

1 **DEVELOPMENT AGREEMENT**
2 **(Allis Yards Residential – SE corner of S. 70 St. and W. Washington St.)**

3 **THIS DEVELOPMENT AGREEMENT** (this “Agreement”), made and entered into as of the
4 ____ day of _____, 2024, by and between the Community Development Authority of the
5 City of West Allis, a separate body politic created by ordinance of the City of West Allis, pursuant to
6 Section 66.1335 of the Wisconsin Statutes (“Authority”), the City of West Allis, a municipal
7 corporation) (“City”), (Authority and City are collectively, “West Allis”) and LxL Allis Yards, LLC, a
8 Wisconsin limited liability company, and its successors and/or assigns (“Developer”). The Authority,
9 the City, and Developer are each referred to herein as a party or together as the “Parties.”

10 **WHEREAS**, the Developer has an approved offer to purchase certain property located within
11 Tax Increment District #16, outlined in Lot 1 of Certified Survey Map 9569 (the “CSM”) described in
12 **Exhibit A** attached hereto (the “Property”); and

13 **WHEREAS**, the Property is subject to an existing development agreement originally executed
14 on March 21, 2019, between Cobalt Development and West Allis; and

15 **WHEREAS**, the provisions of the preceding development agreement between West Allis and
16 Cobalt Development will continue to remain in place, except for the Fifth Amendment to the
17 Development Agreement which places a priority on the Municipal Revenue Obligation, to have the
18 payment back to the Developer, LxL, Allis Yards, LLC., to only fall behind the Administrative Costs
19 projected annually and above all other potential expenditures for the TIF #16 District.

20 **WHEREAS**, the Developer intends to construct a five-story, 248-unit, multi-family residential
21 building with approximately 294 underground parking spaces and approximately 69 surface parking
22 spaces (the “Project”), generally consistent with the preliminary site plan and rendering, attached
23 hereto as **Exhibit B** (the “Project Plans”); and.

24 **WHEREAS**, West Allis agrees that the Project Plans are acceptable in all respects, and
25 satisfies, in West Allis’ opinion, the standards set forth in this Development Agreement; and

26 **WHEREAS**, the Project is located within the southeast corner of W. Washington St. and S. 70
27 St. within the S. 70 St. Redevelopment Area, commonly referred to as the Allis Yards Redevelopment;
28 and

29 **WHEREAS**, the Parties have also entered into a Development Financing Agreement (the
30 “Development Financing Agreement”) dated of even date hereof in which West Allis has agreed to
31 provide certain financial incentives and assistance to allow Developer to develop the Project; and

32 **WHEREAS**, the Developer and West Allis desire to set forth in writing the terms and
33 conditions under which Developer has agreed to develop and maintain the Project;

34 **NOW, THEREFORE**, in consideration of the mutual covenants and benefits contained herein
35 and in the Development Financing Agreement, and for other good and valuable consideration, the
36 receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

37 **1. AUTHORITY’S and CITY’S OBLIGATIONS.** The City and Authority shall have completed the
38 following actions:

39 **A. Approvals.** West Allis shall approve of an amendment to the development
40 agreement between West Allis and Cobalt Development to the extent necessary to
41 allow the Project to move forward.

42 **2. DEVELOPER’S OBLIGATIONS.** Developer shall be obligated as follows:

43 **A. Environmental Remediation.** Developer shall be responsible for all costs
44 associated with environmental remediation of the Property as required by the
45 Wisconsin Department of Natural Resources.

46 **B. Construction of Project.** Developer will undertake the following;

47 (1) Developer shall commence construction of the Project no later than the date
48 referred to in **Exhibit C** of this Agreement (the “Project Schedule”) and shall
49 proceed with due diligence to substantial completion and occupancy no later

50 than the date referred to in the Project Schedule. Failure of Developer to
51 commence or substantially complete construction as required by the Project
52 Schedule, subject to Force Majeure (as defined below), shall constitute a
53 breach of this Agreement; provided, however, such failure shall not
54 constitute a default if Developer is actively and continuously pursuing
55 commencement or substantial completion, as applicable, of construction in
56 good faith and with due diligence.

