



REDEVELOPMENT AUTHORITY AGENDA

May 11, 2023 at 7:45 AM

**City Hall
Conference Room 106
828 Center Avenue
Sheboygan, WI**

Persons with disabilities who need accommodations to attend this meeting should contact the Department of City Development, (920) 459-3377. Persons other than commission, committee, and board members who wish to participate remotely shall provide notice to the City Development Department at (920) 459-3377 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

OPENING OF MEETING

1. Roll Call: *Roberta Filicky-Peneski, Jim Conway, James Owen, Deidre Martinez, Cleo Messner, and Steven Harrison may attend remotely.*
2. Call to Order
3. Pledge of Allegiance
4. Identify potential conflict of interest

ITEMS FOR DISCUSSION AND POSSIBLE ACTION

5. Possible discussion and action on the Berkshire Sheboygan Riverfront (former Koepsell property) 2nd Amendment to Purchase Agreement, Right of Entry, and other real estate closing documents.

NEXT MEETING

6. TBD

ADJOURN

7. Motion to Adjourn

In compliance with Wisconsin's Open Meetings Law, this agenda was posted in the following locations more than 24 hours prior to the time of the meeting:

*City Hall • Mead Public Library
Sheboygan County Administration Building • City's website*

SECOND AMENDMENT TO AND ASSIGNMENT OF OFFER TO PURCHASE

THIS SECOND AMENDMENT TO AND ASSIGNMENT OF OFFER TO PURCHASE (this "Second Amendment") dated as of May __, 2023, is entered into by and between GENERAL CAPITAL ACQUISITIONS, LLC, a Wisconsin limited liability company ("Original Buyer"), GENCAP EMEM SHEBOYGAN 101, LLC, a Wisconsin limited liability company ("Assignee"), and the REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN ("Seller").

RECITALS

A. Original Buyer and Seller entered into that certain Offer to Purchase dated as of December 1, 2021 (as amended, the "Offer"), whereby, pursuant to the terms and conditions of the Offer, Buyer agreed to purchase and Seller agreed to sell certain real property located in Sheboygan, Wisconsin as more particularly described therein.

B. Original Buyer desires to assign to the Assignee, and Assignee desires to accept from Original Buyer, the entire interest of Original Buyer in and to the Offer

C. The parties desire to amend the Offer, as more particularly described below.

AGREEMENTS

In consideration of the Recitals and the mutual promises set forth below, the parties hereby agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated herein by this reference.
2. Capitalized Terms. Capitalized terms not otherwise defined in this Second Amendment shall have the meanings assigned to them in the Offer.
3. Assignment. Original Buyer hereby assigns to Assignee all rights, interest, liabilities and obligations of Original Buyer under the Offer. Assignee hereby accepts the assignment from Original Buyer of all rights, interest, liabilities and obligations of Original Buyer under the Offer. Assignee agrees to perform all obligations of Original Buyer under the Offer from and after the date hereof.
4. Property.
 - (a) The first sentence of Recital A is hereby amended to read as follows: "Seller currently holds title to that certain real property designated as Parcel Nos. 59281505760, 59281505670, 5921505800, 59281505810, 59281505820, 59281505830, 59281505840, 59281505860, 59281505870, 59281505880 and 59281505930 depicted in Exhibit A attached hereto (the "Property")."
 - (b) The Exhibit A attached to the Offer is hereby replaced with Exhibit A attached hereto.

