

**\*\*\*ATTACHMENTS\*\*\***

II

4.3

R. O. No. 29 - 19 - 20. MAYOR. June 3, 2019.

Submitting a communication from Mayor Mike Vandersteen, on behalf of the City of Sheboygan, requesting the use of one of the City's free Blue Harbor Conference Center days to host a welcome reception for the delegates from Esslingen, Germany (Sheboygan's Sister City) on Wednesday, September 11, 2019.

Finance  
Personnel

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MAYOR MICHAEL VANDERSTEEN

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 35-19-20 by Alderpersons Donohue and Bohren authorizing entering into a Contract for Sale of Land for Private Development with Office Service Company, LLP.

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**REPORT PREPARED BY:** Chad Pelishek, Director of Planning & Development

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**REPORT DATE:** June 5, 2019

**MEETING DATE:** June 10, 2019

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

Office Service Company, LLP. is the developer for renovation of the former Boat Doctors facility at 1320 Niagara Avenue. Under the agreement, the City would sell the former 14<sup>th</sup> Street boat launch property to the east of the Boat Doctors building to Office Service Company, LLP. for \$50,000. The proceeds of the sale would be put in an escrow account with Woodland Title services and the developer would draw against it on a 50/50 basis for environmental costs as defined in the agreement up to a maximum of \$50,000. The city owned property will ultimately be consolidated with the Boat Doctors parcel and the former Harmony Bar property to be one parcel. The property that the city is selling to the east of the former Boat Doctors will be used for parking for the development with the largest tenant being Lakeshore Technical College.

Also, under the agreement, the City would provide a TID 19 development incentive to the developer not exceed \$75,000 over ten years with a yearly payment of the \$7,500 based on an assessed value of the \$1,600,000.

**STAFF COMMENTS:**

The Architectural Review Board and City Plan Commission have already approved the drawings. Staff supports this project to redevelop a historical building on Sheboygan's waterfront as well as bring new tax base to the area.

**ACTION REQUESTED**

Motion to recommend the Common Council adopt Res. No. 12-19-20 by Alderpersons Donohue and Bohren authorizing entering into a Contract for Sale of Land for Private Development to Office Service Company, LLP.

**ATTACHMENTS:**

I. Res No. 35-19-20

III

5.1

Res. No. 35-19-20. By Alderpersons Donohue and Bohren. June 3, 2019.

A RESOLUTION authorizing entering into a Contract for Sale of Land for Private Development with Office Service Company, LLP.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Contract for Sale of Land for Private Development with Office Service Company, LLP regarding proposed development of the former 14<sup>th</sup> Street Boat Launch and Boat Doctors property in Sheboygan, including sale of City property and a TIF incentive for development, in form substantially similar to the attached agreement.

*Finance Personnel*

*Richard Donohue*  
\_\_\_\_\_  
*James A. Bohren*  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CONTRACT FOR  
SALE OF LAND FOR PRIVATE DEVELOPMENT  
BY AND BETWEEN  
CITY OF SHEBOYGAN  
AND  
OFFICE SERVICE COMPANY, LLP**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") made this \_\_\_\_ day of May, 2019, by and between the City of Sheboygan, a public body corporate of the State of Wisconsin (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), having its principal offices at 828 Center Avenue in the City of Sheboygan, Wisconsin, and Office Service Company, LLP, a Wisconsin limited liability partnership (hereinafter called "Developer"), having an office for the transaction of business at 7722 Hawthorne Road, Mequon, WI 53097.

**RECITALS**

**WHEREAS**, the City has offered to sell and the Developer is willing to purchase certain real property more particularly described in Exhibit "A" attached hereto and made a part hereof ("the Property") and to develop the Property with an adjoining parcel legally described on attached Exhibit A; and

**WHEREAS**, the City believes that the development of the Property pursuant to this Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents.

**WHEREAS**, the City has established a Tax Incremental District, which includes the Property ("TID #19") in accordance with §66.1105, Wis. Stats. ("the Tax Increment Law"), in order to provide a viable method of financing eligible project costs within TID #19 for appropriate private development, which will contribute to the overall development of the City.

**WHEREAS**, the City is authorized by the Tax Increment Law to pay project costs, as defined in §66.105(2)(f), Wis. Stats., from the special fund of TID #19 or from the proceeds of municipal obligations issued pursuant to statute.

**WHEREAS**, the City is authorized by the Tax Increment Law to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of a Project Plan, as defined in §66.1105(2)(g), Wis. Stats.

**WHEREAS**, the Project Plan for TID #19 includes the payment of Development Incentive Payments for purposes of carrying out the Project Plan.

**WHEREAS**, the City proposes to enter into this Agreement with the Developer to achieve the objectives of TID #19 and to facilitate the implementation of TID #19's Project Plan. The City is prepared to provide financial assistance to the Developer through Development Incentive Payments in order to bring about the continued development in accordance with this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, it is in the mutual interest of all parties to proceed with development of the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the Developer through Development Incentive Payments in order to bring about the development and thereby promote the sound redevelopment of the City's riverfront area.

### **ARTICLE I. OVERVIEW OF THE PROJECT**

The Project consists of the renovation of a former boat works building located on the Boat Doctors Property (as hereafter defined) into a multi-tenant facility with residential and commercial tenants, adjacent parking, and a waterfront feature on the north side adjacent to the Sheboygan River, all together with the Property.

### **ARTICLE II. DEFINITIONS**

All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented.

"Boat Doctors Property" means the real property located at 1320 and 1336 Niagara Ave. with Tax Parcel # 59281500120 and 59281500131.

"Certification Date" shall mean the date each year when the City certifies the assessment of property for purpose of real property tax assessment in that year.

"Construction Plans" means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with this Agreement.

"Deed" means the warranty deed provided by the City as set forth in Article VII.

"Development Incentive Payments" means the incentive payments to the Developer by the City as set forth in Section 603 hereafter.