57 (2) The Project shall be landscaped in accordance with approved Project Plans.

58 **C. Availability of Funds and Approval for Construction.** Prior to the execution of this
59 Agreement, and from time to time thereafter, upon reasonable request of West Allis,
60 but not more than once in a 12-month period, Developer shall provide to West Allis
61 evidence satisfactory to West Allis and their financial and/or construction cost
62 consultants, in West Allis' reasonable discretion, that Developer has available to it
63 the necessary corporate approvals and sufficient funds for the completion of the
64 Project upon the schedule set forth herein. Notwithstanding anything in this Section
65 2 to the contrary, Developer may deliver such materials to Authority's and the City's
66 financial consultant upon receipt of such consultant's agreement to keep such
67 information confidential, other than with respect to disclosures to West Allis, and the
68 financial consultant will report to West Allis on the contents thereof.

69 **D. Development Finance.** In order to advance the Project, West Allis agreed to provide
70 certain economic incentives to support the redevelopment effort that are outlined
71 within **Exhibit E – Development Finance Agreement.**

72 **E. Conveyance.** Prior to issuance of an Occupancy Permit for the Project, Developer
73 shall not sell, transfer or convey the Property to anyone other than an Affiliate (as

74 hereinafter defined), except that Developer may at any time, with or without West
75 Allis' consent: (i) mortgage all or any portion of the Project property as security for the
76 Project's financing (a "Mortgage"); (ii) collaterally assign Developer's interest in this
77 Agreement to Developer's mortgage lender ("Lender") in connection with the
78 Project's financing. For purposes of this Agreement "Affiliate" shall mean an entity
79 controlling, controlled by or in common control with Developer. Nothing herein shall
80 preclude Developer from selling a majority membership interest in the ownership of
81 the Property. Lender shall be permitted to foreclose on the Property without West
82 Allis' consent.

83 **F. Nondiscrimination.** Developer shall not restrict the use or enjoyment of the Property
84 or the Project of a person because of race, color, national origin, age, sex or disability
85 in the sale, use or occupancy of the Project.

86 **3. DESIGN AND CONSTRUCTION STANDARDS.** The Parties have concluded that the Project
87 will create a quality development that fits the context and vitality of the surrounding
88 neighborhood redevelopment while utilizing contemporary design standards, and that the
89 development is intended to increase the tax base and enhance the neighborhood. Building
90 plans and specifications, including architectural elevations, for the Project, to include
91 construction materials, shall be substantially in conformity with the Project Plans. The
92 construction, design and operation of the Project shall comply in all material respects with
93 the approved Project Plans.

94 **4. UTILITIES AND SITE LIGHTING.** All new utility lines on the Property shall be installed
95 underground in easements provided, therefore. No new overhead electric power, telephone
96 or cable service will be permitted. Existing overhead wires may remain in place. Parking and
97 roadway lighting (fixture, height, type and intensity) where provided shall be approved by

98 West Allis. Area lighting shall not be mounted on the building. Full cut off fixtures shall be
99 utilized to prevent light splay onto surrounding properties.

100 **5. CERTIFICATE OF COMPLETION.** Notwithstanding anything in this Agreement to the
101 contrary, construction of the Project in accordance with the final plans and specifications
102 approved by the City’s Plan Commission shall conclusively evidence compliance with this
103 Agreement. Following completion of construction of the Project in accordance with such
104 final approved plans and issuance of an occupancy permit by the City of West Allis, at the
105 written request of Developer, West Allis shall execute and deliver to Developer a Certificate
106 of Completion in substantially the form attached hereto as **Exhibit D** confirming that the
107 Project is acceptable to West Allis in all respects and satisfies, in West Allis’ opinion, the
108 standards set forth in this Agreement (the “Certificate of Completion”). The Certificate of
109 Completion shall constitute a conclusive determination of satisfaction and termination of
110 Developer’s covenants and agreements set forth in this Agreement, including, without
111 limitation, any provision related to (a) the obligation of Developer to complete the Project,
112 and (b) the required date for completion of the Project; provided, however, that Developer’s
113 obligations pursuant to Sections 2.G, 4.B, 12.A, and 12.C shall continue in effect until
114 otherwise satisfied as set forth in this Agreement.

