

III

DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

Res. No. 156 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 13, 2023.

A RESOLUTION authorizing entering into a Development Agreement with GenCap Emem Sheboygan 101, LLC regarding an affordable housing project to be located on or near the former Koepsell property.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Development Agreement Between GenCap Emem Sheboygan 101, LLC and the City of Sheboygan, a copy of which is attached hereto and incorporated herein.

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

**DEVELOPMENT AGREEMENT
BETWEEN
GENCAP EMEM SHEBOYGAN 101, LLC
AND THE CITY OF SHEBOYGAN**

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into as of the ____ day of _____, 2023 by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City"), and GENCAP EMEM SHEBOYGAN 101, LLC a Wisconsin limited liability company with its principal offices located at 6938 N. Santa Monica Blvd., Fox Point, WI 53217 (hereinafter "Developer").

RECITALS

A. Developer has proposed constructing a new 83-unit senior affordable housing project and 18 live/work-three-bedroom units with underground and at-grade parking and related improvements (the "Development"). The Development will be located on a portion of the property (as further described in Article 5.6 herein, the "Property") described and depicted in Exhibit A to this Agreement (the "Undivided Property"). Said Exhibit A is attached and incorporated as part of this Agreement.

B. City recently conducted an Affordable Housing Market Study that identified a need for housing affordable to individuals and families with low and moderate incomes.

C. The Property is located in the City's Tax Incremental District No. 17 (the "District"), a rehabilitation district pursuant to Wis. Stat. § 66.1105 ("State Tax Increment Law"), which the City established in September 2018. The District was established for the purpose of making public improvements in the area so as to promote business redevelopment activity, attract and retain developments, and encourage further private investment in local businesses and residences, thereby providing long-term tax benefits to the City and the other overlying tax jurisdictions.

D. The City is authorized under the State Tax Increment Law to pay Project Costs (as defined in Wis. Stat. § 66.1105(2)(f)) from the special fund of the District or from the proceeds of municipal obligations issued under Wisconsin Statutes.

E. The City is authorized by Wis. Stats. § 66.1105(3)(e) to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of the TID Project Plan (as defined in Article I of this Agreement), as it may be amended.

F. The Project (as defined in Article I of this Agreement) to be undertaken by the Developer, as described herein, is of particular importance to the City as it provides additional opportunities for affordable housing.

G. The TID Project Plan includes a "City Upfront Development Incentive" and "Pay-Go Development Incentive" from the District as eligible Project Costs for purposes of carrying out the TID Project Plan.

H. The City has also received funding from the United States Department of Treasury under the American Rescue Plan Act ("ARPA") to assist local municipalities negatively impacted by the COVID-19 public health emergency for affordable housing and plans to provide an upfront grant in the amount of \$2,000,000 from this allocation towards the cost of developing and constructing the Development (the "ARPA Grant").

I. The City proposes to enter into this Development Agreement with the Developer to achieve the objectives of the District and ARPA and to facilitate the implementation of the TID Project Plan, as it may be amended. Additionally, the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the continued development of the Project in accordance with this Agreement.

J. The City desires to make the proceeds of the ARPA Grant and the "City Upfront Development Incentive" (as defined in Article I of this Agreement) available to the Wisconsin Preservation Fund, Inc., a Wisconsin non-stock corporation ("WPF"), conditioned upon WPF loaning the proceeds of the ARPA Grant and City Upfront Development Incentive to the Developer.

K. WPF is a nonprofit corporation that was formed, in part, to foster the development of affordable housing such as the Development. Developer desires to assist WPF in the furtherance of its charitable purposes and has requested WPF to participate in the development of the Project.

L. 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 incentives in order to bring about the development and thereby promote the sound growth of the City.

M. The Project proposed by the Developer would not be economically feasible within the foreseeable future without financial assistance from City to Developer as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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

"ARPA" means the American Rescue Plan Act pursuant to which the U.S. Department of Treasury is authorized to provide state and local fiscal recovery funds to local governments for purposes of making significant investments with long-term benefits to help municipalities recover from the negative effects of the COVID-19 pandemic, focusing on affordable housing, revitalization and access and delivery of public service.

"City" means the City of Sheboygan, a Wisconsin municipal corporation.

"City Upfront Development Incentive" means an upfront contribution of \$2,000,000 from TIF 17 Fund Balance to be paid to WPF.

"Developer" means GenCap Emem Sheboygan 101, LLC and its permitted successors and assigns.

"Events of Default" means any of the events described in Article X hereof.

"Excess TIF Revenues" means the amount by which the property taxes paid by the Developer on the Development with respect to any given tax year exceed the Guaranteed Annual Real Estate Tax Payment for such tax year.

"Pay-Go Development Incentive" means payments in the maximum amount of One Million Five Hundred, Twenty-Five Thousand, Three-Hundred, eighty dollars (\$1,525,380) paid by the City to Developer pursuant to the terms in Article VII below.

