$100,000.

(23) "Payment in Lieu of Taxes" (PILOT) is a payment made to the City in the place of a tax payment to compensate for tax exempt ownership.

C. Effectiveness of this Agreement. This Agreement shall be effective and its terms binding upon the approval by the City Council, signature by the City Manager and City Clerk and the approval of all other agreements and/or transactions that require approval by the City, and approval by the Developer and signature by Developer's authorized representatives. This Agreement shall be null and void if it has not been signed by authorized representatives of the City and the Developer and a fully -signed copy of the Agreement provided back to back to the City by August 10, 2023, unless the City and the Developer agree in writing to the contrary.

All of the City's obligations under this Agreement are contingent upon the occurrence of all of the City approvals referenced herein and the City shall have no obligation to make the **TIF Grant** or the **TIF Affordable Housing Grant** to the Developer if all City Approvals have not occurred. In the event the required City approvals have not been received by the Project Commencement Deadline, this Agreement shall automatically terminate.

2. OBLIGATIONS OF THE CITY

A. TIF Grant

(i) The City Council has adopted the Two Rivers Tax Incremental District 17 and TIF 17 Project Plan. TIF 17 is a blight elimination TID as the Development Site is the former location of Newell and Mirro Industries, and as such, is a brownfield site. The Project Plan identifies project costs including the construction costs of a new, 54-unit affordable multi-family development.

(ii) The City hereby agrees to provide a TIF Grant in the amount of \$500,000 in the form of a pay-as-you-go grant at an interest rate at 6.5% to be paid in annual installments resulting in payments to the Developer starting in the Revenue Year 2026 until Revenue Year 202046, subject the Developer's satisfaction of and continued compliance with the conditions set forth herein. Such payments shall be made only to the extent that there is Available Tax Increment in any Revenue Year. The Developer shall satisfy every one of the following conditions:

- a. Developer shall have obtained and closed on all financing, including all Private Financing, for the construction and operation of the Project;
- b. Developer shall have provided a complete and accurate Project Cost Breakdown to the City;

c. Developer shall have obtained all necessary consents, permits, and approvals for the Project as shown in the Site Plans in **Exhibit D** including, but not limited to, zoning, plan approval and building permits, required by the City or any other governmental entity having jurisdiction over the Project; and

d. Developer shall have recorded the Memorandum with respect to the parcel that constitutes the Development Site; and

e. Developer shall have provided satisfactory evidence of all the foregoing to the City as determined by the City in its sole discretion.

f. Provided further that:

(1) Developer is not in default of its obligations under this Agreement;

(2) Project Completion was achieved on or prior to the Project Completion Deadline; and

(3) The Project is constructed in substantial compliance, as determined by the City in its sole discretion, with the plans and specifications that Developer provided to the City pursuant to this Agreement and the consents, approvals or permits issued by any governmental authority with respect to the construction of the Project.

(iii) The TIF Grant shall be payable solely from each Available Tax Increment which has been received and retained by the City in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes and appropriated by the City Council to payment of the TIF Grant. The TIF Grant shall be payable in annual installments on or before the TIF Grant Payment Deadline of each Revenue Year, commencing with Revenue Year 2026 (based on the Available Tax Increment generated in 2025) and on each TIF Grant Payment Deadline thereafter (based on Available Tax Increment generated in the immediately preceding Tax Year) in an amount equal to the TIF Grant for the respective Revenue Year; provided, however, that the City may, at its option and in its sole discretion, prepay the TIF Grant in whole or in part at any time.

If the total TIF Grant payments have been insufficient to pay the full TIF Grant after the scheduled installment payable on or before the TIF Grant Payment deadline in Revenue Year 2046 (based on the Available Tax Increments generated in 2045), then the TIF Grant and all interest shall be deemed paid in full, the obligation of the City to make any further payment shall terminate, and Developer shall have no right to receive any additional payments.

The City makes no representation or covenant, express or implied, that Available Tax Increments will be generated or that they will be sufficient to pay, in whole or in part, the TIF Grant and any applicable interest. All Tax Increments received by the City which are not

appropriated to pay the TIF Grant may be used by the City for any legally permitted purpose, in its sole discretion.

(iv) As stated above, the application of Available Tax Increments to payment of the TIF Grant each year is subject to future annual appropriation by the City Council. The City makes no representation or covenant, express or implied, that any non-zero Available Tax Increment will be generated and/or appropriated in any given year, nor does the City make any representation or covenant as to any aggregate amount of Available Tax Increments to be paid to Developer. Any Tax Increment which is not appropriated and allocated toward the Available Tax Increment may be used by the City for any legally permitted purpose, in its sole discretion.

B. TIF Affordable Housing Grant

Under Sec. 66.1105, Wis. Stats, a one year extension beyond the normal retirement date of tax incremental districts is permitted to use funds captured during this additional year increment to assist with affordable housing. The City of Two Rivers has adopted resolutions to make use of this law by approving an extension of TID #3, TID #4 and TID #5 and placed in an Affordable Housing Fund for eligible projects.

The City Council adopted TIF 17 Project Plan which includes the construction of new affordable housing. The City has the abovementioned set aside TIF Affordable Housing funds. The City hereby agrees to provide a TIF Affordable Housing Grant in the amount of \$100,000, subject to the conditions set forth herein and the Developer's continued compliance with all terms and conditions herein. The Developer shall satisfy every one of the following conditions prior to payment by the City of said TIF Affordable Housing Grant:

(i) Developer shall have obtained and closed on all financing, including all Private Financing, for the construction and operation of the Project;

(ii). Developer shall have provided a complete and accurate Project Cost Breakdown to the City;

(iii) Developer shall have obtained all necessary consents, permits, and approvals consistent with the development as shown in the Site Plans in Exhibit D, including, but not limited to, zoning, plan approval and building permits, required by the City or any other governmental entity having jurisdiction over the Project;

(iv). Developer shall have recorded the Memorandum with respect to the parcel that constitutes the Development Site;

(v.) Developer shall have commenced construction of the Project, not later than the Project Commencement Deadline;

(vi.) Developer shall have expended at least \$2 million on the project, for land acquisition and preparation, building construction and site improvements, and fixtures, furnishings and equipment.

