

Patrick Kay
272 Lighthouse Circle
Manistee, MI 49660
February 8, 2016

Board of Directors
Manistee Main Street DDA
294 River Street, Suite 2
Manistee, MI 49660

Dear Manistee Main Street DDA:

It is with regret that I tender my resignation from the Manistee Main Street DDA effective immediately. Since the beginning of my employment in November 2013, I have served Downtown Mansitee and this board to the best of my ability, however I feel that it is my time to step down. I feel that I have taken this organization to then next level and given you the tools to succeed. My family and I have always had the intention of moving back to the south and this gives us the ability to do so.

I am grateful for having had the opportunity to serve the downtown and this fine organization for the past 2 years and three months, and I offer my best wishes for its continued success.

Sincerely,

Patrick Kay

SEPARATION AGREEMENT AND GENERAL RELEASE

This **SEPARATION AGREEMENT AND GENERAL RELEASE** (the "Agreement") is made and executed between Patrick Kay ("Kay") and the Manistee Main Street Downtown Development Authority ("DDA") on the date set forth below.

WHEREAS Kay was employed by DDA as its Executive Director; and

WHEREAS Kay has resigned his employment relationship with DDA, effectively February 18, 2016 and the parties desire to clarify details regarding his departure.

NOW, THEREFORE, in consideration of the promises described below, the parties agree as follows:

1. DDA agrees to take the following action:
 - a. **Severance Pay.** DDA will pay Kay severance pay in the amount of Six Thousand Five Hundred Seventy-six and 93/100 (\$6,576.93) Dollars. Payment shall be made as soon as possible after the expiration of the revocation period set forth in Paragraph 3 and will be subject to all tax and payroll withholdings.
 - b. **Accrued but unused Vacation.** Kay has 10 days of accrued but unused vacation as of February 18, 2016 and DDA will pay Kay the amount of \$2,192.31 for his accrued but unused vacation. This amount shall be paid at the same time the payment in paragraph 1.a. above is made and will be subject to all tax and payroll withholdings.
 - c. **Unemployment.** In the event that Kay should apply for unemployment benefits, DDA will advise the Unemployment Insurance Agency that his employment was ended on February 8, 2016 for reasons that do not constitute misconduct. The payments set forth in Paragraph 1(a) will be designated to the period of February 8, 2016 through April 2, 2016 for unemployment purposes.

2. In exchange for the promises set forth in Paragraph 1 of this Agreement, Kay agrees as follows:
 - a. **Waiver and Release of Claims against DDA.** Kay acknowledges that he resigned his employment effective February 8, 2016. In addition, Kay voluntarily agrees to and hereby does knowingly, fully and completely waive and release any and all statutory, administrative or common law claims, rights or causes of action seeking damages, costs, expenses, compensation, or any other relief that he has or may have against DDA, its officers, agents, servants, board members and employees, which arises out of or is in any way connected with his employment at or the termination of his employment from DDA. This waiver and release includes but is not limited to claims, rights or causes or action involving: negligence; defamation; fraud or misrepresentation; invasion of privacy; due process of law under the United States

