

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of October ____, 2018 by and between [COBALT _____, LLC], a Wisconsin limited liability company ("Developer"), and the CITY OF WEST ALLIS, a Wisconsin municipal corporation ("City").

RECITALS

City and Developer acknowledge the following:

A. Developer intends to acquire not less than ____ acres of the Property in the City of West Allis, Wisconsin, consisting of: (i) approximately ____ acres located on the east side of 70th Street, as depicted and described on Exhibit A attached hereto ("East Side Site"), and (ii) the approximately ____ acres located on the west side of 70th Street, as depicted and described on Exhibit A attached hereto ("West Side Site"). The East Side Site and the West Side Site are collectively referred to herein as the "Property").

B. The Property is located within the boundaries of the City's Tax Increment District No. ____ (the "District"). Pursuant to Section 66.1105, Wis. Stats. (the "Tax Increment Law"), the City adopted a plan for redevelopment within the District (the "Project Plan").

C. Subject to obtaining the benefits set forth herein, Developer plans on preparing the Property for redevelopment into a mixed-use project containing one or more office, health/fitness, retail, hospitality, restaurant, and residential components, including development of new public infrastructure (collectively, the "Project"). A preliminary site plan showing projected future development of and uses on the Property is attached hereto as Exhibit B (the "Preliminary Development Plan"). It is acknowledged that development of the Project pursuant to the Preliminary Development Plan is consistent with the Project Plan.

D. The projected aggregate assessed valuation for the Project, when fully developed, is anticipated to be approximately \$87,000,000, as shown on the valuation schedule attached hereto as Exhibit C (the "Project Valuations").

E. The City desires to encourage economic development, eliminate blight, expand the City's tax base and create new jobs within the City, the District and upon the Property. The City finds that the development of the Project and the fulfillment of the terms and conditions of this Agreement will further such goals, are in the vital and best interests of the City and its residents, and will serve a public purpose in accordance with state and local law.

F. The development of the Project would not occur without the benefits to be provided to Developer as set forth in this Agreement.

G. The City, pursuant to Common Council action dated _____, has approved this Agreement and authorized its execution by the proper City officials on the City's behalf.

H. The Developer has approved this Agreement and authorized its execution by the appropriate representatives on its behalf.

I. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

AGREEMENTS

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

ARTICLE I THE PROJECT AND DEVELOPER OBLIGATIONS

A. Subject to satisfaction of the conditions set forth in this Agreement, Developer shall perform the following:

1. On or before _____, 2018, acquire the land comprising the Property. To the extent that Developer is unable to acquire all of the Property, the land so acquired shall be sufficient in size and configuration to allow a comprehensive redevelopment substantially similar to the Preliminary Development Plan.

2. On or before _____, 2019, complete the demolition of improvements on the East Side Site in a manner that supports the orderly implementation of the Project.

3. Install the Project infrastructure improvements set forth on Exhibit D, attached hereto (the "Site Infrastructure") in accordance with the commencement and completion schedule set forth on Exhibit D.

4. Within thirty (30) days after the City's issuance of the building permit for the Project (the "Building Permit"), Developer shall commence construction of the Project in accordance with the commencement and completion schedule set forth on Exhibit D and the final plans and specifications (including landscaping plans) approved by the City at the time of or prior to the granting of the Building Permit (the "Final Plans and Specifications"). Copies of the Final Plans and Specifications will be retained at the City's Planning Department, located at the West Allis City Hall. Subject to a Force Majeure Event (as hereinafter defined), Developer shall substantially complete the Project in compliance with the Final Plans and Specifications not later than _____ (the "Outside Completion Date"). The Project shall be deemed to be substantially complete on the date that the City building inspector issues a final certificate of occupancy for the entire Project (the "Completion Date"). (Partial or interim certificates of occupancy will likely be issued on a building-by-building basis as each building within the Project is completed.) The City building inspector shall not issue the certificate of occupancy if the Project does not materially conform to the Final Plans and Specifications, subject to any changes to such Final Plans and Specifications that may have been requested by Developer and approved by the City.