(vii). Developer shall have provided satisfactory evidence of all the foregoing to the City as determined by the City in its sole discretion.

(viii) Provided further that the Developer is not in default of its obligations under this Agreement.

3. OBLIGATIONS OF DEVELOPER

(i). Secure Private Financing. Developer shall secure all necessary Private Financing for the Project (including a firm commitment for permanent take-out financing for any construction financing), as defined herein, not later than the Project Commencement Deadline, and shall provide proof of such financing to the City along with the Project Cost Breakdown. For reference, Developer's preliminary Project budget is attached hereto as Exhibit C.

(ii). Construction and Operation of the Project.

Developer shall: (a) proceed to contract with BCM, LLC as to commence construction of the Project following the approvals described in this Agreement; such construction shall commence no later than the Project Commencement Deadline; (b) subject to the force majeure provisions contained herein, achieve Project Completion in a manner consistent with this Agreement and with all federal, state and local plan approvals; and the Project is a new 54 unit multi-family development as described herein no later than the Project Completion Deadline.

(iii) Developer shall expend on the Project an amount equal to not less than \$10 million including land acquisition and preparation, building construction and site improvements, and fixtures, furnishings and equipment and shall provide the City with documentation reasonably acceptable to the City of all Project construction costs, including construction lien waivers.

(iv) 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. 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.

(v) After Project Completion, the Project shall be a new 54 unit multi-family development and the Developer shall not modify the Project without the City's prior written

consent. Developer shall maintain the physical condition of the Project and the Property in a reasonable manner. Developer shall not change the design of the project without the City's prior review and approval. This subsection shall be in effect until the completion of the Guaranteed Revenue requirement.

(vi) Building Property Maintenance. For operation of the completed project, the Developer shall provide the City with the identity and provide contact information of the management company that will serve this property when the Project is completed.

C. Payment of Annual Property Taxes; Shortfall Payment. The parties hereto anticipate that the Project and the Development Site will be subject to property taxes, and Developer agrees to pay property taxes on the Project and the Development Site in a timely manner. In the event that the City does not receive the full Guaranteed Revenue amount for any applicable Tax Year, then Developer shall make any applicable Shortfall Payment no later than the Shortfall Payment Deadline of such Revenue Year. Such Shortfall Payments shall be required regardless of whether all or a portion of the Development Site should ever become exempt from property taxes. Any Shortfall Payment or portion thereof not paid when due shall bear interest at the rate of 12.0% per annum from due date until paid.

D. Memorandum. Developer agrees to promptly record the Memorandum with respect to each parcel of the Development Site at the closing of its purchase and acquisition of each parcel of the Development Site. In the event of any prior mortgage(s), such mortgage(s) shall be promptly subordinated to the Memorandum. Developer shall provide the City with evidence of the relative priority of the Memorandum which is reasonably acceptable to the City.

E. Easement Agreements.

- (i) The Developer shall provide the City with an easement agreement along the waterfront where a trail exists. The easement agreement is attached to this Agreement as Exhibit E.
- (ii) The Developer shall provide an easement allowing certain uses by the City of a portion of the Development Site located adjacent to the CN Railroad Trestle Bridge, located within the West Twin River. The easement agreement is attached to this Agreement as Exhibit F.
- (iii) Developer further agrees to provide the City with an option to purchase the above-described portion of the Development Site located adjacent to the CN Railroad Trestle Bridge. Said Option to Purchase is attached to this Agreement as Exhibit G.

F. Payment in Lieu of Taxes

(i) In the event the Project becomes exempt from property taxes at any time prior to Tax Year 2045 Developer shall make a Payment in Lieu of Taxes (PILOT) to the City in each subsequent Revenue Year, through Revenue Year 2046, in an amount equal to the greater of:

- (a.) Guaranteed Revenue as that term is defined herein; or
- (b.) The most recent assessed value for the Project as a taxable property multiplied by the total property local property tax rate (all taxing entities) for that Revenue Year.

In the event that only a portion of the project becomes exempt from property taxes, then the PILOTS payable in subsequent Revenue Years shall in each year be reduced by an amount equal to the taxes paid in that Revenue Year on the portion of the Project that remains taxable.

(ii) As further consideration for the City Assistance being provided to the Project, Developer agrees that, should the Project be or become exempt from property taxes prior to Tax Year 2065, then Developer shall make a PILOT to the City in each Revenue Year through Revenue Year 2066 in an amount equal to the most recent assessed value for Project as taxable property multiplied by the total local property tax rate (all taxing entities) for that Revenue Year.

In the event that only a portion of the project becomes exempt from property taxes, then the PILOTS payable in subsequent Revenue Years shall in each year be reduced by an amount equal to the taxes paid in that Revenue Year on the portion of the Project that remains taxable.

Because this provision shall remain in effect beyond the term of this Agreement, Developer agrees to execute the a "Payment in Lieu of Taxes Agreement,' a copy of which is attached hereto as Exhibit H.

4. REPRESENTATIONS AND WARRANTIES

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

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

(ii) 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 accordance with this Agreement, it will constitute a binding obligation on behalf of the City subject to the terms and provisions hereof.

(iii) 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:

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

(ii) The individuals executing this Agreement on behalf of the Developer are duly empowered and authorized to execute this Agreement on behalf of the Developer 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 accordance with this Agreement, it will constitute a binding obligation on behalf of the Developer subject to the terms and provisions hereof.

(iii) 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. This Agreement constitutes a binding obligation on behalf of the Developer subject to the terms and provisions hereof.

(iv) 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.

5. DEFAULT; REMEDIES; FORCE MAJEURE

C. Notice of Default and Right to Cure. 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 fifteen (15) business days in the event of a monetary default or within thirty (30) calendar 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 calendar 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

6. TERM

The term of this Agreement (the "**Term**") shall be for a period commencing upon the Effective Date of this Agreement and expiring on the earlier of: (i) December 31, [2046]; or the (ii) expiration of the term of existence of TID 17.