"Plans and Specifications" means the plans and specifications for the Project prepared by the Developer which have will be approved by the City Plan Commission in accordance with all procedures and requirements of the City for such approvals.

"Project" means the development proposed by Developer herein for construction of a housing complex with 83 senior (55 years+) affordable units, 18 live/work/three-bedroom units and associated underground and at-grade parking lot located at the Property.

"Substantial Completion" means completion of the Project evidenced by: (i) issuance by the Project architect of a certificate of substantial completion (but not including weather-related delays of landscaping and related exterior work); and (ii) issuance by City of a temporary or permanent certificate of occupancy for the Project.

"Tax Increment" means the county, city, school and other local general property taxes levied on the Project attributable to the additional Assessed Value for real estate tax assessment purposes created by the Project that is the subject of this Agreement over the Base Value of the Property. For purposes of this Agreement, the "Base Value of the Property" is Six Hundred Seven Thousand, Two Hundred Dollars (\$607,200.00).

"TID Project Plan" means the Project Plan for Tax Incremental Financing District No. 17 of the City of Sheboygan, Wisconsin.

ARTICLE II. OVERVIEW OF THE PROJECT

The Project consists of the construction of a housing complex with 83 senior (55 years +) and 18 live/work/three- bedroom affordable housing apartment units, and associated parking upon the Property, the conceptual plans of which are attached hereto as Exhibit B). The Project will be subject to income and rent restrictions as set forth in the extended use agreement entered into by Developer and the Wisconsin Housing and Economic Development Authority ("WHEDA") in connection with the allocation of the Tax Credits (as defined herein) to the Project. Construction shall commence by December 31, 2023 and shall be Substantially Completed within eighteen months thereafter (subject to extension for Force Majeure), at an estimated cost of \$27,125,559.

ARTICLE III. CONDITION PRECEDENT TO DEVELOPER AND CITY OBLIGATIONS

The parties acknowledge that Developer has been awarded an allocation of 4% Low-Income Housing Tax Credits (the "Tax Credits") from WHEDA. Developer's obligations hereunder shall be contingent upon Developer acquiring the Property and Developer obtaining, in Developer's sole discretion, commitments for equity, grant funding, and debt financing in amounts sufficient to complete the Project. Developer may elect to terminate this Agreement for failure to satisfy this condition by delivering written notice to the City not later than September 30, 2023 and upon such termination, the parties shall have no further obligation to each other. The conditions precedent to City obligations to make the proceeds of the ARPA Grant, City Upfront Development Incentive and Pay-Go Development Incentive are set forth herein.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer makes the following representations and warranties which the City may rely upon in entering into this and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(A) Developer is a duly organized and existing limited liability company in current status under the laws of the State of Wisconsin.

(B) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.

(C) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(D) Prior to receiving the proceeds of the ARPA Grant or the City Upfront Development Incentive, the Developer will have sufficient funds through equity investment in Developer, through lending sources, and through other funding mechanisms for the completion of the Project and will provide evidence thereof to the City. Developer shall, from time to time upon the reasonable request of the City, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City of any material adverse change in the Developer's financial condition.

(E) The Project to be constructed will be fully subject to taxation under Wisconsin property tax laws from January 1 of the year after Developer acquires the Property from RDA (as defined in Article 5.6 of this Agreement) until the Expiration Date (as defined herein). Developer, for itself, its successors and assigns, shall not, prior to the Expiration Date, (i) take any action(s) or file any claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under property tax laws, or (ii) advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

(F) The City's obligation to provide the ARPA Grant is contingent upon City, Developer and WPF entering into a Grant Agreement related to the ARPA Grant in a form approved by the City Attorney.

ARTICLE V. UNDERTAKINGS OF THE DEVELOPER

5.1 Construction of the Project. The Developer shall commence construction of the Project on or before December 31, 2023. Developer shall Substantially Complete construction within eighteen months thereafter (subject to extensions for Force Majeure).

5.2 Compliance with Codes, Plans and Specifications, Etc. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall comply with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement, the Development Plan contained in Exhibit B to this Agreement (which is attached and incorporated by reference), and the Plans and Specifications. The acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, exceptions or conditional use permits, or approve any building the City determines not to comply with the City codes and ordinances. All work done by or for Developer shall be in accordance with all applicable City codes and ordinances, the Plans and Specifications, and other applicable laws and regulations. All plans for each aspect of the work must be approved by the City (which may delegate such approvals to its staff in accordance with City codes, ordinances and policies). If permits or approvals are required for any such work, issuance of such permits or approvals is a condition to commencement of such work,

and Developer will at its sole cost and expense take such action as required to seek such approvals and permits.

