

PUBLIC IMPROVEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT AGREEMENT (the “Agreement”) is made as of November 5, 2019 (the “Effective Date”) by and between the WEST QUARTER WEST, LLC, a Wisconsin limited liability company (“WQW), and WEST QUARTER EAST, LLC, a Wisconsin limited liability company (“WQE”), (collectively, the “Developer”) and the CITY OF WEST ALLIS, a Wisconsin municipal corporation (“City”), each of the foregoing being a “Party”, and collectively the “Parties”.

RECITALS

A. Developer is the owner of the real property and improvements in the City of West Allis, Wisconsin, consisting of: (i) approximately 16.76 acres as depicted and described on **Exhibit A** attached hereto and (ii) approximately 1.45 acres located on the west side of South 70th Street as depicted and described on **Exhibit A** attached hereto (collectively, the “Property”).

B. Developer and the City acknowledge and understand that this Agreement is executed in connection with that certain Development Agreement dated March 21, 2019 (the “Development Agreement”) executed by the Parties for the implementation and development of the Project, as that term is defined in the Development Agreement, located at the Property.

C. In conjunction with the Project, Developer requested this Agreement to allow Developer, at its expense, to design, construct and install the streetscape project (the “Streetscape Project”) on the east and west sides of South 70th Street between approximately West Madison Street and West Washington Street (the “Streetscape Sites”), as depicted and described on **Exhibit B** attached hereto. City and Developer acknowledge that the Streetscape Project may be constructed and installed in two phases (each, a “Phase”) based on the timing of other construction activities occurring on the Property.

D. Upon substantial completion of each Phase of the Streetscape Project, as reasonably determined by the City, Developer shall dedicate such Phase of the Streetscape Project to the City pursuant to the terms and conditions contained herein.

E. If not defined herein, any capitalized terms herein have the meaning ascribed to them in the Development Agreement.

AGREEMENTS

In consideration of the RECITALS and the terms and conditions set forth herein, the Parties agree and covenant as follows:

ARTICLE I DEVELOPER OBLIGATIONS

A. Subject to the further terms and conditions set forth in this Agreement, Developer shall perform the following:

1. Obtain all easements, approvals, consents and/or permits necessary to commence construction activities for each Phase of the Streetscape Project.

2. Construct each Phase of the Streetscape Project in accordance with the final plans and specifications approved by the City (the "Approved Streetscape Plans") and all applicable federal, state and local laws, ordinances and regulations. Developer shall provide the City, its officials, agents and employees access to the Streetscape Sites during normal business hours, and shall provide any documentation requested, for reasonable inspections of the each Phase of the Streetscape Project during construction. During such access, the City shall not unreasonably interfere with Developer's contractors performing each Phase of the Streetscape Project construction work.

3. Design, construct and install each Phase of the Streetscape Project in accordance with the budget approved by the City (the "Streetscape Budget"), as set forth on **Exhibit C** attached hereto.

B. Developer shall substantially complete both Phases of the Streetscape Project in compliance with the Approved Streetscape Plans not later than June 30, 2021.

C. Developer shall, at no cost to the City, dedicate each Phase of the Streetscape Project to the City in accordance with City inspection and acceptance procedures. Each Phase of the Streetscape Project shall at all times be subject to City inspection and approval and the City or other public entity shall not be required to accept conveyance of the Streetscape Project unless the each Phase of the Streetscape Project is constructed in a good and workmanlike manner, in accordance with the Approved Streetscape Plans, and otherwise is in a condition reasonably acceptable to the City. Following approval by the City of each Phase of the completed Streetscape Project, each such Phase of the Streetscape Project shall be conveyed to the City or other public entity, to the extent appropriate. The Developer shall provide to the City or other public entity from the Developer and all contractors and consultants involved in connection with the construction and installation of each Phase of the Streetscape Project, a one-year warranty against defects in construction, materials and workmanship, in a form reasonably acceptable to the City. The Developer shall also provide to the City as-built construction records for each Phase of the Streetscape Project in an electronic format reasonably acceptable to the City.

