

PILOT AGREEMENT

Document Number

Document Title

**PAYMENT IN LIEU
OF TAXES AGREEMENT**

(TID 41)

Drafted By: Jeremy McKenzie, Asst. City Attorney

Recording Area

Name and Return Address

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Milwaukee, WI 53202

Parcel Identification Number (PIN):

361-1992-5

This PILOT AGREEMENT for payments in lieu of taxes (“**PILOT Payments**”) is made by and between RiverBend Place LLC, a Delaware limited liability company (“**OWNER**”), and the City of Milwaukee, a Wisconsin municipal corporation (“**CITY**”), as of _____, 2017.

RECITALS

A. OWNER is the owner of the real property legally described on **Exhibit A** (the “**PROPERTY**”).

B. OWNER recognizes that, notwithstanding the fact that portions of the **PROPERTY** may in the future qualify for tax exempt status, valuable government services and benefits will be provided to it and the **PROPERTY**, which services and benefits directly or indirectly relate to the public health, safety, and welfare, and which include, but are not limited to: fire and police protection; paved streets and streetlights; snow removal; benefits associated with living in an organized community.

C. The **PROPERTY** includes real estate that was the subject of that certain Development Agreement (Manpower Project) dated as of June 30, 2006 by and among OWNER, CITY and the Redevelopment Authority of the City of Milwaukee (“**RACM**”), evidenced by a Memorandum of Development Agreement (Manpower Project) dated as of June 30, 2006

recorded in the Office of the Register of Deeds of Milwaukee County, Wisconsin as Document No. 09333615 (together, the “**Development Agreement**”).

D. Per Common Council Resolution File No. _____, passed _____, 2017, the Common Council approved the termination of the Development Agreement and the Developer Increment Guaranty Agreement (defined in the Development Agreement). RACM, by RACM Resolution File No. _____ dated _____, 2017 also approved the termination of the Development Agreement and the Developer Increment Guaranty Agreement.

E. As a condition of the termination of the Development Agreement and the Developer Increment Guaranty Agreement, CITY requires that OWNER agrees, for itself and its successors and assigns, in the event that the PROPERTY, or any part of it, is or becomes exempt from payment of property taxes, to make PILOT Payments to CITY in recognition of the services and benefits referred to herein and the provision of financial assistance to the PROJECT (defined in the Development Agreement) pursuant to the terms of this PILOT AGREEMENT, and OWNER has agreed to do the same.

F. It is the intent of this PILOT AGREEMENT to have OWNER and all future owners and tenants of the PROPERTY, any parcel or building which is within the PROPERTY or any portion thereof, make payments in lieu of taxes, in the event that the PROPERTY is or becomes exempt from payment of property taxes, in order to assure the financial viability of TID 41.

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

1. INCORPORATION OF RECITALS. The parties hereby acknowledge that the above Recitals are part of this PILOT AGREEMENT.

2. CITY SERVICES.

A. Services Typically Covered by Property Tax. CITY agrees to continue to furnish governmental services and benefits to the PROPERTY of the same type, and to the extent, as are furnished from time to time, without cost or charge (except by means of property tax and authorized fees and charges), to other similarly situated commercial buildings and projects in CITY. Nothing in this PILOT AGREEMENT shall be construed to give OWNER or its successors and assigns a contractual right to specific governmental services, or to impose upon CITY any additional duties, it being the parties’ intent that CITY provide public services to the PROPERTY subject to the same terms and conditions as apply to properties owned by citizens or the public generally. Such services and benefits include, but are not limited by specific enumeration herein, those typically covered by the property tax such as fire and police protection, and on public streets, snow removal, and street lighting. CITY shall not have breached its obligations hereunder if it is prevented from providing benefits and/or services to the PROPERTY because of typical *force majeure* reasons (e.g. war, flood, fire, labor dispute, supply shortage, act of God, natural disaster, etc.), because of budgetary constraints, or because any person or entity shall assert a right which prevents delivery of such benefits and/or services.

