

**CONFIDENTIAL MEMORANDUM OF UNDERSTANDING SUBMITTED
TO THE HONORABLE WILLIAM E. CALLAHAN, JR., UNITED STATES
MAGISTRATE JUDGE AS PART OF MEDIATION PROCEEDINGS IN
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
WISCONSIN CASE NO. 09-CV-964**

THIS MEMORANDUM OF UNDERSTANDING is entered into and effective as of June 13, 2011, by and between the **GENEVA RIDGE JOINT VENTURE**, an Illinois Joint Venture, with its principal place of business located at 110 North Brockway, Suite 210, Palatine, Illinois, 60067 (hereinafter "Geneva Ridge"), on the one hand, and the **CITY OF LAKE GENEVA**, a municipal corporation organized under the laws of the State of Wisconsin with offices located at City Hall, 226 Geneva Street, Lake Geneva, Wisconsin, 53147 (hereinafter "City"), on the other hand (individually "Party" and collectively "Parties").

RECITALS

The Parties to this Memorandum of Understanding ("MOU") acknowledge the following:

1. Geneva Ridge desires to develop its nine separate but contiguous parcels of vacant land located within the corporate limits of the City, consisting of tax key parcel nos. ZYUP00179, ZYUP00180, ZYUP00181, ZYUP00182, ZYUP00183, ZYUP00184, ZYUP00185, ZYUP00186, and ZYUP00186A (all nine parcels are collectively referred to herein as the "Property" or "Properties"), more specifically depicted in the plat map attached hereto as Exhibit A, consistent with the general and specific planning principles contained in the City's June 15, 2004 South Neighborhood Plan for the Property, a detailed update to the City's Comprehensive Master Plan adopted in 1999.

2. The Parties wish to resolve longstanding litigation in order to achieve a full, final and complete resolution of the disputes between them, thereby avoiding the cost and expense of further litigation and trial.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, and other good and valuable consideration, receipt of which is hereby expressly acknowledged by the Parties hereto, the Parties specifically agree as follows:

Section I. The Parties agree to undertake and diligently pursue the following actions, with a goal of accomplishing all of them as promptly as is reasonably feasible.

(A) Amendment of City's "Smart Growth" Comprehensive Master Plan.

1. The City agrees to initiate proceedings to consider and vote upon Geneva Ridge's request to amend the City's "Smart Growth" Comprehensive Master Plan, as that Plan relates to the Properties, in substantial conformance with the land use designations previously assigned to the Properties in the City's June 2004 South Neighborhood Plan, pursuant to the procedures set forth in Wis. Stat. §66.1001 (4)(b)-(f), and the City's current Master Plan itself. The "Smart Growth" Comprehensive Master Plan amendment process shall be initiated to consider amendment of the future land use designations for the Properties to Planned Neighborhood future land use designation ("PN"), and Planned Mixed Use future land use designation ("PMU"), as those use designations are described in the City's December 14, 2009 Comprehensive Plan ("Comprehensive Plan"). The PN and PMU land use designations are also depicted on "Map 5a: Future Land Use – City of Lake Geneva Comprehensive Plan ("Map 5a"), which is included in, and described by, the Comprehensive Plan. A copy of the text for the PN and PMU land use designations and Map 5a from the Comprehensive Plan is attached hereto as Exhibit B and incorporated herein by reference. Under the land use designation amendments contemplated by this MOU, all of the Properties

would be designated PN, except for 15 acres in the southwest corner of tax key parcel no. ZYUP000181, which would be designated PMU.

2. The City and Geneva Ridge will cooperate to expedite the consideration process for the described amendments, but with the recognition that the City is not bound to enact any particular land use designation amendment classification or ordinance. The remaining provisions of this MOU, however, are contingent upon the amendment to the City's current "Smart Growth" Comprehensive Master Plan land use designations for the Properties, as described herein.

