

**INDEMNIFICATION
AGREEMENT**

Document Number

Document Title

Recording Area

Name and Return Address:

Amundsen Davis, LLC
Attn: Ryan M. Spott, Esq.
111 E. Kilbourn Ave., Suite 1400
Milwaukee, WI 53202

Parcel Identification Number (PIN)

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Drafted by:
Patrick Schloss
Community Development Authority
City of West Allis

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is entered into as of the ____ day of June, 2024, by and between: **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin States (the "Authority"), the **CITY OF WEST ALLIS, WISCONSIN** ("City") and **Mark Higgins**, property owner of 6620 W. Mitchell, West Allis, WI 53214 (the "Developer") The Authority, the City, and the Developer are also identified together as "Parties" within this Agreement.

Recitals

WHEREAS, the Authority is the owner of certain real property in the City of West Allis, Wisconsin, identified as Lot 1 of Certified Survey Map No. 9370 (the "CSM"), recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin (the "Recording Office"), on December 2, 2021, as Document No. 11193094 as more particularly described and depicted on **Exhibit A – Authority Property**, attached hereto (the "Authority Property" or "Lot 1").

WHEREAS, Developer is the owner of certain real property in the City of West Allis, Wisconsin, that is adjacent to the Authority Property and is more particularly identified as Parcel 1 of Certified Survey Map No. 6513, recorded in the Recording Office on May 12, 1998, on Reel 4302, Image 1308-1311, as Document No. 7530958 as more particularly described and depicted on **Exhibit B – Developer Property**, attached hereto (the "Developer Property").

WHEREAS, On or about the date of this Agreement, the Authority intends to convey a portion of Lot 1 to Developer as more particularly described and depicted on **Exhibit C – Property**, attached hereto (the "Property"), and this Agreement is a material part of the conveyance and the Developer would not purchase or accept conveyance of the Property without this Agreement.

WHEREAS, As a condition of the conveyance of the Property, Developer agrees to terminate (with respect to the Developer Property) an Easement for Ingress and Egress that was recorded on October 13, 1998, on Reel 4413 Image 578-580.

WHEREAS, The Authority Property is subject to a Stormwater Easement Agreement dated August 24, 2018, and recorded in the Recording Office on August 28, 2018 as Document No. 10806830, as amended by that certain First Amendment to Stormwater Easement Agreement dated March 16, 2022, and recorded in the Recording Office on July 27, 2022 as Document No. 11269560 (together, as the same may be amended, the "Stormwater Easement Agreement"), and is also subject to a Reciprocal Easement and Operating Agreement dated December 23, 2021, recorded in the Recording Office on December 30, 2021 as Document No. 11203577, as amended by that certain First Amendment to Reciprocal Easement and Operating Agreement dated _____, 2024, and recorded in the Recording Office on _____ as Document No. _____ (together, as the same may be amended, the "REA").

WHEREAS, it is the intent of the Parties that (1) Developer not be responsible for any portion of the costs and maintenance obligations under the Stormwater Easement Agreement or the REA as a result of acquiring the Property, including repairing the Property, (2) the Authority and City shall be solely responsible for the operation and maintenance of the Stormwater Facilities (as defined in the Stormwater

Easement Agreement and the REA) without any cost or performance obligations of Developer from and after the conveyance of the Property to Developer, including repairing the property as the result of activities pursuant to the Stormwater Easement Agreement and REA, and (3) the Authority and the City will indemnify and defend Developer from and against all claims or damages arising under or resulting from any use of or construction of improvements on the Property in violation of rights of parties under the terms and conditions of the Stormwater Easement Agreement or REA;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

Agreement:

1. Stormwater Facilities and Related Improvements. Developer acknowledges that certain Stormwater Facilities (as defined in the Stormwater Easement Agreement and the REA) exist on the Property that convey stormwater from areas beyond the Property, which improvements are located within a recorded easement on the Property. Developer agrees not to modify, alter, damage or tamper with the proper functioning of the Stormwater Facilities, and upon reasonable advance written notice, to provide parties to the Stormwater Easement Agreement or REA routine and regular access within the Stormwater Easement Area (as defined in the Stormwater Easement Agreement and the REA) to inspect, maintain, repair and/or replace the Stormwater Facilities, provided the Stormwater Facilities at all time remain wholly located within the Stormwater Easement Area. The CDA and City shall, at their sole cost and expense and within 10 days following completion of any such access or work, restore the Property to the same or better condition that existed prior to the commencement of any such access to the Stormwater Easement Area and any inspection, maintenance, repair, and or replacement of the Stormwater Facilities.