5. Included within the Site Infrastructure are certain improvements that will be dedicated or conveyed to the City, as noted on Exhibit D (the "Public Improvements"). All Public Improvements shall be bid and constructed in accordance with City requirements and shall be designed to City specifications. Prior to commencement of construction of the Public Improvements, Developer shall enter into the City's standard form of public improvements agreement pertaining to the design, bidding, installation, and dedication of public improvements by a private party to the City (the "Public Improvements Agreement"). The Public Improvements Agreement shall not require the posting of a bond or letter of credit to secure completion of any Public Improvements that are being funded by the Initial Funding (as hereafter defined).

6. Dedicate the Public Improvements to the City in accordance with the Public Improvements Agreement and the schedule set forth on Exhibit D.

7. On or before _____, 201__, legally divide the Project Site into development parcels consistent with the Preliminary Development Plan and either market and sell some or all of the parcels to third party users/developers or self-develop (by Developer or affiliates) some or all of the parcels.

8. Invest not less than \$_____ in equity toward the costs of performing its development obligations under the preceding paragraphs, and conventional financing (the "Bank Loan) sufficient in amount to fund the remaining costs of Developer's obligations, net of the City's financial obligations set forth herein.

9. Provide the debt service guaranties and collateral set forth herein.

B. Developer shall perform its development obligations in accordance with the development budget approved by the City (the "Development Budget"), which is set forth on the first page of the sources and uses schedule attached hereto as Exhibit E ("Sources and Uses").

C. Developer's obligation to perform under this Agreement shall be subject to Developer, in cooperation with the City, obtaining all appropriate approvals and entitlements for the Project, including comprehensive PUD zoning overlay, approvals and approvals for site plan, architectural, landscaping, traffic and off-site improvements.

ARTICLE II CITY OBLIGATIONS

A. Upon satisfaction of all the preconditions set forth in Section II.C, the City shall provide funding for the Project in the form of a forgivable loan in an amount equal to \$5,000,000 for land acquisition costs related to Developer's purchase of the Property (the "Acquisition Loan"). The Acquisition Loan shall be structured and documented in a manner mutually agreed upon by the City and Developer. The Acquisition Loan will be disbursed at closing on the Developer's acquisition of the East Side Parcel and the West Side Parcel.

B. Upon satisfaction of all the preconditions set forth in Section II.D, the City shall provide funding for the Project in the form of a forgivable loan in an amount equal to \$1,500,000

for the development of a ____ room hotel on the East Side Parcel (the "Hotel Loan"). The Hotel Loan will be structured and documented in a manner mutually agreed upon by the City and Developer. The Hotel Loan will be disbursed upon the City's receipt of evidence satisfactory to the City that a ____ room hotel is under construction on the East Side Parcel, as depicted on the Preliminary Development Plan (the "Hotel Project").

C. Prior to disbursing the Acquisition Loan, all of the following conditions shall have been satisfied:

1. Developer shall have closed the Bank Loan and all preconditions to the disbursement of not less than \$ _____ under the Bank Loan shall have been satisfied.

2. Developer and City shall have entered into the Public Improvements Agreement in form reasonably satisfactory to Developer and the City.

3. City shall have received from Developer (a) copies of all environmental reports pertaining to the East Side Site; and (b) the personal financial statement of Scott Yauck, and shall have reviewed and approved same.

4. Developer shall have granted to the City a first mortgage or mortgages, in form reasonably satisfactory to the City, encumbering the East Side Site to secure the Developer's obligations under the Acquisition Loan and to secure the Debt Service Guaranties set forth in Article III herein (the "Mortgage", whether one or more). The Mortgage shall be recorded against the East Side Site immediately following the recording of a deed to Developer, and Developer shall provide the City, at Developer's cost, a mortgage title insurance policy insuring the City's first lien position. The Mortgages and Debt Service Guaranties may be subordinated and/or partially released as development of the Project occurs; provided, the remaining collateral is reasonably acceptable to the City to secure the Acquisition Loan Debt Service (as defined herein).

5. Developer shall have granted to the City a perpetual easement across a portion of the West Side Site, as mutually agreed upon by the City and Developer, to allow the City and its agents access to an electrical cabinet and related facilities required for the maintenance of City street lights, as depicted on the attached Exhibit F (the "Easement Area").

D. Prior to disbursing the Hotel Loan, all of the following conditions shall have been satisfied:

1. All conditions in Section II.C have been satisfied.

2. City shall have received from Developer evidence satisfactory to the City that construction on the Hotel Project has commenced.

