

AMENDED AND RESTATED EASEMENT AGREEMENT

This Amended and Restated Easement Agreement (“Agreement”) is entered into between the **City of Manitowoc**, 900 Quay Street, Manitowoc, Wisconsin (“Grantee”) and **Osuld Torrison River Lofts Association, Inc.**, a Wisconsin Corporation, 31 Maritime Drive, Manitowoc, Wisconsin (“Grantor”).

RECITALS

A. Grantor is the Association of Unit Owners of River Lofts, a Condominium pursuant to the Condominium Declaration dated November 12, 2007 and recorded in the Register of Deeds for Manitowoc County as Document Number 1038010 in Volume 2328 of Records, Page 508 and has the exclusive right to the management and control of the Common Elements of River Lofts, a Condominium.

B. River Lofts, a Condominium includes the following described real estate located at 31 Maritime Drive, Manitowoc, Wisconsin:

Lots Numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Block Numbered One Hundred Eighty-three (183) in the City of Manitowoc, according to the Recorded Plat thereof.

Tax Parcel No. 52-000-183-010

C. Grantor and Grantee are desirous of amending and restating a previous Easement dated January 19, 2009 and recorded on January 21, 2009 as Document Number 1058132 in Volume 2426 of Records, Page 555 in the Register of Deeds Office for Manitowoc County as it relates to certain Common Elements described herein as an existing wood dock and existing concrete walk and later described herein as Easement Area.

D. Grantor and Grantee intend to amend and restate the Easement in its entirety and this Agreement shall replace the previously recorded Easement referenced above.

Accordingly, in consideration of the recitals, the covenants, conditions and promises contained herein and set forth below, the Grantor and Grantee hereby amend and restate the Agreement and hereby agree as follows:

1. **Recitals.** The recitals above are deemed true and correct.
2. **Grant of Non-Exclusive Easement.** In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged by Grantor, Grantor hereby creates, establishes, grants and conveys unto Grantee, for Grantee’s benefit and the benefit of the public, a perpetual, irrevocable (unless terminated pursuant to Section 12. of this Agreement) a non-exclusive Easement to

provide ingress and egress for pedestrian usage at all times in, over, through and across the following legally described Easement Area:

An area located along the southernmost boundary of Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Block Numbered One Hundred Eighty-three (183) in the City of Manitowoc according to the recorded plat thereof, consisting of an existing wood dock and existing concrete walk as shown and identified on the Plat of Survey of the River Lofts Condominiums, prepared by SMI and dated September 20, 2019 and attached as Exhibit “A” (“Easement Area”).

3. **Purpose of Easement.** The purpose of the Easement is:
 - (a) to provide ingress and egress for pedestrians at all times; and
 - (b) to provide ingress and egress at all times for construction equipment to enable the Grantor and the Grantee to perform work related to the construction, installation, inspection, maintenance, cleaning, repair, reconstruction and removal of the Improvements and all appurtenances related thereto, including, but not limited to both public and private utilities, above and below grade, located in and adjacent to the Easement Area.

4. **Maintenance of Easement Area.** Grantee shall have the express and sole duty and responsibility to construct, install, complete, clean, repair and maintain the Improvements in the Easement Area at Grantee’s own cost and expense, and no responsibility therefore shall accrue to the Grantor by reason of its benefits from the Easement. Maintenance, landscaping, snow plowing, upkeep and general care of the Easement Area and the Improvements shall be the express and sole responsibility of the Grantee. Grantee will conduct snow removal on the easement area at the same time the Mariner’s Trail is cleared. Grantor may elect to remove snow at their own expense on a more regular schedule, and may request to be placed on the City’s downtown snow removal schedule at their expense. Grantor and Grantee shall each bear individual responsibility for the public utilities they have installed in the Easement area. Upon termination of the Easement as defined in Section 12. of this Agreement, the Easement Area shall be restored at Grantee’s sole expense, to a condition acceptable to the Grantor.

In exchange for the transfer of responsibility for maintenance of the easement area from Grantor to Grantee, Grantor shall supply electricity to power the lights on the Easement Area as well as the lights installed on the adjacent parcel located directly west of the Easement Area so long as the Easement is in effect. Should the Easement Area need to be repaired or replaced, Grantee shall be responsible to replace it with a similar structure consistent with Grantee’s Downtown Design Guidelines.

The trimming and removal of trees, bushes, shrubs or other foliage in the Easement Area, as may be necessary, in the judgment of the Grantee, for the safe location of Improvements, shall be the express responsibility of the Grantee.

