

**PRE-DEVELOPMENT AGREEMENT
BETWEEN
3 AMIGOS APARTMENTS, LLC
AND
THE CITY OF SHEBOYGAN**

THIS PRE-DEVELOPMENT AGREEMENT (“Agreement”) is entered into by the City of Sheboygan, a Wisconsin municipal corporation with a mailing address of 828 Center Ave, Sheboygan, WI 53081 (“City”), and 3 AMIGOS APARTMENTS, LLC, a Wisconsin Limited Liability Company with a mailing address of 1525 Torrey View Drive Sparta, WI 54656 (“Developer”). The City and the Developer may be jointly referred to herein as the “Parties” or singularly as a “Party.”

RECITALS

Staff from the City have been in discussions with the Developer regarding City-owned property located at 636 Wisconsin Avenue, commonly referred to as the “Wells Fargo lot” (“**Property**”), and includes Parcel Nos. 59281110440 (“Lot 1”) and 59281111451 (“Lot 2”) for the purpose of constructing mixed-use development on Lot 1 and fair market residential townhomes with a rental rate cap on Lot 2. A map of the property is herein attached as **EXHIBIT A**. The Property’s estimated value is \$477,800.00.

The Parties are continuing to negotiate the terms of the development agreement and would like to secure certain rights related to the Project before investing additional time and money exploring the development of the Project.

The City finds that allowing the Developer the rights to the Property pursuant to the terms and conditions in this Agreement will be beneficial to the City for many reasons, including the possibility of the Project bringing additional housing to the City of Sheboygan.

THEREFORE, for the mutual considerations contained herein, the City and the Developer agree as follows:

TERMS

1. **Recitals**. The recitals above are hereby incorporated into and made a part of this Agreement.
2. **Term**. This Agreement shall be valid on the date of full execution by the Parties and shall remain in full force and effect until September 1, 2025, unless earlier terminated as provided for herein. This may be extended by mutual agreement of both parties.
3. **City Responsibilities**. During the term of this Agreement, the City agrees as follows:
 - a. The City shall not enter into any contracts with a third party for the sale of any portion of the Property without the prior written approval of the Developer.
 - b. The City shall take the necessary steps to rezone the Property with the concurrence of the Developer to make the proposed project feasible.

- c. The City shall develop plans for the use of TID 21 to incentivize the proposed development.
 - d. The City shall allow the Developer and the Developer's employees, agents and contractors to enter onto the Property for the purpose of conducting engineering and site testing so long as the Developer provides at least notice 24 hours in advance to the City Engineer. The City reserves the absolute right to deny entry onto the Property if there are conflicts (e.g., the City will be conducting excavating work during that time the Developer desires to enter onto the Property) or reasonable safety concerns, as solely determined by the City. In such case, the City will make all reasonable efforts to inform the Developer as soon as possible when entry will be denied.
 - e. City shall, at its cost, demolish all structures on the site and leave the site pad ready for construction.
 - f. Nothing in this Agreement guarantees the approval of the zoning change, concept plan, preliminary/final plat, development agreement.
4. Developer Responsibilities. During the term of this Agreement, in addition to any other responsibilities contained in this Agreement, the Developer agrees as follows:
- a. The Developer shall immediately terminate this Agreement pursuant to Paragraph 7(b), below, in the event the Developer decides, for any reason, to no longer pursue the Project.
 - b. For the duration of the Agreement, the Developer shall have and maintain insurance in the amounts provided for on **EXHIBIT B**.
 - c. The Developer shall create a site plan for consideration by the city for the build out of Lot 1 and Lot 2.
 - d. The Developer shall provide evidence of initial financing to the satisfaction of the City.
 - e. The Developer intends to create a limited liability company specific to this project and shall provide notice to the City of any company updates which shall be included in any future development agreements on the Property.
5. Mutual Responsibilities. During the term of this Agreement, the Parties agree to work together on the overall concept design and regulations associated with the Project; however, nothing contained herein shall be construed to mean, imply or guarantee that the Project or any part thereof including, but not limited to, architectural designs or plans, has been or will be approved by the City Council.
6. Termination.
- a. This Agreement shall automatically terminate upon execution by the Parties of a Development Agreement for the Property and Project.

- b. This Agreement may be terminated by either Party with seven calendar days' advance notice to the non-terminating party should the non-terminating party materially breach any of the terms contained herein.
- c. The City may terminate this Agreement at any time and without notice if:
 - i. The Developer has made or is found to have made any statement that was proven to have been false in any material respect to this Agreement and/or
 - ii. The Developer: (1) becomes insolvent or generally does not pay, or is unable to pay, or admits in writing its inability to pay, its debts as they mature, (2) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets, (3) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan, or other arrangement with creditors, (4) files a petition or application in bankruptcy or any similar proceeding or has such a proceeding commenced against the Developer, and such petition, application or proceeding either remains undismissed for a period of ninety (90) days or more or Developer files an answer to such a petition or application admitting the material allegations therein, or (5) applies to a court for the appointment of a receiver or custodian for any of Developer's assets or properties or has a receiver or custodian appointed for any of its assets or properties, with or without consent, and such receiver is not discharged within ninety (90) days after his/her appointment, and/or (6) adopts a plan of complete liquidation of its assets.