3. The City's Plan Commission and the City's Common Council will consider and initiate, during the "Smart Growth" Comprehensive Master Plan amendment process, such steps as may be necessary to amend the land use designations for the Geneva Ridge Properties, as contemplated by this MOU.

4. As part of the mutual agreement of cooperation to expedite the amendment process, the City shall provide all the appropriate postings, notices, and publications, conduct all public hearings, and take any other necessary steps in good faith as required by law so as to permit the City's Plan Commission and the City's Common Council to vote upon the proposed amendment to the City's "Smart Growth" Comprehensive Master Plan for the Property, as intended and contemplated by this MOU as quickly as possible, but absolutely no later than August 31, 2011.

(B) Inclusion of Geneva Ridge Properties in City's Future Urban Services Area.

During the "Smart Growth" Comprehensive Master Plan amendment process, and contingent upon the amendment to the City's current "Smart Growth" Comprehensive Master Plan land use designations for the Properties as described herein, the City and Geneva Ridge further agree to cooperate and make a good faith effort to take all reasonable and necessary steps required by law as quickly as possible, but absolutely no later than August 31, 2011, to amend the City's Community Facilities and Utilities Comprehensive Plan so as to include the Geneva Ridge Properties in the City's Future Urban Services area, as depicted on the City's draft Map 7, Community Facilities and Utility Map, dated June 19, 2009, a copy of which is attached hereto as Exhibit C and incorporated herein by reference.

(C) Payment of Money.

Within seven (7) days after, but only after, a final City vote that amends the "Smart Growth" Comprehensive Master Plan for the Geneva Ridge Properties, and the completed inclusion of the Properties in the City's Future Urban Services area boundaries, all as contemplated within this MOU, the City's insurers shall pay to Geneva Ridge a lump sum cash payment of Two Million One-Hundred Thousand and 00/100 Dollars (\$2,100,000.00). This payment is being made by the City's insurers in consideration for the agreement by Geneva Ridge to provide appropriate releases to all defendants and to dismiss United States District Court, Eastern District of Wisconsin, Case No. 09-C-965, with prejudice and without costs.

Section II. Effectiveness of Provisions Upon Occurrence of Certain Events.

The Parties acknowledge and agree that Sections I (A), (B) and (C) are interdependent, non-severable provisions (until all of the Events (defined below) occur), and the effectiveness of Sections I (A), (B) and (C) is conditioned upon all of the following events having occurred and having been satisfied. It is understood that each of the events will move forward simultaneously, but none of them will be finalized and concluded until all are concluded and that all contingencies will be waived simultaneously. The events are (collectively, "Events"):

(A) The land use designations and corresponding text for the Geneva Ridge Properties are amended to PN and PMU, at no cost to Geneva Ridge, consistent with the objectives outlined in the Comprehensive Plan and consistent with this MOU as quickly as possible, but absolutely no later than August 31, 2011;

(B) Amendment and revision of the City's Community Facilities and Utilities Comprehensive Plan Boundaries, at no cost to Geneva Ridge, to include the Geneva Ridge Properties in the City's Future Urban Services area map boundary as quickly as possible, but absolutely no later than August 31, 2011;

(C) No later than seven (7) days after final approval vote by the City Council of the amendments to the City's "Smart Growth" Comprehensive Master Plan and to the City's Future Urban Services area, as contemplated by this MOU, the City's insurers shall cause to be paid to Geneva Ridge a lump sum cash payment of Two Million One-Hundred Thousand and 00/100 Dollars (\$2,100,000.00).

Section III. Stay of Proceedings.

Upon execution of this Agreement, the Parties shall jointly approach the court and seek a stay of all discovery, hearings, and other proceedings to August 31, 2011, pending implementation and completion of the Events listed in Section 2 of this Agreement.

Section IV. Releases by Geneva Ridge.

Geneva Ridge agrees that it shall provide appropriate releases to all defendants, and that the action shall be dismissed with prejudice and without costs, in United States District Court, Eastern District of Wisconsin, Case No. 09-C-964, (collectively "Releases"), only after all of the Events set forth herein have occurred and all contingent provisions have been satisfied.

