CITY OF MANITOWOC TID NO. 22
DEVELOPMENT AGREEMENT WITH
1015 BUFFALO LLC

THIS SPACE RESERVED FOR RECORDING DATA 13 CHG

NAME AND RETURN ADDRESS

City Clerk
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

052-000-168-040
Parcel Identification Number

This instrument was drafted by:

Adam Tegen
City of Manitowoc
Community Development Director

CITY OF MANITOWOC TID NO. 22
DEVELOPMENT AGREEMENT WITH
1015 BUFFALO LLC

THIS AGREEMENT (hereinafter called the "Agreement") made as of the 29 day of January, 2021, by and between The City of Manitowoc (hereinafter called the "CITY") and 1015 BUFFALO LLC (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may be referred to individually as a "PARTY" and may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to develop the Project defined below on a parcel of land with an address of 1015 Buffalo Street, City of Manitowoc, Manitowoc County Parcel #052-000-168-040, more specifically described as and shown on Exhibit A (the "Property"); and,

WHEREAS, DEVELOPER and/or its future tenant (the "Tenant") will invest a total of approximately $1,500,000 on the Property including exterior façade improvement and interior building renovations (including electrical and mechanical upgrades), and soft costs (collectively, the "Project"). The purpose of the Project is to establish a new brewery, taproom, and restaurant within a historic building. The Project will reinvigorate a historic former commercial and industrial building that has traditionally been underutilized and struggled to find an identity. The redevelopment will also result in additional job creation and downtown entertainment options; and,

WHEREAS, the Property is located in Tax Increment Finance District No. 22 ("TID 22"), and development incentives were identified in the Project Plan for TID 22 to support projects within the district. The use of Tax Incremental Financing is necessary for the Project to take place as the Project is impacted by extraordinary development costs due to the renovation of a historic structure that has traditionally been utilized for industrial and storage uses as well as the high cost of equipment necessary to support the use; and,

WHEREAS, the CITY has targeted the downtown core to support additional entertainment and dining options, development, and tax base for the community; and,

WHEREAS, the completed Project is anticipated to result in additional economic activity and quality of life while increasing property values throughout TID 22 and the entire downtown.

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

I. PROPOSED PROJECT SCOPE AND CONSTRUCTION.

A. DEVELOPER agrees to complete the Project including the Renovation of the property in accordance with the façade improvement plans submitted for the City

Façade Grant and interior building permit plans showing 1st floor restaurant/taproom/brewery space and lower level brewery operations. The total Project costs will be approximately $1,500,000. The total assessed value for the Property upon project completion shall not be less than $425,000, with a minimum increase of $319,000.

B. The DEVELOPER shall use its good faith best efforts to complete the exterior renovations, 1st floor renovations for the restaurant/taproom/brewery and lower level renovations for brewery operations to complete the Project (the 1st floor and lower level spaces shall be deemed complete at by the delivery of a final certificate of occupancy or occupancy permit of that portion of the building) by December 31, 2021 (the "Completion Date") in accordance with site and building plans as approved by the CITY. In it anticipated (but not required) that in the future, the 2nd story may be developed as an additional entertainment space but is not part of the Project. CITY acknowledges that site and building plans may be subject to change throughout the Project, subject to CITY's further review and approval, which shall not be unreasonably withheld.

C. The CITY will cooperate and use reasonable efforts with respect to any and all permits necessary for completion of the Project. This shall include, but not be limited to, the CITY's agreeing the Tenant's current alcohol license can be transferred to Tenant's new location at the Property assuming that the Tenant maintains that license until the point an occupancy permit can be issued.

D. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.

E. The Exterior Concept Plans and Interior Floor Plans for the Project (hereinafter, collectively, the "Concept Plan") are attached as Exhibit "B" and are incorporated by reference to this Agreement. By execution of this Agreement, the PARTIES expressly approve the Concept Plan. The CITY or the DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the CITY and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with federal, state and municipal code requirements.

F. The CITY shall sell the eastern 30 feet of parcel 052-000-073-090 adjacent to the development parcel to DEVELOPER (or its assignee) for the fee of $1 by December 31, 2020. The DEVELOPER agrees to grade the parcel consistent with the overall River Point District Development Plans and utilize the property for an outdoor entertainment space. Said use shall be developed consistent with an approved site plan. The DEVELOPER shall have access to CITY clean fill stockpiled within the River Point District at no cost. Concomitant with the sale of the parcel discussed herein, the CITY will be granting DEVELOPER (or its assignee) an Option to Purchase (on terms and conditions set forth in the offer to

purchase related to the DEVELOPER's purchase of the Property from CITY) the real property described as follows:

> The West 20 feet of Lot 5, Block 168 of the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin and all of Lot 6, Block 168 of the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin and a portion of the vacated Buffalo Street right of way being 5 feet wide adjacent to said West 20 feet of said Lot 5 and all of Lot 6.

G. 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, pandemic or epidemic, any other PARTY (or such PARTY's failure to perform including failure of CITY to install "River Point District" infrastructure) 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.