B. BID Assessments, Special Assessments, Special Charges and Fees. Notwithstanding paragraph 2.A., or any future property tax exempt status of the PROPERTY, OWNER understands that the PROPERTY will be subject to applicable business and/or neighborhood improvement district assessments, special assessments, special charges, and special taxes as defined in Wis. Stat. 74.01 (and as also referred to in Wis. Stat. Ch. 66) and fees charged by CITY in the same manner that such special assessments, special charges, special taxes, and fees are charged for similar services and/or undertakings to commercial buildings within CITY. This provision shall not affect CITY's powers, consistent with the law, to determine the services and benefits (other than those typically covered by the property tax) that shall be provided to the PROPERTY and/or similarly situated property pursuant to this paragraph 2.B. Nothing contained herein shall preclude OWNER or its successors and assigns from appealing, as provided by law, the imposition of such special assessments, special charges, special taxes, or fees by CITY.

3. PILOT PAYMENTS.

A. Calculations. In recognition of those services and benefits covered by paragraph 2.A. of this PILOT AGREEMENT, beginning in the year the PROPERTY or any portion thereof becomes exempt from property tax, and so long as the PROPERTY or any portion thereof continues to be exempt, in whole or in part, under Wis. Stat. 70.11, OWNER or its successors and assigns shall pay CITY an annual PILOT Payment for the PROPERTY or the portion thereof which is exempt for each calendar year. The method to be used in determining the PILOT, through the year during which TID 41 is terminated, shall be the Value¹ for that tax year determined by CITY's Assessor times the Total Property Tax Rate² for the tax year, but with a proration for any exemption for a portion of a tax year to the extent applicable law allows for an exemption for a portion of a tax year.

B. Payment Due Date. PILOT Payments for the year in which the PROPERTY or a portion thereof becomes exempt and subsequent years shall be due and payable (i) in full on or before January 31 of the year following the calendar year for which the PILOT Payment was calculated, or (ii) if OWNER or its successor or assign elects to pay in installments, according to the following schedule: one-tenth of the PILOT Payment by the last day of each month for the first 10 months in the year following the calendar year for which the particular PILOT Payment was calculated. OWNER or its successor or assign shall be deemed to have elected to pay the PILOT Payment in installments by making the first full installment payment on or before January 31 in the respective year in which the PILOT Payment is due.

C. Use. CITY may use and expend PILOT Payments hereunder in such manner and for such purposes as CITY desires.

D. Mandatory Payment for Services to Offset PILOT Payment. Notwithstanding anything herein to the contrary, if the State of Wisconsin enacts a mandatory payment for

¹ "Value" herein means CITY Assessor's determination of the fair market value of the tax exempt portion(s) of the PROPERTY on January 1 of each tax year.

² "Total Property Tax Rate" means the net rate for all taxes calculated to include all taxing bodies reflected on City of Milwaukee tax bills from time to time (by way of example, in 2015, the applicable Total Property Tax Rate was \$29.35 per \$1,000 of assessed value).

municipal services to be paid by owners of property exempt from general property tax or similarly situated owners of exempt property, PILOT Payments shall be reduced dollar for dollar by any such mandatory payment paid by OWNER or its successors or assigns to CITY.

4. EXEMPT STATUS. NOTHING IN THIS PILOT AGREEMENT SHALL BE CONSTRUED AS GRANTING TAX-EXEMPT STATUS ON THE OWNER OR THE PROPERTY. IF OWNER QUALIFIES FOR TAX EXEMPT STATUS UNDER WISCONSIN LAW, IT IS THE OWNER'S OBLIGATION TO APPLY FOR TAX EXEMPT STATUS. At such time that OWNER is granted tax exempt status pursuant to Wis. Stat. 70.11, OWNER shall then make PILOT PAYMENTS pursuant to this PILOT AGREEMENT. No PILOT PAYMENT under this PILOT AGREEMENT is due from OWNER until such time that the PROPERTY is deemed to be exempt from payment of property taxes pursuant to Wis. Stat. 70.11.

