

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

FRIENDS OF THE STURGEON BAY)
PUBLIC WATERFRONT, SHAWN FAIRCHILD,)
CARRI ANDERSSON, LINDA COCKBURN,)
RUSSELL COCKBURN, KATHLEEN FINNERTY)
AND CHRISTIE WEBER,)

PLAINTIFFS,)

Case No. 15-cv-1124

VS.)

CITY OF STURGEON BAY AND)
WATERFRONT REDEVELOPMENT AUTHORITY)
OF THE CITY OF STURGEON BAY,)

DEFENDANTS.)

COMPLAINT

Plaintiffs Friends of the Sturgeon Bay Public Waterfront, Shawn Fairchild, Carri Andersson, Linda Cockburn, Russell Cockburn, Kathleen Finnerty and Christie Weber, by their attorneys, Wheeler, Van Sickle & Anderson S.C. and Midwest Environmental Advocates, as and for their complaint against the above-named Defendants, allege as follows:

INTRODUCTION

1. Plaintiffs are group of individuals and an unincorporated association organized to oppose the sale by Defendants City of Sturgeon Bay (“City”) and Waterfront Redevelopment Authority of the City of Sturgeon Bay (“WRA”) of property (the “Property”) to Sawyer Hotel Development LLC (“Sawyer Hotel”) for the development of a privately owned hotel, because the Property consists largely or wholly of filled lakebed beneficially owned by the public under the public trust doctrine, Article IX, sec. 1 of the Wisconsin Constitution.

2. The City's agreement to convey the Property is set forth in a Development Contract for Hotel for Sturgeon Bay Waterfront Redevelopment dated January 8, 2015 (the "Development Contract") under which Sawyer Hotel acquired the exclusive right to purchase and develop the Property. A true and correct copy of said Development Contract is attached hereto as Exhibit A and made a part hereof.

3. Upon admission of Wisconsin to statehood in 1848, legal title to the portions of the Property below the ordinary high water mark ("OHWM") of Lake Michigan was transferred to the State of Wisconsin as trustee for the benefit of the public, to safeguard the rights of the public as guaranteed by the public trust doctrine.

4. Under the public trust doctrine, the area of the Property lying below the OHWM of Lake Michigan must be maintained in trust for the benefit of the public. A long and unbroken line of Wisconsin Supreme Court cases establishes that trust property cannot be conveyed to a private person or entity for a commercial purpose.

5. Count I of the Complaint alleges that Plaintiffs have a constitutionally established interest in the Property. The City's transfer of the Property without the authorization of the Wisconsin Legislature will deprive Plaintiffs and other Wisconsin citizens of their beneficial interest under color of State law, in violation of Plaintiffs' substantive due process rights under the Fourteenth Amendment of the United States Constitution.

6. Count II alleges that the City and WRA have acted ultra vires, in excess of their lawful authority by contracting to convey lakebed property without the authorization of the Wisconsin Legislature.

7. Count III alleges that Defendants' conveyance of lakebed to a private entity for an exclusively commercial purpose is a breach of the duty of the trustee under the public trust doctrine, Art. IX, sec. 1 of the Wisconsin Constitution.

PARTIES

8. Plaintiff Friends of the Sturgeon Bay Public Waterfront (“Friends”) is an unincorporated association located in Sturgeon Bay, Wisconsin, whose members include the individual plaintiffs in this action. Friends was organized for the purpose of protecting public trust lands on the west waterfront of Sturgeon Bay, and brings this action on behalf of itself and in the name of the State of Wisconsin.

9. Plaintiff Shawn Fairchild is an adult resident of the City of Sturgeon Bay, Wisconsin. Fairchild brings this action on behalf of himself individually and in the name of the State of Wisconsin.

10. Plaintiff Carri Andersson is an adult resident of the City of Sturgeon Bay, Wisconsin. Andersson brings this action on behalf of herself individually and in the name of the State of Wisconsin.

11. Plaintiff Linda Cockburn is an adult resident of the City of Sturgeon Bay, Wisconsin. Cockburn brings this action on behalf of herself individually and in the name of the State of Wisconsin.

12. Plaintiff Russell Cockburn is an adult resident of the City of Sturgeon Bay, Wisconsin. Cockburn brings this action on behalf of himself individually and in the name of the State of Wisconsin.

13. Plaintiff Kathleen Finnerty is an adult resident of the City of Sturgeon Bay, Wisconsin. Finnerty brings this action on behalf of herself individually and in the name of the State of Wisconsin.

14. Plaintiff Christie Weber is an adult resident of the City of Sturgeon Bay, Wisconsin. Weber brings this action on behalf of herself individually and in the name of the State of Wisconsin.

15. Defendant City of Sturgeon Bay is a Wisconsin municipal corporation with its principal offices located at 421 Michigan Street, Sturgeon Bay, Wisconsin 54235.

16. Defendant Waterfront Redevelopment Authority of the City of Sturgeon Bay is a municipal redevelopment authority organized and existing pursuant to Wis. Stat. § 66.1333(3), (formerly numbered Wis. Stat. § 66.431), with its principal office located at 421 Michigan Street, Sturgeon Bay, Wisconsin 54235.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it arises under the Constitution and laws of the United States. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

18. Venue is proper in the Eastern District of Wisconsin because all of the parties reside or have their principal place of business in this district and all of the facts giving rise to this action have taken place in this district.

FACTS COMMON TO ALL CLAIMS

19. Sturgeon Bay is a bay of Lake Michigan, and a navigable water of the State of Wisconsin, whose bed and waters are held in trust by the State of Wisconsin for the benefit of the public.

20. The City claims title to a parcel of real property located on the west waterfront of Sturgeon Bay, at 92 East Maple Street in the City of Sturgeon Bay ("Parcel 92") under a special warranty deed recorded December 28, 2012 in office of the Door County Register of Deed as Document No. 766706. A survey map showing the boundaries of Parcel 92 as set forth in the City's special warranty deed is attached hereto as Exhibit B and made a part hereof.

21. The City claims title to an adjacent parcel of real property located at 100 East Maple Street ("Parcel 100") under a quit claim deed from the City as grantor, recorded November 12, 2014, in the office of the Door County Register of Deeds as Document No. 783268. A survey map showing the boundaries of Parcel 100 as set forth in the City's quit claim deed is attached hereto as Exhibit C and made a part hereof.

22. The City quitclaimed Parcel 100 to itself in connection with the City's receipt from the Wisconsin Department of Natural Resources ("WDNR") of a "WDNR Determination of Concurrence with the Approximate Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project," recorded October 28, 2014, in the office of the Door County Register of Deeds as Document No. 782928 (the "WDNR Concurrence"). A true and correct copy of said WDNR Concurrence is attached hereto as Exhibit D and made a part hereof.

23. The WDNR Concurrence purports to concur in a survey of the approximate location of the OHWM of Lake Michigan along a portion of Parcel 100, as shown in Exhibit D. The designation of the OHWM in the WDNR Concurrence does not cover the entire shoreline of Parcel 100. WDNR has made no determination of the location of the OHWM on Parcel 92.

24. Phase I and Phase II environmental site assessments prepared by the City's engineering consultants, as well as numerous historical maps and aerial photographs evidence that Parcel 92 is located largely or wholly below the OHWM of Lake Michigan as it existed at Wisconsin statehood. Physical evidence and historical maps show that Parcel 92 consists largely or wholly of former wharves or piers constructed on submerged lakebed that were subsequently filled in with cinders, wood, concrete and other material.

25. The Property to be conveyed to Sawyer Hotel under the Development Contract consists of portions of Parcel 92 and Parcel 100, as shown on a certified survey map attached hereto as Exhibit E and made a part hereof. Sawyer Hotel has submitted plans and specifications showing the proposed hotel will be located wholly or in part on lakebed below the OHWM.

26. The City is on notice that all or a substantial portion of the Property consists of artificially filled lakebed of Lake Michigan and of Plaintiffs' and others objection to the sale to Sawyer Hotel as a violation of the City's constitutional obligations under Wisconsin's public trust doctrine. Notice was given, among other times, during public hearings and meetings of the WRA, meetings of the City Council, and based on a letter to the City from Midwest Environmental Associates dated June 23, 2015.

27. Defendants' conveyance to Sawyer Hotel according to the Development Contract will impair the right of Plaintiffs and other Wisconsin citizens to use and enjoy public trust property as a natural resource and as a free and open space for access to and use and enjoyment of navigable waters for fishing, boating, enjoyment of natural scenic beauty and commerce on Lake Michigan.

28. Defendants City and WRA's failure to preserve trust property for Plaintiffs and other Wisconsin citizens' use and enjoyment as a natural resource and physical environment and Defendants' authorization of the conveyance of title, transfer of control and construction of a private commercial enterprise depriving Plaintiffs of unrestricted access to and right to engage in navigation, fishing, boating, commerce and other activities on Lake Michigan, will cause Plaintiffs to suffer an irreparable injury to their beneficial interest in the Property.

29. There is no adequate remedy at law for the impairment of the beneficial interest in such property held equally by Plaintiffs and other Wisconsin citizens from the actions set forth above.

COUNT I:
42 U.S.C. § 1983
TAKING OF PUBLIC TRUST PROPERTY
WITHOUT DUE PROCESS

30. Plaintiffs reallege and incorporate by reference each of the allegations in the preceding paragraphs of this Complaint as if set forth in full.

31. The State's title to submerged lands beneath navigable waters is held in trust for citizens "so as to preserve to the people forever the enjoyment of the waters of such lakes, ponds, and rivers to the same extent that the public are entitled to enjoy tidal waters at the common law." Illinois Steel Co. v. Bilot, 109 Wis. 418, 425, 84 N.W.2d 855 (1901).

32. The public trust doctrine establishes standing for the State, or any person suing in the name of the State, for the purpose of vindicating the public trust. Any person suing in the name of the State may assert such a cause of action recognized by existing law. Robinson v. Kunach, 76 Wis. 2d 436, 451-52, 251 N.W.2d 449 (1977).

33. The Fifth Amendment of the United States Constitution provides that no person shall be “deprived of life, liberty, or property, without due process of law. . . .” The Fifth Amendment applies to the states through the Fourteenth Amendment of the United States Constitution.

34. 42 U.S.C. §1983 provides that every person who, under color of state law, subjects or causes to subject any person to a deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the person injured in an action at law, suit in equity, or other proper proceeding for redress.

35. The Wisconsin Legislature and those agencies to which the legislature has statutorily delegated powers of the trustee (including WDNR and the Board of Commissioners of Public Lands) have exclusive authority over the use of navigable waters protected by the public trust doctrine.

36. The Wisconsin Legislature has established a procedure for review of legislation conveying lakebed lands in Wis. Stat. § 13.097. That statute provides, *inter alia*, that when legislation that conveys a lakebed area is introduced in the legislature, that WDNR shall prepare a report on the legislation including findings as to the use of the lake bed areas subject to the conveyance, the effect of the proposed conveyance on public trust purposes, and the extent to which the proposed conveyance will be controlled or supervised by a governmental unit to assure conformity with a public trust purposes. The report required under Wis. Stat. § 13.097 must contain conclusions, among others, as to whether current opportunities for public trust purpose uses will be enhanced or diminished upon completion of the project, and whether commercial purposes dominate the proposed use of the lake bed area.