H. CITY shall work with DEVELOPER in good faith to provide storm water collection to the rear of the building located on the Property (i.e. south of the building) including, without limitation, granting easement(s) across CITY owned property and / or otherwise providing access and connection to any storm sewer system (and other related infrastructure) installed by the CITY in/on/under the area commonly known as the River Point District.

I. CITY agrees to work in good faith with DEVELOPER to provide 1015 Buffalo Street with new, adequately sized water and sanitary sewer laterals as part of the Buffalo Street reconstruction that was approved with the City of Manitowoc's 2021 Budget.

J. CITY agrees to work in good faith with DEVELOPER to obtain (including, without limitation, providing / obtaining necessary approvals) for a "curb cut" to DEVELOPER on directly east of the building on the Property to enable DEVELOPER's and Tenant access to the rear of such building.

II. FINANCIAL ASSISTANCE

A. Beginning in 2023 (based on 2022 real estate taxes), CITY shall reimburse the DEVELOPER up to 90% of the Annual TIF Increment Revenue paid to TID 22 for the Property. The reimbursement shall be for either a period of 15 years or an amount not to exceed a cumulative value of $70,000 (which is based on the

extraordinary development costs associated with the renovation of a historic building and equipment costs), whichever comes first. This reimbursement shall be known as the "Annual TIF Payment."

B. This financial assistance plan includes any and all further improvements to the Property for the 15-year period, including any additional building improvements or development on the Property that generates Annual TIF Increment Revenue for TID 22 over the Base Year Taxes.

C. The Annual TIF Payment shall be 90% of the amount calculated by subtracting the Base Year Taxes from the actual real property taxes paid on an annual basis starting with the December 2022 tax bill. The "Base Tax Value" is the 2020 assessed real estate value for the Property, which is $104,000. The actual taxes paid on the Base Tax Value are defined to be the "Base Year Taxes." Real property taxes for purposes of this formula do not include any special assessments, special taxes, or special charges, and personal property taxes are excluded from this calculation. Notwithstanding the dates in paragraph II(A) above, the first of the 15 payments shall be made in the year in which there is substantial increment from the Project; that is, if on January 1, 2022 substantial construction of the Project has not yet begun, which would be reflected in the January 1, 2022 assessment, the December 2022 tax bill and received by the CITY in 2023, then the first payment will be made in 2024, reflecting the substantial commencement of construction of the Project completed as of January 1 of 2022.

D. Each year, the Annual TIF Payment will be made on August 15 following the CITY receiving proof from DEVELOPER that the annual real estate and personal property tax bills for the Property have been paid in full, whether in one payment or in installments as allowed under City law.

III. DEVELOPER'S TRANSFER RESTRICTIONS AND OBLIGATIONS

A. DEVELOPER shall be prohibited from selling the Property to an entity which is exempt from real estate taxes without the approval of the Manitowoc Common Council.

B. Until completion of the obligations under Sections I and II above, there shall be neither sale of the Property nor any assignment of rights or obligations under this Agreement, without CITY consent, which shall not be unreasonably withheld. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement. DEVELOPER may assign his payments to a lending institution as collateral, and the Community Development Director for CITY is authorized to consent to such an arrangement upon approval of the Finance Director and City Attorney.

C. DEVELOPER shall not challenge any property tax assessment within the first ten years of this agreement unless the assessment increases by more than 20% from the required minimum total assessed value of $425,000, real or personal on the development parcel, nor cause the property to be used in such a fashion that taxes cannot be assessed.

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 sixty (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 development in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the CITY; accordingly, the CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting PARTY as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the CITY and the DEVELOPER may seek damages. No other remedies for the PARTIES to this agreement exist outside of this Agreement.

B. The CITY and the DEVELOPER 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. No member of DEVELOPER or any member of its members shall be personal liable to the CITY or any successor in interest, in the event of any default or breach by DEVELOPER, or for any amount which may become due to the CITY by DEVELOPER or its successors under this Agreement.

E. **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 between the CITY and the DEVELOPER 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 hereto, their respective successors and assigns.

F. **Amendments to Agreement**. This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.

G. **Third Parties**. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto 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.

H. **No Partnership Created**. This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any PARTY liable for any of the debts or obligations of any other PARTY.

I. **Formalities and Authority**. The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.

J. **Notices and Demands**. A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER:
1015 BUFFALO LLC
Attn: Alex Allie
100 Maritime Drive, Suite 3C
Manitowoc, WI 54220

With a copy to:
Attorney Trent R. Nelson
Kummer, Lambert, Fox & Glandt LLP
927 S. 8th Street
Manitowoc, WI 54220

To CITY:
City of Manitowoc
Attn: City Clerk
900 Quay Street
Manitowoc, WI 54220

or to such other address, within the United States, with respect to a PARTY as that PARTY may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a PARTY under this Agreement to any other PARTY under this Section shall be given to each other PARTY to this Agreement.

K. **Nonmerger and Survival**. Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

{SIGNATURE PAGES FOLLOW}

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make these commitments, and intend them to be binding upon their respective entities and to execute this Agreement on their behalf.