CITY Assessor's Office may review the PROPERTY's exempt status under Wis. Stat. 70.11 from time to time with the respective January 1 dates being the reference dates for those exemption reviews. If CITY, as a result of those reviews or otherwise, determines that all or any portion of the PROPERTY no longer qualifies (or does not qualify) for exemption from property tax, (i) CITY will provide notice of such determination to OWNER or its successor or assign, (ii) this PILOT AGREEMENT shall be suspended with respect to any years and, if applicable, with respect to any portions of the PROPERTY for which exemption no longer applies, (iii) if PILOT Payments have been erroneously made for such tax years, CITY shall promptly refund such PILOT Payments, or, at the option of CITY, offset such PILOT Payments against any property taxes due, or to become due, from OWNER or its successors or assigns, in which case CITY will treat such offset as having been made under protest, and (iv) the PROPERTY, or any portion thereof which does not qualify for exemption, shall be placed on the property tax rolls for all years for which whole or partial exemption has been determined not to apply. If OWNER or its successors or assigns disagree with CITY's determination that the PROPERTY or any part thereof no longer qualifies for tax exemption, OWNER or its successors or assigns may challenge such determination by following the procedure set forth in Wis. Stat. 74.35 or as otherwise provided by law.

Notwithstanding anything to the contrary contained herein, OWNER acknowledges that it is or may be bound by the reporting requirement, in Wis. Stat. 70.11, preamble, and that under Wis. Stat. 70.109: exemptions are strictly construed; it is presumed that property is taxable; and the burden is on the person claiming exemption.

OWNER, on its behalf and that of its successors and assigns, also acknowledges that if it leases, or otherwise allows another person to use and/or occupy, all or a portion of the PROPERTY, such use may affect the PROPERTY's exempt status. See, e.g. the preamble of Wis. Stat. 70.11, 70.1105, and *Deutsches Land v. City of Glendale* (WI S.Ct. April 16, 1999). For example, if OWNER is exempt but only uses and occupies 90% of the PROPERTY for exempt purposes and leases the other 10% of the PROPERTY to a for-profit, nonexempt entity, and if the assessor applies a square footage, taxed in part analysis, the PROPERTY is to be taxed on a 10% basis and exempt on a 90% basis and the PILOT Payment would have to be paid on the 90% portion.

5. TERM. This PILOT AGREEMENT shall terminate upon the termination of TID 41, but until then, shall run with the land and be binding on all successors and assigns of OWNER having an interest in any portion of the PROPERTY. Upon termination of TID 41, either party may request that a Termination of this PILOT Agreement be signed by all parties in recordable form, and OWNER shall be responsible for recording same at its expense in the Milwaukee County Register of Deeds Office.

6. APPEAL OF ASSESSED VALUE. OWNER and its successors and assigns shall have the same rights to contest the assessed valuation of the PROPERTY as a taxpaying owner under Wisconsin law. CITY acknowledges OWNER's right to contest the assessed valuation of the PROPERTY under the procedures provided in Wis. Stat. 70.07 and 70.47, and CITY expressly agrees not to dispute OWNER's right to contest the assessed valuation of the PROPERTY under said statutes.

7. DOCUMENTS, INSPECTION, COOPERATION. OWNER and its successors and assigns shall cooperate with CITY (including, but not limited to, the City Assessor's Office, the City Attorney's Office, and the City Comptroller's Office) with respect to this PILOT AGREEMENT by allowing inspections of the PROPERTY upon reasonable written request of CITY and by allowing inspection of any leases applicable to the PROPERTY and such other documents that CITY may, from time to time, request concerning exemption and assessment determinations. Notwithstanding the foregoing, CITY expressly reserves all its rights in law and equity to inspect and to obtain disclosure, documents, inspection, and information.

8. AMENDMENT. This PILOT AGREEMENT may be modified and amended from time to time as CITY and OWNER shall mutually agree in writing. However, if an amendment or modification applies to only a portion of the PROPERTY, it is only the CITY and the current owner(s) of that portion of the PROPERTY that must agree in writing to the amendment or modification rather than all parties defined as OWNER in this PILOT AGREEMENT.