37. By approving the conveyance of the Property without the prior authorization of the Wisconsin Legislature, including review of such authorizing legislation as is required by Section 13.097 of the Wisconsin Statutes, and by purporting to convey an interest in and control of such property to a private entity for an exclusively commercial purpose, the City and WRA will take, deprive or otherwise diminish the beneficial interest of the Plaintiffs and other citizens

in the use of the trust property, in violation of the rights of Plaintiffs and other Wisconsin citizens under the Due Process Clause of the Fourteenth Amendment.

38. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek to bar the City and WRA from conveying any interest in or control of the Property to the Sawyer Hotel where the Defendants have not obtained the prior authorization of the Wisconsin Legislature and have otherwise acted in violation of the rights of Plaintiffs and other Wisconsin citizens as holders of a beneficial interest protected under the Due Process Clause of the Fourteenth Amendment.

39. In addition, pursuant to 42 U.S.C. § 1983, Plaintiffs seek to enjoin the City and WRA from any action that takes or diminishes the value of the beneficial interest of Plaintiffs and other Wisconsin citizens in such Property by any construction or transfer of control that fails to preserve the Property either as a natural resource for their unencumbered use and enjoyment or as a free and open space accessible for use and enjoyment of activities on Lake Michigan, and any other action that likewise violates their rights as holders of such a beneficial interest protected under the Due Process Clause of the Fourteenth Amendment.

COUNT II:
ULTRA VIRES
CONVEYANCE OF PUBLIC TRUST PROPERTY

40. Plaintiffs reallege and incorporate by reference all the allegations in the preceding paragraphs of this Complaint as if set forth in full.

41. The Development Contract authorizes Sawyer Hotel to construct and operate a hotel on the Property. This is a private purpose, is inconsistent with public trust use and therefore the Development Contract violates the requirement under the Public Trust Doctrine that the Property be used solely for public purposes.

42. The City's and WRA's agreement to convey title to the Property under the Development Contract takes, diminishes, or otherwise impairs Plaintiffs' and Wisconsin citizens' interest in the Property, which must be maintained in trust for the benefit of the public under the public trust doctrine, Art. IX, sec. 1 of the Wisconsin Constitution.

43. Any conveyance or purported conveyance of any interest in or transfer of control of such Property to Sawyer Hotel or to any private entity or individual with the consent of the Wisconsin Legislature is an ultra vires act by the City and WRA.

COUNT III:
BREACH OF PUBLIC TRUST
WIS. CONST., ART. IX, SEC. 1

44. Plaintiffs reallege and incorporate by reference all the allegations in the preceding paragraphs of this Complaint as if set forth in full.

45. The public trust doctrine in Wisconsin Constitution Article IX, Section 1 creates a duty upon the State and its instrumentalities to protect all navigable waters and their beds for the use of Wisconsin citizens and future generations.

46. The City and WRA are government instrumentalities with a duty to preserve and protect lake bed property in trust for the use and benefit of the public under the public trust doctrine.

47. The conveyance of the Property to Sawyer Hotel pursuant to the Development Contract will result in a private entity having complete ownership and control over the Property.

48. The construction and operation of a hotel on the Property pursuant to the Development Contract will remove the entire area of the Property from public use and will result in no portion of the Property being open to the general public or devoted to a public purpose.

49. The conveyance of the Property and subsequent hotel development will not provide any convenience to Plaintiffs and Wisconsin citizens for public trust purposes.

50. The conveyance of the Property to Sawyer Hotel for a purely commercial purpose is an abdication of the City and WRA's trustee duties as instrumentalities of the State because said conveyance impairs and otherwise violates the rights of the public under Article IX, sec. 1 of the Wisconsin Constitution.

WHEREFORE, the Plaintiffs demand judgment as follows:

- A. Permanently enjoining the conveyance by Defendants City and WRA of any rights or interest in or transfer of control of the Property lying below the OWHM of Lake Michigan to any private entity or individual;
- B. Permanently enjoining Defendants City and WRA from approving or allowing the building of a hotel on that portion of the Property lying below the OHWM;
- C. Awarding Plaintiffs their costs and attorneys' fees;
- D. Awarding any other relief the Court deems just and equitable.

Dated this 17th day of September, 2015.

By: /s/ Mary Beth Peranteau
One of Plaintiffs' Attorneys

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DEVELOPMENT CONTRACT FOR HOTEL FOR
STURGEON BAY WATERFRONT REDEVELOPMENT

AGREEMENT made by and between the Waterfront Redevelopment Authority of the City of Sturgeon Bay, Sturgeon Bay, Wisconsin, hereinafter referred to as "WRA", the City of Sturgeon Bay, Wisconsin, a Wisconsin municipal corporation, hereinafter referred to as the "City", and Sawyer Hotel Development LLC, a Wisconsin limited liability company, hereinafter referred to as "Sawyer Hotel."

RECITALS

WHEREAS, the City has created a Waterfront Redevelopment Authority pursuant to the provisions of §66.431, Wis. Stats., for the purpose of development of areas on the west side of the ship canal bisecting the City of Sturgeon Bay and the Door Peninsula in Door County, Wisconsin, as legally described on Exhibit A attached hereto ("West Waterfront Redevelopment District");

AND WHEREAS, as part of the redevelopment of the West Waterfront Redevelopment District, the plan calls for the development of hotel, restaurant, housing, and other facilities;

AND WHEREAS, the WRA, City, and Sawyer Hotel recognize that funding for the development is to be provided by TIF financing, community development investment grants, and other grants as may be available, and the City and WRA will be making application for community development investment grants and other grants;

AND WHEREAS, the WRA has determined that it is in the best interests of the WRA and the City to enter into contracts with developers for the exclusive development of such facilities, and by this Agreement wishes to enter into an agreement with Sawyer Hotel for the development of a hotel to be located within the West Waterfront Redevelopment District.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereinafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged by both of the parties hereto, the parties agree as follows:

1. Facility to be Developed.

A. Facility Described. Sawyer Hotel will develop, on the real estate to be acquired by Sawyer Hotel hereinafter described, an approximately 80 unit upscale "boutique" style hotel, with both hotel suites with kitchens and lockout rooms ("Hotel"). The Hotel will include two elevators, hotel suites, lobby retail store, continental breakfast area, decks, porte cochere, and kitchens within units. The actual size and amenities of the Hotel is subject to final recommendations by Sawyer Hotel's architects and consultants. Sawyer Hotel may develop the Hotel in whole or in part as a condominium and may

convey completed units in the Hotel condominium to third party purchasers, upon such terms and conditions as Sawyer Hotel may deem appropriate, in its sole discretion.

B. Limitation on Use of Premises. The operations of this Hotel shall be as determined by Sawyer Hotel and/or its assigns; however, the use of the real estate hereinafter mentioned shall be primarily for a hotel facility, plus related retail sales and services, unless otherwise agreed to in writing by the WRA.

C. Exclusive Right to Develop. Sawyer Hotel is hereby granted the exclusive right to develop and operate a hotel facility within the West Waterfront Redevelopment District, except as provided in subparagraph 9.C. of this Agreement. By entering into this Agreement, Sawyer Hotel hereby expresses its commitment to the development of the Hotel within the time as set forth in Paragraph 9.

2. Conveyance of Real Estate on which Hotel will be Located.

A. Land for Hotel Described. The real estate on which the Hotel will be located is generally depicted on the site plan attached hereto as Exhibit B ("Hotel Lot"). The Hotel Lot will include enough land area to accommodate the building footprint, an outdoor patio area, service areas such as garbage/recycling, and landscaping. The area and configuration of the Hotel Lot shall be approved by Sawyer Hotel in writing, and if either the area or the configuration of the Hotel Lot is determined by Sawyer Hotel to be inadequate for the feasible development or operation of the Hotel, this Agreement shall be null and void.

B. Survey. City/WRA will create and record a certified survey map of the Hotel Lot, showing the exact boundaries of the Hotel Lot for Sawyer Hotel's development. Prior to recording the certified survey map, the proposed Hotel Lot shall be approved in writing by Sawyer Hotel.

C. Sale to Sawyer Hotel. As an inducement to Sawyer Hotel to construct and develop the Hotel, City shall sell the Hotel Lot to Sawyer Hotel for the sum of Ninety Thousand Dollars (\$90,000) to be paid in equal annual installments of Nine Thousand Dollars (\$9,000) per year for ten (10) years, without interest. The first installment of Nine Thousand Dollars (\$9,000) shall be paid at closing, and succeeding payments shall be made annually thereafter on the anniversary of the date of closing. The note to the City shall be secured with a second mortgage to City/WRA and expressly subordinate to Sawyer Hotel's mortgage financing, or secured by a personal guaranty of Robert Papke.

D. Conveyance/Representations.

1. The conveyance of the Hotel Lot by the City to Sawyer Hotel shall be by General Warranty Deed, free and clear of all liens and encumbrances except municipal and zoning ordinances, recorded easements for public utilities servicing the site, recorded building and use restrictions and general real estate taxes for the year of closing, provided, however, that none of the foregoing prohibit or make reasonably impractical Sawyer Hotel's proposed development.

2. Sawyer Hotel shall be furnished, at City's cost, within thirty (30) days after completion of the Certified Survey Map referred to above, and again within two (2) weeks of closing, a commitment from a title insurance company licensed in Wisconsin and acceptable to Sawyer Hotel to issue title insurance in the amount of the fair market value of the Hotel Lot upon recording of proper documents, showing title to the Hotel Lot as of a date within one (1) week of delivery of the commitment to Sawyer Hotel to be in the condition provided in subparagraph (1) above. The title insurance to be provided by City hereunder shall be updated at the time of closing and shall include such endorsements as may be deemed necessary or desirable to Sawyer Hotel or its lender. City shall, at its sole expense, furnish to Sawyer Hotel at closing a "marked up" commitment or title insurance policy showing Sawyer Hotel as the insured and with title to the Hotel Lot to be as provided in subparagraph (1) above, reflecting the coverage required hereby, and with all standard policy exceptions removed.

3. Conditions Precedent to Conveyance to Sawyer Hotel. Sawyer Hotel shall not be obligated to close the portion of this transaction set forth in this Paragraph 2, nor shall Sawyer Hotel be required to continue to perform any other obligations hereunder until all of the following conditions have been satisfied:

- a. Each of the acts, covenants and undertakings of WRA and/or the City to be performed on or before closing pursuant to the terms hereof shall have been duly performed.
- b. There shall have been no adverse change in the Hotel Lot nor shall there have been or shall there be on the closing date any circumstance, including pending or threatened litigation, that might be expected to result before or after closing in an adverse condition making Sawyer Hotel's development of the Hotel on the Hotel Lot impractical or unreasonably costly.
- c. The instruments of transfer and other closing documents shall have been delivered to Sawyer Hotel in form and substance as provided in this Agreement.
- d. Sawyer Hotel shall have obtained, or shall have determined to its satisfaction that the City and the other governmental bodies or agencies having jurisdiction over the Hotel Lot and Sawyer Hotel's planned operations thereon shall issue all necessary or desired permits, approvals and licenses, in form and substance acceptable to Sawyer Hotel, necessary for development and use of the Hotel, including but not limited to, any rezoning or conditional use permits, grading, building, construction, business or occupancy permits, and the approvals, permits and licenses provided for in Paragraph 7 hereof, all without conditions deemed unreasonable by Sawyer Hotel.