- (c) Assignee and the City of Sheboygan ("City") have entered into that certain Development Agreement dated as of March 21, 2023 (the "Development Agreement"). Pursuant to the terms of the Development Agreement, Assignee has agreed to cause Seller to subdivide the Property into two separate parcels generally in accordance with the draft certified survey map attached hereto as Exhibit B (the "CSM"). Notwithstanding anything in the Offer to the contrary, Seller shall convey the portion of the Property generally depicted as Lot 1 in the CSM (the "Project Parcel") by warranty deed (the "Deed") to Assignee at Closing for the Purchase Price and shall convey the remaining portion of the Property generally depicted as Lot 2 in the CSM (the "Park Parcel") by quit claim deed ("Park Parcel Deed") to the City for \$1.00. Assignee shall be responsible for obtaining, at its sole cost, the CSM. Seller agrees to cooperate with Buyer in obtaining such CSM and shall deliver an executed copy of the CSM for recording on or before Closing. RDA's obligation to convey the Park Parcel to the City shall be contingent upon the conveyance of the Project Parcel to Assignee.
- (d) Closing Deliveries. The Closing deliveries in Section 10 of the Offer shall be delivered in connection with the Project Parcel. No Closing deliveries shall be required in connection with the Park Parcel except for the Park Parcel Deed, CSM, \$1.00 purchase price for Park Parcel and any documents reasonably required by Title Company to record the Park Parcel Deed.
- (e) Miscellaneous. Except as specifically amended in this Second Amendment, the terms of the Offer remain unmodified and in full force and effect. In the event of any inconsistency between the terms of this Second Amendment and the Offer, the terms of this Second Amendment shall control. This Second Amendment may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. This Second Amendment may be executed via e-mail or facsimile transmission and all PDF (or similar electronic format) or facsimile signatures shall be deemed originals for all purposes.

[Signature page follows]

BUYER:

GENERAL CAPITAL ACQUISITIONS, LLC

By: _____

Name: _____

Its _____

ASSIGNEE:

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

SELLER:

REDEVELOPMENT AUTHORITY OF THE
CITY OF SHEBOYGAN

By: _____

Name: _____

Its _____

Exhibit A

Depiction of the Property

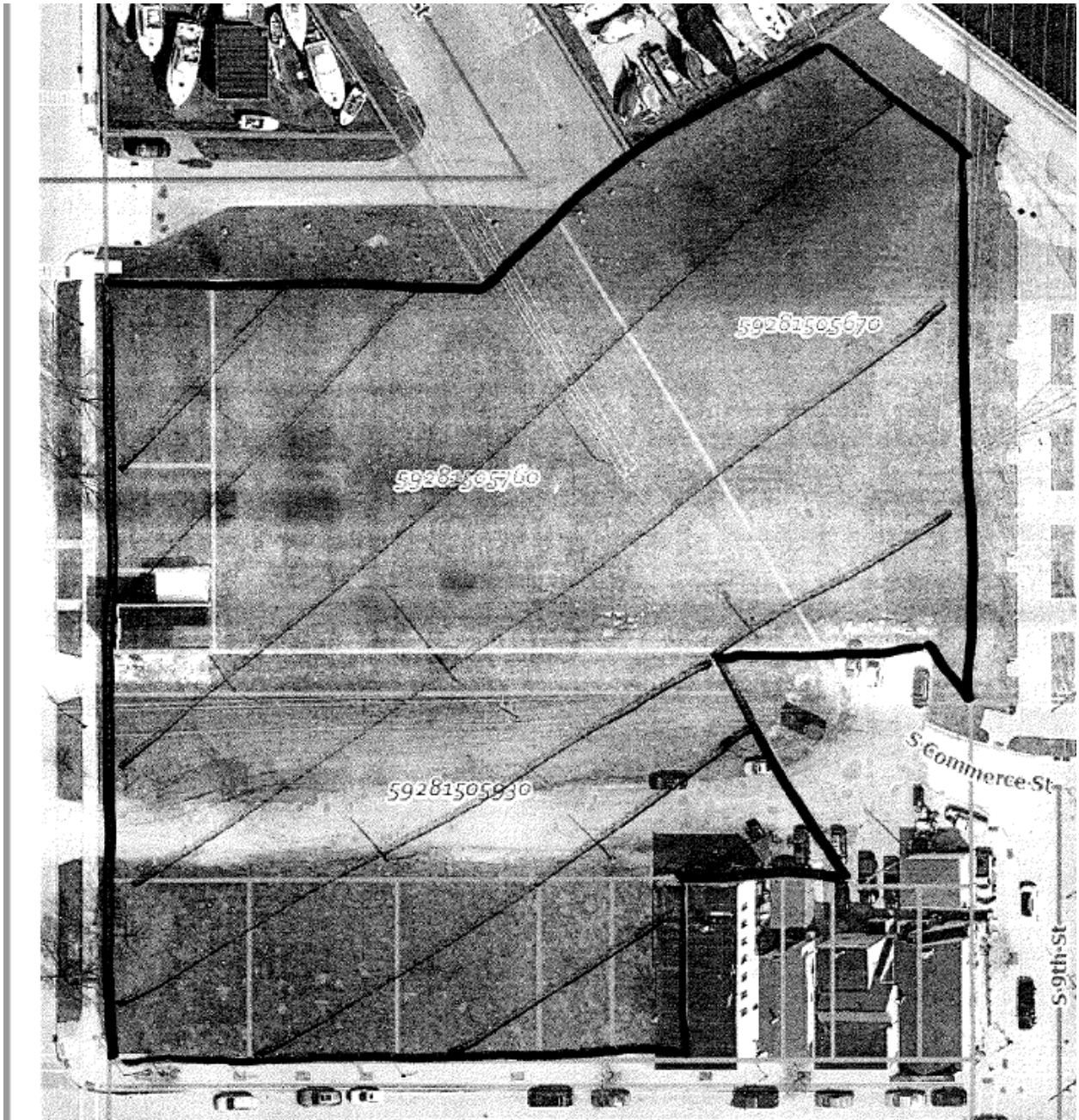


Exhibit B

CSM

[See attached]

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into as of May ___, 2023, by and between the REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN ("RDA") and GENCAP EMEM SHEBOYGAN 101, LLC ("Buyer").

RECITALS

A. RDA is the owner of that certain real property located in Sheboygan, Wisconsin more particularly described in Exhibit A attached hereto (the "Property").

B. RDA and General Capital Acquisitions, LLC ("General Capital") entered into to that certain Offer to Purchase dated as of December 1, 2021, as amended (the "Purchase Agreement") pursuant to which RDA wishes to sell, and GENCAP wishes to purchase, the Property. General Capital will assign its right, title and interest in the Purchase Agreement to Buyer.

C. Buyer wishes to construct 101 units of multifamily housing on the Property (the "Project") in accordance with the terms of that certain Development Agreement between the City of Sheboygan and Buyer dated as of March 23, 2023.

B. In order to facilitate development of the Project, Buyer desires to complete certain abatement and demolition activities on the Property more particularly set forth in the attached Exhibit B (the "Work") prior to the conveyance of the Property from RDA to Buyer.

C. Buyer wishes to obtain from RDA the temporary right to enter upon the Property in order to perform the Work.

D. RDA is willing to permit Buyer to have access to the Property for such purpose, subject to and in accordance with the terms and conditions of this Agreement.

AGREEMENTS

In consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and RDA agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by this reference.

2. Access. RDA hereby grants permission to Buyer and such employees, agents, consultants, service providers and contractors as Buyer may designate and their respective agents and subcontractors (individually, an "Entering Party" and collectively,

the "Entering Parties"), at Buyer's sole risk and expense, to enter upon the Property for the limited purposes of performing the Work. Buyer may not enter the Property for any other purpose without RDA's prior written consent, which consent may be withheld in RDA's sole discretion. Buyer hereby waives, releases, and discharges RDA from losses, damages, expenses, liabilities, claims, demands, causes of action and remedies of whatever kind or nature which arise out of and/or relate in any manner whatsoever to the performance of the Work or other entry upon any or all of the Property by the Entering Parties.

3. Entry onto Property. The Entering Parties shall have the right to enter the Property at reasonable times and in a reasonable manner so as to be able to perform the Work.