"Events of Default" means any breach of this Agreement, including any such breach or other of the events described in Section 1403 hereof.

"Project" means the development described in Article I.

"Property" means the city owned property known as the "14<sup>th</sup> Street Boat Launch," Tax Parcel # 59281500110.

"Real Property" means both the Boat Doctors Property and the Property and all improvements therein, but not including any personal property.

"Substantial Completion" shall mean completion of the Project to an extent that an occupancy permit is issued or issuable.

"Tax Incremental Value" means the increased real property assessment of the Property generated by the Project.

"Tax Increment Revenue" means the tax revenue (as defined in sec. 66.1105(2)(i), Wis. Stats.) generated from the Tax Incremental Value. Personal Property is not included in Tax Increment Revenue.

"Title Commitment" shall mean the title commitment for the Project provided by the City.

**ARTICLE III.  
SALE: PURCHASE PRICE**

Subject to all the terms, covenants and conditions of this Agreement, the City agrees to sell the Property to the Developer for, and the Developer will purchase the Property from the City and pay therefor, the total amount of Fifty Thousand and 00/100 (\$50,000) dollars, ("Purchase Price"), to be paid in cash or by certified check simultaneously with the delivery of the Deed conveying the Property to the Developer (the "Sale").

**ARTICLE IV.  
ESCROW**

At Closing, the City shall deposit the net proceeds from the sale into an escrow account held at Woodland Title Services (the "Account") pursuant to an agreed escrow agreement. Upon request by the Developer, the City shall pay directly or reimburse Developer for up to Fifty Percent (50%) of Eligible Environmental Costs. Eligible Environmental Costs shall include all of the following costs incurred only as to the Property: environmental investigations, remediation or monitoring of the site, removal of hazardous waste containers, soil removal, capping, barrier installation, vapor intrusion systems, piling support systems, and other demolition activities that facilitate redevelopment of a brownfield property. On the first to occur of (i) no funds remaining in the Account; or (ii) December 31, 2020, the Account shall be closed and any remaining funds in the escrow account shall be paid to the City, and the City shall have no further responsibility to the Developer related to environmental costs for the Project.

**ARTICLE V.  
SCHEDULE**

It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals	June 2019
Issuance of Building Permits	July 2019
Start Construction	July 2019
Substantial Completion	October 2019

**ARTICLE VI.  
UNDERTAKINGS OF THE CITY AND OF THE DEVELOPER**

**Section 601. Financing Confirmation.** As promptly as possible, but not later than sixty (60) days after approval by the City of the Construction Plans, the Developer shall submit to the City evidence reasonably satisfactory to the City that the Developer has the equity capital and/or commitments for mortgage financing necessary for the timely completion of construction of the Project.

**Section 602. Minimum Investment.** Developer shall incur at least One Million, Six Hundred Thousand and 00/100 Dollars (\$1,600,000) in Construction Costs for the Project ("Minimum Investment"). Construction Costs include all costs for construction and development of the Project including without limitation those set forth on attached Exhibit B.

**Section 603. Development Incentive Payments.** Providing the Developer has provided evidence reasonably satisfactory to the City that Construction Costs have equaled or exceeded the Minimum Investment and shown that the Tax Incremental Value for the Real Property based on the 2021 Certification Date is at least \$1,250,000 higher than the assessment of the Real Property based on the 2019 Certification Date, the City agrees to provide to the Developer each year, for a maximum period of ten (10) years, an annual Development Incentive Payment as described in this Section 603 in a total principal sum over the ten years not to exceed \$75,000 ("Maximum Development Payment"). Each year, commencing in 2021 and ending in 2030, the City will pay the Developer a Development Incentive Payment in an amount equal to Seven Thousand, Five Hundred and 00/100 (\$7,500), up to the Maximum Development Payment; except that if, in any given year, the assessed value of the real property upon which the Project is situated is less than \$1,600,000, the amount of said payment for that year shall be reduced by the ratio of the assessed value to \$1,600,000. For the avoidance of doubt, and as an example, should the assessed value of the real Property upon which the Project is situated be \$1,400,000, the payment that year shall be \$6,562.50 ( $\$1,400,000 \div \$1,600,000 = 0.875$ ;  $\$7,500 \times 0.875 = \$6,562.50$ ). The City shall make an annual Development Incentive Payment due under this Section no later than September 30 of each year, commencing in 2021. Payment by the City of a Development Incentive Payment will only be made if the Developer is current for all property taxes (real and personal) to the City in full.

**Section 604. Off-Site Public Improvements.** The City shall, at its sole cost and expense; (i) have prepared and pay for the preparation of the engineering and construction plans and specifications for certain off-site improvements, as described more particularly on Exhibit "B" attached hereto ("City Improvements"); and (ii) contract for and install, maintain, repair and replace the City Improvements. The City shall place up to a three inch asphalt layer during the summer of the 2019 to provide a temporary repair to Niagara Avenue between North 14<sup>th</sup> Street and the Shoreland 400 recreation trail. The City further agrees to completely reconstruct Niagara Avenue from North 14<sup>th</sup> Street to the Wisconsin Avenue within the City's right-of-way by September 30, 2020 including without limitation the replacement of curb and gutter and pavement. The Developer shall be responsible for the cost of installing, constructing, planting, or maintaining sidewalks and street trees which may be required in or adjacent to public rights-of-way

**ARTICLE VII.  
CONVEYANCE OF PROPERTY**

**Section 701. *Form of Deed.*** The City shall convey to the Developer title to the Property by warranty deed (the "Deed"), free and clear of all liens and encumbrances except those restrictions set forth in this Agreement and such exceptions noted by the Title Commitment and accepted by Developer.

**Section 702. *Time and Place for Delivery of Deed.*** The closing of the Sale shall occur on or before May 31, 2019 ("Closing" or "Closing Date"), or such other date as mutually agreed to by the parties, at the principal office of the City.