E. In consideration of the performance by Developer of its obligations under this Agreement with respect to the Project, and as value increment over \$18,000,000 "comes on line", the City agrees to issue to Developer tax increment revenue bonds (each a "Developer

Bond”) in an amount equal to the cost of any structured parking incurred by Developer in connection with the vertical development of the Project, provided that the aggregate amount of all such Developer Bonds shall in any event not exceed _____% of the total value increment “coming on line”. For example, if Developer incurs \$_____ of cost for structured parking and shows that \$_____ of new development value is “coming on line”, the City shall issue a Developer Bond in the principal amount of \$_____ and bearing annual interest at the rate of [4.75%] accruing as of the issuance of the Bond. If the total principal balance of all issued Developer Bonds does not equal the total cost incurred by the Developer for structured parking within the Project, then as additional development values come on line, the City shall issue additional Developer Bonds at the rate of _____% of the additional development value coming on line until the total of all Developer Bonds issued equals the total costs incurred by Developer for structured parking within the Project, subject to the total cap on Developer Bonds set forth below. Future development values “coming on line” shall mean either: (i) a Value Increment Guaranty provided to the City by a creditworthy party as reasonably determined by the City guarantying value increment of a designated minimum amount, or (ii) with respect to vertical projects developed by Developer or its affiliates, the value of land and vertical improvements approved by an institutional third party construction lender financing such improvements upon closing on such construction loan. If Developer’s costs of constructing structured parking for the Project exceeds _____% of the amount of value increment “coming on line”, so that the total amount of Developer Bonds issued by the City does not equal the total cost incurred by Developer for such structured parking, and the Developer later is successful in bringing additional value increment online, the City shall issue an additional Developer Bond at the time such additional value increment “comes on line”; provided that the total amount of Developer Bonds issued by the City hereunder shall not exceed the lesser of (i) the total cost incurred by the Developer for structured parking for the Project and (ii) _____% of the total value increment in excess of \$18,000,000 “coming on line”. In any event, the total principal amount of all Developer Bonds issued hereunder shall not exceed \$15,000,000.

F. The Developer Bonds shall be issued in substantially the form attached here to as Exhibit G. The Developer Bonds shall mature upon the scheduled termination date for the District and installments of principal and interest on the Developer Bonds will be due and payable on September 1 of each year commencing on the September 1 following the issuance of the Developer Bond (the “Bond Payment Date”). The amount of the annual payment of principal and interest due on each Bond Payment Date shall be equal to the amount of available “MOB Surplus Tax Increment” levied for the preceding calendar year calculated as of August 1 of the year the Developer Bond payment is due. “MOB Surplus Tax Increment” shall mean all tax increments (as defined by the Tax Increment Law) collected and retained by the City solely from the Property in a calendar year that are attributable solely to the amount by which the assessed valuation of the Property exceeds \$18,000,000. (For example, if the assessed valuation of the Property in a given year is \$18,000,000 or less, there would be no MOB Surplus Tax Increment available to make any payments of principal or interest on the Developer Bonds and no such payments would be due. If the assessed valuation of the Property in a given year is equal to \$48,000,000, then only the tax increments generated by the \$30,000,000 difference between \$18,000,000 and \$48,000,000 would constitute MOB Surplus Tax Increment and would be available to make interest and principal payments on the Developer Bonds.) MOB Surplus Tax Increment appropriated to make payments on the Developer Bonds shall first be applied to

accrued interest on the Developer Bonds, in the order in which such Developer Bonds are issued, with any remaining amount being applied toward principal, in the order in which such Developer Bonds are issued. The Developer Bonds shall be subject to prepayment in whole or in part at any time at the option of the City. The amounts and maturities of the installments of principal of the Developer Bonds which are to be prepaid shall be selected by the City.

THE DEVELOPER BONDS SHALL BE A SPECIAL, LIMITED REVENUE OBLIGATION OF THE CITY PAYABLE ONLY FROM MOB SURPLUS TAX INCREMENT THAT IS APPROPRIATED BY THE COMMON COUNCIL FOR THAT PURPOSE. No property or other asset of the City, except MOB Surplus Tax Increment appropriated to make payments with respect to the Developer Bonds, is or shall be a source of payment of the City's obligations thereunder. The Developer Bonds shall not constitute a debt or obligation of the City, the County in which it is located, the State of Wisconsin or any political subdivision thereof within the meaning of any State constitutional provision, statutory limitation, or charter provision or limitation thereof and shall not be a charge against their general credit or taxing powers.