4. Timing and Performance of Work.

(a) The Entering Parties shall perform the Work under this Agreement in a good, workmanlike manner. The Entering Parties shall work diligently and exercise reasonable commercial efforts to complete the Work in a timely fashion. The Entering Parties shall assume full responsibility for and will comply with all applicable laws, regulations, codes and ordinances applying and pertaining to the performance of the Work, including all Environmental Laws. "Environmental Laws" means all federal, state, and local laws, ordinances, regulations, standards, rules, policies, and other governmental requirements, administrative rulings, court judgments, and decrees, and all amendments thereto, relating to pollution or protection of human health, wetlands, wildlife, natural resources, or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., and the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq., as any such statutes may be amended, restated, modified, or supplemented from time to time, and all regulations adopted thereunder, and all state and local analogs. In addition to the foregoing, Environmental Laws also means and includes all voluntary cleanup programs and/or brownfields programs under federal, state, or local law. "Hazardous Materials" means any substance or material defined in or governed by any Environmental Laws as a dangerous, toxic or hazardous pollutant, contaminant, chemical waste, material or substance, and also including urea-formaldehyde, polychlorinated biphenyls, dioxin, radon, mold, fungi, lead, lead based

paint, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, including, but not limited to crude oil or any fraction thereof, methane gas, natural gas, natural gas liquids, gasoline and synthetic gas, Toxic Mold, or any other waste, material, substance, pollutant or contaminant which would subject the owner or operator of the Project to any damages, penalties or liabilities under any applicable Environmental Laws. .

(b) Buyer shall secure and pay for all demolition permits, abatement permits, disposal permits and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

(c) Buyer shall ensure that no liens are placed on the Property by any entities performing the Work. Buyer agrees to indemnify and hold RDA harmless from and against any and all Claims relating to any liens or other claims for payment made by any party involved in completing the Work. This indemnity shall survive the termination of this Agreement.

5. Compliance with Agreement. Buyer shall require each of the Entering Parties who will be entering on the Property to comply with the provisions of this Agreement.

6. Indemnification. To the fullest extent permitted by law, Buyer shall indemnify, defend and hold RDA harmless from and against any losses, damages, expenses, liabilities, claims, demands, and causes of action (together with legal fees and other expenses incurred by RDA in connection therewith), resulting directly or indirectly from the performance of the Work or other entry upon any or all of the Property by the Entering Parties or their agents or representatives, including, without limitation, any losses, damages, expenses, liabilities, claims, demands, and causes of action resulting, or alleged to be resulting, from injury or death of persons, or damage to the Property or other property. The foregoing obligations shall survive termination of this Agreement.

7. Insurance.

(a) Buyer shall cause its consultants, contractor(s) and their subcontractors to maintain for the term of this Agreement, one or more insurance policies with the following coverage limits:

Worker's Compensation Statutory	Statutory
Employer's Liability	\$ 100,000 per accident \$ 500,000 per employee (disease)
Commercial General Liability	\$ 1,000,000 per occurrence \$ 2,000,000 aggregate

Automobile Liability	\$ 1,000,000 per occurrence
	\$ 2,000,000 aggregate

(b) Buyer shall require each of its consultants, contractors and their subcontractors to comply with the provisions of the Agreement, including, but not limited to, the insurance requirements described in subparagraph 7(a) hereof.

(c) Buyer shall cause its consultants, contractors and their subcontractors to provide to RDA certificates evidencing the requisite insurance coverage and naming RDA as additional insured.

8. Term. Unless otherwise agreed in writing, this Agreement shall be in effect until the earlier of: (a) all Work is completed or (b) the date Buyer acquires ownership of the Property.

9. Authority to Enter Into Agreement. The individuals executing this Agreement on behalf of the parties herein represent and warrant that they have the authority to execute this Agreement, said representation and warranty shall survive the execution of this Agreement.

10. Miscellaneous. This Agreement sets forth the entire understanding among the parties with respect to the subject matter hereof. This Agreement shall be governed by the laws of the State of Wisconsin and any dispute under this Agreement shall be venued in Wisconsin. This Agreement may not be amended, changed, altered or modified except in writing signed by all of the parties hereto. Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken shall constitute but one and the same instrument. This Agreement may be executed by signing and delivery, in person or by facsimile transmittal.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and delivered on the date first set forth above.

REDEVELOPMENT AUTHORITY OF THE
CITY OF SHEBOYGAN

By: _____
Name: _____
Its _____

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

EXHIBIT A**THE 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 B

THE WORK

[See attached]