5. **Other Structures in Easement Area.** Other than the stated purpose herein and except for the Improvements previously authorized pursuant to the TIF and 2007 Permit, the Grantor shall not erect or permit to be erected any building or other real or personal property improvements including, but not limited to a sign, fence, wall, pole, post, structure or other facility so as to prevent the Grantee or the public access in, over, through and across the Easement Area, without the written consent of the Grantee. The Grantee shall not erect or permit to be erected any building or other real or personal property improvements including, but not limited to a sign, fence, wall, pole, post, structure or other facility so as to prevent the Grantor or the public access in, over, through and across the Easement Area, without the written consent of the Grantor. The bulk storage of materials, equipment or other products, marketing and advertising displays, and the parking of vehicles shall be prohibited in the Easement Area, without the express written consent of the Grantee.

The Grantor shall be responsible for the payment of all costs related to any required construction, installation, inspection, maintenance, repair, reconstruction and removal of any Grantor-installed physical additions to the Improvements, upon terms and conditions acceptable to the Grantee. The Grantee shall be responsible for the payment of all costs related to any required construction, installation, inspection, maintenance, repair, reconstruction and removal of any Grantee-installed physical additions to the Improvements, upon terms and conditions acceptable to the Grantor.

6. **Quiet Enjoyment.** The Grantor and any of Grantor's agents, employees, tenants, licensees, invitees, successors and assigns shall have the right to use and enjoy the Easement Area, provided such use does not unreasonably interfere with the use of the Easement Area by the Grantee and the public. The Grantee's use of the Easement Area shall not unreasonably interfere with the Grantor's use of the Property.

7. **Representations.** The Grantor represent and warrant to the Grantee that Grantor is duly organized, validly existing and in good standing under the laws of the State of Wisconsin, and that the Grantor has legal or equitable interest in the Property, and further represent and warrant the following:

- (a) The Grantor has, at the time and date of execution of this Agreement, the power, authority and legal right to execute and enter into said Agreement, and to execute, enter into, and deliver all documents required of the Grantor to complete requirements contained in this Agreement; and
- (b) The person(s) signing this Agreement are duly authorized to do so, and their signatures bind the Grantor in accordance with the terms of this Agreement.

The Grantee represents and warrants to the Grantor that the Grantee has the power, authority and legal right to enter into all of the transactions, and to perform all of the covenants and obligations required to be entered into or performed by the Grantee, as the case may be, under this Agreement. The Grantee further represents and warrants to the Grantor that the Grantee is empowered and authorized to execute and deliver this Agreement and any other agreements and documents, if any, required hereunder to be executed and delivered by the Grantee as the case may be. When executed by the Grantor and the Grantee, all such agreements shall constitute legal, valid and binding obligations of the Grantor and the Grantee in accordance with its terms. The Grantor and the Grantee agree that any material false representation or warranty shall constitute a material breach under Section 14. of this Agreement.

8. **Standard Utility Easement Agreement.** The Easement Area shall be subject to the "Standard Utility Easement Conditions" ("SUEC") recorded at the Manitowoc County Register of Deeds Office on November 2, 1997 in Volume 1252, Page 498 of Records, Document Number 798738 and which are incorporated herein by reference. The Grantee hereunder shall be defined as a Grantee under Section 1.(c) of the SUEC. In the event there is a conflict between SUEC and this Easement, this Easement shall control.

9. **Covenant Running With Land.** This Easement is a covenant running with the Property and is binding upon and inures to the benefit of and is enforceable by the parties hereto, their heirs, successors and assigns. The Easement is appurtenant to Grantor's Property, and Grantor's interest in the Easement may not be transferred, assigned or sublet separately from the Easement Area.

10. **Taxes and Assessments.** Grantor shall pay in a timely manner when due, any real estate taxes, and all current and future assessments against the Property, special or otherwise, that may be levied and costs associated with the installation of any and all public utilities benefiting the Easement Area including, but not limited to, electric service, water main, storm sewer, sanitary sewer, sidewalks and street pavement in any public rights-of-way abutting said Easement Area.

11. **Condition of Easement Area.** Grantor and the Grantee specifically acknowledge that Grantor, pursuant to this Agreement, has granted rights to the Grantee and the general public for utilization of the Easement Area on Grantor's property on an "as is with all faults" basis regarding the quality, nature, adequacy and physical condition of the Easement Area, including but not limited to soils, geology, groundwater, constructability, stability or suitability of said Property for any particular purpose. The Grantor and Grantee specifically acknowledge that they are not relying on any representations or warranties of any kind, whatsoever, express or implied, regarding the condition of the Easement Area.

12. **Termination.** This Agreement shall remain in full force and effect until such date that there is an agreed upon date of termination of the Easement in writing signed by the Grantor and Grantee. Any agreement to terminate may include terms, conditions and requirements acceptable to the parties including, but not limited to the

preparation and recording of an instrument to terminate this Agreement. After the effective date that this Agreement is terminated and if so required, the Grantee shall have 60 consecutive calendar days to remove any Improvements made by the Grantee from the Easement Area. After the 60 day period has lapsed, the Grantor shall become the owner of all Improvements remaining in the Easement Area, and may dispose of the Improvements through any means acceptable to the Grantor.