7. 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:

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 Developer:

West River Lofts LLC
Principal, Scott Crawford, Inc.
1420 W Center Street, Suite 2
Milwaukee, Wisconsin 53206

In the case of the City:

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

8. 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 Development Site (or any portion thereof) 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 Development Site to an entity controlled by or under common control with Developer and shall have the right to mortgage or otherwise encumber the Development Site to finance the construction of the Project, as provided herein. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement.

9. PUBLIC RECORDS RESPONSIBILITIES

To ensure that applicable laws are followed, both with regard to private rights, and with regard to public records laws, Developer agrees as follows: If the City receives public records requests for records that the City believes might be in the possession of Developer, the City will notify Developer of the request. Within three (3) days of such notification (subject to extension of time upon mutual written agreement), Developer shall either provide the City with the record that is requested, for release to the requestor; or Developer shall advise the City that it objects to the release of the requested information because it considers such information confidential or proprietary, and provide the basis for the objection. Regardless of any objection by Developer, however, if for any reason the City reasonably and in good faith concludes that the City is obligated to provide a record to a requestor that is in Developer's possession, Developer shall provide such records to the City promptly upon the City's request. Developer shall not charge for work performed under this section, except for the "actual, necessary and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law.

10. MISCELLANEOUS

A. Recording. Recording of this Agreement is prohibited except for the Memorandum.

B. 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. All submissions given to the City to satisfy the conditions contained in this Agreement must be satisfactory in form and content to the City, in its reasonable discretion.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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 the City and the Developer, including, without limitation, Developer's obligation to provide City with Guaranteed Revenue addressed herein, shall survive any sale transfer, assignment or conveyance of the Development Site (or a portion thereof), and shall survive mortgage foreclosure, and bind any subsequent owners in title to the Development Site.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. Joint and Several Obligations. If Developer consists of more than one person/entity, each such person/entity shall be jointly and severally liable for the payment and performance of all obligations of Developer under this Agreement and the City may bring suit against each such person/entity, jointly or severally, or against any one or more of them.

O. 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.

[Signature Page Follows]

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

DEVELOPER:

WEST RIVER LOFTS LLC

By: _____
Name: _____
Title: _____

CITY:

THE CITY OF TWO RIVERS, WISCONSIN

By: _____
Name: Gregory E. Buckley
Title: City Manager

By: _____
Name: Amanda Baryenbruch
Title: City Clerk

EXHIBIT A

**LEGAL DESCRIPTION OF
THE DEVELOPMENT SITE**

LOTS 1-6, BLOCK 83, LOTS 1-5, EXCEPT THE WEST 15 FEET OF LOT 5, BLOCK 84
LOTS 1-4 & 8-12, BLOCK 87, LOTS 1-4, BLOCK 88, VACATED MONROE STREET,
VACATED WEST STREET, & VACATED 14TH STREET, ALL IN ORIGINAL PLAT
CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN

EXHIBIT B

FORM OF MEMORANDUM

**MEMORANDUM OF
DEVELOPMENT AGREEMENT**

Document Number

Document Name

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (this “Memorandum”) is made and entered into as of the _____ day of _____, 2023, by and between the CITY OF TWO RIVERS, WISCONSIN, a Wisconsin municipal corporation (the “City”), on the one hand, and WEST RIVER LOFTS LLC, a Wisconsin limited liability company (“Developer”), on the other hand (the City and Developer are referred to herein, collectively, as the “Parties”).

WHEREAS, the Parties entered into a certain Tax Incremental Financing Grant and Developer’s Performance Agreement, dated as of [_____], 2023 (as may be amended from time to time, the “Development Agreement”); and

WHEREAS, the Development Agreement relates to certain real estate [a portion of which is] described on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Parties desire to place this Memorandum of record in the real estate records for Manitowoc County, Wisconsin to provide notice to third parties of the Development Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Notice is hereby given that the Parties have entered into the Development Agreement affecting the Property. Until termination of the Development Agreement, the Development Agreement runs with the Property and is binding upon, benefits and burdens the Property, Developer and any subsequent owner and/or mortgagee of all or any portion of the Property and each of their successors and assigns.
2. The Development Agreement imposes certain obligations, liabilities and restrictions on the owners and/or mortgagees of all or any portion of the Property.
3. The term of the Development Agreement commenced as of [_____], 2023, and terminates as provided therein.
4. The terms, conditions and other provisions of the Development Agreement are set forth in the Development Agreement, express reference to which is made for greater particularity as to

Recording Area

Name and Return Address

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

See Exhibit A attached
Parcel Identification Number (PIN)

This is not homestead property.

the terms, conditions and provisions thereof. A copy of the Development Agreement is available upon request from the City at the offices of the City Clerk.

5. This Memorandum is not a complete summary of the Development Agreement. Provisions in this Memorandum shall not be used to interpret the provisions of the Development Agreement. In the event of conflict between this Memorandum and the unrecorded Development Agreement, the unrecorded Development Agreement shall control.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first set forth above.

DEVELOPER:

WEST RIVER LOFTS LLC

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2023,
_____, known to be the person who executed the foregoing instrument
and to me known to be the _____ of WEST RIVER LOFTS LLC, a Wisconsin
limited liability company, and acknowledged that s/he executed the foregoing instrument as such
authorized representative of said entity and with its authority.

Notary Public, State of Wisconsin
My commission: _____

THE CITY:

THE CITY OF TWO RIVERS, WISCONSIN

By: _____

Name: Gregory E. Buckley
Title: City Manager

By: _____

Name: Amanda Baryenbruch
Title: City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me this ____ day of _____, 2023, Gregory E. Buckley and Amanda Baryenbruch, of the City of Two Rivers, Wisconsin, known to be the persons who executed the foregoing instrument and to me known to be such City Manager and City Clerk, respectively, and acknowledged that they executed the foregoing instrument as such officers as the deed of said City of Two Rivers, Wisconsin, by its authority.