5.3 Taxability of the Project. Developer hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under state law from January 1 of the year after Developer acquires the Property from RDA until the Expiration Date (as defined in this subsection). Prior to the Expiration Date, Developer shall take no action at Open Book, Board of Review, or in Circuit Court to reduce the assessed valuation of the Project to a value lower than that necessary to create a tax payment less than the Guaranteed Annual Real Estate Tax Payment (as defined herein). 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 prior to the Expiration Date which would jeopardize or call into question the taxability of the Project or eliminate real estate or personal property taxation in the State of Wisconsin. This section shall remain in place until December 31, 2044 ("Expiration Date").

5.4 Payments in Lieu of Taxes. Notwithstanding the above, in the event that the Project is determined at any time to be exempt from real and/or personal property taxation under state law, or in the event that a particular tax is eliminated or repealed, Developer, for itself and 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 Project were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project. This section shall remain in place until the Expiration Date.

5.5 Good Faith Hiring and Contracting Efforts. Developer agrees to exercise good faith in striving whenever possible to hire, retain, and contract with qualified individuals and businesses residing and/or based in the City of Sheboygan, as well as veteran- and minority-owned businesses. Developer agrees to undertake reasonable efforts to make opportunities known and available to local residents and businesses, such as advertising in publications and internet resources frequented by such residents and businesses.

5.6 Pocket Park. Developer is party to an offer to purchase with the Redevelopment Authority of the City of Sheboygan ("RDA") for the purchase of the Undivided Property. Developer will legally subdivide the Undivided Property generally in accordance with the certified Survey Map attached hereto as Exhibit C (the "CSM"). A portion of the Property with boundaries that are generally consistent with Lot 2 of the CSM (the "Park Parcel") will be conveyed to the City for \$1 for City's use as a park. The Development will be constructed on the remaining portion of the Undivided Property (the "Property"). Developer shall cause the RDA to convey the Park Parcel to City at the time Developer acquires the Property from the City. Developer, at its cost and expense, will landscape a new pocket park/entertainment venue (the "Pocket Park") on the Park Parcel in accordance with the scope of work attached hereto as Exhibit D. Upon inspection and acceptance of the Pocket Park landscaping by City, City shall, at its sole cost and expense, operate, maintain and repair the Pocket Park as a public park.

ARTICLE VI. DEVELOPER GUARANTEE TO CITY

6.1 Minimum Investment. Developer for itself, its successors and assigns, hereby guarantees to construct or provide for private construction of the Project with a minimum investment of Nineteen Million (\$19,000,000) Dollars ("Minimum Investment"). Costs and expenses counted towards the Minimum Investment include all hard costs expended by Developer in connection with the development and construction of the Project. Developer shall provide the City a statement of costs and expenses incurred in the development of the Project no later than sixty (60) days after Substantial Completion of the Project as required by this Agreement, or such later date as the parties may hereafter agree. Such statement shall be certified by a certified public accountant.

6.2 Minimum Tax Payment. Developer guarantees the amount of taxes to be paid for the Project shall not be less than \$205,000.00 commencing in tax year 2025, and each year thereafter until and including the 2044 tax year (the "Guaranteed Annual Real Estate Tax Payment"). Developer's payments shall be due at the same time as the property taxes but in no event shall payments be made later than January 31st of the year following the tax year in which property taxes are billed. To the extent the real property taxes paid are less than the Guaranteed Annual Real Estate Tax Payment, the Developer shall also pay any Differential Payment to the City in cash at the time the payments are due. "Differential Payment"

means the amount to be paid by the Developer as the shortfall, if any, between the Guaranteed Annual Real Estate Tax Payment and the amount of taxes billed.

ARTICLE VII. UNDERTAKINGS OF THE CITY

7.1 ARPA Payment. The City will grant the proceeds of the ARPA Grant (in amount equal to \$2,000,000) to WPF pursuant to the terms of a grant agreement between the Developer, WPF, and City as described in Paragraph F of Article IV above (the "Grant Agreement"). The City acknowledges that WPF will loan the proceeds of the ARPA Grant to Developer for Developer's use in connection with the development and construction of the Project. The City shall deposit the full amount of the ARPA Grant to a construction escrow account with First America Title Insurance Company, 833 E. Michigan Street, Milwaukee, WI 53202 ("Title Company") at the time of the closing of the construction financing and admission of the Investor Member into Developer. Such deposit shall be deemed a disbursement of the ARPA Grant to WPF and an advance of the loan proceeds from WPF to Developer.

7.2 City Upfront Development Incentive. The City will grant the proceeds of the City Upfront Development Incentive (\$2,000,000) to WPF and WPF will loan the proceeds of the City Upfront Development Incentive it receives from City to Developer for Developer's use in connection with the development and construction of the Project. The City shall deposit the full amount of the City Upfront Development Incentive to a construction escrow account with Title Company at the time of the closing of the construction financing and admission of the Investor Member into Developer. Such deposit shall be deemed a disbursement of the City Upfront Development Incentive to WPF and an advance of the loan proceeds from WPF to Developer. The City agrees and acknowledges that the City Upfront Development Incentive shall not be repayable except that Developer shall be required to repay the City Upfront Development Incentive in case of a default by Developer in the performance of its obligations under this Agreement that is not cured within any applicable notice and cure periods herein.