13. **Records.** The Grantor and the Grantee shall maintain complete, accurate, and organized books and records with respect to this Agreement, and shall retain said books and records until this Agreement is terminated. Any authorized representative of the Grantee shall at all reasonable times be given access to, and the right to copy and inspect, any and all such Grantor books or records related to this Agreement.

14. **Default.** An event of default is defined as a failure of the Grantor or the Grantee to perform or observe any and all covenants, conditions, obligations or agreements on their part to be observed or performed when and as required under this Agreement. At any such time from the date of written notification by the non-defaulting Party to the defaulting Party of an event of default hereunder, the non-defaulting Party shall notify in writing the defaulting Party of said event of default, and the defaulting Party shall cure said event of default within thirty (30) consecutive calendar days of the date of said notice. If the non-defaulting Party commences to cure such matter within the thirty (30) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed at the earliest reasonable date, then the event of default will no longer be deemed to be an event of default.

15. **Remedies on Default.** Should the Grantor or the Grantee cause an event of default to occur which continues and is not timely cured, the non-defaulting Party may commence any legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligations, agreements or covenants of the defaulting Party under this Agreement.

16. **No Remedy Exclusive.** No remedy or right conferred upon or reserved to the Grantor or the Grantee in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Whenever an event of default occurs that is not timely cured, and the non-defaulting Party commences any lawsuit for the collection of payments due or to become due under this Agreement, the defaulting Party shall pay the reasonable professional and attorneys fees, court costs and other such expenses incurred by the non-defaulting Party.

17. **Insurance.** During the term of this Agreement, the Grantor is responsible to maintain insurance coverages against the Property, and shall at their sole expense, continually maintain in effect insurance against such risks, both generally and specifically with respect to the Improvements and any physical additions related thereto, in the Easement Area as follows:

- (a) **Liability Insurance.** Comprehensive General Liability Insurance, including Blanket Contractual Liability Insurance, against liability for personal injury, including the death of persons resulting from injuries occurring on or in any way related to the Easement Area, regardless of when the claim is made, and as the Grantee's interest may appear, in the minimum amount of **Two Million (\$2,000,000.00) Dollars per occurrence** and against liability for damage to the Improvements or the Easement Area; and
- (b) **Fire and Extended Coverage** for at least the sum of \$400,000;

or, if such coverage is not available when needed, such other similar coverage as is then available. Subject to the rights of any mortgagee or holder of a mortgage recorded on a date prior to the effective date of this Agreement encumbering the Property, if during the term of this Agreement, the Easement Area and the Improvements therein shall be materially damaged or partially or totally destroyed, the Grantor shall promptly repair, rebuild or restore the Easement Area and the Improvements in a manner consistent with the conditions existing at the Property prior to the date the damage or destruction occurred. In the happening of such an event, the Grantor shall promptly give written notice thereof to the Grantee. If the net proceeds of insurance policies resulting from claims for such losses are insufficient to pay in full the cost of such repair, rebuilding or restoration of the Easement Area and the Improvements, it shall be the responsibility of the Grantor to complete the work thereof and provide for payment of the portion of the cost thereof which is in excess of the amount of said proceeds.

The Grantee shall be named as an additional insured party or certificate holder, as applicable, on all liability and fire and extended coverage insurance policies required under the Section. All insurance policies required under this Section shall be purchased and maintained with insurance companies authorized to do business in the State of Wisconsin. Each such policy of insurance shall contain a provision that the insurance company shall give the Grantee at least thirty (30) consecutive calendar days prior written notice of amendment, extension, alteration, cancellation, non-renewal or material change during the term of this Agreement. In the event of a proposed cancellation or non-renewal of any such policy by an insurance company, the Grantor shall secure adequate replacement insurance policies prior to the effective date of such cancellation or non-renewal.

Prior to execution of this Agreement, the Grantor insurance carriers shall provide the Grantee with evidence of property insurance (ACORD form 27 or equivalent), plus endorsements affecting coverage required in this Section. The endorsements are to be signed by a person authorized by the insurance company to bind coverage, and

applicable Additional Insured Certificates of Insurance signed by the insurance company's representative evidencing the coverage required by this Agreement. Such evidence shall include confirmation that coverage includes or has been modified to include all insurance requirements contained in this Section. The Grantor shall, upon demand of the Grantee, deliver to the Grantee such policies of insurance and the receipts for payment of premiums thereof.

18. **Indemnification.** Grantee shall indemnify Grantor from and against all loss, costs, injury, death or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Grantee's activities conducted on the Easement Area, regardless of the cause of the injury, except to the extent caused by the negligence or misconduct of Grantor.