THE CITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE MOB SURPLUS TAX INCREMENT, IF APPROPRIATED, WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE UNDER THE DEVELOPER BONDS. THE CITY'S OBLIGATION TO MAKE PAYMENTS ON THE DEVELOPER BONDS IS LIMITED TO THE AVAILABILITY OF MOB SURPLUS TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE COMMON COUNCIL.

In each year the staff of the City shall include the appropriation of MOB Surplus Tax Increment in the City budget as submitted to the Common Council for consideration for the next succeeding fiscal year. If the Common Council determines not to appropriate any portion of such MOB Surplus Tax Increment, written notice thereof shall be provided to the Developer within 14 days. The City agrees that, subject to annual appropriation of said funds, on an annual basis all funds in the special fund of the District which constitute MOB Surplus Tax Increment will be used to make the payments due under the Developer Bonds.

IF ON THE FINAL DEVELOPER BOND PAYMENT DATE, THERE REMAIN AMOUNTS OUTSTANDING AND UNPAID ON THE DEVELOPER BONDS, THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE DEVELOPER BONDS SHALL BE DEEMED PAID IN FULL, IT BEING UNDERSTOOD THAT UPON THE FINAL DEVELOPER BOND PAYMENT DATE, THE OBLIGATION OF THE CITY TO MAKE ANY FURTHER PAYMENTS ON THE DEVELOPER BONDS SHALL TERMINATE. THE CITY SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE DEVELOPER BONDS WHICH REMAINS UNPAID AFTER THE FINAL DEVELOPER BOND PAYMENT DATE, AND THE PARTY OR PARTIES HOLDING THE DEVELOPER BONDS SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

The City shall have no obligation to make payments on the Developer Bonds while the Developer is in default of any of its obligations under this Agreement or if no MOB Surplus Tax Increment is available.

G. The City agrees that if: (i) the Developer is not in default of any of its obligations hereunder, (ii) there is MOB Surplus Tax Increment available on a Developer Bond Payment Date to make a payment on the Developer Bond, and (iii) the City Council determines not to appropriate all or any portion of such MOB Surplus Tax Increment for such year, then:

If any other tax increment revenue bonds issued by the City to other parties are then outstanding (the "Other Bonds"), the City shall not appropriate any allocable tax increments and make payments on any of the Other Bonds in a greater proportion than the City has done for the Developer Bond (for example, assume that in a given year, the City appropriates only 25% of the available MOB Surplus Tax Increment for payment on the Developer Bond; then as to such year, the City shall not appropriate more than 25% of the amount of any tax increments that, under the terms of any of the Other Bonds, are to be made available for such Other Bonds); and

Until such time as the City subsequently makes an annual appropriation of all MOB Surplus Tax Increment available on a Developer Bond Payment Date toward payments due on the Developer Bond (including prior payments that would have been payable but for the Common Council prior determination not to appropriate funds, the City shall not issue any new tax increment revenue bonds similar to the Developer Bond.

ARTICLE III DEBT SERVICE GUARANTY

A. In consideration of the Acquisition Loan, Developer and Scott Yauck (collectively, the "Guarantors") hereby jointly and severally guarantee that commencing in 2019 and for each calendar year thereafter that this guaranty remains in place (the "Debt Service Guaranty"), the sum of (i) the Tax Increments available from the Property, and (ii) the capitalized interest included within the City's bond issue for the Acquisition Loan, (the foregoing are collectively referred to as the "Available Funds"), shall be equal to or greater than the City's annual debt service obligations for the bonds issued to fund the Acquisition Loan (the "Acquisition Loan Debt Service"). If in any year the Available Funds are less than the Acquisition Loan Debt Service, then the Guarantors shall pay the difference to the City (a "Debt Service Shortfall Payment") not later than fifteen (15) days following delivery of written notice from the City requesting such payment. As an example of calculating a Debt Service Shortfall Payment, assume: (a) the City's debt service obligation for the Acquisition Loan in 2019 is \$300,000; (b) the Tax Increments available from the Property are equal to \$150,000; and (c) the capitalized interest available from the Acquisition Loan bond issue for such year is equal to \$125,000. In such instance, the Guarantors would owe a Debt Service Shortfall Payment to the City equal to \$25,000 ($\$300,000 - \$275,000 = \$25,000$).