7.3 Pay-Go Development Incentive. The City agrees to pay to Developer subsequent to Substantial Completion, the Pay-Go Development Incentive on the Payment Dates (as hereinafter defined), but only in the manner, at the times, from the source of revenue, and to the extent hereinafter provided. Said Pay-Go Development Incentive shall be made as an inducement for the

development of the Project. Subsequent to Substantial Completion and provided Developer pays its property tax bill and its Differential Payment, if any, in full by January 31 of the year following the applicable tax year, the City shall pay by no later than March 15 of each year (each, a "Payment Date") a sum equivalent to 90% of the Tax Increment and Differential Payment generated by the Development in that tax year for each tax year until and including the 2044 tax year. However, in no case shall the sum total of all annual payments exceed One Million Five Hundred, Twenty-five Thousand, Three-hundred, eighty dollars (\$1,525,380) Dollars. Prior to Substantial Completion of the Project, City will deposit an amount equal to 90% of the Tax Increment received by City into a special fund for the District. Upon Substantial Completion of the Project, such amount shall be disbursed to Developer as a Pay-Go Development Incentive payment.

7.4 Excess TIF Revenues. Provided Developer pays its property tax bill in full by January 31 of the year after the applicable tax year, the City agrees to pay to Developer, for each tax year after the tax year in which all annual payments paid to Developer pursuant to Section 7.3 above first exceed (\$1,525,380) until and including the 2035 tax year, on March 15 following the applicable tax year, 90% of the Excess TIF Revenues for such tax year.

7.5 Community Development Investment Grant. City agrees to cooperate with Developer to apply to the Wisconsin Economic Development Corporation ("WEDC") for grant funding for the Project pursuant to WEDC's Community Development Investment Grant Program.

7.6 No Early Dissolution. Except in the event of an Event of Default by Developer, City covenants that the City shall not, without obtaining Developer's prior written consent, introduce a resolution to, and shall not, dissolve or terminate the Pay-Go Development Incentive. The parties acknowledge that the District terminates by statute if it has existed a specified number of years.

7.7 Purpose. The City Upfront Development Incentive made under this Agreement is provided by the City as part of a negotiated, lawful contract with Developer in exchange for consideration, including requirements to develop the Project in a manner that inures to the benefit of the general public. Said payments are in no way tied to future property tax payments and do not provide any future tax break, nor do they refund already paid taxes.

7.8 Vacation of Public Alley. The City shall cooperate with Developer and RDA to vacate the public alley located within the Property.

ARTICLE VIII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY

As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

(A) All representations, guarantees, and warranties of Developer set forth in Articles IV and V, and other representations and warranties of Developer in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct.

(B) All covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied.

(C) No Event of Default by Developer has occurred, or with the giving of notice or lapse of time would occur.

ARTICLE IX. INDEMNIFICATION OF THE CITY

The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "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 development of the Project, provided that the foregoing indemnification shall not be effective for any negligent acts of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation, gross negligence or willful misconduct of, or breach of this Agreement by, the Indemnified Parties, the Developer will protect and defend the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the

acquisition, construction, installation, ownership and operation of the Project. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE X. DEFAULT/REMEDIES

10.1 Events of Default. An Event of Default is any of the following:

(A) A failure by the Developer to cause Substantial Completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of written notice to Developer, then the event will not be an Event of Default.

(B) The failure by the City to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the City of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the City commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of notice to the City, then the event will not be an Event of Default.

(C) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.

10.2 Notice of Default. City agrees to give Developer's tax credit investor ("Investor Member") written notice of any default so long as City has been provided the name and address of the Investor Member. Investor Member may, at Investor Member's option, cause the cure of such default within the cure periods set forth above. The City agrees to accept any cure by Investor Member as if such cure were made by Developer.

10.3 Remedies on Default. Whenever an Event of Default occurs and is continuing, the other non-defaulting party may take any one or more of the following actions:

(A) The non-defaulting party may immediately suspend their performance under this Agreement from the time any notice of an Event of Default is given until they receive assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.

(B) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the defaulting party under this Agreement.

10.4 No Remedy Exclusive. No remedy or right conferred upon or reserved to the City or Developer in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

10.5 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

10.6 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

ARTICLE XI. FORCE MAJEURE

No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, pandemic or epidemic, acts of God, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent, and the time for performance will be extended by the period of delay occasioned by any such cause.