E. Environmental. WRA/City shall provide a Voluntary Party Liability Exemption and a site closure letter from the Wisconsin Department of Natural Resources, with no conditions which would reasonably interfere with the operation of the Sawyer Hotel, prior to closing on conveyance of the Hotel Lot to Sawyer Hotel.

F. Easements. Said conveyance shall include permanent easements in form and substance acceptable to Sawyer Hotel for (i) ingress and egress from Maple Street and/or Madison Avenue to the Hotel Lot through a parking lot to be developed to enable Sawyer Hotel to have access for vehicles and pedestrians, and (ii) any utilities services that must cross City property in order to provide service to the Hotel Lot.

3. Waterfront.

A. Ownership. It is understood that City or WRA will retain title to a strip of land located between the Hotel and the ordinary high water mark of the waters of the bay as surveyed and recorded in document _____. WRA or City will therefore retain the riparian rights to space between the ordinary high water mark and the existing dock wall. The city and WRA shall not sell, transfer, convey, or donate such land to another entity during the term of this Agreement without the express written approval of Sawyer Hotel.

B. Public Improvements. The City and WRA shall complete improvements to the City property surrounding the Sawyer Hotel as tax increment is available to fund improvements. The City or WRA shall thereafter maintain such improvements in a safe and usable condition.

C. Completion/Coordination of Public Space Improvements. It is anticipated by WRA that the work on the aforesaid public waterfront improvements may be done in phases, depending upon available funding through tax increment. The WRA and City commit to substantially completing the grading and walkways immediately adjacent to the Sawyer Hotel and a pathway to the waterfront on or before the completion date of the Hotel. Other components will be completed as soon as tax increment funding is available.

D. Transient dockage. The WRA and City agree to make available at least fifty-one percent (51%) of the existing dock wall from south boundary of the area leased to the Door County Maritime Museum to the Maple-Oregon bridge for mooring for transient boaters, with at least one hundred feet of clearance on each side of a planned festival pier. As an alternative, the minimum transient dockage requirement can be met through an equivalent amount of new piers and slips extending from the dock wall for use by transient boaters, in locations reasonably accessible to Sawyer Hotel. Dockage areas will be constructed as tax increment or grant funds are available.

E. No Costs to Sawyer Hotel. No part of the foregoing costs shall be charged or assessed to Sawyer Hotel or the Hotel Lot or improvements thereon.

F. Vision Easement. WRA and City agree to provide a permanent vision easement for the area extending from the Hotel perpendicular to the dock wall. The easement

shall prohibit the construction or placement of permanent buildings other than Event Stage, public building, and other structures materially similar to those depicted in the revised area plan of VandeWaal Associates attached hereto as exhibit B in locations to be determined, provided such that the public building shall not have a roof higher than 15 feet above the regional flood elevation without the consent of Sawyer Hotel. This provision shall not apply to temporary buildings or shelters used for events on the waterfront.

G. Quiet Enjoyment. City shall provide, at closing, a quiet title to the Hotel Lot in a condition as will allow Sawyer Hotel to enjoy uninterrupted control of the property conveyed. City will recommend such modifications to its noise ordinance as are required to include the West Waterfront Redevelopment District within the area subject to its coverage.

4. Parking.

A. Primary Parking for Hotel. The WRA and City will construct a paved parking area, including lighting and landscaping, suitable for parking at least seventy-two (72) cars on land owned or acquired by the City, located immediately adjacent to the Hotel. These parking spaces will be conveniently located for use by Hotel patrons, but will be also be available for use by other nearby developments and the general public. The WRA and City agree to erect signage to designate some or all of said spaces for exclusive use by the Hotel if Sawyer Hotel can demonstrate that necessary parking spaces are not, in fact, available for use by Hotel patrons.

B. Additional Public Parking. WRA represents that additional parking within the West Waterfront Redevelopment District will be made available for parking needs of the Hotel, other adjacent development, and the general public on a non-exclusive basis. Such additional parking shall consist, at a minimum, of one hundred fifty (150) parking spaces in the area to the east of Madison Avenue and north of Maple Street.

C. Maintenance. WRA and/or the City shall maintain all of the aforesaid parking areas and keep them in good repair and in safe condition, and reasonably clear of snow and ice.

D. Representations Regarding Availability. The WRA and City represent and warrant that (i) all of the parking areas identified in subparagraphs A and B above shall be available for use prior to the time the Hotel opens for business, (ii) there shall be no fees charged to hotel employees and guests for any such parking, whether by parking meters, parking passes or otherwise, and (iii) all such parking shall be open and accessible to the public at all times.

E. No Costs to Sawyer Hotel. No part of the foregoing costs for parking shall be charged or assessed to Sawyer Hotel, the Hotel Lot or improvements thereon.

5. Utilities.

A. Provision of Service. Sanitary sewer, water, and electrical, service shall be extended by WRA/City at its cost to the Hotel Lot at locations reasonably acceptable to WRA,

City and Sawyer Hotel based on final plans and specifications for the Hotel. Sawyer Hotel shall be responsible for the cost of the connection between the Hotel and those utilities. WRA shall also insure that an adequate provision is made for storm water runoff without any requirement of Sawyer Hotel to provide any storm water detention facilities upon the Hotel Lot and shall prepare any storm water management plans required for development of the Hotel and the West Waterfront Redevelopment District. All utilities serving the Hotel shall be located underground and shall be determined by Sawyer Hotel to be of quality and capacity satisfactory for the Hotel's operations, without unreasonable additional expense. All work required of WRA shall be performed in accordance with a development schedule to be approved by WRA and Sawyer Hotel to facilitate timely development of the Hotel.

B. Relocation. WRA/City shall work with American Transmission Company to locate a portion or all of the electrical transmission line underground, or to reduce the number of overhead utility poles shown on Exhibit C, all prior to substantial completion of the Hotel.

6. Assistance for Other Site Improvements. The WRA and City agree to complete, or provide financial assistance to Sawyer Hotel to complete the following improvements necessary to allow construction of the Hotel at the Hotel Lot:

A. Filling/Grading. The site shall be filled and/or graded to meet flood-proofing requirements of the Sturgeon Bay Floodplain Zoning Code.

B. Pilings and Building Expenses. Payment of up to of \$480,000 for costs associated with engineering and installation of pilings/pile caps and related building expenses to support the Hotel will be made to Sawyer Hotel within 30 days of receipt of invoices after commencement of excavation work for the Hotel. Should the costs described above exceed \$480,000, Sawyer Hotel shall pay for the additional cost.

7. Licenses/Permits/Zoning.

A. Building Permits/Approvals. Sawyer Hotel shall obtain, directly or through its agents, a building permit from the City, approval from the State of Wisconsin for the Hotel and such other permits, licenses, and related approvals as may be necessary or shall be deemed desirable by Sawyer Hotel for construction of the Hotel and operation of the Hotel. Such Hotel shall be constructed in accordance with all applicable federal, State of Wisconsin, County of Door, and City of Sturgeon Bay laws, ordinances and regulations.

B. Zoning. The parties anticipate that the Hotel Lot will be zoned Planned Unit Development (PUD) and the PUD zoning requirements will not preclude the development of the Hotel and accessory uses as shown in Exhibit B. If, however, the actual zoning on the Hotel Lot restricts the development of the planned Hotel in any material way, Sawyer Hotel may void this Agreement.

C. Signage. On-premise signs for the Hotel shall comply with the City's sign code and PUD zoning ordinance, as applicable. In addition, the City shall provide a location(s) for identification sign(s) on City/WRA property at the entrance(s) to the West Waterfront

Redevelopment District along N. Madison Avenue and/or E. Maple Street. Such sign(s) may be common sign(s) to identify other public or private uses at the West Waterfront Redevelopment District. The design and specific location(s) of the sign(s) shall be mutually acceptable to Sawyer Hotel and the WRA/City.

D. City and WRA Assistance. The City and WRA agree to use their best efforts to assist Sawyer Hotel in obtaining all permits, licenses, and approvals referred to herein or reasonably requested by Sawyer Hotel in connection herewith.

E. Inability to Obtain Permits/Approvals. In addition to any rights afforded Sawyer Hotel under any other paragraph hereof, if Sawyer Hotel is unable to obtain a zoning or building permit allowing construction of the Hotel, and without conditions reasonably deemed by Sawyer Hotel to be unreasonable and without imposition of fees, charges, assessments or taxes deemed unreasonable by Sawyer Hotel, then Sawyer Hotel shall be under no obligation to develop the Hotel and this Agreement shall be null and void.

8. Conditions Precedent to City and WRA Obligations. In addition to all other conditions and requirements set forth in this Agreement, the obligations of the City and WRA under this Development Agreement are conditioned upon the satisfaction of each and every of the following conditions:

A. On or before June 15, 2015, Sawyer Hotel, at its cost, will provide the Project Cost Breakdown to the City and WRA. The Project Cost Breakdown shall be certified by Sawyer Hotel, its Project architect and general contractor as accurate and complete and shall be acceptable to the City. The Project Cost Breakdown shall satisfy the City and its appraiser that all hard costs of construction, installation, furnishing and equipping of the Hotel are not less than \$7,734,000. The Project Cost Breakdown must otherwise show a state of facts acceptable to the City and WRA.

B. On or before June 15, 2015, Sawyer Hotel, at its cost, shall provide the City and WRA with a completion schedule for the Hotel which must be acceptable to the City and WRA.

C. On or before June 15, 2015, Sawyer Hotel shall provide the City and WRA with evidence satisfactory to the City and WRA that Sawyer Hotel has the funds necessary to construct and install the Hotel. Such evidence shall include, without limitation, an unconditional written financing commitment from a lender of Sawyer Hotel's choice, under the terms of which the lender agrees to make a loan to Sawyer Hotel in an amount sufficient, when combined with any equity contribution of Sawyer Hotel and the Loan, to construct, furnish, equip and install the Hotel. Said financing commitment must be acceptable in all respects to City and WRA. This must precede City and WRA's expenditure of funds for project improvements. City and WRA will retain as confidential those financial documents which can remain confidential under Wisconsin's public records law.

D. On or before June 15, 2015, the City, WRA, and the State of Wisconsin shall have determined that the final Plans for the Hotel are acceptable to the City, the WRA, and the State and all approvals from the City and the State of the Plans shall have been obtained.

E. No uncured default, or event which with the giving of notice or lapse of time or both would be a default, shall exist under this Agreement. Sawyer Hotel shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Hotel to which Sawyer Hotel is a party or an obligor.

F. On or before June 15, 2015, Sawyer Hotel shall have executed and delivered to the City and WRA any documents and agreements as are required by this Agreement.