B. The financial exposure under the Debt Service Guaranty shall be reduced and, ultimately, released as new development values "coming on line" materialize and close the Acquisition Loan Shortfall Amount created at the time of funding the Acquisition Loan. For purposes of this Agreement, "materialize" means that, in all instances, the pertinent new

development value (for which evidence of its "coming on line" was previously provided) shall have been fully assessed by the City at such development value.

C. Debt Service Shortfall Payments made by the Guarantors will be treated by the City as contingent non-interest bearing loans, repaid out of available Tax Increments after all debt incurred by the City to fund the Acquisition Loan has been fully repaid. If the Guarantors fail to timely make a Debt Service Shortfall Payment and the City must exercise any remedies to collect same, any funds collected by the City in the exercise of such remedies shall not be treated as loans and will not be repaid. If the unextended statutory term of the District expires prior to full repayment of any Debt Service Shortfall Payments, then the outstanding balance of such Debt Service Shortfall Payments shall be forgiven and the City shall have no further obligations to repay same.

ARTICLE IV ASSESSED VALUATION GUARANTY

A. In consideration of the issuance of the Hotel Loan, Developer hereby guaranties that commencing in the first calendar year following the Completion Date and for each calendar year thereafter that this guaranty remains in place, the assessed valuation of the East Side Site for real property tax purposes (the "Assessed Value") shall not be less than \$10 million (the "Base Value"). If in any year during the term of this guaranty the Assessed Value is less than the Base Value, then the Developer shall make an Assessed Value Shortfall Payment (as defined below) to the City as provided herein. An "Assessed Value Shortfall Payment" shall mean the difference between: (a) the amount of property taxes that would have been assessed against the East Side Site in the applicable year had the Assessed Value been equal to the Base Value; and (b) the actual amount of property taxes assessed against the Property for such year. Developer shall make the Assessed Value Shortfall Payment to the City not later than fifteen (15) days following the date that the property tax bill for the Property is issued. As an example of calculating an Assessed Value Shortfall Payment, assume: (w) the Assessed Value in 2021 is \$9 million; and (x) the City's property tax rate (all taxing jurisdictions included) for 2021 is 2.8%. In such instance, Developer would owe an Assessed Value Shortfall Payment to the city equal to \$28,000 [(\$10 million minus \$9 million) x 2.8%] payable on or before fifteen (15) days following the issuance of the 2021 property tax bill for the Property.

B. Assessed Value Shortfall Payments made by the Developer will be treated by the City as contingent non-interest bearing loans, repaid out of available Surplus Tax Increment after payment in full of all accrued interest and principal on the Bond. If the unextended statutory term of the District expires prior to full repayment to Developer of any Assessed Value Shortfall Payments, then the outstanding balance of such Assessed Value Shortfall Payments shall be forgiven and the City shall have no further obligations to repay same.

C. The assessed valuation guaranty set forth in this Article shall expire upon the closure of the District. Until such expiration, this valuation guaranty shall constitute a covenant running with the land, binding upon any and all owners of the Property and their successors and assigns, including any mortgagee that acquires title through foreclosure or a deed in lieu thereof, and any purchaser or assignee of such mortgagee. The City is hereby empowered and authorized

by Developer to levy a special assessment lien against the East Side Site to collect any unpaid Assessed Value Shortfall Payment, which lien shall be a first priority lien.

**ARTICLE V
PAYMENT OF TAXES; PAYMENT IN LIEU OF TAXES**

A. Throughout the life of the District, Developer will pay (or cause to be paid) all ad valorem property taxes properly assessed against any portion of the Property owned by the Developer before such taxes become delinquent. The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Property.

