

15-416

**DEVELOPMENT AGREEMENT
ABATEMENT AND DEMOLITION – LAKESHORE TOWN CENTER**

THIS AGREEMENT (hereinafter called the “Agreement”) made as of the 20th day of April, 2015, by and between the **City of Manitowoc** (hereinafter called the “City”) and **Lakeside Improvement, LLC**, a Wisconsin limited liability company (hereinafter called the “Developer”). The City and Developer may collectively be referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Developer will be conducting abatement and demolishing the primary structure on the property (hereinafter the “Property”) legally described on the attached Exhibit “A” (tax parcel number 520-031-070) generally located at 828 Memorial Drive; and

WHEREAS, the Developer will request from the City a demolition permit (application for which is attached as Exhibit “B”), but the Developer is also requesting that the City modify or waive the standard form of performance guarantee; and

WHEREAS, the City must still protect the public interest by ensuring proper completion of the demolition; and

WHEREAS, the City and Developer are committed to seeing the Property redeveloped into an active mixed-use town center that generates economic activity and tax base for the community.

NOW, THEREFORE, in consideration of the promises and obligations herein set forth, it is mutually agreed between the Parties as follows:

- I. Proposed Project Scope and Developer Obligations. Developer shall demolish the former Lakeview Center mall, all parking lot lights and support structures, and all free standing signage on the Property. Unless there is a bona fide interest in developing the former Powers Auto Center, then Developer shall also demolish that structure. Developer shall document, remove from the site, and properly dispose of all contaminated (e.g., asbestos, lead-based, PCB, petroleum, etc.) materials. Developer shall also document, remove from the site, and properly dispose of all other demolition materials that will not be utilized for future fill material on the site. Developer may temporarily stockpile rubbelized building materials that will be utilized for future fill material in one or more visually screened locations. This scope of work is referred to hereinafter as the “Project”. Developer shall also comply with the following requirements for this Project:
 - A. Developer shall secure the services of one or more appropriate contractor(s) and expend all funds necessary to complete the Project.
 - B. Developer may leave building foundations in place as long as no hazardous materials or other contaminants remain, and utilities have been properly terminated in compliance with the requirements of the Manitowoc Municipal Code.
 - C. Developer shall comply with all applicable Federal, State, and Municipal codes throughout the Project, including submitting necessary plans and obtaining applicable permits.

- D. Developer obligations under this Agreement will be considered satisfied and complete when the scope of work is complete as deemed with a certificate of completion from the City.
- E. Developer shall complete the Project no later than December 31, 2015 in accordance with demolition permits approved by the City. If Developer fails to complete the Project by December 31, 2015, the Developer agrees and covenants to enter into good-faith negotiations with the City to sell the Property to the City for an agreed upon price, subject to each parties' rights including that the City may choose to condemn the property. The negotiated price will reflect a net reduction of property value based on the actual cost to complete any remaining demolition work. If the City elects to condemn or to acquire the property following its good faith negotiations, the Developer agrees to:
 - 1. Not contest the City's right of condemnation;
 - 2. Accept the City's jurisdictional offer (which will be based on a full narrative appraisal); provided Developer has determined that the offer is reasonably consistent with the fair market value based upon the City's appraisal and an independent MIA appraisal commissioned and paid for by Developer at the time of such jurisdictional offer; and
 - 3. Participate in a cooperative condemnation process.
- F. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, any other party in this Agreement, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. City Obligations.

- A. The City will cooperate with respect to the timely issuance of all approvable permits necessary for completion of the Project. All Parties agree to use reasonable efforts to obtain performance on the conditions of this Agreement, and the City will extend reasonable flexibility in the timeline giving consideration to Unavoidable Delays.
- B. Nothing in this Agreement shall be construed to require the City to purchase or condemn the Property. The City retains its rights to exercise discretion in this regard, and the preferred scenario is for the Developer to complete the demolition and develop the property.
- C. If Developer fails to complete the Project, the intent of this Agreement is that the Parties would first attempt to voluntarily reach an agreed upon price for the property prior to utilizing the condemnation option. The City agrees and covenants to not make a jurisdictional offer prior to December 31, 2016.
- D. As approved by the Common Council, this agreement serves in lieu of the requirement for an irrevocable letter of credit under Section 16.070, MMC.

III. Rights of Access

- A. The Developer shall permit representatives of the City to have reasonable access to the Property at all reasonable times for the purposes of enforcing this Agreement, including, but not limited to, inspection of all work being performed in connection with the Project.
- B. **No Charge.** No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section. The City shall not test, sample or remove any materials without Developer's written consent unless necessary for building inspection purposes.

IV. Other Rights and Remedies.

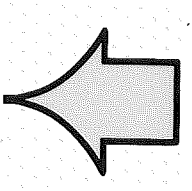
- A. **Termination and Remedies.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within 60 days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the Project in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the Parties; accordingly, the Parties shall, in the event of legal proceedings, authorize the remedies to compel the specific performance of the defaulting party. The Parties agree that specific performance constitutes completion of the scope of work defined in this Agreement.