ARTICLE II CITY OBLIGATIONS

A. City shall cooperate with Developer throughout the development and construction of each Phase of the Streetscape Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

B. Provided that the Developer is not then in default beyond applicable notice and cure periods under this Agreement or the Development Agreement, the City shall pay an amount not to exceed \$475,000 (the "Streetscape Funds") for the design, construction and installation of the Streetscape Project within ten (10) days after satisfaction of all of the following conditions:

(1) Developer has obtained approval from the City Engineer with respect to detailed plans and specifications for the Streetscape Project;

(2) Developer has obtained any easements, rights of way, consents and/or permits necessary to commence construction activities for the Streetscape Project;

(3) Developer has provided the City with the Streetscape Budget and the City has reviewed and approved same; and

(4) City confirms that the Streetscape Project has been constructed in a good and workmanlike manner, in accordance with the Approved Streetscape Plans.

Notwithstanding the foregoing, City and Developer acknowledge and agree that payment by the City of the Streetscape Funds shall occur in two installments, one for each Phase of the Streetscape Project following satisfaction of the foregoing conditions with respect to each such Phase of the Streetscape Project.

C. The City shall recoup the Streetscape Funds from Developer by means of levying a special assessment against the Property in an amount equal to the total amount of Streetscape Funds paid by the City plus any costs reasonably incurred by the City directly related to this Agreement or the Streetscape Project. The City may levy such special assessment against the Property at any time after the date this is one hundred eighty (180) days after the date when the City paid the Streetscape Funds. Such special assessment shall constitute a lien upon the Property, as and in the same method, manner, status and legal existence as levied taxes are a lien against property pursuant to Wis. Stat. § 70.01; and shall also be otherwise collectible as are delinquent special charges pursuant to Wis. Stat. § 66.0627. Any and all notice and hearing requirements which may be required under the law for such special assessment or special charge are hereby waived by Developer. The special assessment shall be payable in equal installments over a term of not less than ten (10) years.

D. The City hereby grants the Developer and its agents and contractors a temporary, non-exclusive construction easement on, over, through and across those portions of City-owned real property located within the Streetscape Sites to perform the construction and installation of each Phase of the Streetscape Project (the "Streetscape Easement"). The Streetscape Easement shall commence on the Effective Date and shall expire on the earlier of (a) the date the City confirms that both Phases of the Streetscape Project have been constructed in a good and workmanlike manner, in accordance with the Approved Streetscape Plans, or (b) June 30, 2021 (the "Easement Term"). The Streetscape Easement shall automatically terminate at the expiration of the Easement Term and be of no further force and effect without the need for any further filings or actions by the Parties.

ARTICLE III WRITTEN NOTICES

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer of the City (as to the City) or to an

officer of Developer (as to Developer), if hand delivered; (ii) two business days following deposit in the United States mail, postage prepaid, or (iii) upon delivery if delivered by a nationally recognized overnight commercial carrier that will certify as to the date and time of such delivery; and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Article of a change of address:

If to the City: City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Clerk

If to the Developer: West Quarter West, LLC
c/o Cobalt Partners, LLC
207 N. Milwaukee Street
Milwaukee, WI 53202
Attn: Scott J. Yauck

West Quarter East, LLC
c/o Cobalt Partners, LLC
207 N. Milwaukee Street
Milwaukee, WI 53202
Attn: Scott J. Yauck

**ARTICLE IV
MISCELLANEOUS**

A Developer shall maintain or cause to be maintained the following insurance policies (the “Insurance Policies”) issued by insurers licensed in the State of Wisconsin, with ratings and in the financial size category as requested by the City, covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the City:

1. Builder’s risk insurance in form and amounts reasonably satisfactory to the City;
2. During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by owners of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and
3. Such other insurance as may be reasonably requested by City.