**Section 703. *Recording of Deed.*** The Developer shall promptly record the Deed with the Sheboygan County Register of Deeds. The Developer shall pay all costs for so recording the Deed.

**Section 704. *Conditions Precedent to Developer's Obligations.*** The Developer's obligation to conclude the Sale contemplated herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions on or prior to ten (10) days before the Closing Date (unless a different time period is noted below):

- (a) **Due Diligence.** Developer shall determine after receipt of the City Documents that it is satisfied with the environmental condition of the Project. The City shall provide the City Documents not later than fifteen (15) days after execution of this Agreement. The City Documents shall include all environmental information in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental Protection Agency, the Wisconsin Dept. of Natural Resources and other such agencies), case closure letters, remedial action plans and similar information.
- (b) **Financing Contingency.** Developer obtaining a written loan commitment from a lending institution of Developer's choice in an amount and with such terms and conditions acceptable to Developer within Developer's sole discretion for the construction of the Project.
- (c) **Title.** Within twenty (20) days after Developer's receipt of the Title Commitment, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Title Commitment. In the absence of such notification, such exceptions shall be deemed accepted by Developer. In the event Developer disapproves of any matter pertaining to title, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be satisfied by the City.

In the event that the City elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that the City elects not to cure any defect or disapproved matter, Developer may, within ten (10) days after receipt of written notice from the City that the City has been unable to cure or is unwilling to cure:

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
  - (2) take title to the Property "as-is".
- (d) **Governmental Permits, Licenses and Approvals.** Developer obtaining prior to Closing Date, all necessary permits, licenses and approvals from the City, and/or any other applicable governmental entity or City, for the Project as determined by Developer, within Developer's sole discretion. The City agrees to use its best efforts and cooperate with Developer in the application for any such permits, licenses and approvals.
- (e) **Utility Connections.** Developer obtaining written evidence that sanitary sewer, storm sewer and potable water mains are located adjacent to the Real Property boundary line. In the event that sewer and water laterals are not stubbed off at the mains and located at the Real Property boundary line, the Developer shall be solely responsible for any and all costs and expenses related to bringing such sewer and water laterals to the Property boundary line.
- (f) **Soil and Topographic Conditions.** Developer determining, in Developer's sole discretion, on or prior to the Closing Date, that the Soil Information does not disclose any soil or topographic conditions that would impair, interfere with or negatively impact, the development of the Project. Soil Information shall mean all information, reports, documentation or otherwise in the possession of the City/City and/or the City's/City's agents, attorneys, consultants or independent contractors relating to the soil and topographic conditions of the Property and which shall be delivered to the Developer by the City within ten (10) days of the execution of this Agreement. Developer's obligation to conclude this Sale is further contingent upon Developer obtaining, at Developer's sole expense, on or prior to the Closing Date:
- (1) written confirmation from a recognized and qualified soil and engineering firm (selected by Developer), that the soil and subsoil conditions of the Real Property are sufficient and suitable, as determined by Developer, in its sole discretion, for the Project, and
  - (2) soil borings and soil reports which verify a minimum poundage per square foot (psf) of soil bearing capacity, as determined by Developer.

If the above written confirmation or soil reports show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer in its sole discretion, prior to Closing, Developer may

- (1) terminate this Agreement by providing written notice thereof to the Agency thereby cancelling the Sale; or
- (2) accept the Property "as-is" despite the existence of such condition.

**ARTICLE VIII.  
TIME FOR COMMENCEMENT AND COMPLETION OF IMPROVEMENTS**

The construction of the Project shall be commenced in within four (4) months after the Closing Date and, except as otherwise provided in this Agreement, Substantially Completion shall occur within twelve (12) months after commencement of construction.

**ARTICLE IX.  
RIGHTS OF ACCESS TO PROPERTY**

**Section 901. *Right of Entry for Utility Service.*** The City reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Property boundary lines.

**Section 902. *Developer Not to Construct Over Utility Easements.*** The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in such easement or has been approved by the City, and unless Developer indemnifies and agrees to hold harmless the City and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

**Section 903. *Access to Property.*** Prior to Closing, the City shall permit representatives of the Developer to have access to the Property, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After Closing, upon advance written request, the Developer shall permit the representatives of the City access to the Property at reasonable times for the purposes of inspection of all work being performed in connection with the construction of the Project. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE XI  
CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS;  
CERTIFICATE OF COMPLETION**

**Section 1001. *Plans for Construction of Improvements.*** . As promptly as possible after the date of execution of this Agreement but no sooner than sixty (60) days of execution of this Agreement, the Developer shall submit to the City, for approval by the City, plans, drawings, specifications and related documents, with respect to the Improvements to in sufficient completeness and detail to show the construction of the Project will be materially in accordance with the provisions of this Agreement and shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations

The City shall, if the Construction Plans submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by the City thereof shall be required, except with respect to any material change. The Construction Plans shall, in any event, be deemed approved unless rejected in writing by the City, in whole or in part, setting forth in detail the reasons therefor, within thirty (30) days after the date of their receipt by the City.

If the City, in its reasonable discretion, rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, the Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of Construction Plans shall continue to apply until the Construction Plans have been approved by the City, which approval shall not be unreasonably withheld or delayed.

All work with respect to the Project shall be in material conformity with the Construction Plans as approved by the City.

Developer, hereby represents that the Project will be fully subject to real estate and personal property taxes under state law. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

Notwithstanding the above, in the event that the Real Property, or any part thereof, is determined at any time to be exempt from real and/or personal property taxation under state law, Developer, for itself, its successors and assigns, agrees to make payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the property were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project and the Real Property.

**Section 1002. Changes in Construction Plans.** If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 1101 hereof with respect to such previously approved Constructions Plans, the City shall approve the proposed change and notify the Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the City's receipt of notice of such change.