115 **6. MAINTENANCE RESPONSIBILITIES.**

116 **A.** Developer shall keep the Property and any easement areas on the Property in a well
117 maintained, safe, clean, and attractive condition at all times. Such maintenance
118 includes, but is not limited to, the following:

- 119 (1) The removal of all litter, trash, refuse, and wastes.
- 120 (2) The mowing of all lawn areas should be conducted in accordance with
- 121 municipal code.

- 122 (3) The maintenance of lawn and landscape areas in a weed-free, healthy and
123 attractive condition.
- 124 (4) The care and pruning of trees and shrubbery outside of easements within
125 Property boundaries.
- 126 (5) The maintenance of exterior lighting, signs, and mechanical facilities in
127 working order.
- 128 (6) The keeping of all exterior building surfaces in a clean, well-maintained
129 condition.
- 130 (7) The striping and sealing of parking and driveway areas.
- 131 (8) The removal of unlicensed or inoperable vehicles.
- 132 (9) Snow and ice removal.

133 **B. Maintenance During Construction.** During construction, it shall be the
134 responsibility of Developer to ensure that construction sites on the Property are kept
135 free of unsightly accumulations of rubbish and scrap materials; and that
136 construction material, trailers, and the like are kept in a neat and orderly manner. If
137 any street rights-of-way abutting the Property are damaged as a result of Developer's
138 construction activities, Developer shall repair said damage to edge of pavement.
139 Burning of excess or scrap construction material is prohibited. Construction site
140 erosion control practices shall be implemented to prevent erosion, sedimentation
141 and pollution of air or water during construction in accordance with the Building
142 Permit for erosion control issued by the City's Building Inspection & Neighborhood
143 Services Department on October 25, 2021, as Permit No. 211849. The Developer is
144 responsible for any snow removal, grass cutting, weed removal, and fencing the
145 Property.

169 obligation of the then-owner of the exempt portion of the Project Site. The covenant
170 contained in this Section 13 shall be deemed to be a covenant running with the land and
171 shall be binding upon the then-owners of any portion of the Project Site for the duration
172 of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such
173 covenant and entitled to enforce the same against all of the then-owners of an exempt
174 portion of the Project Site. The covenants and obligations set forth in this Article may be
175 embodied in a separate document and recorded against the Property as provided herein.

176 **8. NO PARTNERSHIP OR VENTURE**

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

181

182 **9. CONFLICT OF INTEREST**

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

186 **10. WRITTEN NOTICES**

187 All notices required or permitted by this Agreement shall be in writing and shall be deemed
188 to have been given (i) upon delivery to an officer of the City (as to the City) or to an officer of
189 Developer (as to Developer), if hand delivered; (ii) two business days following deposit in the
190 United States mail, postage prepaid, or (iii) upon delivery if delivered by a nationally
191 recognized overnight commercial carrier that will certify as to the date and time of such

192 delivery; and each such communication or notice shall be addressed as follows, unless and
193 until any of such parties notifies the other in accordance with this Article of a change of
194 address:

195 If to the City: City of West Allis
196 West Allis City Hall
197 7525 W. Greenfield Avenue
198 West Allis, WI 53214
199 Attn: City Clerk
200

201 With a copy to: Economic Development
202 Economic Development Executive Director
203 7525 W. Greenfield Avenue
204 West Allis, WI 53214
205 Attention: Patrick Schloss
206

207 With a copy to: City Attorney
208 7525 W. Greenfield Avenue
209 West Allis, WI 53214
210 Attention: Kail Decker
211

212 If to the Developer: LXL Allis Yards, LLC
213 c/o Land by Label, LLC
214 638 Milwaukee Street
215 Delafield, WI 53018
216 Attn: Ian Martin

217

218 **11. DEFAULT PROVISIONS AND REMEDIES.**

219 **A. Event of Default.** The occurrence of the following conditions shall constitute an
220 “Event of Default” so long as such conditions exist and are continuing:

221 (1) Developer fails to perform or satisfy any of its obligations under this
222 Agreement within thirty (30) days following written notice from Authority or
223 the City; provided, however, if the default is not reasonably susceptible of
224 cure within such thirty (30) day period, then Developer shall have such
225 additional period of time to cure the default as long as the Developer is
226 diligently pursuing such cure to completion.