ARTICLE XII. ADDITIONAL PROVISIONS

12.1 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

12.2 Incorporation by Reference. All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

12.3 No Implied Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plan, Plans and Specifications, or any part thereof, or to impose any limitations, restrictions and requirements on the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

12.4 No Assignment. Developer may not assign its rights in this Agreement without the express prior written consent of the City. Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued. No owner of the Property may subdivide the Property nor sell, transfer or convey less than the entire Property. Notwithstanding the foregoing, no consent shall be required for: (i) a transfer of the Property pursuant to any foreclosure proceedings or a transfer by deed (or other instrument of conveyance) in lieu of any such foreclosure to any lender providing financing for the Project, or thereafter by such lender to a third party; or, (ii) a collateral assignment of this Agreement for the benefit of Developer's lenders.

12.5 No Joint Venture. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

12.6 Time of the Essence. Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.

12.7 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.8 Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows or such other address designated in a notice to the other party pursuant to the terms of this section 12.8:

To the City: City of Sheboygan, Wisconsin
828 Center Ave.
Sheboygan, WI 53081
Attn: City Clerk

with a copy to:
City Attorney
City of Sheboygan, Wisconsin
828 Center Ave., Suite 210.
Sheboygan, WI 53081

To the Developer: GenCap Emem Sheboygan 101, LLC
c/o General Capital Management, Inc.
6938 N. Santa Monica Boulevard
Fox Point, Wisconsin 53217
Attn: David Weiss

with a copy to:
Reinhart Boerner Van Deuren s.c.
1000 N. Water Street, Suite 1700
Milwaukee, WI 53202
Attn: William R. Cummings

12.9 Entire Agreement. This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

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

12.11 Cooperation. The City and the Developer agree to cooperate in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. The City and the Developer each will at any time, or from time to time at the written request of the other, sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

12.12 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

12.13 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.

12.14 Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

12.15 Fees. Upon execution of this Agreement, and thereafter upon request of the City, the Developer shall reimburse the City for all legal, consulting and other fees and expenses incurred in connection with the preparation of this Agreement and other documents and agreements referred to herein in an amount not to exceed \$35,000.

[Signature Page Follows]

**SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF SHEBOYGAN, WISCONSIN

BY: _____
Ryan Sorenson, Mayor

ATTEST: _____
Meredith De Bruin, City Clerk

GENCAP EMEM SHEBOYGAN 101, LLC

By: GenCap Emem 101 MM, LLC.
Managing member

By: General Capital Management,
Inc., Manager

By: _____
David Weiss
Chief Executive Officer

This document authorized by and in accordance with Res. No.
____-22-23.

EXHIBIT A - UNDIVIDED PROPERTY

PARCEL 1:

THE SOUTH 1/2 OF LOT 8 AND THE EAST ONE (1) FOOT OF THE SOUTH 1/2 OF LOT 7 IN BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505840

PARCEL 2:

THE SOUTH ONE-HALF (S 1/2) OF LOT NINE (9), BLOCK TWO HUNDRED FORTY-THREE (243) OF THE ORIGINAL PLAT, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY WISCONSIN.

PARCEL NO.: 59281505860

PARCEL 3:

A TRACT OF LAND IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS COMPRISING THE NORTH HALF OF LOTS 7 THROUGH 12, INCLUSIVE, IN BLOCK 243 OF THE SAID CITY OF SHEBOYGAN, AS PER THE PLAT THEREOF ON FILE IN THE OFFICIAL PUBLIC RECORDS OF SAID SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505930

PARCEL 4:

THE WEST ONE-HALF (W 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF LOT TEN (10), IN BLOCK TWO HUNDRED FORTY-THREE (243) OF THE ORIGINAL PLAT, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY WISCONSIN.

PARCEL NO.: 59281505870

PARCEL 5:

THE NORTH 1/2 OF THE WEST 45' OF LOT 4, BLOCK 243, ORIGINAL PLAT, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505800

PARCEL 6:

THE NORTH 42 FEET OF THE SOUTH 75 FEET OF THE WEST 45 FEET OF LOT 4, BLOCK 243, ORIGINAL PLAT, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505810

PARCEL 7:

THE SOUTH THIRTY-THREE (33) FEET OF THE SOUTH ONE-HALF (S 1/2) OF THE WEST FORTY-FIVE (45) FEET OF LOT FOUR (4), BLOCK TWO HUNDRED FORTY-THREE (243) OF SHEBOYGAN ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505820

PARCEL 8:

THE EAST ONE-HALF (E 1/2) OF THE SOUTH ONE-HALF (S 1/2) OF LOT TEN (10), BLOCK TWO HUNDRED FORTY-THREE (243) OF THE ORIGINAL PLAT, IN THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505880

PARCEL 9:

LOTS 1, 2, 3 AND THE EAST 15.00 FEET OF LOT 4, BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, ACCORDING TO THE RECORDED PLAT THEREOF, ALSO DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1, SAID POINT BEING THE POINT OF BEGINNING; THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK 243, 206.22 FEET; THENCE N00°09'14"W, 153.55 FEET (RECORDED AS 150.00 FEET) TO THE NORTH LINE OF SAID BLOCK 243; THENCE S89°10'42"E ALONG SAID NORTH LINE, 113.69 FEET (RECORDED AS 115.00 FEET) TO THE NORTHEASTERLY LINE OF SAID BLOCK 243; THENCE S31°27'41"E ALONG SAID NORTHEASTERLY LINE, 178.10 FEET TO THE POINT OF BEGINNING; TOGETHER WITH THAT PART OF THE VACATED SOUTH COMMERCE STREET RIGHT-OF-WAY LYING EASTERLY OF AN ADJACENT THERETO.