**Section 1003. Approvals of Construction Plans and Evidence of Financing as Conditions Precedent to Conveyance.** The submission of Construction Plans and their approval by the City as provided in Section 1101 hereof, and the submission of satisfactory evidence of equity capital and commitments for mortgage financing as provided in Articles V and VI hereof, are conditions precedent to the obligations of the City to convey the Property to the Developer pursuant to the Sale.

**Section 1004. Progress Reports.** Subsequent to the Sale of the Property, or any part thereof, to the Developer, and until construction of the Improvements has been completed, the Developer shall make monthly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

**ARTICLE XI.  
RESTRICTIONS UPON USE OF PROPERTY**

**Section 1101. Restrictions on Use.** The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain the following covenants on the part of the Developer and its successors and assigns, that Developer shall:

- (a) devote the Property to and in accordance with the uses specified in this Agreement for a period of not less than twenty-seven (27) years from date of completion of the Project; and
- (b) not discriminate upon the basis of race, color, creed, sex, religion, ancestry, disability, sexual orientation, marital status, family status, lawful source of income, age or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

The above covenants run with the Property and they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City and any successor in interest to the Property, or any part thereof, against the Developer, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

**Section 1102. City Rights to Enforce.** In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its governmental successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 1201 hereof, for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided in Section 1201. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

**ARTICLE XII.  
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

**Section 1201. *Representations as to Development.*** The Developer represents and agrees that its purchase of the Property and its other undertakings pursuant to this Agreement are, and will be, used for the purpose of development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of:

- (a) the importance of the development of the Property to the general welfare of the community; and
- (b) the below market purchase price that has been made available by the City for the purpose of making such development possible;

the qualifications and identity of the Developer are of particular concern to the community and the City. The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

**Section 1202. *Prohibition Against Transfer of Ownership Interests.*** For the foregoing reasons, the Developer represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to Substantial Completion of the Project and without the prior written approval of the City:

- (a) there shall be no transfer of ownership interests in the Developer by any party owning ten percent (10%) or more of the ownership interests in the Developer (which term shall be deemed for the purposes of this and related provisions to include successors in interest);
- (b) nor shall any such owner suffer any such transfer to be made; and
- (c) nor shall there be or be suffered to be by the Developer, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, by any other method or means.

With respect to this provision, the Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

**Section 1203. Prohibition Against Transfer of Property and Assignment of Agreement.**  
For the foregoing reasons the Developer represents and agrees for itself and its successors and assigns, that prior to Substantial Completion of the Project:

- (a) Except only by way of security for, and only for,
  - (1) The purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to constructing the Project under this Agreement; and
  - (2) Any other purpose or as otherwise authorized by this Agreement, the Developer, its successors or assigns, (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.
- (b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:
  - (1) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).
  - (2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no

transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the City would have had, had there been no such transfer or change.

- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, which approval shall not be unreasonably withheld or delayed, its approval shall be indicated to the Developer in writing.

In the event, the transferee satisfies the conditions set forth in Subsections (b)(1)-(3) above, and City approves the sale, assignment, conveyance, lease or transfer to the transferee, then any and all obligations under this Agreement shall be transferred to the transferee and the Developer shall be released from any and all obligations under this Agreement. Notwithstanding anything contained in this Section 1203 or this Agreement to the contrary, Developer, prior to Substantial Completion of the Project, shall have the right to enter into agreements with third parties for the pre-leasing or leasing of any apartments which are part of the Project and such third parties (and the agreements entered into by Developer with them) shall not be subject to any approval by the City.

**Section 1204. Termination of Prohibitions and Restrictions in Sections 1202 and 1203.** For purposes of clarity, notwithstanding anything contained in this Agreement to the contrary, upon Substantial Completion of the Project, the Developer may transfer, assign, sell, or convey the Property or any portion thereof to any person without the consent of the City. It being understood that all restrictions on transfer in Section 1202 and 1203 of this Agreement shall terminate upon completion of the Project.

**Section 1205. Information as to Members.** In order to assist in the effectuation of the purposes of this Article XII, the Developer agrees that during the period between execution of this Agreement and Substantial Completion of the Project:

- (a) the Developer will promptly notify the City of any and all changes of greater than ten percent (10%) in the ownership of the company, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and
- (b) the Developer, its successors or assigns, shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the authorized or managing member(s) of the Developer, setting forth all of the members of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the company their names and the extent of such interest, all as determined or indicated by the records of the Developer, by specific inquiry made by any such member, of all parties who on the basis of such records own ten percent (10%) or more interest in the Developer, and by such other knowledge or information as such authorized

representative shall have. Such lists, data and information shall in any event be furnished to the City immediately prior to the delivery of the Deed to the Developer and as a condition precedent thereto and annually thereafter on the anniversary of the Closing Date.

**ARTICLE XIII.  
MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

**Section 1301. *Limitation Upon Encumbrance of Property.*** Prior to the completion of the Project, as certified by the City in the form of an Occupancy Certificate, neither the Developer nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining:

- (a) funds only to the extent necessary for construction of the Project; and,
- (b) such additional funds, if any, unless requested by Developer and approved by the City in its reasonable discretion.

Except for the financing, mortgage, encumbrances or liens permitted above, the Developer (or successor in interest) shall notify the City in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Developer or otherwise.

**Section 1302. *Mortgagee Not Obligated to Construct.*** Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including:

- (a) any other party who thereafter obtains title to the Property or such part from or through such holder; or
- (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself);

shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or permitted in this Agreement.

**Section 1303. Copy of Notice of Default to Mortgagee.** Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City.

**Section 1304. Mortgagee's Option to Cure Defaults.** After any breach or default referred to in Section 1303 hereof, which has not been cured by Developer within seventy-five (75) days (of receiving notice of such breach or default from the City as set forth in Section 1401 below, each such holder of a mortgage authorized by this Agreement shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Provided, that if the breach or default is with respect to construction of the Project, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement, the Project on the Property or the part thereof to which the lien or title of such holder relates.