If all conditions contained in this section are satisfied within the time periods for satisfaction of such conditions as set forth above or if such conditions are waived in writing by the City and WRA, within the time periods for satisfaction of such conditions as set forth above, then the above conditions shall be deemed satisfied. Otherwise, the City and WRA, at their option, exercised in their sole discretion, may terminate this Agreement, in which event, neither of the parties to this Agreement shall have any further liability or obligation to the other parties. Notwithstanding the foregoing, if Sawyer Hotel does not obtain, by January 6, 2015, all required City and WRA approvals for this project or in the event there are outside legal challengers against the project, all deadline dates for the Sawyer hotel contained in Paragraph 8 and Subparagraph 9A shall be automatically extended for one year. In such event the City /WRA may elect to terminate this agreement up to and including February 9, 2015.

9. Completion; Enforcement.

A. Completion Date. Sawyer Hotel shall work diligently to complete construction of the Hotel and Hotel Lot, in accordance with approved plans, so that it will be open to the public as an operating hotel by June 15, 2016.

Performance & Payment Bond. Sawyer Hotel, as part of its contract with its prime contractor for construction of the facility, shall require the contractor to furnish, at Sawyer Hotel's option, either (i) a payment and performance bond in the amount of the construction cost of the Hotel assuring completion of the Hotel and payment of subcontractors, suppliers, and materialmen who would have the right to file liens against the premises, or (ii) an irrevocable letter of credit issued by a U.S. domestic bank in the full amount of the construction cost to secure the contractor's performance hereunder.

B. Notice of Default; Remedies. In the event any party to this Agreement is in default hereunder (the "Defaulting Party") one of the other parties (the "Non-defaulting Parties") shall give the Defaulting Party written notice of the default, describing in reasonable detail the nature of the default and what action, if any, is deemed by the Non-defaulting Party necessary to cure the default and specifying the reasonable period of time, no longer than ninety (90) days, within which the default may be cured (the "Cure Period").

During the period of time between the default by the Defaulting Party and the expiration of the Cure Period, the Non-defaulting Parties may suspend their performance; provided, however, that they may not so suspend their performance if and to the extent that to do so would impede the Defaulting Party in such party's attempts to cure its default. In the event a

default is still in existence at the expiration of the Cure Period, and, in the case of a default that cannot be completely cured within such Cure Period, in the event that the Defaulting Party has not commenced (or is not continuing diligently to pursue) appropriate action to cure such default, then the Non-defaulting Parties may take any legal, equitable or administrative action to which such party may be allowed by this Agreement or by law, including the right to seek specific performance.

The remedies to which a party is entitled shall be cumulative and shall not be precluded or restricted by any other provision of this agreement or by the pursuit of a particular remedy. If Sawyer Hotel is the Defaulting Party, WRA shall thereupon also have the right to enter upon the premises and complete all necessary items of construction work and assess the cost thereof to the Hotel Lot as a lien thereon. Such lien may then be foreclosed by the City in the manner of a construction lien under Wisconsin law.

C. Force Majeure. No party shall be liable to another party for loss, cost or damage resulting from the failure of such party to fulfill his or its requirements hereunder if such failure is the result of any cause not within the reasonable control of the party whose performance is interfered with, including, without limitation, wars, acts of civil unrest, strikes, fires, floods and acts of God, and the time for performance hereunder shall be extended by the period of delay occasioned by any such cause.

D. Costs of Enforcement. The prevailing party in any action shall be entitled to its costs of enforcing this Agreement, including court costs and disbursements and reasonable attorneys' fees.

10. Sale/Lease/Assignment.

A. Sale/Lease. Sawyer Hotel shall not sell, transfer or lease the Hotel Lot or the Hotel without the prior written approval of the WRA, which approval shall not be unreasonably withheld so long as the transferee/tenant is a creditworthy entity with experience operating similar hotels, or has a hotel manager experienced in operating similar hotels. Upon a sale, transfer or lease to which the WRA consents, Sawyer Hotel shall be released and forever discharged from any liability or obligation for any matter arising thereafter. This does not preclude the sale of condominium units within the Hotel.

B. Assignment. Neither Sawyer Hotel, nor its successors, assigns or agents, may assign any rights under this Agreement or the Agreement itself without the prior written approval of the WRA, which approval shall not be unreasonably withheld.

C. Construction/Operating Entity. Nothing contained herein, though, shall prohibit Sawyer Hotel from creating a corporation or other entity for the purpose of constructing and/or operating the Hotel. Any such entity, though, shall construct the Hotel and/or operate the Hotel in accordance with all of the terms of this Agreement and will be bound by the terms thereof.

D. Facilitation of Financing. In order to facilitate Sawyer Hotel's obtaining financing for construction of the Hotel, WRA and the City agree to make reasonable modifications to this Agreement, none of which shall alter the terms hereof in any material respect, if requested by a prospective lender, and to execute and deliver estoppel letters and such other documents as a prospective lender may reasonably require to close the loan.

11. Taxation.

A. Understandings. Sawyer Hotel understands that the ability of the WRA to develop the West Waterfront Redevelopment District is dependent upon expectations of tax assessment of the facilities developed in the TIF District. It is necessary, therefore, that the owners of facilities in the TIF District pay taxes on the minimum assessments forecasted by the City for the life of the TIF District.

B. Minimum Payment. Sawyer Hotel estimates the cost of the Hotel Lot, Hotel and related property and personal property to be \$7,734,280. Sawyer Hotel agrees to pay an annual amount at least equal to the tax on property having an assessed value of \$7,734,280, regardless of whether the current year's assessment is less than that amount, until the City's reimbursable costs under the TIF program have been fully reimbursed. In the event that a given year's assessed value is less than \$7,734,280, as provided above, the amount of the current year's tax assessment and bill shall be paid to the City and the difference, if any, between that amount and the amount of assessed tax and the mil rate on an assessment of \$7,734,280 as provided above (the "Minimum Payment") shall be paid to City as a special charge for services. Any amount paid above the Minimum Payment in any year shall be "banked", and may be used to offset underpayments in any future year.

C. Guarantee. The principal of Sawyer Hotel, Robert Papke, shall personally guarantee payment of the Minimum Payment as described above for each year until the City/WRA reimbursable costs under the TIF program for this project have been fully reimbursed. Any amount paid above the Minimum Payment in any year shall be "banked", and may be used to offset underpayments in any future year. This Guarantee will be released upon the sale, to bona fide buyers, of condominium units have a total equalized value of \$5,250,000. The Condominium Owners Association shall guarantee the Minimum Payment each year during the life of the TID, and the condominium declaration shall require the assessment of unit owners by their percentage ownership of common area for such Minimum Payment annually when the assessed value of improvements is less than \$7,734,280. The provision requiring this assessment in the condominium declaration may not be altered or removed without the consent of the City of Sturgeon Bay.

12. Insurance.

A. Fire Insurance. Sawyer Hotel shall maintain fire and other casualty insurance on the premises in an amount at least equal to the cost of its reconstruction, exclusive of foundation, without co-insurance. WRA and the City shall be named as additional insureds.

B. Liability Insurance. In addition, Sawyer Hotel shall maintain public liability insurance on the premises to be conveyed herein, including the Hotel operation, in an amount of at least \$1,000,000.00. WRA and the City shall be named as additional insureds.

C. Certificates Showing Coverage. Sawyer Hotel shall at least annually furnish to WRA either a copy of such policy or a certificate of insurance showing such coverage.

D. Use of Proceeds. Subject to the rights of Sawyer Hotel's first mortgagee, any insurance proceeds received for fire or other casualty loss to the Hotel shall be used to rebuild, restore, or replace (as the case may be) property damaged by such fire or other casualty. This applies to both real and personal property.

13. Survival of Agreements.

A. Survival of Provisions. None of the provisions of this Agreement are intended to or shall be merged into any deed transferring any interest in the Hotel Lot, and all of said provisions, including representations and warranties made herein, shall survive the closing of Sawyer Hotel's acquisition of the Hotel Lot as provided herein.

B. Provisions Not Limited by Investigation. All of the provisions hereof, including representations and warranties shall remain operative and in full force and effect during the term hereof regardless of any investigation made by or on behalf of any party.

14. Cooperation with Other Developers.

A. Sawyer Hotel's Agreement to Cooperate. The parties hereto recognize that the facility developed pursuant to this Agreement is a part of the development of a number of facilities that will comprise the West Waterfront Redevelopment District. Sawyer Hotel agrees, therefore, to cooperate with such developers, and in particular, the developers of the restaurant and brewery located adjacent to the Hotel and the Door County Maritime Museum.

B. WRA's Obligation to Cause Other Developers to Cooperate. WRA represents that this same requirement shall be a term of the agreements with the other developers of the facilities within the West Waterfront Redevelopment District.

15. Termination of Agreement. This Agreement shall terminate upon the occurrence of the earlier of the following events: (i) the parties enter into a written agreement terminating this Agreement, or (ii) termination of the TIF District as provided by Wisconsin law.

16. Miscellaneous.

A. Construction of Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin, with venue of any lawsuit to be in Door County, Wisconsin.

B. Modifications. No modifications of this Agreement shall be made except in writing signed by the parties hereto.

C. Successors and Assigns Bound. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, personal representatives and assigns.

D. Authority to Execute Agreement. The undersigned represent that they are duly authorized to execute this Agreement on behalf of the parties hereto.

E. Approval by City/Effective Date of Agreement. This Agreement shall not become effective until approved by the City Council of the City of Sturgeon Bay as to all of the terms and conditions hereof, which terms and conditions shall be binding on the City to the extent allowed by law.

F. Memorandum of Agreement. A memorandum of this Agreement setting forth its existence shall be recorded with the Register of Deeds for Door County, Wisconsin, and tract indexed against the site described herein.

G. Defined Terms.

1. "City" shall mean the City of Sturgeon Bay, Wisconsin.
2. "Environmental Law" means any local, state or federal law or other statute, law, ordinance, rule, code, regulation, decree or order governing, regulating or imposing liability or standards of conduct concerning the use, treatment, generation, storage, disposal or other handling or release of any Hazardous Substance.
3. "Sawyer Hotel" shall mean Sawyer Hotel Development LLC, its successors and/or assigns.
4. "Hazardous Substance" means any pollutant, contaminant, waste or toxic or hazardous chemicals, wastes or substances, including, without limitation, asbestos, urea formaldehyde insulation, petroleum, PCB's, air pollutants, water pollutants, and other substances defined as hazardous substances or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. § 1802, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., the Solid Waste Disposal Act, 42 U.S.C. § 3251 et seq., the Clean Air Act, 42 U.S.C. § 1857 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., Chapter 144 of the Wisconsin Statutes, or any other statute, rule, regulation or order of any governmental agency having jurisdiction over the control of such wastes or substances, including

but not limited to the United States Environmental Protection Agency, the United States Nuclear Regulatory Agency, the Wisconsin Department of Natural Resources and the Door County Department of Health.

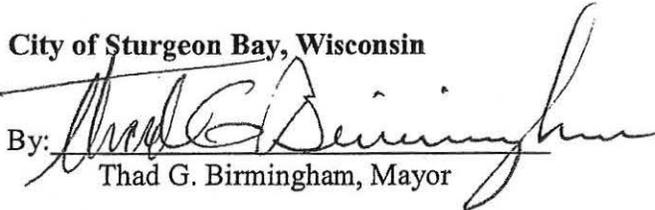
5. "TIF District" shall mean Tax Increment District #4 created by the City for financing the West Waterfront Redevelopment District referred to herein under the authority of the Tax Increment Law of the State of Wisconsin.