1015 BUFFALO LLC: By its Sole Member, Terex Holdings, LLC

By: _____
Alex C. Allie, Member – owner of 50% of Membership Units in Terex Holdings, LLC

By: _____
Peter C. Allie, Member – owner of 50% of Membership Units in Terex Holdings, LLC

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this 29 day of January, 2021, the above named Alex C. Allie and Peter C. Allie, to me known be the persons who executed the foregoing instrument on behalf of 1015 BUFFALO LLC.

_____
Notary Public, State of Wisconsin
My Commission: 9-10-21
Carrie Wallander

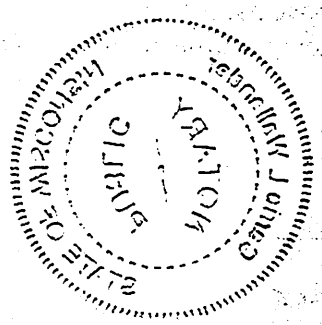
CITY OF MANITOWOC

By: _____
Justin M. Nickels, Mayor

Attest: _____
Mackenzie Reed-Kadow, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me this 8th day of ~~January~~ February, 2021, the above named, Justin M. Nickels, Mayor, and ~~Deborah Neuser,~~ Mackenzie Reed-Kadow, Clerk, to me known to be the persons and officers who



executed the foregoing instrument and acknowledged that they executed the same as such officers by the CITY of Manitowoc's authority.

Notary Public, State of Wisconsin
My Commission: September 12, 2021

NOTARY PUBLIC
AMANDA BARYENBRUCH
STATE OF WISCONSIN

Exhibit A
Legal Description of the Property:

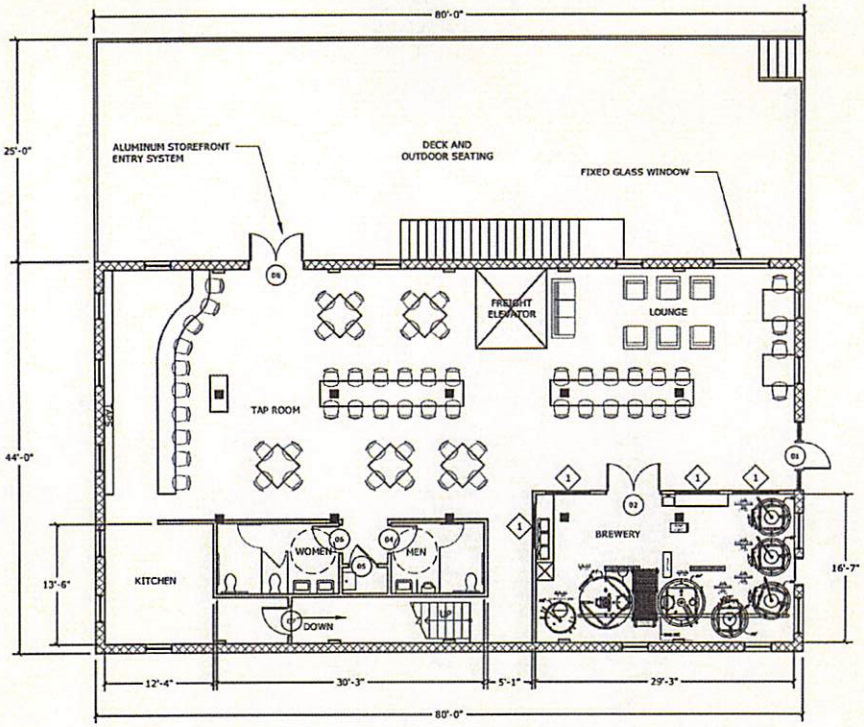
Lots three (3) and four (4) and part of vacated Buffalo Street, Block One Hundred Sixty-Eight (168), in the Original Plat, in the City of Manitowoc, Manitowoc County, Wisconsin.

Depiction of the Property:

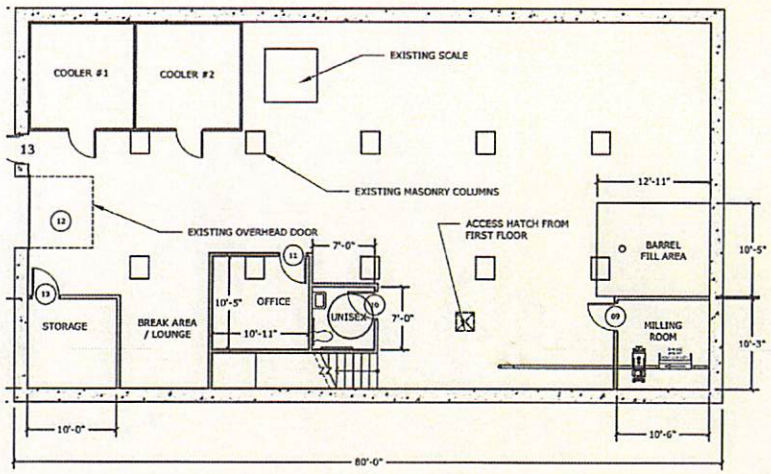
The "Property" is the area outlined in blue in the drawing below

Exhibit B
Concept Plans

PROPOSED PLANS



MAIN LEVEL



LOWER LEVEL