**Section 1305. Mortgage and Holder.** For the purposes of this Agreement the term "mortgage" shall include mortgages, deeds of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deeds of trust.

#### **ARTICLE XIV. REMEDIES**

**Section 1401. In General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. 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 after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

**Section 1402. Termination by Developer Prior to Conveyance.** The Developer shall be entitled to terminate this Agreement in the event that:

- (a) the City does not tender conveyance of the Property, or possession thereof, by Deed as part of the Sale in the manner and condition provided in this Agreement; or

- (b) the Developer shall, after preparation of Construction Plans satisfactory to the City, furnish evidence reasonably satisfactory to the City that Developer has been unable, after and despite diligent effort for a period of sixty (60) days after approval by the City of the Construction Plans, to obtain mortgage financing for the construction of the Project on a basis and on terms that are satisfactory to Developer; or,
- (c) the Developer is unable to satisfy (and otherwise has not waived), any of the conditions precedent contained in this Agreement;

then this Agreement shall, at the option of the Developer, be terminated by written notice thereof to the City and neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

**Section 1403. Termination by City Prior to Conveyance.** The City shall be entitled to terminate this Agreement in the event that:

- (a) prior to conveyance of the Property by Deed as part of the Sale to the Developer and except as otherwise permitted under this Agreement,
  - (1) the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property; or
  - (2) there is any change of more than ten percent (10%) in the ownership of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof; or
- (b) the Developer does not submit Construction Plans within the permitted time period, as required by this Agreement, or (except as excused under subdivision (b) of Section 1002 hereof) evidence that it has the necessary equity capital and mortgage financing, in reasonably satisfactory forms and in the manner and by the dates respectively provided in this Agreement therefor; or
- (c) the Developer does not pay the Purchase Price and take title to the Property upon tender of Deed by the City pursuant to the Sale,

then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property shall, at the option of the City, be terminated by the City by written notice thereof to the Developer, in which event, neither the Developer (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

**Section 1404. *Other Rights and Remedies of City; No Waiver by Delay.*** The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article XIV, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Developer and its successors in interest and assigns in the Property, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article XIV shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section 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 created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this section or with respect to the particular default except to the extent specifically waived in writing.

**Section 1405. *Enforced Delay in Performance for Causes Beyond Control of Party.*** For the purposes of any of the provisions of this Agreement, neither the City nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for development, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unavailability of materials, unusually severe weather, or delays of subcontractors due to any of the foregoing causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project, or progress in respect thereto, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this section shall, within ten (10) business days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

**Section 1406. *Rights and Remedies Cumulative.*** 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 either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own 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 or any other obligations of the other party.

**Section 1407. Indemnification.**

(a) Developer agrees to indemnify and hold harmless the City, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "City Indemnified Parties") against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the City Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the City Indemnified Parties in fulfilling the obligations of the City or their agents as set forth under this Agreement.

(b) Except for any negligent acts or any willful misrepresentation of the City Indemnified Parties, Developer agrees to protect and defend the City Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by Developer under this Agreement.

(c) The City agrees to protect and defend Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agrees to hold Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of the City (or other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

**ARTICLE XV.  
MISCELLANEOUS**

**Section 1501. Conflict of Interests; City Representatives Not Individually Liable.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, 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 may become due to the Developer or successor or on any obligations under the terms of this Agreement.

**Section 1502. Equal Employment Opportunity.** The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry,

disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- (b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.
- (c) The Developer will furnish all information and reports required by law and any and all applicable federal, state and local rules, regulations and orders, and will permit access to the Developer's books, records and accounts by the City, or appropriate governmental entity, for purposes of investigation to ascertain compliance with such laws, rules, regulations and orders.
- (d) In the event of the Developer's noncompliance with the nondiscrimination clauses of this section, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and such other sanctions may be imposed and remedies invoked as provided by such law, rule, regulation or order, or as otherwise provided by law.
- (e) The Developer will include the provisions of Paragraphs (a) through (d) of this section in every contract or purchase order, and will use its best efforts to require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by such rules, regulations or orders, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. The Developer will take such action with respect to any construction contract, subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Developer" shall be changed to "Contractor."

**Section 1503. Provisions Not Merged with Deed.** None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from the City to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**Section 1504. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 1505. Successors and Assigns.** This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, Developer may assign this Agreement by one or more successive assignments at any time prior to closing to any related entity or affiliate of Developer. Upon any such assignment, the assignee shall have the rights and obligations of Developer hereunder and Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

**Section 1506. Notices and Demands.** A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer at Office Service Company, LLP, 7722 Hawthorne Road, Mequon, WI 53097, Attn: Paul Weaver; and
- (b) in the case of the City, is addressed to or delivered personally to the City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

**Section 1507. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

**Section 1508. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf.) or similar electronic methods shall be deemed to be original signatures for all purposes.