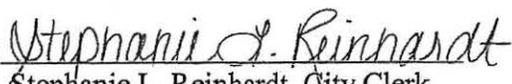
6. "WRA" shall mean the Waterfront Redevelopment Authority of the City of Sturgeon Bay, Wisconsin.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

WHEREFORE, the parties have hereunto set their hands as of this 8th day of January, 2015.

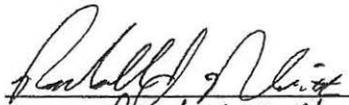
City of Sturgeon Bay, Wisconsin

By: 
Thad G. Birmingham, Mayor

Attest: 
Stephanie L. Reinhardt, City Clerk

STATE OF WISCONSIN)
) ss.
DOOR COUNTY)

Personally appeared before me this 8 day of January, 2015, the above-named Thad G. Birmingham and Stephanie L. Reinhardt, the Mayor and City Clerk, respectively, of the City of Sturgeon Bay, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority.


Name: Randall J. Nesbitt
Notary Public, State of Wisconsin
My Commission ~~expires~~: is permanent

[SIGNATURES CONTINUE ON NEXT PAGE]

Sawyer Hotel Development LLC,
a Wisconsin limited liability company

By: [Signature]
Name: Robert Papke
Title: Sole owner

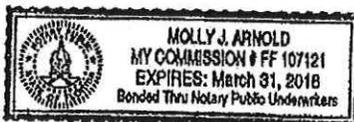
[Signature]
Robert Papke, Guarantor

Florida
STATE OF WISCONSIN)
Palm Beach COUNTY) ss.

Personally appeared before me this 7 day of January, 2018, the above-named Robert Papke, Guarantor of Sawyer Hotel Development LLC, to me known to be the person who executed the foregoing agreement on behalf of said corporation and by its authority.

[Signature]
Name: Molly Arnold
Notary Public, State of ~~Wisconsin~~ Florida
My Commission expires: March 31, 2018

This instrument was drafted by
Atty. Randall J. Nesbitt
Pinkert Law Firm LLP
454 Kentucky Street
Sturgeon Bay, WI 54235



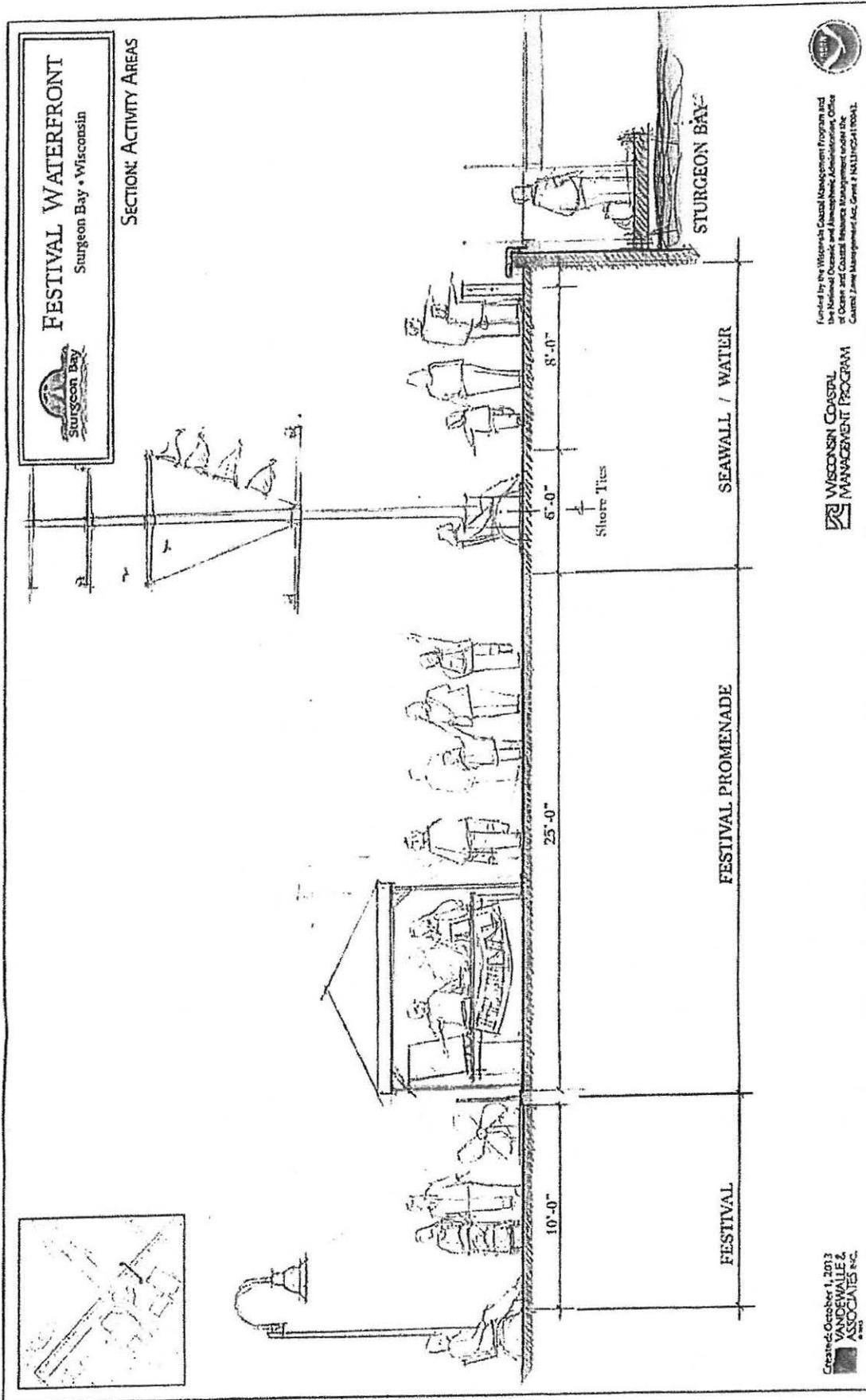
F:\Clients\SS\Sturgeon Bay-City\Sawyer Hotel\Sawyer Hotel Development Agreement 12-30-2014.docx

EXHIBIT A

Legal Description of West Waterfront Redevelopment District

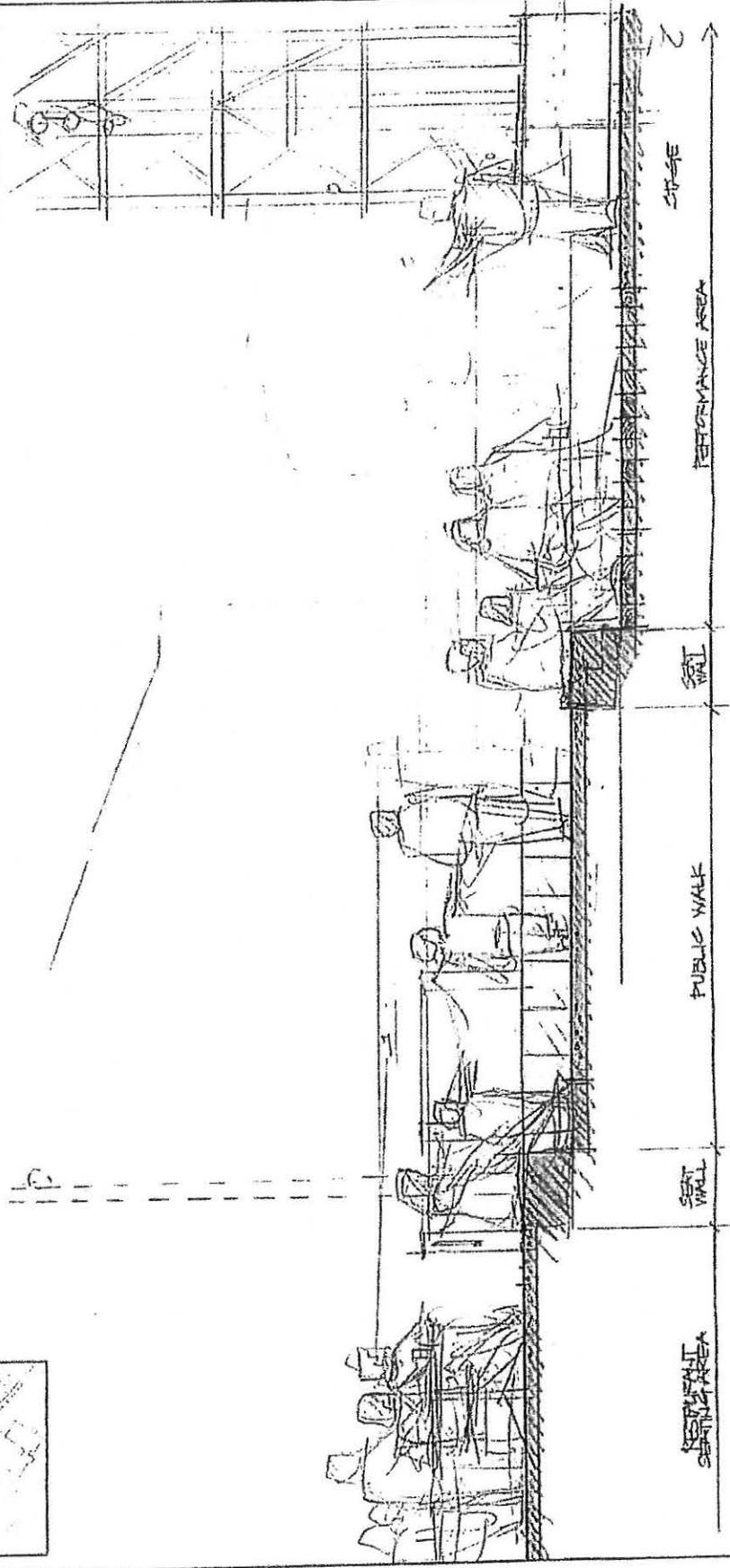
A parcel of land located in the fractional NE 1/4 of Section 7, Township 27 North, Range 26 East, City of Sturgeon Bay, Door County, Wisconsin bounded and described as follows:

Commencing at the intersection of the centerline of North Madison Avenue and the high water line of Sturgeon Bay, thence southwesterly along a curve to the left and centerline of said North Madison Avenue to the intersection with the centerline of West Larch Street, thence westerly along said centerline of West Larch Street to the intersection with the extended westerly line of Lot 1 of Certified Survey No. 1142 recorded in Volume 6 of Certified Survey Maps, Page 298, thence southerly along said extended westerly line of Lot 1 to the intersection with the centerline of West Locust Court, thence easterly along said centerline of West Locust Court to the intersection with North Madison Avenue, thence continue easterly along the centerline of East Locust Court to the intersection with the westerly line of Parcel No. 281-12-10080101, thence southerly along said westerly line extended to the intersection with the centerline of East Maple Street, thence westerly along said centerline of East Maple Street to the intersection of South Madison Avenue, thence southerly along said centerline of South Madison Avenue to the extended northerly line of Parcel No. 281-12-10011101, thence easterly along said extended northerly line to the northeast corner of said parcel, thence southerly along the westerly line of said parcel extended to the centerline of an alley, thence easterly along said alley to the intersection with the extended westerly line of Lot 1 of Certified Survey No. 1306 recorded in Volume 7 of Certified Survey Maps, Page 322, thence northwesterly along said extended westerly line of said Lot 1 to the intersection of East Maple Street, thence easterly along said centerline of East Maple Street to the centerline of Oregon Street, thence northeasterly along said centerline of Oregon Street to the high water line of the bay of Sturgeon Bay, thence northwesterly along said high water line to the point of commencement.