2. Maintenance. The Developer has no obligation to perform any maintenance, repairs, replacements or improvements of the existing or future Stormwater Facilities.

3. Indemnification: The Authority and City agree to indemnify, defend, and hold harmless the Developer from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorney fees) arising out of or related to any obligation and the exercise of any rights contained in the Stormwater Easement Agreement or the REA, including payment obligations of any kind arising out of activities undertaken pursuant to the Stormwater Easement Agreement or the REA. It is expressly agreed that the Authority, the City, and the owner of fee title to Lot 1 from time to time shall be solely responsible for all payment and performance obligations under the Stormwater Easement Agreement and the REA, notwithstanding the conveyance of the Property to the Developer. The indemnification will include, without limitation:

A. Indemnification from and defense of the Developer for (i) the construction, maintenance, repairs, and replacements of improvements in the Stormwater Easement Area, (ii) responsibility for any costs, expenses, and assessments of any kind against the Property in connection with the Stormwater Easement Agreement or REA, (iii) damage to the Property as arising from activities under the Stormwater Easement Agreement or REA that is not repaired by the parties of the recorded Stormwater Easement Agreement, REA or the Authority, including, without limitation, reimbursement to Developer for any costs and expenses of third party contractors hired by Developer to correct or replace any such damage.

B. Indemnification from and defense of all claims or damages arising under or resulting from Developer's use of the Property and construction of improvements on the Property in violation of rights of parties under the terms and conditions of the Stormwater Easement Agreement or REA or without consent of the parties thereto.

4. Term: This Agreement shall be permanent and perpetual and run with the land unless and until the Parties mutually agree to dissolve this Agreement. Termination shall be by written recordable instrument executed by the Parties hereto or their respective successors and assigns.

5. Assignment. Developer may assign this Agreement and its rights hereunder. The Authority and the City may not assign this Agreement or their respective rights hereunder. Further, upon the sale, transfer, conveyance or other change of ownership or control of Lot 1, the CDA and the City shall not be released from their obligations under this Agreement and will remain jointly and severally liable for all of the obligations under this Agreement.

6. Authority. The persons executing this Agreement represent and warrant that they have the legal authority to bind the respective party for which each signature is made and the CDA has the authority to bind and encumber the Authority Property.

7. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

8. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral.

9. Capitalized Terms: Capitalized terms used in this Agreement and not otherwise defined shall have the meanings set forth in the Stormwater Easement Agreement or the REA.

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

Signatures on Next Page

Authority

By: _____

Name: Patrick Schloss, Executive Director

Dated: _____

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2024, by Patrick Schloss, as Executive Director of the Community Development Authority of the City of West Allis.

Name Printed: _____

Notary Public, County of Milwaukee

My commission expires: _____

[NOTARIAL SEAL]

Approved as to form this _____ day.

Of _____, 2024.

Kail Decker, City Attorney

CITY OF WEST ALLIS

By: _____

Name: Dan Devine, Mayor

Dated: _____

By: _____

Name: _____, City Clerk

Dated: _____

STATE OF WISCONSIN)

) SS.

COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2024, by Dan Devine, as Mayor, and _____, as City Clerk, of the City of West Allis, Wisconsin.

Name Printed: _____

Notary Public, County of Milwaukee

My commission expires: _____

[NOTARIAL SEAL]

DEVELOPER

BY: _____

Mark Higgins, owner

STATE OF WISCONSIN)

) SS.

COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2024, by Mark Higgins, owner of 6620 W. Mitchell Street.

Name Printed: _____

Notary Public, County of Milwaukee

My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

Authority Property

[Description to be inserted]

EXHIBIT B

Developer Property

[Description to be inserted]

EXHIBIT C

Property

[Description to be inserted]