

**FOURTH AMENDMENT TO
RIVERHEATH DEVELOPMENT AGREEMENT**

WHEREAS, RiverHeath LLC, a Wisconsin limited liability company (the “Developer”), and the City of Appleton, a Wisconsin municipal corporation (the “City”) have previously entered into a Development Agreement dated July 15, 2009, and

WHEREAS, the Developer and the City have been working cooperatively to accomplish the projects identified in the Development Agreement, and

WHEREAS, progress has been made to accomplish the tasks outlined in the previous Development Agreement, and

WHEREAS, the Developer and the City seek to amend the Development Agreement to reflect the progress made since the signing of the original agreement,

WHEREAS, the Common Council of the City of Appleton hereby determines that the undertakings contained herein by the City of Appleton, and the expenditure of public funds as indicated herein, serve the public purpose of promoting development in the city of Appleton, and

NOW THEREFORE, the Developer and the City agree that the Development Agreement dated July 15, 2009, as amended by the First Amendment to the Development Agreement dated July 18, 2011, the Second Amendment to the Development Agreement dated September 12, 2011 and the Third Amendment to the Development Agreement dated January 10, 2013 shall be amended as follows:

1. Paragraph 3.5 is amended to read as follows:

3.5. Prepare site plans, specifications, development timetables, closing timetables and budgets for redevelopment and construction work to be undertaken in Phase 2a and 2b as shown on Exhibit B. Developer shall complete a traffic impact analysis prior to commencement of Phase III. Developer shall be solely responsible for any infrastructure improvements that may be necessary due to an increase in the traffic generated by the RiverHeath development at the John Street/Banta Court and Newberry Street/Walter Avenue intersections in conjunction with Phase III of the Development except as indicated in paragraphs 4.7 through 4.10.

2. Paragraph 4.7 shall be amended to read as follows:

4.7. City will construct the publicly dedicated portion of a concrete road, RiverHeath Way, from Banta Court to the north approximately 600' to connect with the Newberry Street Extension. A 10' wide concrete sidewalk will be constructed along the westerly side of RiverHeath Way and also along the west/north side of the Newberry Street extension. On-street parking shall be prohibited on the Newberry Street Extension. Both the streets and sidewalks will be placed in public right-of-way and remain public streets. The City agrees that parking along RiverHeath Way will remain unmetered. That portion of RiverHeath Way from the intersection of RiverHeath Way and Banta Court north to the intersection of RiverHeath Way and Newberry Street Extension shall be constructed to City standards.

The City shall publicly bid and hold the contracts for the construction of the publicly dedicated portion of RiverHeath Way. The street will be constructed in stages. ~~Stage 1 will consist of underground infrastructure, i.e., sewer and water and grading and graveling. Stage 1 will be completed in 2013. Stage 2 will consist of concrete paving and a 10-foot sidewalk. Stage 2 will be completed in 2014.~~

3. Paragraph 4.7.1 is created to read as follows:

4.7.1. The City will publicly bid, hold the contracts for, and manage the installation of one lift station and force main, the location of which shall be as indicated on Exhibit J attached hereto and incorporated herein by reference. The force main and lift station shall be privately owned, maintained and serviced by the Developer. The cost of said force main and lift station, purchase and installation, shall be included in the \$1.6 million identified in Paragraph 4.9.1 below.

The City shall be responsible for the installation of said lift station and force main only. The lift station shall be capable of accommodating the full build out density of the Development. Any upgrades or improvements to the lift station shall remain the sole responsibility of the Developer and the City shall have no responsibility for said improvements or upgrades.

4. Paragraph 4.9 is hereby amended to read as follows:

4.9. The City shall publicly bid, hold the contracts for, and manage the construction of the publicly dedicated portion of RiverHeath Way, as identified in

paragraph 4.7, ~~and~~ Newberry Street extension construction as identified in paragraphs 4.7 and 4.8 and lift station and force main as identified in paragraph 4.7.1.

The construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension and lift station and force main shall occur in two stages. The components of each stage shall be as indicated on Exhibit K attached hereto and incorporation herein reference. Stage 1 shall be completed in 2013. Stage 2 shall be completed in 2014.

5. Paragraph 4.9.1 is hereby amended to read as follows:

4.9.1. The City shall issue debt to pay for construction of the publicly dedicated portion of RiverHeath Way, ~~and~~ Newberry Street extension and the lift station and force main pursuant to the contract bids. Debt will be issued in two separate years. Debt for Stage 1 was issued in 2012. Debt for Stage 2 shall be issued in 2014. The Developer shall be responsible for repaying the City's contribution for the construction of the publicly dedicated portion of RiverHeath Way, ~~and~~ Newberry Street extension, lift station and force main. ~~If the cost of the public portion is below the \$1.6 million loan amount the Developer shall use the remaining loan proceeds to complete the remaining public infrastructure on site i.e., the trail.~~

Developer has agreed to pay 200 basis points above the all-inclusive cost interest rate on the general obligation notes that include this project, with the entire amount of both loans being repaid in nine (9) years.