9. SEVERABILITY; GOVERNING LAW. If any provision hereof is duly held by a court of competent jurisdiction to be invalid with respect to any circumstance or otherwise, the remainder of this PILOT AGREEMENT and/or the application of the PILOT AGREEMENT to any other circumstance, shall not be affected thereby. The parties intend that the laws of the State of Wisconsin and ordinances and regulations of the City of Milwaukee shall be the governing law with respect to this PILOT AGREEMENT.

10. BINDING EFFECT/NOTICE. This PILOT AGREEMENT shall be binding upon and inure to the benefit of that parties hereto and their successors and assigns. Successors and assigns referred to in this PILOT AGREEMENT include any owner or tenant of any portion of the PROPERTY or improvements thereon. OWNER and its successors and assigns shall include a reference to this PILOT AGREEMENT in each future conveyance of all or any portion of the PROPERTY in order to give express notice of this PILOT AGREEMENT. Neither OWNER nor its successors or assigns shall have any liability for obligations accruing under this PILOT AGREEMENT with respect to any portions of the PROPERTY for any period of time other than during their ownership and/or occupancy. OWNER AND ITS SUCCESSORS AND ASSIGNS MAY WISH TO GIVE NOTICE OF THE TERMS OF THIS PILOT AGREEMENT TO

FUTURE TENANTS UNDER LEASES FOR PORTIONS OF THE PROPERTY AND ALLOCATE RESPONSIBILITY FOR PAYMENTS UNDER THIS PILOT AGREEMENT IN ANY LEASES FOR PORTIONS OF THE PROPERTY.

11. AUTHORITY. OWNER represents and warrants to CITY that its agents executing this PILOT AGREEMENT have been duly authorized to so execute and to cause OWNER to enter this PILOT AGREEMENT, and that OWNER has obtained all requisite consents and approvals concerning the same.

12. RECORDING, COUNTERPARTS. CITY, at OWNER's expense, shall cause this PILOT AGREEMENT or a memorandum of this PILOT AGREEMENT to be recorded with the Milwaukee County Register of Deeds and deliver a copy of the recorded PILOT AGREEMENT to OWNER. This PILOT AGREEMENT may be signed in one or more counterparts, which, when taken together, shall constitute one and the same document.

[SIGNATURE PAGE(S) FOLLOW(S)]

IN WITNESS WHEREOF, the parties hereto have caused this PILOT AGREEMENT to be executed by duly authorized representatives as of the date and year first written above.

<p>CITY: CITY OF MILWAUKEE</p> <p>By: _____ Tom Barrett, Mayor</p> <p>_____</p> <p>James Owczarski, City Clerk</p> <p>Countersigned:</p> <p>_____</p> <p>Martin Matson, Comptroller</p> <p>City Common Council Resolution File No. _____</p> <p>RACM Resolution File No. _____</p>	<p>OWNER:</p> <p>RIVERBEND PLACE LLC, a Delaware limited liability company</p> <p>BY The Brewery Works, Inc., a Wisconsin corporation, Manager</p> <p>By: _____ Gary Grunau, President</p>
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EXHIBIT A

Legal Description of the Property

Lot 2 of Certified Survey Map No. 7775, recorded June 22, 2006 as Document No. 9257626, a division of Lots 1 through 13 inclusive, in Block 30, part of Lots 1, 2 and 3 and all of Lots 4 through 10 inclusive, in Block 31, Lots 1 through 11 inclusive, in Block 32, Lots 1 through 3 inclusive, in Block 33, part of Lot 1, in block 40, the vacated alleys in Blocks 30, 31 and 32, vacated North Commerce Street, vacated West Vliet Street and part of vacated West McKinley Avenue adjacent to Blocks 30, 31, 32, 33 and 40, all in Plat of the Town of Milwaukee on the West side of the River and lands, all in the Northeast 1/4, Northwest 1/4, Southwest 1/4 and Southeast 1/4 of the Southeast 1/4 of Section 20, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

Tax Key No: 361-1992-5

Address: 201-229 W. Cherry Street