

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this “MOU”) is by and between City Centre L.L.C. (along with any successor in interest in the Property [as that term is defined below] “City Centre”) and the City of Manitowoc, Wisconsin (the “City”). City Centre and the City shall hereafter generally be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, City Centre owns real property with commonly known address of 500 South 16th Street within the City (the “Property”); and

WHEREAS, Center Street is located on the Property; and

WHEREAS, Center Street was a public street until the time it was vacated via an Ordinance executed by the City on or around September 18, 1941, such Ordinance being recorded in the office of the Manitowoc County Register of Deeds on September 23, 1941 at 10:46am as Document Number 254406, Volume 199, Page 643; and

WHEREAS, the vacating Ordinance did not vacate the City’s infrastructure underneath Center Street; and

WHEREAS, the Parties have been in discussion for some time as to which Party owns the sewer lines underneath Center Street (the “Sewer Lines”) and which Party has the corresponding responsibility for ongoing maintaining (including, without limitation, repairing and replacing such Sewer Lines) that accompany ownership; and

WHEREAS, while the Parties disagree as to the ownership of the Sewer Lines, the Parties have come to an agreement as to current repair and replacement and future ownership and repair and replacement of the Sewer Lines;

WHEREAS, the Parties seek to memorialize their agreement in this Memorandum of Understanding.

NOW, THEREFORE, in consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Repairs and Replacements. The Parties agree to share equally the cost (such cost sharing shall be as further set forth in and subject to Section 2, below) of repairs and replacement (collectively, the “Maintenance Work”) necessary to bring the Sewer Lines and related components up to a condition that would be expected of public sewer lines in the same class of city as the City is in (as determined pursuant to Wis. Stat. Section 62.05). The Maintenance Work may include, but is not limited to, re-lining of the existing Sewer Lines and replacement of the Sewer Lines. The exact nature of the Maintenance Work shall be as mutually agreed by the Parties after consultation with contractors and utility personnel with the expertise and industry experience necessary to evaluate the condition of the Sewer Lines.
2. Payment of Costs of Maintenance Work. Notwithstanding anything to the contrary set forth herein,

the City agrees to pay one hundred percent (100%) of the first sixteen thousand dollars (\$16,000) of the costs and expenses of the Maintenance Work in recognition of City Centre's payment of utilities prior to the date hereof, the price of which were unintentionally inflated as a result of the Sewer Lines being compromised and use of a usage measurement with which City Centre did not agree. The City and City Centre will share equally all costs and expenses which exceed such sixteen thousand dollars (\$16,000) threshold (all costs and expenses in excess of such threshold, the "Costs") discussed above, with the payments being as further set forth in this Section 2. The City shall pay all Costs when due and City Centre shall reimburse the city for City Centre's share of (i.e. 1/2) of all such Costs via a special assessment, with such repayment being in monthly installments included on City Centre's monthly utility bill until City Centre's portion of the Costs is repaid in full. The amounts outstanding until repayment in full shall not be subject to interest, penalty or other added costs. The amount of each such monthly installments shall be determined by dividing the total Costs by eighty-four (84) and, as such, shall be paid by City Centre via eighty-four (84) monthly payments.

3. Assurance of Continued Services. As a material incentive for City Centre's agreement with the terms and conditions herein, the City agrees that it shall never, unless agreed to by City Centre in writing (in City Centre's sole and absolute discretion), cause or permit the discontinuation of any utility currently servicing the Property. City agrees to indemnify, defend and hold City Centre harmless from and against any and all costs incurred by City Centre associated with the discontinuation of any utility currently servicing the Property.
4. Covenants Run with the Land; Recordation. It is the intent of the Parties that this document and all covenants, conditions, requirements, rights and obligations of the Parties herein shall be deemed to run with the Property and shall be construed as inuring to and be binding upon the successors in interests to the Property. The Parties intend that this document be recorded in the Office of the Manitowoc County Register of Deeds.
5. Ownership of Sewer Lines. City Centre agrees, at the conclusion of the Maintenance Work and after full payment by the City of all amounts due for such Maintenance Work, to take ownership and possession of the Sewer Lines and have responsibility for any future Maintenance Work, except to the extent the need for the same is as a result of the action or inaction of the City or as a result of the City's failure to comply with the provisions of Section 3, above. The City, at the City's expense, shall take such steps (including, without limitation, executing and recording of documents) as are necessary to vacate the City's ownership, free and clear of all liens and encumbrances, of the Sewer Lines and turn the same over to City Centre. City Centre agrees to take ownership of such Sewer Lines but shall not assume any liability or responsibility for any liens or encumbrances that exist against the Sewer Lines at the time of such vacation. City shall indemnify, defend and hold City Centre harmless from and against any such liens and encumbrances so existing.
6. Maintenance of Sewer Lines. City Centre agrees to maintain the sewer lines at Property in good working order and condition. If the City or MPU observes leaking at the property for which City Centre is responsible, City Centre shall be notified and has 30 days to inspect and present a solution for repair.

7. Post-Execution Billing for Sewer Services. After execution of this Agreement and at all times thereafter, billing for sewer services utilized on the Property shall be on a “water-usage” basis and all metering/measuring utilized in determining sewer utility bills for the Property shall be water-usage based metering. City shall indemnify, defend and hold City Centre harmless from and against any increased costs resulting from the utility utilizing billing methodology other than that set forth herein, any billing methodology applied to similarly situated industrial sites, or as required by the Public Service Commission of Wisconsin.
8. Survival. The provisions of Section 6, above, and all other provisions herein which, by their nature are interpreted to survive the transfer of the Sewer Lines, shall survive the transfer of the Sewer Lines, such survival being indefinite and running with the Property as set forth above.
9. Further Assurances. The parties will take such additional steps and/or execute additional documents, including the necessary vacations, to honor the intent of this agreement.

[SIGNATURES ON FOLLOWING PAGE]

[SIGNATURE PAGE OF MEMORANDUM OF UNDERSTANDING]

Agreed to by the Parties:

CITY CENTRE L.L.C.

CITY OF MANITOWOC

By: _____
Peter C. Allie
Title: Authorized Signor

By: _____
Justin M. Nickels
Title: Mayor

STATE OF WISCONSIN)
) SS
MANITOWOC COUNTY)

STATE OF WISCONSIN)
) SS
MANITOWOC COUNTY)

Personally came before me this _____ day of
December 2021, the above-named **Peter C. Allie**, to
me known to be the person who executed the
foregoing instrument and acknowledged the same.

Personally came before me this _____ day of
December 2021, the above-named **Justin M. Nickels**,
to me known to be the person who executed the
foregoing instrument and acknowledged the same.

Notary Public, State of WI
My Commission Expires: _____

Notary Public, State of WI
My Commission Expires: _____

By: _____
Mackenzie Reed-Kadow
Title: City Clerk

STATE OF WISCONSIN)
) SS
MANITOWOC COUNTY)

Personally came before me this _____ day of
January 2022, the above-named **Mackenzie Reed-
Kadow**, to me known to be the person who executed
the foregoing instrument and acknowledged the same.

Notary Public, State of WI
My Commission Expires: _____