B. In the event that any portion of the Property becomes exempt from ad valorem taxes during the statutory life of the District and for a period of twenty (20) years thereafter (the "PILOT Term"), then the Developer or any successor owner of such exempt portion of the Property shall make (or cause to be made) during the PILOT Term annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes (all taxing jurisdictions included) would have been for such portion of the Property (as determined by the City assessor) had it not been exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. If the Developer or any successor owner fails to make a payment in lieu of taxes when due, the City may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Property in the amount of the unpaid payments. Notwithstanding the levying of such special assessment, the payment obligation under this Article shall be the personal obligation of the person or entity that is the owner of the Property at the time that any portion of the Property becomes exempt from ad valorem taxes. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon all owners of any portion of the Property for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all successor owners of the Property.

**ARTICLE VI
NO PARTNERSHIP OR VENTURE**

Developer and its contractors or subcontractors shall be solely responsible for the completion of all of Developer's obligations set forth in this Agreement. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the (i) City and (ii) Developer, or any contractor or subcontractor employed by Developer.

**ARTICLE VII
CONFLICT OF INTEREST**

No elected official, member, officer, or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

**ARTICLE VIII
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:	CP _____, LLC c/o Cobalt Partners, LLC 207 N. Milwaukee Street Milwaukee, WI 53202 Attn: Scott J. Yauck
With a copy to:	Godfrey & Kahn, S.C. 833 E. Michigan Street, Suite 1800 Milwaukee, WI 53202 Attn: Michael J. Dwyer

**ARTICLE IX
DEFAULT**

A. The occurrence of any one or more of the following events shall constitute a default ("Default") hereunder:

1. Developer shall fail to pay any amounts when due under this Agreement or any guaranty by Developer and further fails to pay such amounts on or before five days following written notice of such failure; or
2. Any material representation or warranty made by Developer pursuant to this Agreement shall prove to have been false in any material respect as of the time when made or given; or
3. Developer shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty days following notice thereof from the City (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as Developer has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as

the default is cured not later than one hundred eighty days following the notice thereof from the City or such longer period of time as is reasonably agreed to by the City); or

4. A Guarantor defaults under any guaranty by a Guarantor beyond any applicable grace period; or

5. City shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty days following notice thereof from Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the City has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from Developer); or

6. Developer:

(a) becomes insolvent or generally does not pay, or is unable to pay, or admit in writing its inability to pay, its debts as they mature; or

(b) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or

(c) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or

(d) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or

(e) applies to a court for the appointment of a receiver or custodian for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or

(f) adopts a plan of complete liquidation of its/his assets; or

(g) shall cease to exist.

B. Upon the occurrence of any Default, without further notice, demand or action of any kind by the nondefaulting party, the nondefaulting party may, at its option, pursue any or all rights and remedies available at law and/or in equity. The City's rights shall include, but not be limited to, termination of this Agreement and/or temporary or permanent suspension of any payment of the Initial Funding.

C. No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party

in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

E. In the event of a default by either party, all reasonable fees, costs and expenses incurred by the nondefaulting party, including reasonable attorneys' fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

ARTICLE X MISCELLANEOUS

A. Developer shall have in effect at all times all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with Developer's development, construction, management and operation of the Project.

B. 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. Following completion of construction of all components of the Project, "all risks" property insurance insuring against such risks as are insured against by owners of similar improvements, in amounts equal to 100% replacement cost of all such improvements with an extended replacement cost endorsement;

2. During the construction, builder's risk insurance in form and amounts reasonably satisfactory to the City;

3. 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

4. Such other insurance as may be reasonably requested by City.

C. Each Insurance Policy 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.

D. If the Developer does not commence construction of the Project by _____ 201_ (subject to extension pursuant to Paragraph G, below), then the City may, in its sole discretion, terminate this Agreement upon written notice to the Developer. The City shall thereafter have no further obligations under this Agreement.

E. Developer hereby indemnifies, defends, covenants not to sue and holds the City harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the City by reason of the following: (i) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (ii) any release by Developer or its contractors, subcontractors, agents, employees, or invitees of petroleum products or hazardous materials or hazardous substances on, upon or into the Property; (iii) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (i) and (ii) above; (iv) any violation by Developer or at the Project of any environmental law, rule, regulation or ordinance; (v) claims arising in connection with the Project under the Americans With Disabilities Act, and any other laws, rules, regulations or ordinances; (vi) the failure by Developer to comply with any term or condition of this Agreement; (vii) injury to or death of any person at the Project or injury to any property caused by or at the Project; and (viii) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project. The foregoing indemnity shall not apply to any claims or damages arising under clauses (i) through (viii) of the previous sentence to the extent such claims or damages are attributable to the negligence or willful misconduct of the City.