**Section 1509. Recording.** This agreement or a memorandum of this Agreement shall be recorded in the Office of Sheboygan County Register of Deeds against the Property at the cost of the Developer.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN,  
WISCONSIN**

**OFFICE SERVICE COMPANY, LLP**

**BY:** \_\_\_\_\_  
Michael Vandersteen, Mayor

**BY:** \_\_\_\_\_  
Paul Weaver, Partner

**ATTEST:**

\_\_\_\_\_  
Meredith DeBruin, City Clerk

**ACKNOWLEDGEMENT  
STATE OF WISCONSIN**

**SS.**

**COUNTY OF SHEBOYGAN**

This instrument was acknowledged before me  
on

by \_\_\_\_\_

\_\_\_\_\_  
(Name(s) of Person(s))

as

\_\_\_\_\_  
(Type of authority: e.g., officer,  
trustee, etc., if any)

of

\*

\_\_\_\_\_  
(Name of party on behalf of whom  
instrument was executed, if any)

Notary Public,  
Wisconsin  
My commission  
(Expires) is \_\_\_\_\_

This instrument drafted by:

City Attorney Charles Adams  
828 Center Ave.  
Sheboygan, WI 53081-4442  
WI State Bar No. 1021454

**EXHIBIT "A"**  
**Description of Property**

**Property**

**Tax Parcel # 59281500110**

**Boat Doctors Property**

**Tax Parcel # 59281500120 and 59281500131**

**EXHIBIT "B"**  
**Proposed/Estimated Construction Costs**

Site acquire		
Properties		\$460,000
Legal/accounting		\$12,000
Closing costs		\$4,000
Total Site acquisition cost	Total	\$476,000

Development costs		
Site Acquisition and pre dev.		
Topo and full survey		\$6,000
Haz Mat testing		\$8,000
Remediation		\$12,000
Environmental management		\$35,000
Architectural		\$65,000
Engineering		\$19,000
Structural Hist engineering		\$3,000
Development fee costs		\$35,000
Site and civil design		\$12,000
Other dev costs		\$5,000
Contingency		\$10,000
	Total	\$210,000

Soft costs:		
Start up costs		\$2,000
Legal and accounting		\$6,000
Financing		\$8,000
Property taxes		\$8,000
Utilities		\$4,000
Property Insurance		\$2,000
Contingency		\$10,000
	Total	\$40,000

Construction costs		
Abatement		\$16,000
Demo and fill		\$55,000
Site/civil design		\$3,000
Parking lot		\$148,000
Site Utilities		\$38,000

Landscape/Sidewalk		\$34,000
Site Lighting		\$14,000
Permits and plan review		\$8,000
General Conditions		\$56,000
Sandblast exterior		\$65,000
Paint exterior		\$15,000
Canopies- steel		\$45,000
Façade restoration		\$85,000
Selective demo-Interior		\$25,000
Interior remodel		\$798,000
Roofing		\$42,000
Façade restoration-tuck point		\$28,000
Windows and frames		\$49,000
Doors and hardware-Ext		\$26,000
Parking lot and landscaping		\$85,000
Interest cost during const.		\$15,000
Contingency		\$35,000
	<b>Total</b>	<b>\$1,103,000</b>
<b>Total All costs</b>		<b>\$1,829,000</b>

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** R.O. No. 28-19-20 Claim from Mr. James Taylor Lackey for alleged vehicle damages.

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**REPORT PREPARED BY:** Laurie Suhrke, Auditor/Analyst

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**REPORT DATE:** June 5, 2019

**MEETING DATE:** June 10, 2019

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STAUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

City staff has reviewed the following claim: R.O. No. 28-19-20 is a claim from Mr. James Taylor Lackey for alleged damages to his vehicle caused by a pothole on the train tracks on Lakeshore Drive.

**ACTION REQUESTED:**

Motion to recommend the Common Council receive document R.O. No. 28-19-20 and file the recommendation.

**ATTACHMENTS:**

- I. R.O. No. 28-19-20

II

4.2

R. O. No. 28 - 19 - 20. By CITY CLERK. June 3, 2019.

Submitting a claim from James Taylor Lackey for alleged damages to his vehicle when it hit a pothole on the train tracks on Lakeshore Drive.

Finance  
Personnel

---

CITY CLERK

DATE RECEIVED 5-29-19

RECEIVED BY MKC

CLAIM NO. 6-19

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

MAY 29 10 43 AM '19

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

- 1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
- 2. Attach and sign additional supportive sheets, if necessary.
- 3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: James Taylor Lackey

2. Home address of Claimant: 4205 S. 14th Street, Sheboygan, WI, 53081

3. Home phone number: 920-287-1814

4. Business address and phone number of Claimant: 3400 S. Business Drive, Sheboygan, WI, 53081  
920-459-6840

5. When did damage or injury occur? (date, time of day) 3/16/2019 2:30 AM

6. Where did damage or injury occur? (give full description) Lakeshore Drive, South  
Set of Train tracks by Alliant Energy's Fence, about 60 feet  
from stop sign to the south.

7. How did damage or injury occur? (give full description) 2016 Chevy Malibu Premier  
with 25,000 miles hit a pothole on the train tracks with the  
left-front, driver's-side tires resulting in a blowout of its tires  
as well as extensive damage to the <sup>front</sup> rim. The force of impact  
also cracked the windshield, resulting in a large crack <sup>spanning</sup> from right to left

8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:

(a) Name of such officer or employee, if known: N/A

(b) Claimant's statement of the basis of such liability: N/A

9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:

(a) Public property alleged to be dangerous: Road's pothole.

(b) Claimant's statement of basis for such liability: Pothole is so severe it  
did irreparable damage to the tires rim, & windshield

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

See above

11. Name and address of any other person injured:

N/A

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ \$1,727.84

Property: \$ \_\_\_\_\_

Personal injury: \$ \_\_\_\_\_

Other: (Specify below) \$ \_\_\_\_\_

**TOTAL** \$ \$1,727.84

Damaged vehicle (if applicable)

Make: Chevy Model: Malibu Year: 2016 Mileage: 24,721

Names and addresses of witnesses, doctors and hospitals: \_\_\_\_\_

N/A

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.