If any or all of the Events set forth in this MOU do not occur or are otherwise not completed and satisfied in accordance with the provisions of this MOU, Geneva Ridge shall not provide the Releases.

Section V. Interdependence of Events.

The Parties acknowledge and agree that all of the sections and provisions of this MOU are interdependent, non-severable, binding obligations through completion and satisfaction of all of the Events. Upon completion and satisfaction of all of the Events, the remedies available to a Party are those set forth in the actions or documents involved with a particular Event, but without any right at such time to upset, undo or affect other Events. Geneva Ridge, however, in its sole discretion may waive the requirement for completion and

satisfaction of one or more of the Events, to facilitate the completion and satisfaction of the terms of the remaining Events.

Section VI. Additional Provisions.

(A) Each and all of the Parties hereto agree to cooperate fully with each other, to execute any and all supplementary documents, to take any and all such additional actions as may be necessary and appropriate, and to act in good faith, use their best efforts, and to act as expeditiously as possible to give full force and effect from time to time to the terms, conditions, and intent of this MOU.

(B) This MOU expresses the complete agreement of the Parties hereto concerning the matters expressly addressed herein, and supersedes all prior discussions, oral or written, express or implied. No terms of this MOU may be altered, amended, or modified except by a subsequent written agreement executed by all Parties hereto.

(C) This MOU has been reviewed by the City's Common Council, which has authorized the City's legal counsel, Piper & Schmidt, to execute this MOU on behalf of the City.

(D) The provisions of this MOU are not severable. If any provision of this MOU shall be held invalid, illegal, or unenforceable, this MOU in its entirety shall be null and void, without force and effect. In such event, however, the Parties shall meet as soon as practicable and use their best efforts to reach an alternative agreement to give full force and effect to all of the terms, conditions, and intent of this MOU.

(E) This MOU may be executed in separate counterparts, each of which is deemed to be an original and all, when taken together, constitutes one and the same MOU. Facsimile signatures shall be effective to bind each of the Parties. Each Party, however, agrees to provide all others with original signatures on the MOU at the earliest reasonable time after facsimile signatures have been transmitted.

(F) Except as otherwise provided herein, this MOU shall bind and inure to the benefit of, and be enforceable by each Party, and each Party's respective heirs, executors, successors, administrators, assigns, agents, insurers, legal representatives and attorneys. No Party may delegate or assign any of its obligations under this MOU.


(G) The Parties acknowledge that this MOU is subject to and conditioned upon the City receiving the approval of its own governing body no later than June 13, 2011. Once such approval is obtained, the terms of this MOU shall be binding upon the City.

Section VII Public Discussion of this Memorandum of Understanding and the Agreement of the Parties.

The Parties agree that the terms and conditions of this MOU have been negotiated, discussed and bargained for within the context of mediation proceedings conducted before the Honorable William E. Callahan, Jr., United States Magistrate Judge, in Case No. 09-C-964, and as such, are to be considered confidential, inadmissible, settlement communications until further order of the Court or agreement of the Parties.


IN WITNESS WHEREOF, this Memorandum of Understanding is made and agreed as of the date first above written.

GODFREY, LEIBSLE, BLACKBOURN & HOWARTH, S.C.
Attorneys for Plaintiff


By: 
Lisle W. Blackbourn (1003897)

CRIVELLO CARLSON, S.C.

Attorneys for Defendants, Mary Jo Fesenmajer, Arleen Krohn, Tom Spellman and Penelope Roehrer

By: 
Amy J. Doyle (1001333)

PIPER & SCHMIDT
Attorneys for Defendants, City of Lake Geneva, William P. Chesen, Todd Krause, Gary Dunham, Donald Tolar, Frank Marsala, Ron Rotkowski, Alan Kupsik, Thomas Hartz, Matt Kuehl, Dennis Lyon and Martin H. Smith

By: 
Joseph M. Wirth (1012080)