Notary Public, State of Wisconsin
My commission:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1-6, BLOCK 83, LOTS 1-5, EXCEPT THE WEST 15 FEET OF LOT 5, BLOCK 84
LOTS 1-4 & 8-12, BLOCK 87, LOTS 1-4, BLOCK 88, VACATED MONROE STREET,
VACATED WEST STREET, & VACATED 14TH STREET, ALL IN ORIGINAL PLAT
CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN

EXHIBIT C

PROJECT BUDGET

West River Loft Budget Estimates

West River Loft STATEMENT OF FORECASTED SOURCES AND USES

SOURCES OF FUNDS	Construction	Post Construction	Permanent
	\$ 3,341,637	\$ 0	\$ 3,341,637
Fine Mortg - WHEDA			
Fine Mortg - IFF	\$ 50,000		\$ 50,000
City of Two Rivers TIF (IFF)	100,000		100,000
Affordable Housing Funds - Two Rivers	786,750		786,750
HOME Funds	2,000,000		2,000,000
WHEDA AHP & Funds			
GAP	1,025,000		1,025,000
WHEDA IHTF FUNDS	100		100
GP Equity		500,000	500,000
Chicago AHP Funds	1,069,801	5,176,048	7,245,809
LHTC Equity		562,074	562,074
Deferred Dev Fee	3,022,000	(3,022,000)	
Construction Loan - WHEDA	3,022,000	(3,022,000)	
Construction Loan - IFF			
Total Sources Of Funds	\$ 15,238,579	\$ 1,482,922	\$ 16,721,501
USES OF FUNDS	Total	Post Construction	Total Permanent
Acquisition & Site Costs			
Land Acquisition	177,000		177,000
Escrow/Reserves	30,000		30,000
Environmental Remediation	380,000		380,000
Utilities	228,835		228,835
Construction & Commercial Costs			
Residential Construction NC	9,545,450		9,545,450
General Requirements	435,710		435,710
Contractor Overhead	244,754		244,754
Contractor Profit	502,710		502,710
Construction Contingency	291,395		291,395
OC Transition Pre Con	120,000		120,000
FFIE	5,000		5,000
Builder Risk Insurance	105,162		105,162
Building Permits + Cost Cert	30,000		30,000
Performance Bond 7.4% of Const Contract	189,432		189,432
Engineering & Architectural			
Architect Design	216,000		216,000
Architect Supervision & Rambl. Mktg Expenses	105,000		105,000
Engineering (Structural & Civil)	51,500		51,500
Survey	4,000		4,000
Other Eng/Arch	2,500		2,500
Construction Interest & Fees			
Insurance Review Expense	3,000		3,000
Construction Interest	911,210		911,210
Pre Dev Interest + Fees	32,384		32,384
Construction Title and Recording	20,000		20,000
Loan Origination (WHEDA + IFF) - 1%	50,452		50,452
Lump Sum for IFF Fees ESTIMATE	30,000		30,000
Permit Financing			
Perm Origination Fee - 1.5% (WHEDA) and 1% (IFF)	50,125		50,125
Perm Lender Legal (WHEDA)	20,000		20,000
Soft Costs			
Market Study	8,000		8,000
Appraisal	10,000		10,000
WHEDA Closing Escrow/fee	8,000		8,000
Tax Credit Fees	58,455		58,455
Marketing	5,000		5,000
Phase 1 ESA & Phase 2 EDA	32,500		32,500
Property Insurance	30,000		30,000
Title & Recording Fees	20,000		20,000
Cost Certification		20,000	20,000
AHP Application Fee (BT)	27,500		27,500
HOME App Fee (BT)	20,000		20,000
AHP Origination Fee (2.5%)	17,250		17,250
Ciped Corp Funds Origination (2.5%)	40,315		40,315
Accounting (BT)	15,000		15,000
Zoning and Municipal Fees	5,000		5,000
GP Legal Fees	62,000		62,000
Reburb & Relocation Fee (WHEDA)	42,262		42,262
Syndication Costs			
Organization/Legal/Syndication	65,000		65,000
Developer Fees / Reserves			
Developer Fee	72,981	1,016,010	1,089,000
Consultant Fee	45,000		45,000
Operating and DB Reserve - \$1,000,000		1,911,611	1,911,611
Rent Up Reserve - HOME Fund Requirement		122,412	122,412
Replacement Reserve		27,000	27,000
Total Uses Of Funds	\$ 15,238,579	\$ 1,482,922	\$ 16,721,501

EXHIBIT D

SITE PLAN



ABACUS
ARCHITECTS

REVISIONS:

PLAN COMMISSION SUBMITTAL
1721 13TH ST, TWO RIVERS, WI 54241
PROPOSED NEW CONSTRUCTION
DATE 10/22/2001

A2

PROJ. NO. 2019-35

N
W
E
S

ARCHITECTURAL SITE PLAN
NOT TO SCALE

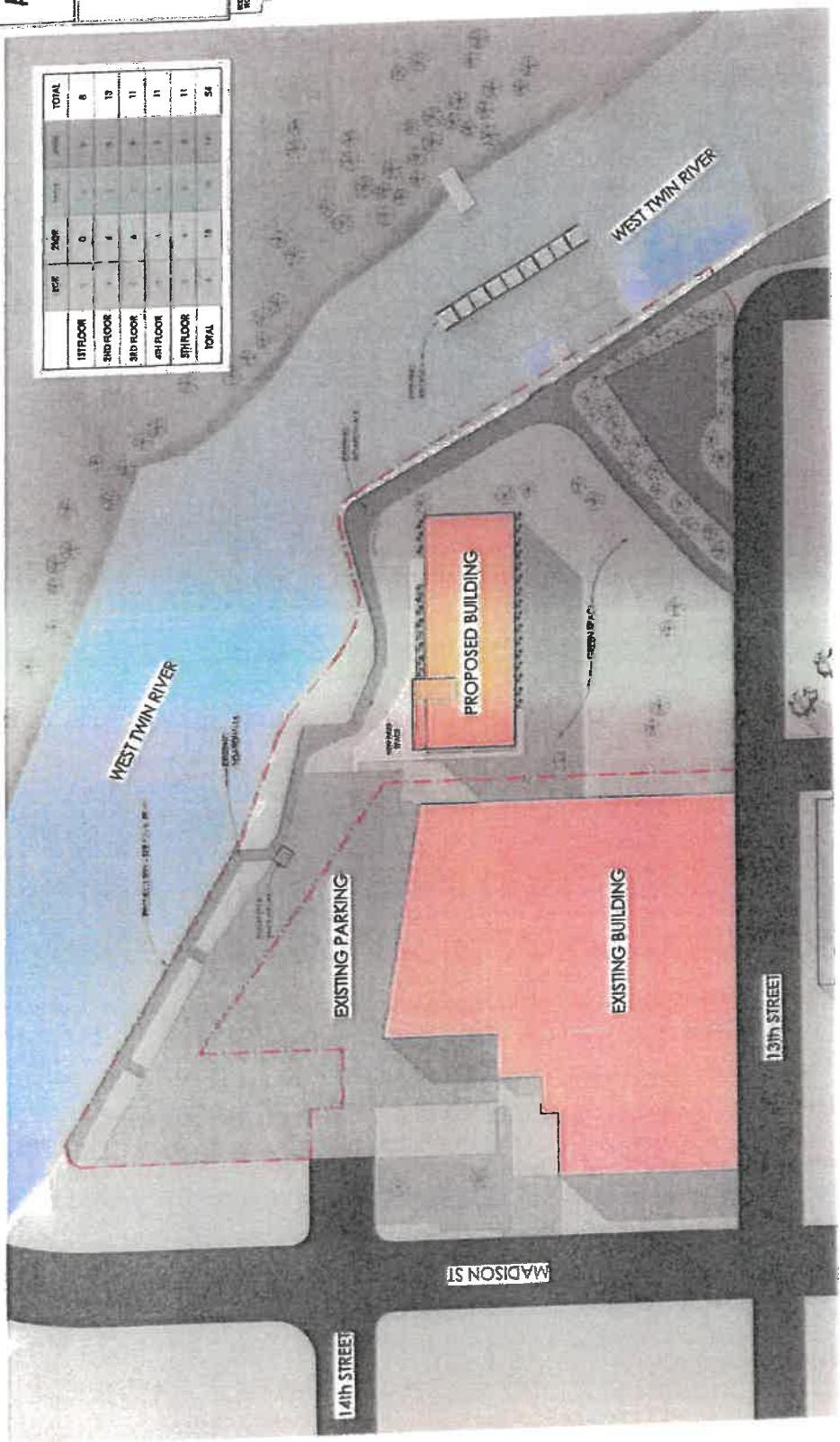


EXHIBIT E

EASEMENT AGREEMENT - Trail

PUBLIC ACCESS EASEMENT

THIS PUBLIC ACCESS EASEMENT (hereinafter referred to as "Easement") made by and between West River Lofts LLC (hereinafter referred to as "Grantor") and the City of Two Rivers (hereinafter referred to as the "Grantee").

RECITALS

WHEREAS, Grantor is the owner of certain real property located in City of Two Rivers, Manitowoc County, Wisconsin more particularly described as (hereinafter referred to as the "Premises"); See Exhibit A.

WHEREAS, the Grantor is building a multi-family residential development on the Premises with frontage along the West Twin River; and

WHEREAS, the Grantee would like access along the West Twin River frontage for a pedestrian walkway and to enter into an agreement setting forth rights and responsibilities related thereto; and

WHEREAS, upon the development agreement between Grantor and Grantee, the Grantor has agreed to convey a public access easement in perpetuity to Grantee based on the terms contained herein;

NOW THEREFORE, the Grantor hereby grants to Grantee, its employees, agents, representatives, successors and assigns, an Easement under the terms and conditions contained herein.

1. The Grantor and the Grantee confirm and agree that the recitals set forth above are true and correct and incorporate the same herein for all purposes.
2. The Grantor grants to the Grantee an easement over and across a twelve-foot strip of land running along the edge of the West Twin River over the length of property owned by the Grantor together with a six (6) foot access easement along the west boundary between 14th Street and the river.
3. The Grantee shall not be required to maintain any sheet piling along the river's edge.
4. Public access along the easement shall be limited to foot travel only. This Easement does not

Recording Area _____

Return: _____

Parcel Identification Number (PIN):

grant any users the right to operate motorized vehicles in any manner or method.

5. The Grantor shall not obstruct the free and uninhibited use of the Premises by the Grantee and the public. The Grantee shall not obstruct the free and uninhibited use and access of the Grantor.
6. The Grantor may use the Premises for purposes that will not interfere with Grantee's full enjoyment of the rights granted in this Easement.
7. The Grantee may install fencing, landscaping, lighting, sidewalk, benches and waste containers.
8. The Grantee may post signs and posters on the Premises, in compliance with law, to delineate and locate the Premises for public use and shall control said use to minimize interference with the Grantor's Property, and any adjacent lands owned by Grantor.
9. The Grantee may publish the location of the Premises electronically or by depicting the location of the Premises on a map for the purpose of directing Users to the location of the Easement.
10. This Easement sets forth the entire understanding of the Grantor and Grantee and may not be modified or amended except by a written document executed and acknowledged by Grantor and Grantee, and the successors and assigns in ownership to the Premises, respectively and duly recorded in the office of the Register of Deeds of Manitowoc County, Wisconsin.
11. If any term or condition of this Easement shall be deemed invalid or unenforceable, the remainder of this Easement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
12. It is intended that this Easement shall be construed as being an adequate and legally enforceable agreement. Enforcement of this Easement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Easement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Easement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.
13. This Easement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
14. All of the terms and conditions in this Easement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the owner of the Premises and their respective successors and assigns. The Easement is an Easement appurtenant to the Premises and may not be transferred separately from, or severed from, title to the Premises. This grant of Easement is subject to all legal encumbrances, including the terms

and conditions of any documents creating easements in favor of Grantor over parts of the Premises.

15. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the Grantee at the address stated at the top of this agreement, and to the Grantor or Grantor's Designee, to the address to which the property tax bill for the Premises is sent.
16. The terms Grantor and Grantee may be singular or plural and shall include all successors and assigns.
17. Additional Conditions
 - A. INSERT SPECIFIC ACCESS ACTIVITIES AND PROVISIONS ON THE PROPERTY, INCLUDING ANY EXCLUDED ACCESS AREAS, LIMITED TIMES OF ACCESS OR TYPES OF ACTIVITIES,

END OF CONDITIONS

IN WITNESS WHEREOF, the Grantor grants this easement and has caused this instrument to be executed on its behalf this _____ day of _____, 20____.

(SEAL)

(SEAL)

State of Wisconsin)
) ss.
 County)

Personally came before me this _____ day of _____, 20____, the above-named _____, to me known to be the person who named _____, executed the foregoing instrument and acknowledged the same.

*Notary Public, State of Wisconsin
My commission (expires)(is) _____

IN WITNESS WHEREOF, the Grantee has caused this instrument to be executed on its behalf this
day of _____, 20____.

By _____ (SEAL)

State of Wisconsin)
)
) ss.
____ County)

Personally came before me this _____ day of _____, 20____, the above-named _____, to me known to be the person who named _____, executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission (expires)(is) _____

Exhibit A

LOTS 1-6, BLOCK 83, LOTS 1-5, EXCEPT THE WEST 15 FEET OF LOT 5, BLOCK 84
LOTS 1-4 & 8-12, BLOCK 87, LOTS 1-4, BLOCK 88, VACATED MONROE STREET,
VACATED WEST STREET, & VACATED 14TH STREET, ALL IN ORIGINAL PLAT
CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE

I, Eric R. Ott, Professional Land Surveyor, hereby certify:

That I have surveyed, divided, and mapped a parcel of land described below.

That I have made such Certified Survey by the direction of the Bright Horizon Properties, LLC, bounded and described as follows:

Lots 1-6, Block 83, Lots 1-5, except the West 15 feet of Lot 5, Block 84, Lots 1-4 and 8-12, Block 87, Lots 1-4, Block 88, Vacated Monroe Street, Vacated West Street, and Vacated 14th Street, all in Original Plat, City of Two Rivers, Manitowoc County, Wisconsin, and more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of Section 1, T. 19 N.-R. 24 E.; thence North 00° 48' 17" West along the West line of the Northwest 1/4 of said Section 1, 209.62 feet; thence North 89° 11' 43" East, 1860.82 feet to a point that is 16 feet more or less from the West shoreline of the West Twin River and to the point of beginning; thence South 61° 10' 02" East along a meander line of the West shoreline of the West Twin River, 581.89 feet to a point that is 20 feet more or less from the West shoreline of the West Twin River; thence North 75° 10' 22" East along a meander line of the West shoreline of the West Twin River, 81.57 feet to a point that is 10 feet more or less from the West shoreline of the West Twin River; thence South 30° 19' 42" East along a meander line of the West shoreline of the West Twin River, 281.22 feet to a point that is 20 feet more or less from the West shoreline of the West Twin River; thence South 00° 36' 12" East, 59.83 feet to a point on the North right of way line of 13th Street; thence South 89° 42' 10" West along said North right of way line, 723.29 feet to the Southwest corner of said Lot 8, Block 87; thence North 00° 33' 36" West along the West line of said Lot 8, 150.29 feet to the Northwest corner of said Lot 8; thence North 89° 35' 24" East along the North line of said Lot 8, 60.35 feet to the Southwest corner of said Lot 4, Block 87; thence North 00° 33' 36" West along the West line of said Lot 4 and its extension Northerly, 210.39 feet to the North right of way line of 14th Street; thence South 89° 29' 30" West along said North right of way line, 45.35 feet; thence North 00° 33' 36" West, 195.72 feet to the point of beginning and containing 5.66 acres (246,655 sq. ft) of land, more or less including all the land lying between the meander line and the West shoreline of the West Twin River.

That such is a correct representation of all the exterior boundaries of the land surveyed and the subdivision thereof made.

EXHIBIT F

EASEMENT AGREEMENT – Access to CN Trestle Bridge

Exhibit F

EASEMENT AGREEMENT

Document No.

THIS AGREEMENT is made as of this _____ day of _____, 2023, by and between WEST RIVER LOFTS LLC ("Grantor") and the CITY OF TWO RIVERS, WISCONSIN ("Grantee").

Recitals:

Grantor is the owner of certain real property (the "Property") located in the City of Two Rivers, Manitowoc County, Wisconsin, more particularly described as in Exhibit A attached hereto and made a part hereof ("the Property"). Grantor has agreed to grant Grantee an easement to construct, maintain and repair a bicycle and pedestrian trail on the Property within a _____ foot wide area, as shown on the map attached hereto as Exhibit A ("the Easement Area") pursuant to the terms and conditions hereinafter set forth.

Agreement

In consideration of the foregoing recitals, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. Public Trail Easement. Grantor hereby grants to Grantee a permanent, exclusive easement for the purpose of constructing, installing, maintaining, repairing, and replacing a bicycle and pedestrian trail ("the Trail") within the Easement Area together with the right to enter the Easement Area and the Property whenever necessary for the purpose of constructing, installing, maintaining, repairing, and replacing the Trail.

2. Improvements. The Grantee may construct, maintain and repair improvements in the Easement Area. Such improvements may include, but not necessarily be limited to: (a) A colored concrete area 3 feet in width, immediately adjacent to the street right-of-way, to be constructed of red colored concrete; (b) A 10-foot wide trail paved in non-colored concrete, located immediately adjacent to the colored concrete, for use as a pedestrian and bicycle trail; (c) A 3-foot wide area paved in non-colored concrete and marked with painted cross-hatches, as a buffer zone between the pedestrian and bicycle trail.