SIGNATURE OF CLAIMANT



DATE

3/20/2019

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED \_\_\_\_\_

RECEIVED BY \_\_\_\_\_

CLAIM NO. 6-19


CLAIM  
Claimant's Name: James Taylor Lackey  
Claimant's Address: 4205 S. 14th St.  
Sheboygan, WI, 53081  
Claimant's Phone No. 920.287.1814

Auto \$ 1,727.84  
Property \$ \_\_\_\_\_  
Personal Injury \$ \_\_\_\_\_  
Other (Specify below) \$ \_\_\_\_\_  
**TOTAL** \$ 1,727.84

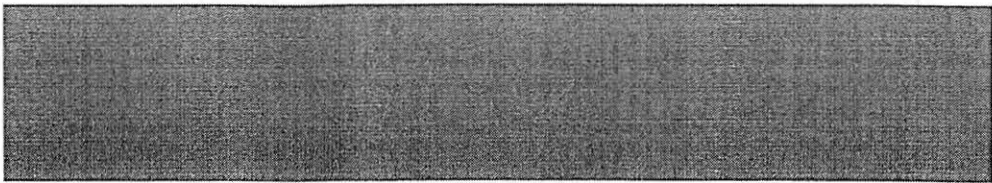
PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.  
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 1,727.84.

SIGNED:  DATE: 3/20/2019  
ADDRESS: 4205 S. 14th St, Sheboygan, WI, 53081

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.  
MAIL TO: CLERK'S OFFICE  
828 CENTER AVE #100  
SHEBOYGAN WI 53081



# Repair Estimate

03/20/2019

1:06 PM

Estimate#:	Estimate Date: 03/19/2019	Odometer: 24,721
Vehicle: Malibu 2016/2019	VIN: 1G1ZH5SX4GF339383	License#:
Customer#: 036 JAMES LACKEY	Advisor#: 961 KYLE WORSTER	
Address: 4205 S 14TH ST	(H) (920) 287-1814	
SHEBOYGAN, WI 53081	(B)	(Ext)

## CUSTOMER QUOTE

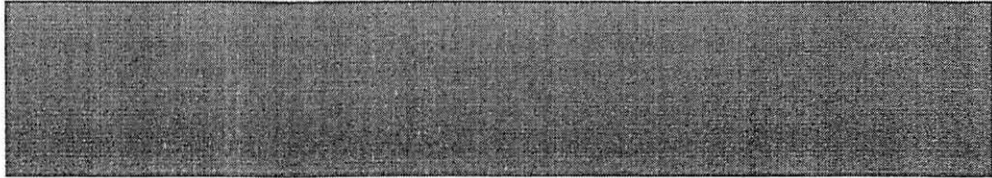
Operation: 21CVZ04 Mount & Balance 2 Tires All

LABOR HOURS: 0.60

Qty	Part Number	Part Description	Part Price	Ext Price
2	GM19364076	C2454019	371.21	742.42
1	GM22969725	WHEEL	431.34	431.34

Misc Code	Misc Description	Ext Price
ENVI	ENVIROMENTAL CHARGES	1.70

LABOR \$:	34.00
PARTS \$:	1,173.76
GOG \$:	0.00
MISC \$:	1.70
TAX \$:	66.52
<b>SUBTOTAL \$:</b>	<b>1,275.98</b>



# Repair Estimate

03/20/2019 1:06 PM

Estimate#:	Estimate Date: 03/19/2019	Odometer: 24,721
Vehicle: Malibu 2016/2019	VIN: 1G1ZH5SX4GF339383	License#:
Customer#: 036 JAMES LACKEY	Advisor#: 961 KYLE WORSTER	
Address: 4205 S 14TH ST	(H) (920) 287-1814	
SHEBOYGAN, WI 53081	(B)	(Ext)

## CUSTOMER QUOTE

Operation: WWD3 Windshield Wiper Diagnosis III All

LABOR HOURS: 3.50

Misc Code	Misc Description	Ext Price
ENVI	ENVIROMENTAL CHARGES	10.00
	LABOR \$:	420.00
	PARTS \$:	0.00
	GOG \$:	0.00
	MISC \$:	10.00
	TAX \$:	23.65
	<b>SUBTOTAL \$:</b>	<b>453.65</b>
	TOTAL LABOR \$:	454.00
	TOTAL PART \$:	1,173.76
	TOTAL GOG \$:	0.00
	TOTAL MISC \$:	10.00
	TOTAL TAX \$:	90.08
	<b>ESTIMATE TOTAL \$:</b>	<b>1,727.84</b>

Customer Signature

Thank you for allowing Sheboygan Chevrolet Buick GMC to prepare your estimate.

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** R. O. No. 33-19-20. Submitting the Comprehensive Annual Financial Report (CAFR) of the City of Sheboygan for the year ended December 31, 2018, prepared by CliftonLarsonAllen, LLP (CLA).

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**REPORT PREPARED BY:** Marty Halverson, Finance Director

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**REPORT DATE:** June 5, 2019

**MEETING DATE:** June 10, 2019

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

Annually the City of Sheboygan contracts with independent auditors to perform an audit of the financial statements. Included in the audit is a report on internal controls and a review of required compliance for Federal and State funding.

**STAFF COMMENTS:**

The audit of the 2018 financials of the City of Sheboygan was conducted by CliftonLarsonAllen, LLP (CLA). The City received an unmodified opinion on the basic financial statements, no indication of noncompliance for federal and state financial assistance, but does have three control deficiencies reported. A corrective action plan is being communicated as to how the deficiencies will be addressed and improved going forward.

An electronic draft version of the CAFR will be provided by Friday, June 7 for your review. Due to the limited time the committee will have for review, no action will be necessary on June 10, however, a subsequent meeting of Finance and Personnel Committee will be scheduled for June 17 at 5:30 p.m. at which city staff will request action on the CAFR.

**ACTION REQUESTED:**

For informational purposes only.

**ATTACHMENTS:**

- I. R.O. No. 33-19-20.
- II. Schedule of Prior Year Audit Findings and Corrective Action Plan

II

**DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE**

R. O. No. 33 - 19 - 20. By FINANCE DIRECTOR. June 10, 2019.

Submitting the findings and management response related to the Comprehensive Annual Financial Report of the City of Sheboygan for the year ended December 31, 2018, prepared by Clifton Larson Allen, LLP (CLA).