Grantor shall indemnify Grantee from and against all loss, costs, injury, death or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with the Grantor's activities conducted on the Easement Area, regardless of the cause of the injury, except to the extent caused by the negligence or misconduct of Grantee.

19. **Duration of Agreement.** This Agreement shall remain in full force and effect until terminated pursuant to Section 12. of this Agreement.

20. **Assignment.** The Grantor shall not assign this Agreement, or any part of it, without the prior written consent of the Grantee. The Grantee shall not assign this Agreement, or any part of it, without the prior written consent of the Grantor.

21. **Modification.** This Agreement is the entire agreement of the Grantor and the Grantee and supersedes all prior oral or written agreements or understandings and may not be changed, altered or amended, unless done with the consent of the Grantor and the Grantee and executed with the same formality as this Agreement.

22. **Waiver.** The failure of the Grantee to exercise any of its rights or remedies in connection with any material breach of the terms and conditions of this Agreement shall not be deemed a waiver of a subsequent material breach of the same or other term or conditions of this Agreement nor as a consent to a continued material breach of that term or condition.

23. **Applicable Law.** This Agreement shall be governed by, construed under, and enforced in accordance with, the laws of the State of Wisconsin.

24. **Notices.** All notices or other communications hereunder shall be deemed to have been sufficiently given or delivered if served by first class mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally and shall be addressed to the Grantee or the Grantor, as the case may be, as follows:

If to Grantee:
Deborah Neuser, City Clerk
City of Manitowoc
900 Quay Street
Manitowoc WI 54220-4543

with a copy to:
Kathleen McDaniel, City Attorney
City of Manitowoc
900 Quay Street
Manitowoc WI 54220-4543

If to Grantor:
Dean A. Fote, President
Osuld Torrison River Lofts
Association, Inc.
31 Maritime Drive, Suite #205
Manitowoc, WI 54220

with a copy to:
Attorney Timothy M. Salutz
SALUTZ & SALUTZ LLP
823 Marshall Street
P.O. Box 187
Manitowoc, WI 54221-0187

The above addresses may be changed at any time by written notice given in the manner provided above. The Grantor and the Grantee agree that electronically reproduced signatures such as by facsimile transmission are valid for execution or amendment of this Agreement.

25. **Covenant Running with the Land.** This Agreement shall be, upon being duly executed, recorded by the Grantee at Grantor's sole expense, at the Register of Deeds for Manitowoc County, Wisconsin, and shall be deemed to be and interpreted as a covenant running with the Property. This Agreement shall survive the termination of the TIF.

26. **Paragraph Headings.** Paragraph headings have been inserted in this Agreement primarily for convenience. If they conflict with the text, the text shall control.

27. **Pronouns.** Pronouns in this Agreement are to be construed as gender neutral. Pronouns, verbs, and/or other words in this Agreement in the singular form shall be interpreted as plural, and plural words as singular, as the context of the word dictates.

28. **Partial Invalidity.** If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

29. **Time of Essence.** Time is of the essence of this Agreement and of every term, condition, or covenant to be performed by the Grantor and the Grantee.

30. **Conflicts.** If the provisions of the TIF or other document between the Grantor and Grantee hereto conflict with the provisions of this Agreement, the provisions of this Agreement shall control unless the Grantee determines otherwise.

31. **Relationship of Parties.** Nothing in this Agreement nor any act of the Grantor or the Grantee shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the Grantor and the Grantee hereto.

32. **Survival of Warranties, Representations and Agreements.** Any warranty, representation or agreement herein contained shall survive the termination of this Agreement.

33. **Construction.** The Grantor and the Grantee have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against the Grantor or the Grantee hereunder by virtue of that Grantor or the Grantee having drafted this Agreement or any portion thereof.

34. **Date of Performance.** If the time period by which any right, option or election under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which any transactional closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

35. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Grantor and the Grantee and shall become a binding and enforceable Agreement among the undersigned hereto upon the full and complete execution and unconditional delivery of this Agreement by the Grantor and Grantee hereto. No prior verbal or written Agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by the Grantor and the Grantee in order for the same to be binding upon the Grantor and the Grantee.

36. **Counterparts.** This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

37. **Binding Effect of Agreement.** This Agreement shall bind and inure to the benefit of, and be enforceable by or against, the Grantor and the Grantee and their respective representatives, agents, successors, or assigns.

38. **No Vested Rights Granted.** Except as expressly provided in the Agreement, no vested right in connection with the Easement rights granted herein or the Improvements shall inure to the Grantor or the Grantee until the date the Agreement is fully executed. Nor does the Grantee warrant by this Agreement that the Grantor is entitled to any other approvals required.

acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Notary Public
Manitowoc County, Wisconsin
My commission (expires)(is): _____