PARCEL NO.: 59281505760

PARCEL 10:

THE WEST 59 FEET OF THE SOUTH ONE-HALF (S 1/2) OF LOT SEVEN (7),
BLOCK TWO HUNDRED FORTY-THREE (243) OF THE ORIGINAL PLAT, IN THE
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN.

PARCEL NO.: 59281505830

PARCEL 11:

LOTS 1, 2, 3, 4 AND 5, BLOCK 232 OF THE ORIGINAL PLAT OF THE
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, ACCORDING TO THE
RECORDED PLAT THEREOF, ALSO DESCRIBED AS: COMMENCING AT THE
SOUTHEAST CORNER OF SAID LOT 1, SAID POINT BEING THE POINT OF
BEGINNING; THENCE N31°27'41"W ALONG THE SOUTHWEST LINE OF SAID
BLOCK 232, 269.13 FEET (RECORDED AS 260 FEET) TO THE NORTHWEST
CORNER OF SAID LOT 5; THENCE N59°18'40"E ALONG THE NORTHWESTERLY
LINE OF SAID LOT 5, 131.3 FEET, MORE OR LESS, TO THE
SOUTHWESTERLY BANK OF THE SHEBOYGAN RIVER; THENCE S51°37'13"E
ALONG SAID RIVER, 34.9 FEET, MORE OR LESS, TO THE EAST LINE OF
SAID BLOCK 232 (ALSO BEING THE WEST RIGHT-OF-WAY LINE OF SOUTH
NINTH STREET); THENCE S00°01'48"E ALONG SAID EAST LINE, 274.9
FEET, MORE OR LESS, TO THE POINT OF BEGINNING; TOGETHER WITH
THAT PART OF THE VACATED SOUTH COMMERCE STREET RIGHT-OF-WAY
LYING WESTERLY OF AND ADJACENT THERETO; EXCEPTING THEREFROM PART
OF LOTS 4 AND 5, BLOCK 232 OF THE ORIGINAL PLAT OF THE CITY OF
SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN, ACCORDING TO THE
RECORDED PLAT THEREOF, DESCRIBED AS FOLLOWS: COMMENCING AT THE
NORTHWEST CORNER OF SAID LOT 5; THENCE N59°18'40"E ALONG THE
NORTHWESTERLY LINE OF SAID LOT 5, 93.78 FEET TO THE POINT OF
BEGINNING; THENCE CONTINUING
N59°18'40"E ALONG SAID NORTHWESTERLY LINE, 37.5 FEET, MORE OR
LESS, TO THE BANK OF THE SHEBOYGAN RIVER; THENCE S51°37'13"E
ALONG SAID RIVER BANK, 34.9 FEET, MORE OR LESS, TO THE WEST
RIGHT-OF-WAY LINE OF SOUTH NINTH STREET (ALSO BEING THE EAST
LINE OF SAID BLOCK 232); THENCE S00°01'48"E ALONG SAID WEST
LINE, 44.7 FEET, MORE OR LESS; THENCE N51°37'13"W, 76.06 FEET TO
THE POINT OF BEGINNING.