FESTIVAL WATERFRONT
Sturgeon Bay • Wisconsin

SECTION: BREWPUB AND STAGE



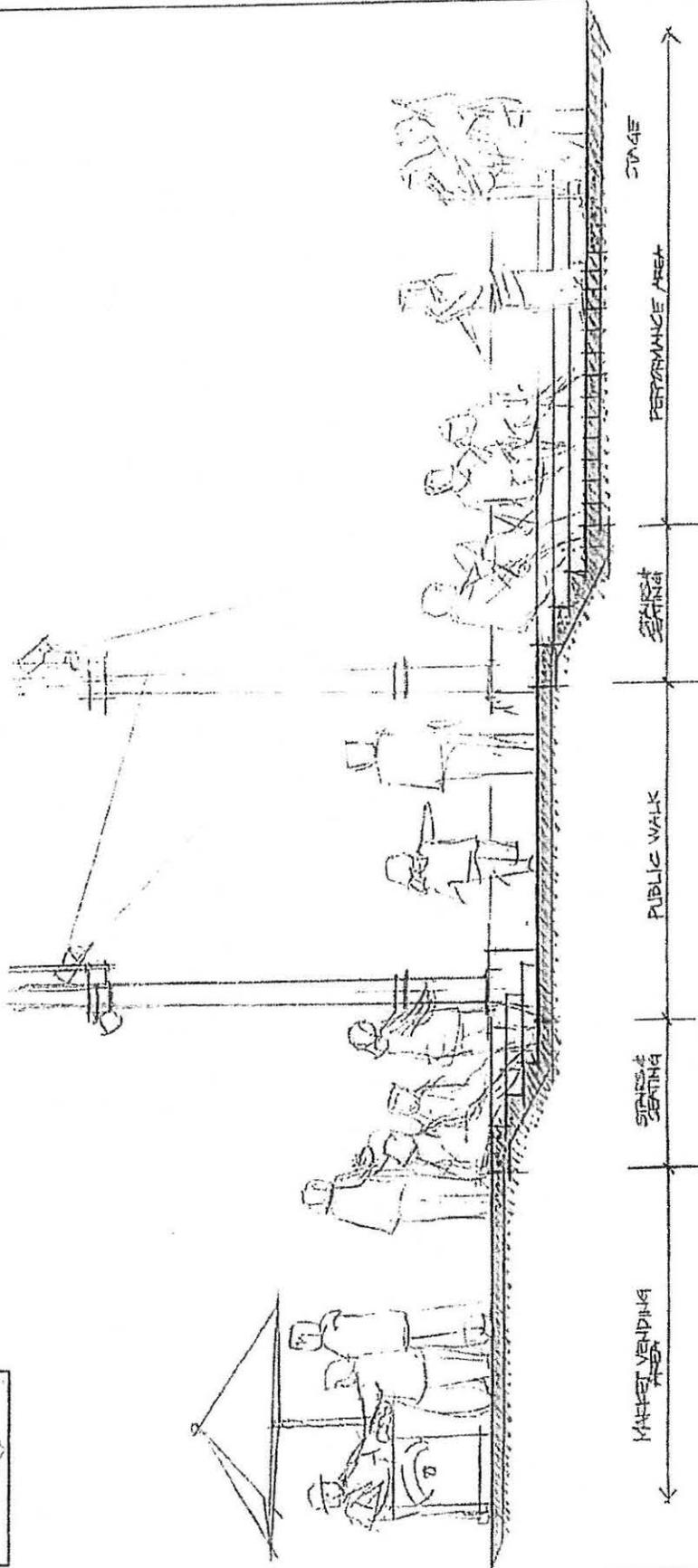
Financed by the Wisconsin Coastal Management Program, and the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management under the Coastal Zone Management Act, Grant # NA13N05417004Z.

WISCONSIN COASTAL MANAGEMENT PROGRAM

Created: October 1, 2013
VANDERWALLE & ASSOCIATES P.C.
© 2013

FESTIVAL WATERFRONT
Sturgeon Bay • Wisconsin

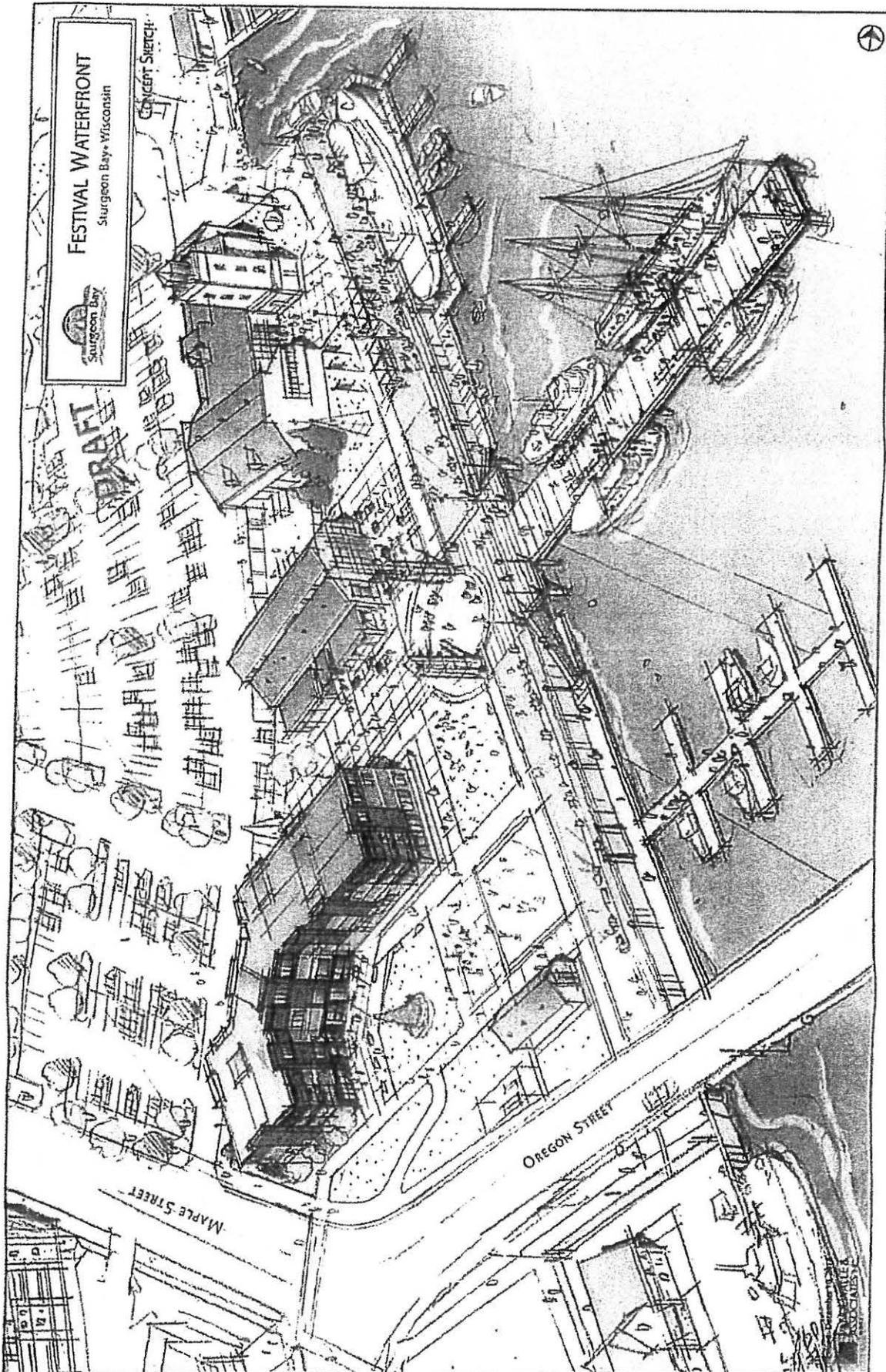
SECTION: FESTIVAL MARKET AND STAGE



Funded by the Wisconsin Coastal Management Program and the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management under the Coastal Zone Management Act, Grant # NA13OAR0001.