The Insurance Policies shall require the insurer to provide at least thirty (30) days prior written notice to the City of any material change or cancellation of such policy. The City shall be named as an additional insured/loss payee on all policies of insurance except worker’s compensation insurance.

B. Developer shall not assign this Agreement or obligations arising hereunder or under the referenced agreements without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed.

C. This Agreement shall be recorded at the Milwaukee County Register of Deeds with all relevant real property as described in Exhibit A, it being understood by the Parties that this Agreement will run with the land and will be binding upon the Property and any owner and/or lessee and/or mortgagee of all or any portions of the Property and their successors and assigns

D. If any Party shall default in the performance or observance of any of the covenants, agreements or conditions on the part of such Party set forth in this Agreement and the continuance thereof for thirty (30) days following receipt of written notice from the other Party specifying such default and requesting that it be corrected; it is hereby defined as and declared to be and to constitute an “Event of Default” under and for purposes of this Agreement. If such default cannot be cured within 30 days and the Party is in good faith actively pursuing a cure, then such default shall not be an Event of Default, provided such default is cured within 120 days after notice.

E. If an Event of Default shall occur, and after notice and the applicable period to cure as provided in this Agreement, the aggrieved Party may pursue any available remedy, either at law or in equity, against the Party in default, including but not limited to withholding disbursement of payments provided for in this Agreement.

F. Developer agrees to indemnify and hold harmless the City, its officers, agents and employees (collectively, the “Indemnified Parties”) and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, reasonable attorney fees and the like, arising from, in connection with, or as a result of the design, operation, construction or installation of both Phases of the Streetscape Project or any actions of Developer, its officers, employee, agents, workmen or independent contractors, undertaken pursuant to this Agreement. Nothing in the foregoing indemnity shall protect the Indemnified Parties against their own default, negligence, willful acts or misconduct.

G. The prevailing party shall be entitled to collect all costs and expenses associated with the enforcement of its rights against the other under this Agreement, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving Developer. Any and all such fees, costs and expenses incurred by the prevailing party which are to be paid by the other, shall be paid on demand.

H. Time is of the essence of each and every obligation or agreement contained in this Agreement.

I. The laws of the State of Wisconsin shall govern this Agreement.

J. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument. Either Party may execute this Agreement by PDF; provided that the Party provides an original of the PDF signature to the other Party within five (5) calendar days of transmission of the PDF signature.

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

CITY OF WEST ALLIS, WISCONSIN

By: _____
Dan Devine, Mayor

By: _____
Steven A. Braatz, Jr., City Clerk

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of November, 2019, the above-named Dan Devine and Steven A. Braatz, Jr., the Mayor and City Clerk, respectively, of the City of West Allis, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority and acknowledged the same.

Name: _____
Notary Public, State of Wisconsin
My Commission expires:

Approved as to form this ____ day of November, 2019

Kail Decker, City Attorney

COMPTROLLER’S CERTIFICATE

Countersigned this ____ day of November, 2019, and I certify that the necessary funds have been provided to pay the liability that may be incurred by the City of West Allis under this Agreement.

Peggy Steeno
Finance Director, Comptroller, Treasurer

[Signatures continue on following page]

WEST QUARTER WEST, LLC

By: Cobalt Partners, LLC, Manager

By: _____

Scott J. Yauck, Sole Member and
Manager

WEST QUARTER EAST, LLC

By: Cobalt Partners, LLC, Manager

By: _____

Scott J. Yauck, Sole Member and
Manager

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

Personally appeared before me this ____ day of November, 2019, the above-named Scott J. Yauck, the Sole Member and Manager of Cobalt Partners, LLC and the manager of West Quarter West, LLC, West Quarter East, LLC, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority and acknowledged the same.

Name: _____

Notary Public, State of Wisconsin

My Commission expires: _____

This instrument was drafted by
and upon recording return to:

Richard W. Donner
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

EXHIBIT A

Legal Description of Property

EXHIBIT B

Site Plan of Streetscape Project

EXHIBIT C

Streetscape Budget