PARCEL NO.: 59281505670

Exhibit A

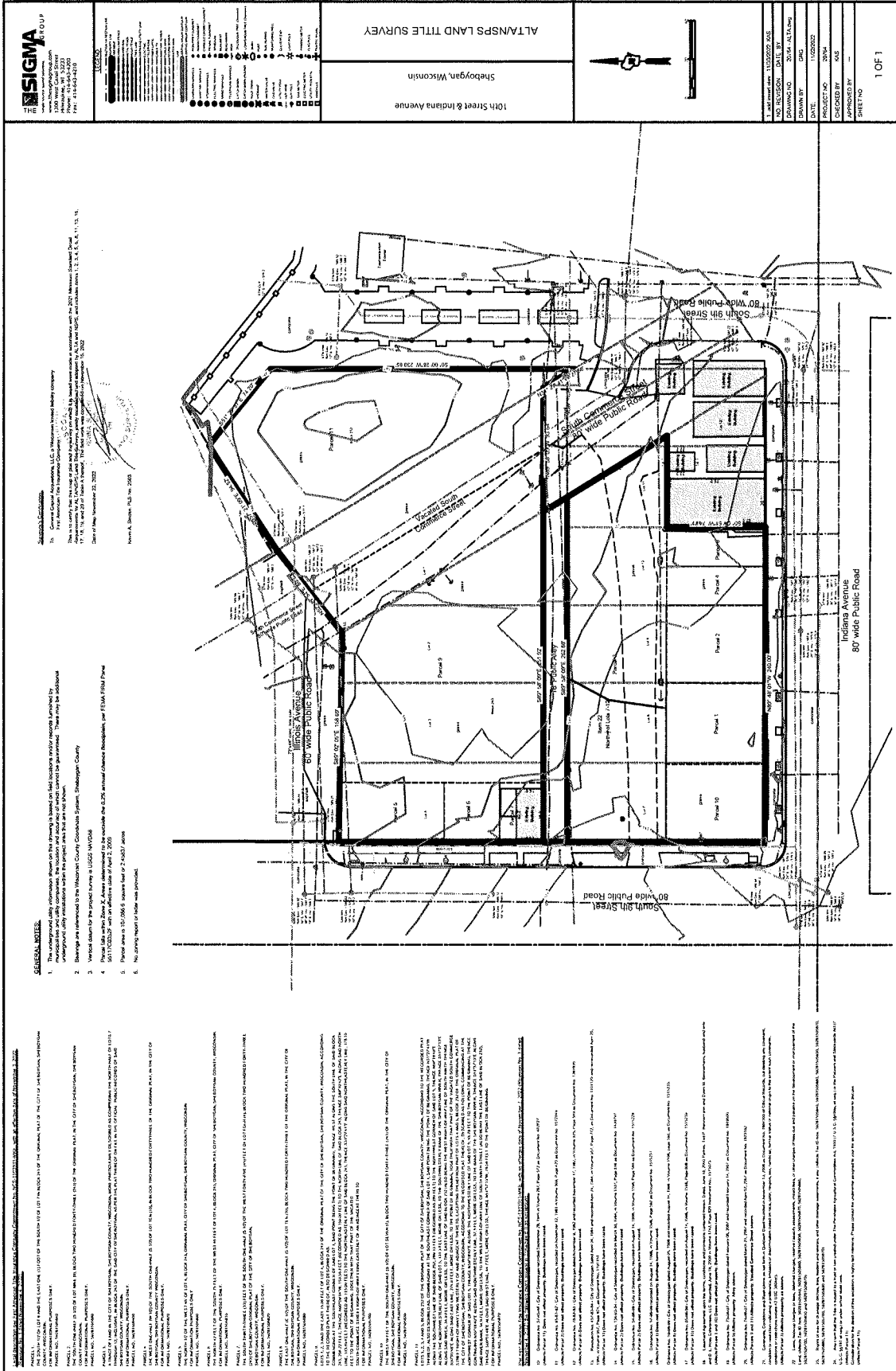


EXHIBIT B - DEVELOPMENT PLAN

[See attached]

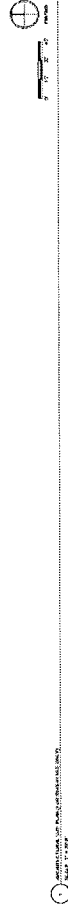


Exhibit C - CSM

[See attached]