Constitution or Michigan Constitution; wrongful discharge; violation of DDA Policies, if any, regarding procedures related to the termination of his employment; breach of contract; violation of the Bullard-Plawecki Employee Right to Know Act (MCL 423.501 *et seq*); violation of the Family and Medical Leave Act (29 U.S.C. § 2601 *et seq*); violation of ERISA (29 U.S.C. § 1002 *et seq*); violation of any and all state and federal employment discrimination laws including sex, race, religion, creed, national origin, height, weight, age and handicap under Title VII of the Civil Rights Act (42 U.S.C. § 2000 *et seq*), the Age Discrimination in Employment Act as modified by the Older Workers Benefit Protection Act of 1990 (ADEA)(29 U.S.C. § 621 *et seq*), the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq*), the Rehabilitation Act (29 U.S.C. § 701 *et seq*), Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq*), and Michigan's Persons With Disabilities Civil Rights Act (MCL 37.1101 *et seq*); violation of Michigan's Veteran's Preference Act (MCL 35.401 *et seq*); violation of the Uniformed Services Employment and Reemployments Rights Act of 1994 (38 U.S.C. § 4301 *et seq*); and violation of Michigan's Whistleblowers' Protection Act (MCL 15.361 *et seq*) or any other state or federal law or regulation protecting whistleblowers. This waiver and release applies to the right to initiate, proceed with or participate in any state or federal lawsuit, any local, state or federal administrative proceeding, or any arbitration proceeding arising out of or in any way connected with his employment at or the termination of his employment with DDA. This waiver and release does not include claims regarding the alleged breach of the terms of this Agreement or claims arising under Michigan's Workers Disability Compensation Act (MCL 418.101 *et seq*). This waiver and release does not apply to rights or claims under the ADEA, if applicable, that may arise after the date of this Agreement, nor does it prohibit Kay from filing a charge or complaint with the Equal Employment Opportunity Commission (the "EEOC"), including a challenge to the validity of this waiver agreement under the ADEA, or participating in any investigation or proceeding conducted by the EEOC, but Kay waives and releases any right to receive any monetary benefit or remedy resulting from any such EEOC charge.

- b. **Non-Disparagement.** Kay agrees he will not make any disparaging or hostile comments about DDA, any officer, board member, agent or employee of DDA. "Disparage" as used herein shall mean any communication, oral or written, that discredits or reflects negatively on DDA or Mr. Kay and DDA agrees it will not make any disparaging or hostile comments about Mr. Kay.
- c. **Return of DDA Property.** Kay will return, any and all property of DDA, including keys, access cards, corporate credit cards, documents, data, usernames and passwords, backup tapes or other media, business records and confidential or proprietary information (including all copies), tools, equipment, supplies or other property belonging to the DDA. Kay will not take or retain any such information or data or copies. Kay will further, upon receipt, return any additional DDA property which he receives after the date of separation.
- d. **Confidential and Proprietary Information.** Kay will hold in strictest confidence and will not disclose to any person or entity any confidential or proprietary

information of DDA, nor will Kay make use of any such confidential or proprietary or personal information for his own purposes or for the benefit of any other person or entity. For purposes of this Agreement, "confidential or proprietary information" means all information relating to DDA, which is not in the public domain or generally available to persons who do not have a confidential relationship with DDA. "Confidential or proprietary information" includes all institutional and personal financial information, account information, transactional information, business plans, marketing plans, employee and client lists and data, and similar proprietary information, and information which has been provided to or obtained by DDA or Kay in confidence.

3. Kay acknowledges that some or all of the consideration provided under Paragraph 1 is in addition to anything of value to which the Kay is already entitled. Kay further acknowledges that he has been allowed the opportunity to have twenty-one (21) days in which to consider the terms of this Agreement, that he has been advised in writing by DDA to consult with an attorney before executing this Agreement and that he understands that he has seven (7) days from the date he executes this Agreement within which to revoke it.
4. This Agreement constitutes the entire understanding between the parties. No prior, contemporaneous, oral or written, express or implied agreement shall have any effect and this Agreement may not be modified or amended except in writing by all of the parties.
5. The terms of this Agreement are to be interpreted, construed, enforced and performed under the laws of the State of Michigan. All disputes regarding an alleged breach of the terms of this Agreement or demanding enforcement of the terms of this Agreement shall be brought with six months of the events giving rise to the dispute. Disputes that are timely raised shall be shall be brought only in Manistee County.
6. Kay acknowledges that he has carefully read each provision of this Agreement, that he understands its contents, and that he knowingly signs this Agreement as his own free and voluntary act and deed after consulting with such advisors and /or attorneys as he considered appropriate.
7. Nothing in this Agreement is an admission or confession of liability or wrongdoing by Kay, DDA, or DDA's agents, officers, employees, board members and representatives; nor shall this Agreement or the subject matter itself be interpreted or construed to be such an admission or confession.
8. This Agreement shall be binding upon the heirs, representatives, successors and assigns to each party.
9. The parties have executed this Agreement on the day and year indicated below.

Dated: _____

Patrick Kay

Manistee Main Street Downtown
Development Authority

Dated: _____

By: _____

Its: _____