The terms "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

E. As more fully set forth in the Public Improvements Agreement, Developer agrees to pay prevailing wages for the Public Improvements. Developer shall further comply with the City's public bidding requirements where applicable. The Public Improvements shall at all times be subject to City inspection and approval and City shall not be required to accept conveyance of the Public Improvements unless the Public Improvements have been constructed in a good and workmanlike manner, in accordance with the City-approved plans for the Public Improvements, and otherwise are in a condition reasonably acceptable to the City. The Developer shall pay the cost of all City inspections and review of the Public Improvements and the review and inspection of Developer's storm water plans and utility connections. Following approval by the City of the completed Public Improvements, the Public Improvements shall be conveyed to the City, to the extent appropriate. The Developer shall provide to the City from the Developer and all contractors and consultants involved in connection with the construction and installation of the Public Improvements, 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 the Public Improvements in an electronic format reasonably acceptable to the City.

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

G. If Developer is delayed or prevented from timely commencing or completing construction of the Project, by reason of fire, earthquake, war, flood, material shortages, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes beyond the reasonable control of the party obligated to perform (“Force Majeure Event”), performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

H. A memorandum of this Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of the mortgage securing the Bank Loan, or any other mortgage on the Project Site, it being understood by the parties that this Agreement will run with the land and will be binding upon the Project Site and any owner and/or lessee and/or mortgagee of all or any portions of the Project Site and their successors and assigns.

I. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

J. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City’s outside financial consultant for review on behalf of the City. The Developer warrants and represents the accuracy of its financial reports and information in all material respects. The parties acknowledge that some of the financial information to be provided to the City may qualify as proprietary or as “trade secrets” and that disclosure of same would have an adverse impact upon Developer and certain tenants of the Project. When financial information is provided to the City, the provider of such financial information shall identify the information that is proprietary or constitutes a trade secret and the City shall take reasonable steps to protect such trade secrets as allowed by law. The foregoing shall not apply to the Project Budget or Developer’s final actual costs for purposes of determining whether an adjustment to the Initial Funding is required under Article IV nor shall it apply to information relating to the disbursement of the Initial Funding.

K. This Agreement may not be assigned by the Developer without the City’s consent, which may be granted or withheld in the City’s reasonable discretion. Developer may collaterally assign this Agreement to Developer’s construction lender or to other lenders for the Project. In the event that such construction lender or any other lender forecloses on its collateral and succeeds to ownership any portion of the Project Site, the City shall fulfill its obligations hereunder provided that such construction lender or other lender assumes in writing all of the obligations of Developer hereunder.

L. Developer shall not be released from any of its obligations hereunder by any sale, foreclosure or other conveyance of all or any portion of the Project Site, either before or after completion of the Project, without the written consent of the City.

M. Subject to applicable laws, Developer and the City shall work together expeditiously and in good faith to obtain appropriate project entitlements, including, without limitation, approvals for zoning (PUD overlay), site plan, architectural, landscaping, traffic, and offsite improvements.

N. Subject to applicable laws, Developer and the City shall work together expeditiously and in good faith in support of optimizing the overall economic efficiency of the Project through appropriate structuring of such matters as site infrastructure financing and construction, etc.

O. This Agreement contains the entire agreement between the City and Developer with respect to the subject matter of this Agreement and may be amended or modified only by subsequent written agreement duly signed by both parties hereto.

[Signatures on following page]


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

CITY OF WEST ALLIS, WISCONSIN

By: _____

Name: _____

Title: _____

Attest:  _____

Name: Steven A. Braatz, Jr.

Title: City Clerk

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 20__, the above-named _____ and _____, 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:

[Signatures continue on following page]

CP _____, LLC

By: Cobalt Partners, LLC, Manager

By: _____
Scott J. Yauck, Sole Member and
Manager

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 20____, the above-named Scott J. Yauck, the Sole Member and Manager of Cobalt Partners, LLC, the manager of _____, 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

Preliminary Development Plan

EXHIBIT C

Project Valuations

EXHIBIT D

Site Infrastructure

EXHIBIT E

Sources and Uses Schedule

EXHIBIT F

Easement Area

EXHIBIT G

Form of Bond