Developer agrees that the City is a lender and ~~this the~~ Third Amendment to the Development Agreement is a note indicating loan amount for purposes of determining interest on the City's contribution, as provided for in Paragraph 4.5 of this Agreement.

If the cost of the public portion is below the \$1.6 million loan amount, the Developer shall use the remaining loan proceeds to complete the remaining public infrastructure on site i.e., the trail.

If the cost to the City for the construction of the publicly dedicated portion of RiverHeath Way, Newberry Street extension, and the private lift station and force main, exceeds the \$1.6 million loan amount provided to the Developer, the Developer shall escrow an amount sufficient to cover the remaining cost for Stage 2 prior to the City awarding a contract for said construction. The funds so escrowed shall be sufficient to cover the balance of Stage 2 costs as determined by the BID responses prior to the final award of the contract. The funds so escrowed shall be sufficient to cover the balance of Stage 2 costs as estimated by the City's Department of Public Works. The Developer shall place the funds in an escrow account held by the City of Appleton. No interest shall be earned on the escrowed funds. If there is a shortfall on the construction, Developer shall be billed. If there are excess funds, any excess shall be returned to the Developer upon final contract payment by the City. shall place in escrow or provide the City with proof of an established standby letter of credit.

6. Paragraph 4.9.2 is hereby amended to read as follows:

4.9.2. Developer shall make payments to the City to repay the City's loan to the Developer to finance the construction of the publicly dedicated portions of RiverHeath Way, ~~and the Newberry Street extension,~~ lift station and force main as described above. The Developer shall make payments for the debt issued for Stage 1 beginning in 2013. The Developer shall make interest only payments on the Stage 1 loan in 2013, 2014, 2015, and 2016. Beginning in 2017, and continuing in 2018 and 2019, the Developer shall make three equal payments of principal, in addition to interest due. All payments shall be made to the City on or before April 1 of each year. The City's loan to the Developer to finance construction of Stage 1 shall be paid in full by April 1, 2019.

The Developer shall make payments for the debt issued for Stage 2 beginning in 2015. The Developer shall make interest only payments on the Stage 2 loan in 2015, 2016, 2017, and 2018. Beginning in 2019, and continuing in 2020 and 2021, the Developer shall make three equal payments of principal, in addition to interest due. All payments shall be made to the City on or before April 1 of each year. The City's loan to the Developer to finance construction of Stage 2 shall be paid in full by April 1, 2021.

7. Paragraph 9.1 is hereby amended to read as follows:

9.1 The City shall provide such sewer utilities improvements up to the Development as may be required recouping the cost of same through normal City assessment procedures. The Developer shall be solely responsible for

installing and maintaining sanitary sewer infrastructure on the Development including any necessary lift stations and force mains except as provided in paragraph 4.7.1. Sanitary sewer service within the Development shall remain a private service. The Developer shall be responsible for providing a lift station(s) that can accommodate the full buildout density of the development.

8. The Schedule of Exhibits is amended to read as follows:

SCHEDULE OF EXHIBITS

- A. Legal Description of the Property
- B. Amended Project Timetable
- C. Amended Project/Concept Plan
- D. Amended Implementation Plan Document for Planned Development
- E. Amended Management Plan
- F. Habitat Enhancement and Mitigation Proposal as approved June 14, 2011
- G. Trail and Fire Access Easement Legal Description and Reference Drawing
- H. Chapter 30 Permit: Wisconsin Department of Natural Resources Revised June 14, 2011
- I. Newberry Street Exhibit Drawing
- J. Omni Associates Drawing Indicating the Location of the Lift Station and Force Main
- K. Construction Stage Outline

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Dated this ____ day of _____, 2013.

DEVELOPER:

RIVERHEATH, LLC

By: _____

Mark Geall, Member

STATE OF _____)
: ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2013, Mark Geall, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____

Notary Public, State of Wisconsin

My commission is/expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CITY OF APPLETON:

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Charlene M. Peterson, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2013, Timothy M. Hanna, Mayor and Charlene M. Peterson, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

James P. Walsh, City Attorney
J:\Attorney\WORD\jpw\RiverHeath\Fourth Amendment to Dev Agrm\
Fourth Amendment to Dev Agrm - City - 05-31-13.doc
Last changed: May 31, 2013
By: Jim Walsh