7. Indemnification. Developer agrees at all times during the term of this Agreement to indemnify, hold harmless and defend the City, its boards, committees, officers, employees, authorized representatives and volunteers against any and all liabilities, losses, damages costs or expenses (including, without limitation, actual attorney's and consultant's fees) which the City, its boards, committees, officers, employees and representatives may sustain, incur or be required to pay by reason of or in any way related to bodily injury, personal injury or property damage of whatsoever nature or in connection with or in any way related to the performance of the work by Developer, its employees, agents and anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs or expenses caused solely by or resulting from the gross negligent acts of the City. Developer's indemnity obligations shall not be limited by any worker's compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by or required of Developer. No member, official or employee of the City shall be personally liable to any Party in the event of any default or breach by the Developer on any obligations under the terms of this Agreement.

8. Miscellaneous.

- a. Nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the City and Developer or cause the City to be responsible in any way for the debts or obligations of Developer or any other person.

EXHIBIT A Property Map

Parcel #: 59281110440



Parcel #: 5928111451



INSTRUCTIONS FOR EXECUTING LEGAL DOCUMENT

CORPORATION INSTRUCTIONS

If the party signing the legal document is a **CORPORATION**, the signatories on the document must be parties authorized to sign by the corporation (typically the manager, agent or secretary) and the following certificate should be executed and returned to the City of Sheboygan:

I, _____ (*print name*), certify that I am the _____ (*title*) of _____ (*business name*), a corporation in good standing in the State of _____, and that I have duly signed the foregoing document for and on behalf of the business by authority of its governing body, within the scope of its corporate powers.

Signature

Date

(*Corporate Seal*)

If the document is not signed by the secretary, manager or agent authorized to sign on behalf of the corporation, the certificate should be executed by some other officer of the corporation under the corporate seal. Alternatively, in lieu of the foregoing certificate, there must be attached to the legal document copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary under the corporate seal to be true copies.

LIMITED LIABILITY COMPANY INSTRUCTIONS

If the party signing the legal document is a **LIMITED LIABILITY COMPANY**, unless the LLC filed a Statement of Nonapplicability with the Wisconsin Department of Financial Institutions (“DFI”) before 12/31/22, the signatories on the document must be persons authorized to legally bind an LLC via a Statement of Authority filed with the DFI (Form 501), as required by Wis. Stat. § 183.0302.

As such, person(s) signing on behalf of the LLC must attach a copy of the filed and approved Statement of Authority or Statement of Nonapplicability.

PARTNERSHIP INSTRUCTIONS

If the party signing the legal document is operating as a **PARTNERSHIP**, each partner must sign the document.

EXCEPTION: If each partner does not sign the document, attached to the document must be a duly authenticated power of attorney evidencing the signer’s (signers’) authority to sign such document for and on behalf of the partnership.

INDIVIDUAL INSTRUCTIONS

If the party signing the legal document is an **INDIVIDUAL** or **INDIVIDUALS**, the trade name, if applicable, must be indicated in the document and such individual(s) must each sign the document.

EXCEPTION: If signed by someone other than the individual(s) entering into the agreement, there must be attached to the document a duly authenticated power of attorney evidencing the signers’ authority on behalf of the individual(s).

EXHIBIT B
City of Sheboygan Insurance Requirements

It is hereby agreed and understood that the insurance required by the City of Sheboygan is primary coverage and that any insurance or self-insurance maintained by the City of Sheboygan, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force for the duration of the Agreement unless otherwise specified.

1. INSURANCE REQUIREMENTS — MINIMUM REQUIRED LIABILITY LIMITS.

- a. Commercial General Liability:
 - i. Each Occurrence: \$1,000,000
 - ii. Personal Injury: \$1,000,000
 - iii. General Aggregate: \$2,000,000
 - iv. Medical Expense: \$5,000/any one person
 - v. Products–Completed Operations (to remain in full force and effect for two years after the completion of the work or the termination/expiration of the contract, whichever is later): IF APPLICABLE, aggregate of \$2,000,000
 - vi. Fire Damage: IF APPLICABLE, \$50,000/any one fire
- b. Automobile Liability: Must have coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1– “Any Auto” basis.
- c. Workers’ Compensation and Employers Liability Insurance: As required by the State of Wisconsin, must have sufficient limits to meet underlying Umbrella Liability insurance requirements. IF APPLICABLE for the work, coverage must include Maritime (Jones Act) or Longshoremen’s and Harbor Workers Act coverage.
- d. Umbrella Liability: Coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.
- e. Aircraft/Watercraft Liability: IF APPLICABLE, Aircraft and Watercraft Liability insurance must be in force with a limit of \$3,000,000 per occurrence for Bodily Injury and Property Damage including Passenger liability and including liability for any slung cargo.
- f. Builder’s Risk/Installation Floater/Contractor’s Equipment or Property: The City of Sheboygan will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by the contractor or its subcontractors or are to be built, installed, or erected by the contractor or its subcontractors.

2. INSURANCE REQUIREMENTS FOR SUBCONTRACTORS. All subcontractors shall be required to obtain Commercial General Liability, Automobile Liability, Workers’ Compensation and Employers Liability as broad and with the same limits as those required per Contractor requirements, excluding Umbrella Liability, contained in Section 1 above.

3. MISCELLANEOUS

- a. All insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Sheboygan.
- b. Insurers must have an A.M. Best rating of no less than A- and a Financial Size Category of no less than Class VI, and be authorized as an admitted insurance company in the state of Wisconsin.
- c. The City of Sheboygan and its officers, council members, agents, employees and volunteers must be named as additional insured.
- d. Certificates of Insurance acceptable to the City of Sheboygan must be submitted concurrently with the execution of the contract. These certificates must contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least thirty (30) calendar days’ prior written notice has been given to the City of Sheboygan.