The full report will be released when made available.

*Finance  
Personnel*

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FINANCE DIRECTOR

# City of Sheboygan, Wisconsin

SCHEDULE OF FINDINGS AND QUESTIONED COSTS FOR  
THE YEAR ENDED DECEMBER 31, 2018

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## SECTION II - FINANCIAL STATEMENT FINDINGS

<b>FINDING NO.</b>	<b>CONTROL DEFICIENCIES</b>
<b>2018-001</b>	<b>Preparation of Annual Financial Report</b>
<b>Condition:</b>	Current City staff maintain accounting records which reflect the City's financial transactions; however, preparing the City's comprehensive annual financial report, including note disclosures, involves the selection and application of specific accounting principles which would require additional experience and knowledge. The City contracts with us and our knowledge of applicable accounting principles, financial statement formats, and note disclosures to assist in the preparation of the annual financial report in an efficient manner. For the same reasons, the City contracts with us to compile the Wisconsin Municipal Report Form C.
<b>Context:</b>	While performing audit procedures, it was noted that management does not have internal controls in place to provide reasonable assurance that financial statements are prepared in accordance with U.S. GAAP.
<b>Criteria:</b>	The preparation and review of the annual financial report and Municipal Financial Report by staff with expertise in financial reporting is an internal control intended to prevent, detect and correct a potential omission or misstatement in the financial statements or notes or other required State Financial reports.
<b>Cause:</b>	City management currently does not have the time and experience necessary to prepare a complete comprehensive annual financial report in accordance with applicable accounting standards.
<b>Effect:</b>	Without our involvement, the City may not be able to completely prepare an annual financial report in accordance with accounting principles generally accepted in the United States of America.
<b>Recommendation:</b>	We recommend the City continue reviewing the annual financial report. A thorough review of this information by appropriate staff of the City is necessary to obtain a complete and adequate understanding of the City's annual financial report and Municipal Financial Report.
<b>Views of responsible officials:</b>	Refer to the management response per the corrective action plan.

# City of Sheboygan, Wisconsin

## SCHEDULE OF FINDINGS AND QUESTIONED COSTS FOR THE YEAR ENDED DECEMBER 31, 2018

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<b>FINDING NO.</b>	<b>CONTROL DEFICIENCIES</b>
<b>2018-002</b>	<b>Adjustments to the City's Financial Records</b>
<b>Condition:</b>	As part of our audit, we proposed adjusting journal entries that were material to the City's financial statements.
<b>Context:</b>	While performing audit procedures, it was noted that management does not have sufficient controls in place related to year end closing procedures.
<b>Criteria:</b>	Material adjusting journal entries proposed by the auditors are considered to be an internal control deficiency.
<b>Cause:</b>	Due to turnover within the Finance department, the City has been behind with the preparation of account reconciliations and year end adjusting and closing entries.
<b>Effect:</b>	Year-end financial records prepared by the City may contain material misstatements.
<b>Recommendation:</b>	We recommend the City review its procedures and designate an individual to be responsible for month end and year end account reconciliations and year end adjusting and closing entries.
<b>Views of responsible officials:</b>	Refer to the management response per the corrective action plan.

<b>FINDING NO.</b>	<b>CONTROL DEFICIENCIES</b>
<b>2018-003</b>	<b>General Ledger Reconciliations</b>
<b>Condition:</b>	Bank accounts and other significant balance sheet accounts were not consistently reconciled on a timely basis throughout the year.
<b>Context:</b>	While performing audit procedures, it was noted that management does not have sufficient internal controls in place related to bank reconciliations and reconciliations of significant balance sheet accounts.
<b>Criteria:</b>	Verification of City balances to supporting documentation is a key control intended to prevent or decrease the occurrence of financial reporting errors or intentional fraud.
<b>Cause:</b>	The City had turnover in the Finance Director position in the finance department and did not have an effective transition plan or adequate cross training of employees resulting in delays in completion of general ledger account reconciliations.
<b>Effect:</b>	Errors or intentional fraud could occur and not be detected timely by other employees in the normal course of their responsibilities.
<b>Recommendation:</b>	We recommend the City implement procedures to ensure that all significant balance sheet accounts are reconciled consistently throughout the year. In addition, the City needs to identify opportunities to cross-train employees.
<b>Views of responsible officials:</b>	Refer to the management response per the corrective action plan.

# City of Sheboygan, Wisconsin

## SCHEDULE OF PRIOR YEAR AUDIT FINDINGS AND CORRECTIVE ACTION PLAN FOR THE YEAR ENDED DECEMBER 31, 2018

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### **PRIOR YEAR AUDIT FINDINGS**

There were no findings or questioned costs for federal or state awards for the year ended December 31, 2017.

### **CORRECTIVE ACTION PLAN**

<u>Finding No.</u>	<u>Corrective Action Plan</u>
Finding 2018-001	Management agrees with the comment and in May 2019 the City added a senior accountant position within the Finance Department. The intent is to develop additional expertise and experience within the Finance Department through additional training at conferences and seminars. Management will continue to review and approve the annual financial report and Wisconsin Municipal Financial Report Form C prior to issuance.
Finding 2018-002	The City hired a new Finance Director during 2018. The Finance Director has been proactive in reviewing and discussing any proposed adjusting entries. The City expects that the number of journal entries and the significance of any proposed entries will decrease significantly during 2019. Establishing and improving written processes will aid in the controls to ensure a more complete year-end closing procedure.
Finding 2018-003	Management agrees with the comment and in May 2019 the City added a senior accountant position within the Finance Department. The intent is to develop additional expertise and experience within the Finance Department. This additional expertise and experience will lend to improved and defined process improvement related to reconciliations.

Contact for corrective action plan:  
Marty Halverson, Finance Director  
City of Sheboygan  
828 Center Avenue, Room 205  
Sheboygan, WI 53081  
920-459-3304