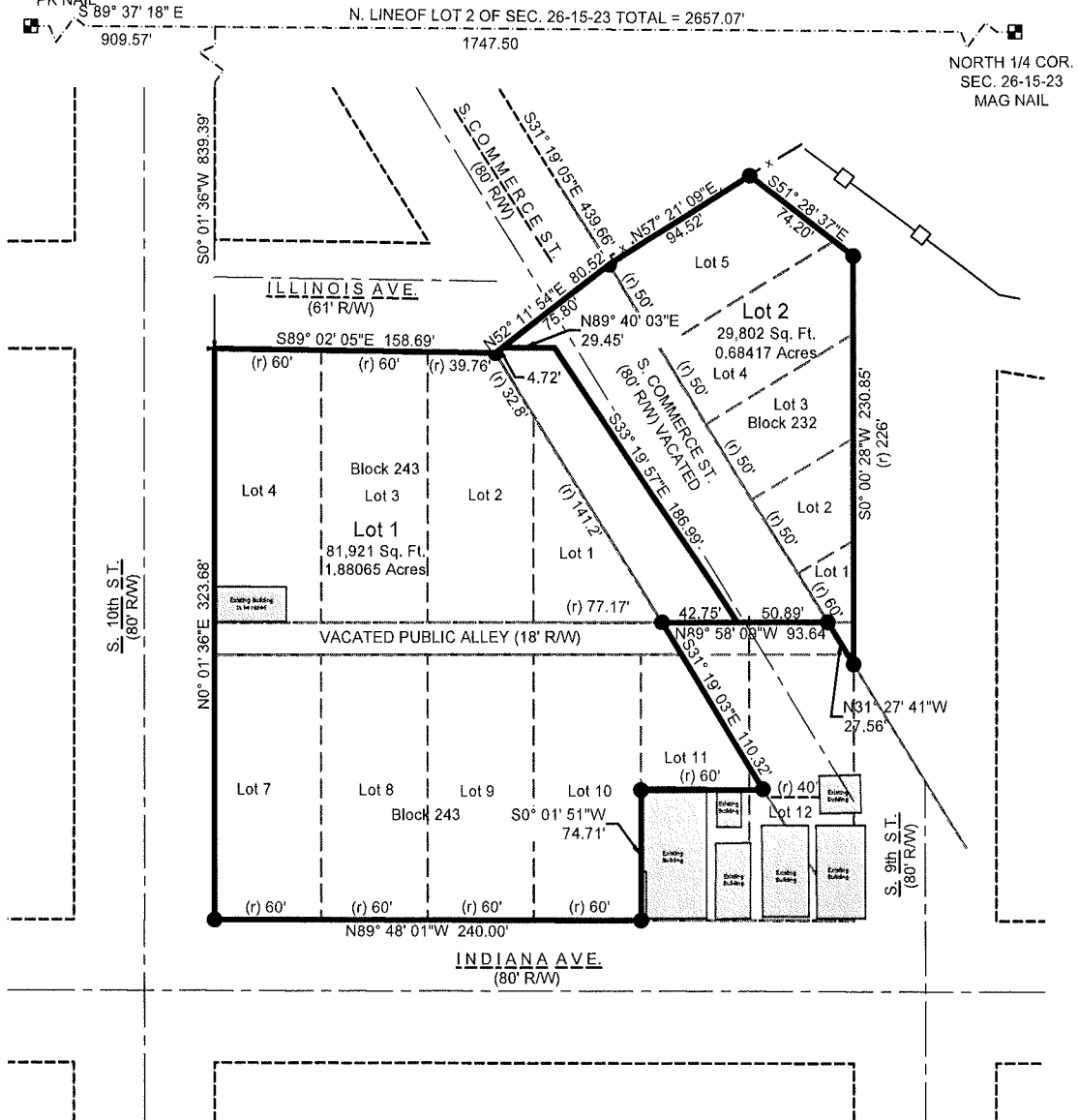
CERTIFIED SURVEY MAP NO. _____

Being Lots 1-4, 7-10, and parts of 11 & 12 in Block 243, Lots 1-5 in Block 232, Vacated South Commerce Street and Vacated Public Alley all in the Original Plat of the City of Sheboygan, all in Lot 2 of Section 26, Township 15 North, Range 23 East, in the City of Sheboygan, County of Sheboygan, State of Wisconsin

ADDRESSES: 1010 S. 9th St., and 1015 S. 10th St.

PARCEL NUMBERS: 5928150-5800,-5810,-5820,-5760,-5670,-5930,-5830,-5840,-5860,-5870,-5880

NW 1/4 COR.
SEC. 26-15-23
PK NAIL



LEGEND & NOTES:

- INDICATES SET 3/4" DIAM. REBAR, 18" LONG WEIGHING 1.50 LBS/LIN. FT.

(r) = recorded/platted distance

COORDINATES & BEARINGS ARE REFERENCED TO THE SHEBOYGAN COUNTY COORDINATE SYSTEM, NAD83 (1991) WITH THE NORTH LINE OF THE NE 1/4 OF SEC. 26-15-23, ASSUMED TO BEAR N 89°37'18" W.

THE SIGMA GROUP
Single Source. Sound Solutions.

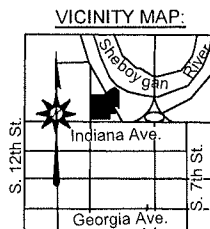
www.thesigmagroup.com
1300 West Canal Street
Milwaukee, WI 53233
Phone: 414-643-4200
Fax: 414-643-4210

PROJECT NUMBER 20764

DRAFTED BY KMA

DATE 2/22/2023

Sheet 1 of 4



NW 1/4 SEC. 26-15-23
SCALE: 1" = 2000'

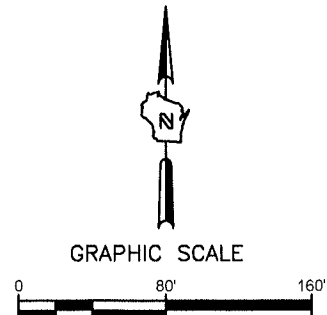


Exhibit D - Pocket Park Scope of Work

Developer will complete required remediation necessary to obtain DNR final closure of the Park Parcel, as follows:

1. Existing material shall remain in place. Developer does not intend to excavate soil from this area.
2. Developer shall install a "warning layer" of geotextile fabric or orange construction fencing as required by WDNR.
3. Developer shall install 18" of clean soil as a cap to the existing material as required by WDNR and shown on Sheet C003 "Soil Management" attached hereto. This is assumed to be a net import of clean soil to the site and will raise the grade in this area by approximately the same height.
4. Developer shall grade the area and install standard grass seed, as mutually approved by Developer and the City.
5. City shall be responsible for ongoing monitoring and maintenance of the clean soil barrier as required by WDNR.