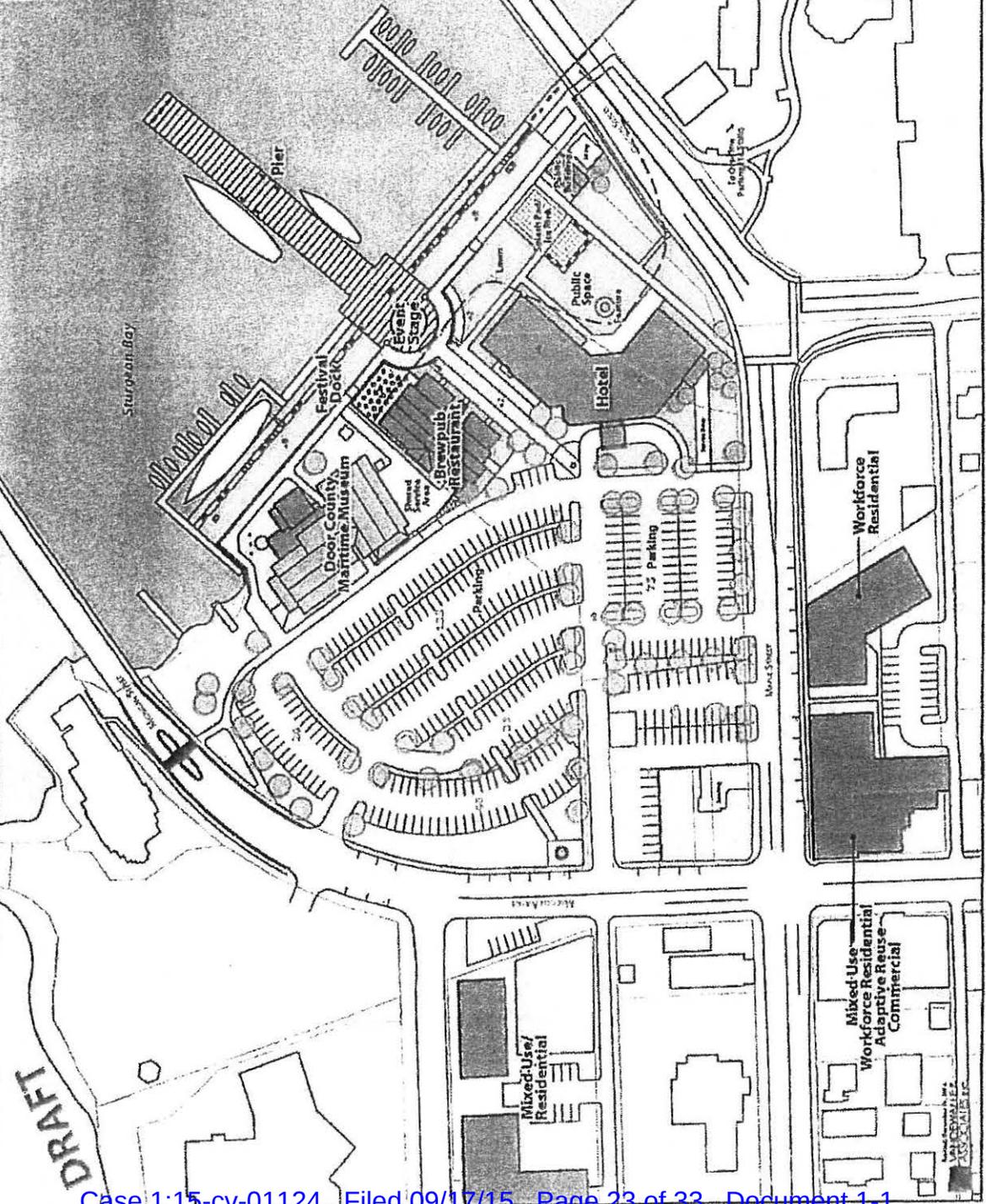


Created: October 1, 2013
VANDEWALLE & ASSOCIATES P.C.
A S.C. 2013



FESTIVAL WATERFRONT
Sturgeon Bay, Wisconsin

POTENTIAL BREWPUB RESTAURANT AND HOTEL LOCATION



DRAFT

EXHIBIT C

Overhead Utility Poles

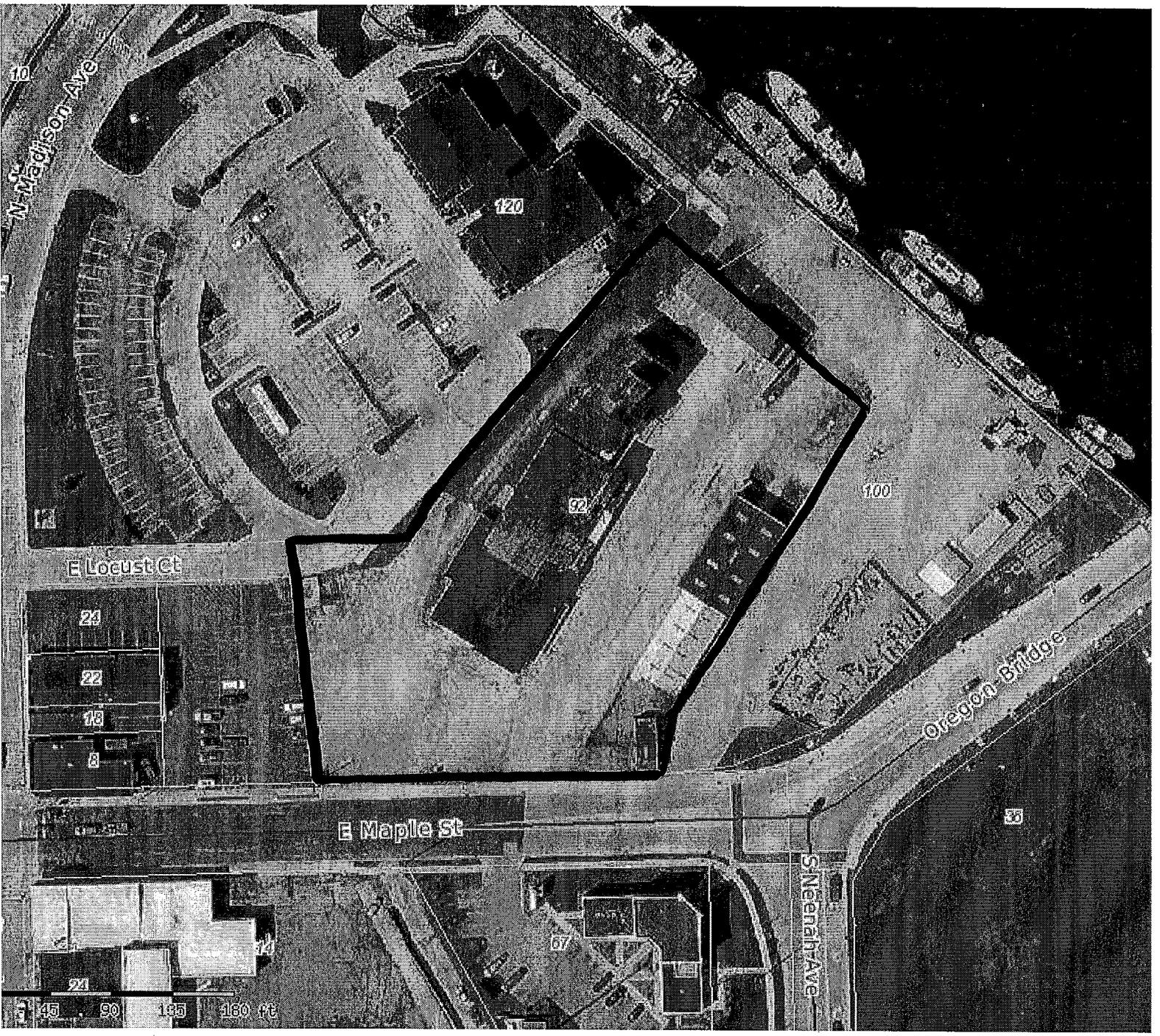


EXHIBIT B



EXHIBIT C

DOC#: 782928



Recorded
OCT. 28, 2014 AT 09:50AM

CAREY PETERSILKA
REGISTER OF DEEDS
DOOR COUNTY, WI

Fee Amount Paid: \$30.00

Tract Indexed

Recording Area

Name and Return Address

Attorney James R. Smith
Pinker Law Firm LLP
454 Kentucky St., P.O. Box 89
Sturgeon Bay, WI 54235

281-24-15090101

Parcel Identification Number (PIN)

WDNR DETERMINATION OF CONCURRENCE
WITH THE APPROXIMATE ORDINARY HIGH
WATER MARK FOR THE
CITY OF STURGEON BAY
WEST SIDE WATERFRONT PROJECT

Drafted by:
Michael L. Bruhn
Director of Policy and External Affairs
State of Wisconsin
Department of Natural Resources
101 South Webster Street, Box 7921
Madison, WI 53707-7921
Telephone: 608-266-2621

EXHIBIT D

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



October 20th, 2014

Attorney James R. Smith
Pinkert Law Firm, LLP
454 Kentucky St.
P.O. Box 89
Sturgeon Bay, WI 54235-0089

Re: WDNR Determination of Concurrence with the approximate Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project

Dear Mr. Smith:

At your request I have reviewed the attached "Plat of Survey," dated October 2, 2014, prepared by Baudhuin Inc. and certified by Wisconsin land surveyor Michael G. McCarty (Survey), depicting the approximate location of the ordinary high water mark (OHWM) with respect to an area located in downtown Sturgeon Bay. The Survey is attached hereto as Exhibit A and incorporated herein by reference. The City of Sturgeon Bay (City) is seeking to establish its property rights with respect to the area legally described on attached Exhibit B which is incorporated herein by reference (the "Parcel").

Under the public trust doctrine, the state holds title to the beds of all natural lakes, including Lake Michigan, in trust for the public. See, Wis. Const., Art. 9, §1. In addition, the Wisconsin Department of Natural Resources (DNR) holds the authority, as the central unit of government regulating waters of the state, to make the determination of the location of the OHWM. The OHWM determination for this site not only defines the extent of state title, it also establishes the jurisdictional authority of the DNR by defining the boundary between the bed and bank of Lake Michigan for the Parcel.

Typically, an OHWM concurrence would require a DNR expert to conduct a field analysis of the physical characteristics of the shore for the purpose of verifying the point on the bank or shore where water has left a distinct mark—the OHWM. Due to historic filling of public lakebed, the location of the OHWM could not be determined by DNR in the routine course. Instead, DNR reviewed several historic maps in order to analyze the historic evolution of the shoreline.

In 1955, the City of Sturgeon Bay established a bulkhead line ordinance, which was approved by the Public Service Commission (the predecessor to DNR with respect to OHWM responsibilities). Despite the 1955 bulkhead approval, the land filled did not conform as nearly as practicable to the shore and was not accompanied by a lakebed lease issued by Board of Commission of Public Lands (BCPL) pursuant to Wis. Stat. §24.39(4). Because the 1955 bulkhead was inconsistent with the requirements of Wis. Stat. §30.11(2), it did not come into force. The 1955 bulkhead file, however, contained a map which provided a depiction of the shoreline in 1955, which included an unusual bay-like feature. It is the DNR's understanding that the approximate location of the OHWM in the Plat of Survey described above was based upon the location of the shoreline in the 1955 map.

DNR was able to review a 1925 U.S. War Department map image (1925 Map) that provided water depths in the Sturgeon Bay area. At that time, the Parcel was not dry land but was actually under the waters of Sturgeon Bay. The 1925 Map illustrates that the Parcel was bookended by an abutment labeled L.M. Washington Dock and designated as Mill Refuse on the southeastern side and a dock structure labeled Teweles & Brandeis on the northwestern side. The Parcel area between the two solid structures in the 1925 Map appears to have been a shallow bay of 2 ft. water depth. In my opinion, the Parcel area would have filled with sediment slowly over the

course of time between the 1925 Map and the 1955 Bulkhead Map. The gradual addition of soil to the shallow area shown in the 1925 Map should be considered accretion and would extend the riparian title out to the OHWM.

The DNR has been working with the City on its proposal to redevelop the portion of the downtown area located above the approximate OHWM with a private retail facility and a public promenade and other public features below the OHWM. The DNR has reviewed the attached Survey and concurs with the approximate location of the OHWM with respect to the Parcel. It is DNR's understanding that the City of Sturgeon Bay is the riparian owner with respect to the Parcel. By execution of this document, the DNR concurs that title to the Parcel above the OHWM will rest in the City due to its status as the adjacent riparian owner. Below the OHWM, the proposed uses contemplated by the City must remain consistent with the public trust uses that allow for public use and enjoyment of the navigable waters of Lake Michigan.

The DNR appreciates the opportunity to work with you in protecting Wisconsin's public trust resources and your cooperation.

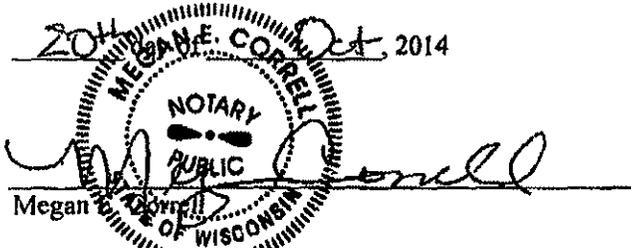
Sincerely,



Michael L. Bruhn
Director of Policy and External Affairs

Subscribed and sworn to before me this

20th Oct, 2014



Megan E. Correll

My Commission is permanent.