- B. The Parties shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- C. Except as expressly provided otherwise in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more such remedies shall not preclude the exercise of it, at the same different times, of any other such remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance or manner of time thereof, of any obligation of any other party or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the party making waiver with respect to the particular obligation beyond

those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations.

- D. No official or employee of the City shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are Parties to this Agreement. No official or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City, or for any amount which becomes due to the Developer or its successors under this Agreement.
- E. **Insurance.** Prior to commencing demolition under this Agreement, the Developer shall obtain or cause its Contractor to provide and keep in full force and effect during demolition, an all-risk builder's risk insurance policy for the Property on which demolition is occurring with coverage equal to the total amount of the Developer's demolition contract or contracts for all improvements being demolished. Such builder's risk insurance policy shall name the Developer and the City as an additional insured, subordinate in its rights to such proceeds to the Developer's mortgagee. However, in such a case, Developer is not relieved of its obligation to perform under this Agreement. The Developer or its Contractor shall also obtain and keep in full force and effect during demolition, a comprehensive general liability insurance policy with all risks coverage of at least \$2,000,000.00 in the aggregate. Such policies of insurance shall be written by insurance companies authorized to do business in the state of Wisconsin. The City shall be named as additional insured on these certificates of insurance. Prior to commencement of demolition, the Developer shall file with the City a certificate of insurance with appropriate additional insured and notice endorsements setting forth that all coverage herein is in full force and effect and providing the City will be given 10 days written notice prior to termination or cancellation of such coverage.
- F. **Applicable Law, Severability, and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or Parties thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding among the Parties with respect to its subject matter, there being no terms, conditions, warranties or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors and assigns. The parties agree any litigation relating to this agreement shall be in Manitowoc County Circuit Court, Manitowoc, Wisconsin.
- G. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the Parties.
- H. **Third Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.



Attest:

City of Manitowoc

Justin M. Nickels, Mayor

Jennifer Hudon, Clerk

Attest:

Lakeside Improvement, LLC

Steven A. Elkind, Ph.D., Sole Member

Exhibit A
Legal Description

A PARCEL OF LAND LYING IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 19 NORTH, RANGE 24 EAST, BEING PART OF LOTS 16, 17 AND 31, OF OEHLER AND GUENTHER'S SUBDIVISION IN THE CITY OF MANITOWOC, MANITOWOC COUNTY, WISCONSIN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH IS 40 FEET EAST AND 40 FEET SOUTH OF THE WEST 1/4 CORNER OF SECTION 16, TOWNSHIP 19 NORTH, RANGE 24 EAST, BEING IN THE SOUTHEAST CORNER OF JOHNSON DRIVE AND EAST MAGNOLIA AVENUE, BEING THE POINT OF REAL BEGINNING; THENCE SOUTH 89 DEGREES 58' 25" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF EAST MAGNOLIA AVENUE 184.90 FEET; THENCE ALONG THE ARC OF A 778.52 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARING SOUTH 67 DEGREES 35' 55" EAST, LONG CHORD 592.71 FEET) 608.05 FEET; THENCE SOUTH 45 DEGREES 13' 25" EAST 206.67 FEET; THENCE ALONG THE ARC OF A 1739.73 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARING SOUTH 50 DEGREES 55' 10" EAST, LONG CHORD 345.33 FEET) 345.90 FEET (RECORDED AS 1486.06 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING SOUTH 50 DEGREES 55' 10" EAST, LONG CHORD 294.98 FEET, 295.46 FEET); THENCE SOUTH 56 DEGREES 36' 55" EAST 42.62 FEET (RECORDED AS SOUTH 56 DEGREES 36' 55" EAST 104.30 FEET) TO THE WESTERLY RIGHT OF WAY LINE OF MEMORIAL DRIVE AND STATE HIGHWAY 42; THENCE SOUTH 33 DEGREES 23' 05" WEST ALONG SAID RIGHT OF WAY LINE OF MEMORIAL DRIVE 148.00 FEET; THENCE SOUTH 25 DEGREES 58' 40" WEST 100.84 FEET (RECORDED AS SOUTH 24 DEGREES 52' 05" WEST 101.30 FEET); THENCE SOUTH 33 DEGREES 23' 05" WEST, 244.84 FEET (RECORDED AS SOUTH 33 DEGREES 23' 05" WEST 241.10 FEET); THENCE ALONG THE ARC OF A 173.72 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARING SOUTH 61 DEGREES 35' 35" WEST LONG CHORD 164.23 FEET) 171.05 FEET (RECORDED AS A 178.08 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING SOUTH 61 DEGREES 35' 35" WEST, LONG CHORD 168.35 FEET, 175.35 FEET) TO THE NORTH RIGHT OF WAY LINE OF REED AVENUE; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 89 DEGREES 48' 05" WEST 776.00 FEET MORE OR LESS TO THE EAST RIGHT OF WAY LINE OF JOHNSTON DRIVE; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 00 DEGREES 07' 25" WEST 1112.12 FEET MORE OR LESS TO THE POINT OF REAL BEGINNING.

Tax Parcel Number(s): 52-520-031-070

Exhibit B
Demolition Permit Application