

RIGHT OF ENTRY AGREEMENT

(Bay Point Developers II LLC)

THIS RIGHT OF ENTRY AGREEMENT ("Right of Entry") is made and entered into as of the ____ day of _____, 2024 by and between the City of Manitowoc, a Wisconsin municipal corporation ("City") and Bay Pointe Developers II LLC a Wisconsin corporation ("Bay Pointe").

WITNESSETH:

WHEREAS, City and Bay Pointe propose to enter into an Agreement where the City will be permitted access through the property described in Exhibit A (the "Property") for purposes of access to Lincoln Park for the purposes of construction of a pedestrian bridge and asphalt trail; and

WHEREAS, City has requested and Bay Pointe has granted permission for City to enter the Property to access Lincoln Park; and

WHEREAS, City has requested and Bay Pointe has granted permission for the City to install a temporary tracking pad on the Property for compliance with erosion control measures;

NOW, THEREFORE, in consideration of the following covenants and mutual obligations of the parties hereto, City and Bay Pointe hereby covenant and agree as follows:

1. Bay Pointe hereby grants to City permission to its employees, agents, contractors, and subcontractors to enter upon the Property for the purpose of accessing Lincoln Park for construction activities as set forth in Exhibit B.

2. Following completion of construction activities set forth in Exhibit B, the City hereby agrees to restore the Property to conditions prior to construction including removal of tracking pad, grading, planting grass, and restoration of curb and gutter on E. Park View Lane at the point of access shown in Exhibit B.

3. During the term of this Right of Entry, City shall maintain liability insurance coverage for the project.

4. City acknowledges and agrees that it is entering into this Right of Entry at its own risk. Under no circumstance shall Bay Pointe be liable to City for any loss, damages, costs or expenses incurred by City as a result of its entry or activities on the Property.

5. City hereby agrees to indemnify and hold harmless Bay Pointe, its employees, agents, successors and assigns from and against any and all losses, claims, damages, expenses, and all suits in equity or actions at law (including reasonable counsel fees) and liabilities arising from, in connection with, or as a result of the acts or omission of City, its employees, officers, agents, contractors and subcontractors in the use of the Property and activities undertaken pursuant to this Right of Entry. Nothing in the foregoing indemnity shall protect Bay Pointe, its employees, agents, successors and assigns against their own default, negligence or misconduct.

6. In the event any court action or administrative proceeding is brought arising out of this Right of Entry Agreement against Bay Pointe or any of its officers, agents, or employees, for acts of City, its employees, officers, agents, contractors, volunteers, invitees, Bay Pointe may tender its defense of any claim or action at law or equity to City or City's insurer, and upon such tender it shall be the duty of City or City's insurer to defend such claim or action without cost or expense to Bay Pointe, its officers, agents, or employees.

7. Any notice required hereunder shall be in writing, forwarded to the parties at the following addresses, and deemed given on the earlier of the date received or two (2) business days after being deposited, postage prepaid, in the U.S. Mail:

To City of Manitowoc:
900 Quay Street
Manitowoc, WI 54220

To Owner:
Bay Pointe Developers II LLC
100 Maritime Drive Suite 3C
Manitowoc, WI 54220

8. This Right of Entry may be signed in one or more counterparts each of which, when taken together, shall constitute one and the same document. Facsimile or PDF signatures shall be treated as originals.

9. This Right of Entry shall be effective as of the date first above written and shall continue until July 31, 2025, or until the project concludes, whichever is earlier.

IN WITNESS WHEREOF, the parties hereto have caused this Right of Entry Agreement to be executed by their duly authorized representatives as of the day and date first set forth above.

CITY OF MANITOWOC

BAY POINTE DEVELOPERS II LLC

By: _____ By: _____
Justin M. Nickels, Mayor Peter Allie

By: _____
Mackenzie Reed, City Clerk/Deputy Treasurer

EXHIBIT A
DESCRIPTION OF PROPERTY

[Attach property map with access route outlined].

EXHIBIT B
DESCRIPTION PROJECT PLANS

[Attach project plans].