3. Access to/Removal of Bridge. Grantor further grants to Grantee access to the CN Railroad Bridge ("the Bridge") adjacent to the Easement Area for the purpose of utilizing the Bridge or any portion thereof as part of a river crossing for the pedestrian and bicycle trail as described above. Grantee shall have the right to use any portion or all of the Easement Area for access by Grantee's staff or other parties authorized by the Bridge, as well as for staging of materials, parking and operation of machinery and equipment,

THIS SPACE RESERVED FOR RECORDING
DATA

Return to: City of Two Rivers
City Manager's Office
1717 E. Park Street, P.O. Box 87
Two Rivers, WI 54241

Parcel Identification Number
Non-homestead property

and any other activities associated with the construction, operation, maintenance, repair and reconstruction of such trail segment and any related work involving the Bridge.

In addition, Grantee is granted access to the Bridge adjacent to the Easement Area for purposes of demolishing and removing the Bridge, or doing other work on the Bridge, including inspection, restoration, repair or maintenance work.. Grantee shall have the right to use any portion or all of the Easement Area for access by Grantee's staff or other parties authorized by the Grantee, as well as for staging of materials, parking and operation of machinery and equipment, and any other activities associated with demolition, operation, maintenance, repair and reconstruction of the Bridge. Grantee shall provide the Grantor with at least 10 days written notice of Grantee's intent to use the Easement Area in connection with the Bridge for the purposes described herein.

4. Fence. Grantee shall install and maintain fencing at least 4 feet in height around the outer perimeter of the Easement Area (except for that portion bordering the West Twin River), whenever Grantee engages in any activity that involves use of construction equipment within the Easement Area, for activities addressed in this Easement Agreement.

5. Notices. All notices to any party to this Agreement shall be in writing and sent by nationally recognized overnight courier or by certified mail, postage prepaid, return receipt requested, addressed as follows:

Grantor: West River Lofts LLC
1420 W Center, Suite 2
Street, Milwaukee, Wisconsin 53206

Grantee: City of Two Rivers
City Manager's Office
1717 E. Park Street
Two Rivers, WI 54241

Either party may change its address for notice by written notice to the other party.

6. Covenants Running with the Land. All the terms of this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of and be enforceable by Grantor and Grantee and their respective successors and assigns.

7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

8. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the Office of the Recorder of Deeds for Manitowoc County, Wisconsin.

9. Partial Invalidity. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

10. Waivers. No delay or omission by any party in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Agreement shall be construed to be a waiver thereof. A waiver by a party of any of the obligations of any other party shall not be construed to be a waiver of any breach of any other terms, covenants or conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

GRANTOR:

WEST RIVER LOFTS LLC

GRANTEE:

CITY OF TWO RIVERS

By: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) SS
COUNTY OF MANITOWOC)

This instrument was signed and acknowledged before me on _____, 2023,
by _____.

[Seal]

Notary Public, State of Wisconsin
My commission _____

STATE OF WISCONSIN)
) SS
COUNTY OF MANITOWOC)

This instrument was signed and acknowledged before me on _____, 2023,
by _____ as _____ of the City of Two Rivers.

[Seal]

Notary Public, State of Wisconsin
My commission _____



ABACUS
ARCHITECTS

REVISIONS:

PLAN COMMISSION SUBMITTAL

1721 13TH ST, TWO RIVERS, WI 54241
PROPOSED NEW CONSTRUCTION
DATE 10/22/2021

A 2

PROJ. NO. 2019-35

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S

ARCHITECTURAL SITE PLAN
NOT TO SCALE

Need legal
for area
shown in
Red

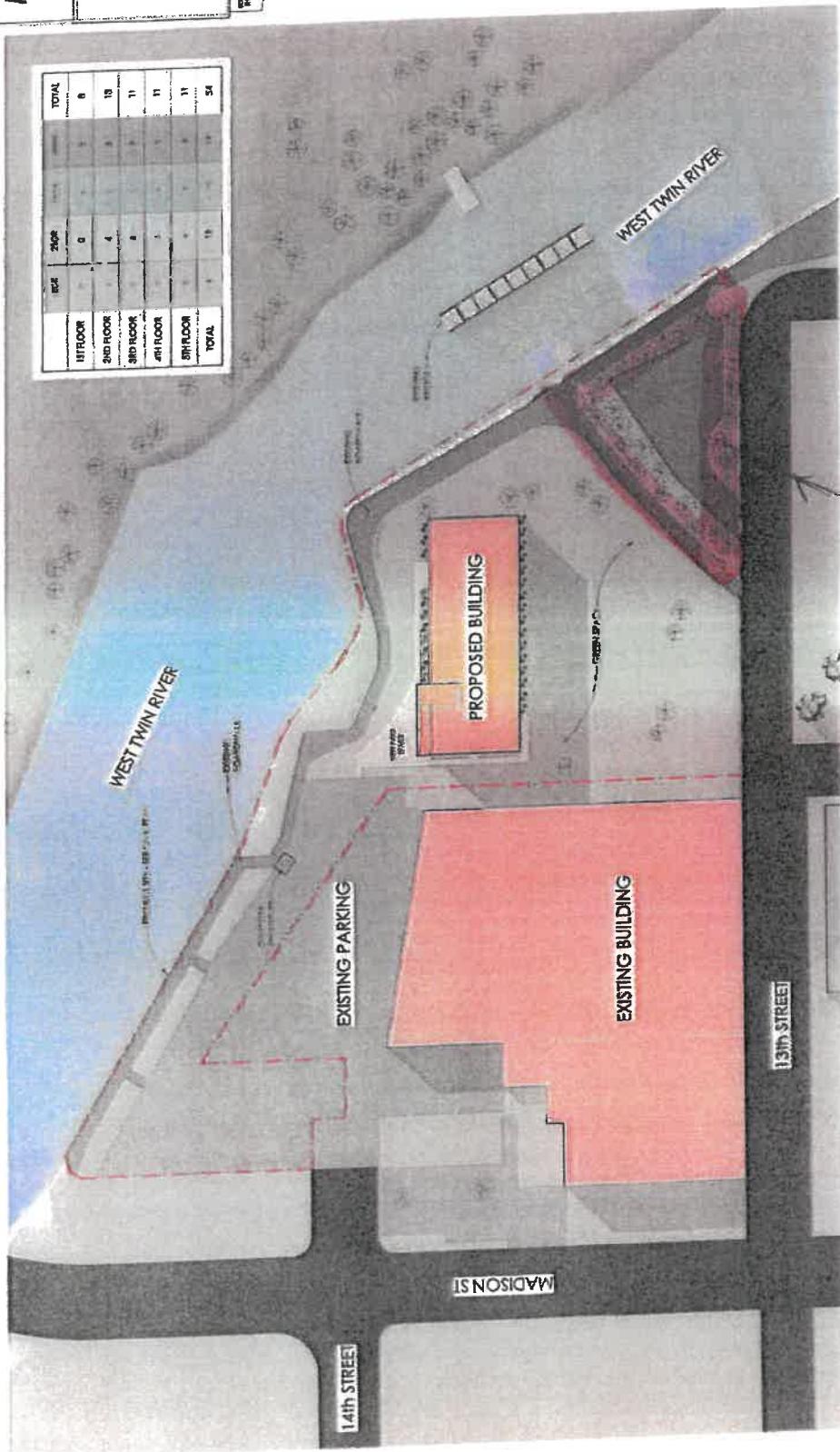


EXHIBIT G

**EASEMENT AGREEMENT
OPTION AGREEMENT FOR PROPERTY ADJACENT TO CN TRESTLE BRIDGE**

OPTION TO PURCHASE REAL ESTATE

AGREEMENT entered into as of this _____ day of _____ 2023 (the "Effective Date"), by and between **West River Lofts LLC** ("the Grantor") and the **City of Two Rivers, Wisconsin, a municipal corporation** ("the Grantee") for the Option to Purchase the real property (the "Premises") described in Section 1 of this Agreement.

FOR VALUE RECEIVED and in consideration of the mutual covenants and conditions contained herein, Grantors and Grantee agree as follows:

1. **PURCHASE OPTION.** The Grantee is conveying to the Grantor the exclusive Option to Purchase the Premises described in Exhibit A attached hereto and made a part hereof.

The parties hereto agree that Grantee shall have the perpetual option to buy the Premises for park, open space, trail and/or utility purposes. Grantee shall exercise this option by providing Grantors with written notice of its intent to exercise this Option, as provided in this Agreement.

Grantor hereby grants Grantee and Grantee's employees, agents, representatives and contractors, the right, on reasonable prior notice to Grantor, to enter upon the Premises for purposes of making such surveys, engineering studies, feasibility studies, environmental assessments, general inspections and other customary and reasonable studies, inspections and tests as Grantee deems necessary. Grantee shall repair any damage to the property caused by its entry on the property. All entry shall be during reasonable hours and after reasonable prior written notice to Grantor. All entry shall be at the sole risk and expense of Grantee, its employees, agents, servants, representatives and contractors.

2. **PURCHASE PRICE.** The purchase price for the Pond Parcel shall be \$1.00.

3. **TIME IS OF THE ESSENCE.** Time is of the essence as to possession, occupancy, date of closing, and all other dates and deadlines set forth in this Agreement.

4. **CLOSING.** Closing, as used herein, shall refer to the actual purchase and sale of the Premises in the event Grantee elects to exercise its option. The time and place of closing shall be chosen by Grantee, but shall in any case take place not less than thirty (30) days from the date on which Grantee's notice of its desire to exercise its option is given as provided in this Agreement. Grantee and Grantor shall attempt in good faith to arrange a mutually agreeable closing date.

5. **DEED.** At closing Grantor shall convey the Premises to Grantee by a quit claim deed.

6. **LEGAL POSSESSION AND OCCUPANCY.** Legal possession of the Premises shall be delivered to Grantee on the date of closing.

7. **ADJUSTMENTS/CLOSING COSTS/PRORATIONS.** Real estate taxes shall be prorated as of the date of closing based on the current year's real estate taxes, if available; on the prior year's taxes if the current year's taxes are not available. Grantee agrees to pay all closing costs (transfer tax, title insurance, etc).

9. **MISCELLANEOUS PROVISIONS.**

a. **Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

c. **Entire Agreement and Amendment.** This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof. This Agreement may only be amended by a written agreement of all the parties.

d. **Severability.** The invalidity of all or any part of this Agreement shall not render invalid the remainder of this Agreement or the remainder of any such part. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

e. **Section and Other Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

f. Assignment, Binding Effect, Benefits. This Agreement will inure to the benefit of the parties hereto and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. Neither party may assign its/his/her right or obligations hereunder without the prior written consent of the other party.

g. Governing Law-Jurisdiction. This Agreement shall be construed as to both validity and performance and enforced exclusively in accordance with and governed by the internal laws of the State of Wisconsin.

h. Survival of Representations and Warranties. All representations and warranties made herein shall survive the closing.

i. Notice. Notice hereunder shall be deemed given when mailed registered mail, return receipt requested, addressed to Grantor or Grantee as follows:

Grantee: % City Manager
1717 E. Park Street
Two Rivers, WI 54241

Grantors: West River Lofts LLC
1420 W Center Street
Milwaukee, Wisconsin 53206

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

WEST RIVER LOFTS LLC

BY: _____

CITY OF TWO RIVERS

BY: _____
Gregory E. Buckley, City Manager

STATE OF WISCONSIN
COUNTY OF MANITOWOC

Personally came before me on _____, 2023 the above-named _____
to me known to be the person who executed the foregoing and acknowledged the same.

Notary Public
(SEAL)

STATE OF WISCONSIN

COUNTY OF MILWAUKEE

Personally came before me on _____, 2023 the above-named _____
to me known to be the person who
executed the foregoing and acknowledged the same.

Notary Public
(SEAL)

This Instrument Drafted by
John M. Bruce, West & Dunn, LLC