Plat of Survey

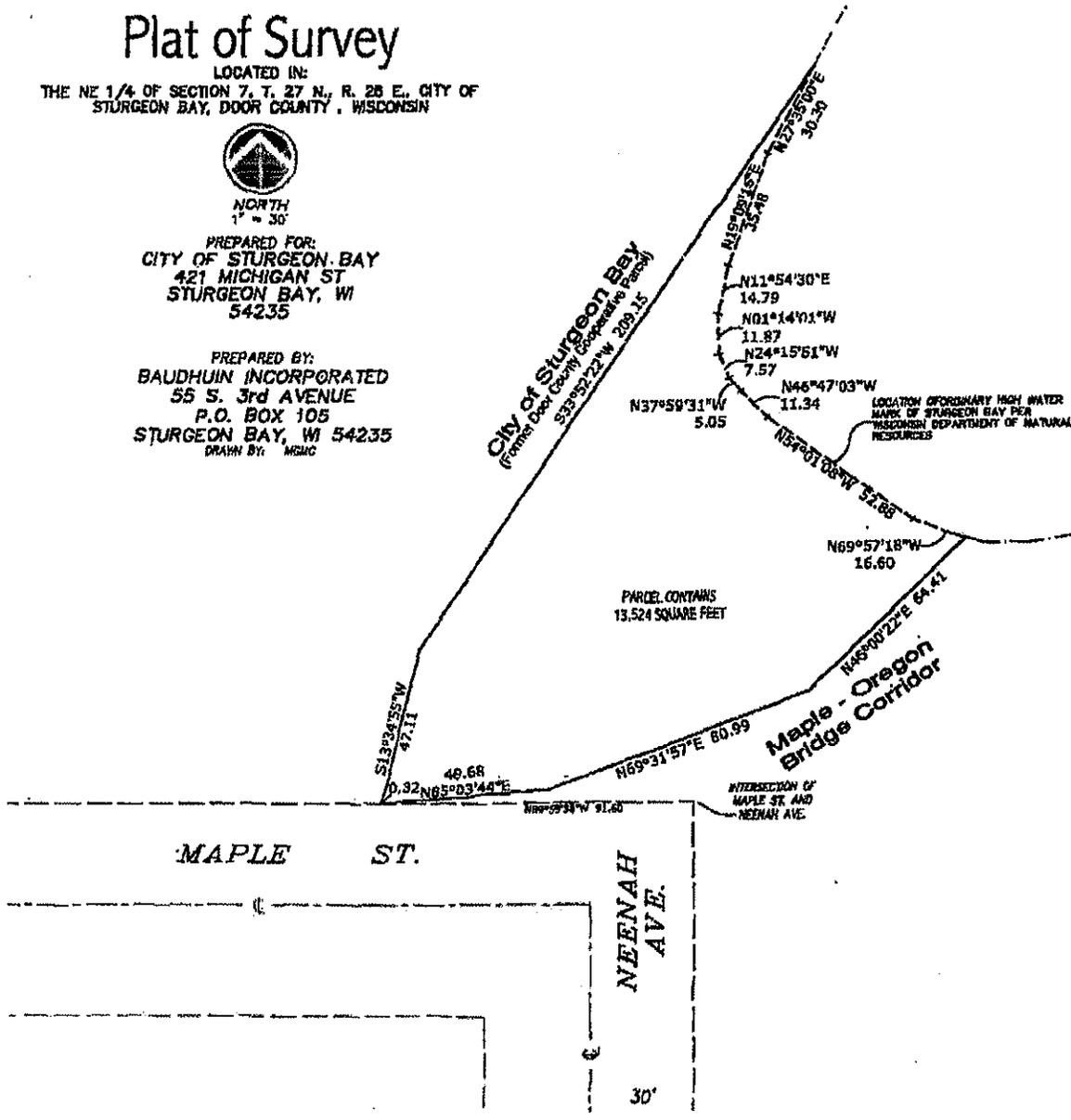
LOCATED IN:
THE NE 1/4 OF SECTION 7, T. 27 N., R. 28 E., CITY OF
STURGEON BAY, DOOR COUNTY, WISCONSIN



NORTH
1" = 30'

PREPARED FOR:
CITY OF STURGEON BAY
421 MICHIGAN ST
STURGEON BAY, WI
54235

PREPARED BY:
BAUDHUIN INCORPORATED
55 S. 3rd AVENUE
P.O. BOX 105
STURGEON BAY, WI 54235
DRAWN BY: MSJC



Description:

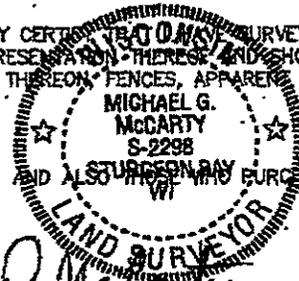
A parcel of land located in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street to the point of beginning of lands to be described; thence N85°03'44"E - 49.68 feet; thence N69°31'57"E - 80.99 feet; thence N46°00'22"E - 64.41 feet to the approximate ordinary high water mark of Sturgeon Bay as determined by the Wisconsin Department of Natural Resources; thence along said ordinary high water mark as follows: N69°57'18"W - 16.60 feet; thence N54°01'08"W - 52.88 feet; thence N46°47'03"W - 11.34 feet; thence N37°59'31"W - 5.05 feet; thence N24°15'51"W - 7.57 feet; thence N01°14'01"W - 11.87 feet; thence N11°54'30"E - 14.79 feet; thence N19°09'16"E - 35.48; thence N27°35'00"E - 30.30 feet; thence leaving said ordinary high water mark S33°52'22"W - 209.15 feet; thence S13°34'55"W - 47.11 feet to the aforementioned north line of Maple Street; thence S89°59'38"E - 0.32 feet along said north line to the point of beginning. Said parcel contains 13,524 square feet.

SURVEYOR'S CERTIFICATE:

I, MICHAEL G. Mc CARTY, REGISTERED LAND SURVEYOR FOR BAUDHUIN INCORPORATED, HEREBY CERTIFY THAT I HAVE SURVEYED THE DESCRIBED PROPERTY AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL STRUCTURES THEREON, FENCES, APPARENT EASEMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.

THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR INSURE THE TITLE THERETO.



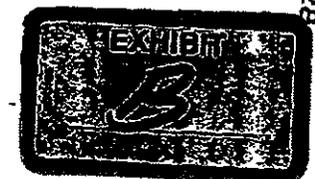
DATED THIS 2nd DAY OF October 2014

Michael G. McCarty
MICHAEL G. Mc CARTY S-2298

CAD: D:\B\DWG\DC CO-OP 15581\581-1.dwg
SHEET 1 OF 1

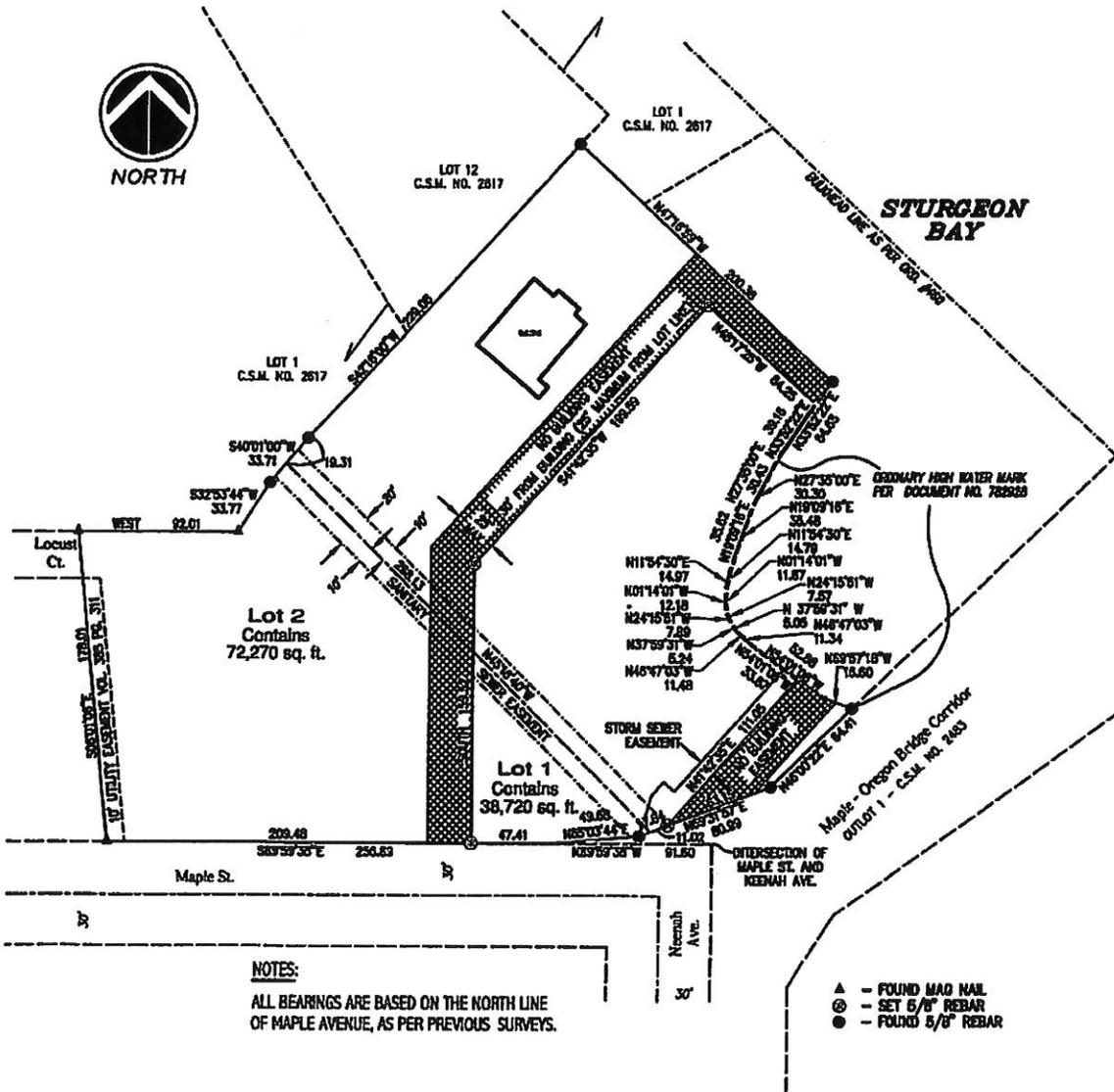
JOB NO. 15581

DOC#:
782928



CERTIFIED SURVEY MAP

BEING:
 PART OF LOT 1, BLOCK 9 OF HARRIS FIRST ADDITION AND
 ALSO A PART OF LOTS 1, 6 AND 7, BLOCK 8 OF BAYVIEW
 PLAT AND ALL OF LOTS 2, 3, 4 AND 5, BLOCK 8 OF BAYVIEW
 PLAT AND ALSO PART OF SUBDIVISION 76
 AND BEING LOCATED IN:
 THE NE 1/4 OF SECTION 7, T. 27 N., R. 28 E.,
 CITY OF STURGEON BAY, DOOR COUNTY,
 WISCONSIN.



NOTES:
 ALL BEARINGS ARE BASED ON THE NORTH LINE
 OF MAPLE AVENUE, AS PER PREVIOUS SURVEYS.