- 227 (2) Developer becomes insolvent or generally does not pay or becomes unable
228 to pay or admits in writing to its inability to pay its debts as they mature.
- 229 (3) Developer makes an assignment for the benefit of creditors or to an agent
230 authorized to liquidate any substantial amount of assets.
- 231 (4) Developer becomes the subject of an “order for relief” within the meaning of
232 the United States Bankruptcy Code or files a petition in bankruptcy, for
233 reorganization or to affect a plan or other arrangement with creditors.
- 234 (5) Developer has a petition or application filed against it in bankruptcy or any
235 similar proceeding or has such a proceeding commenced against it, and such
236 petition, application or proceeding shall remain undismissed for a period of
237 ninety (90) days or Developer files an answer to such petition or application,
238 admitting the material allegations thereof.
- 239 (6) Developer applies to a court for the appointment of a receiver or custodian
240 for any of its assets or properties or has a receiver or custodian appointed for
241 any of its assets or properties, with or without consent, and such receiver
242 shall not be discharged within ninety (90) days after their appointment.
- 243 (7) Developer adopts a plan of complete liquidation of its assets.

244 **B. Failure to Commence or Substantially Complete Construction.** So long as West
245 Allis is in compliance with all of its obligations under this Agreement and the
246 Development Financing Agreement, in the event Developer does not commence
247 construction of the Project pursuant to the Project Schedule, subject to Force
248 Majeure, West Allis may, but shall not be required to, purchase the Property for the
249 price paid to Cobalt Development, as its sole remedy, by giving at least thirty (30)
250 days’ prior written notice to Developer of its intention to repurchase, in which case

251 West Allis will take title. If commencement of construction of the Project has
252 occurred, but Developer does not substantially complete construction of the Project
253 pursuant to the Project Schedule, subject to Force Majeure, Authority and the City
254 may charge Developer a fee of \$50.00 per day for each day between the date that
255 substantial completion is required pursuant to the Project Schedule and the date
256 that the Project is substantially complete.

257 (1) The foregoing right to repurchase shall be subject and subordinate to the lien
258 and rights of any Lender providing financing to the Project and shall
259 automatically terminate upon commencement of construction of the
260 Project.

261 (2) The term “commence construction” or “commencement of construction,”
262 as applicable, as used in this Agreement shall mean the pouring of footings
263 for a building within the Property, provided that if footings are poured prior to
264 Closing, then construction shall be deemed to commence as of Closing. The
265 term “substantial completion” as used in this Agreement shall mean the
266 issuance of an initial occupancy permit for the Project, whether temporary or
267 permanent, subject to punch list items.

268 **9. Limitation on Remedies.** Neither party shall be liable to the other for consequential,
269 indirect, incidental or exemplary damages, whether based on contract, negligence, and
270 strict liability or otherwise. In any action to enforce this Agreement, the prevailing party
271 shall be entitled to its costs, including statutory attorney’s fees.

272

IN WITNESS WHEREOF, the Parties have executed this Agreement the date first above written.

**AUTHORITY: COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY
 OF WEST ALLIS**

By: _____

Name:

Title:

Dated: _____

Approved as to form this ____ day
of _____, 2024.

Name: Kail Decker
Title: City Attorney

DEVELOPER: LxL Allis Yards, LLC
By: LXL Allis Yards Sponsor LLC, its Manager

By: _____

By: Ian Martin, Manager

Dated: _____

Development Agreement List of Exhibits

Exhibit A	Property
Exhibit B	Project Plans
Exhibit C	Project Schedule
Exhibit D	Certificate of Completion
Exhibit E	Development Finance Agreement

EXHIBIT A

- 15.** Parcel A:
- 16.** Lot 1 of Certified Survey Map No. 9569, recorded in the Milwaukee County Register of Deeds office on April 9, 2024, as Document No. 11411446, being a redivision of part of Lot 2 of Certified Survey Map No. 9205, being part of the Northeast 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin.
- 17.**
- 18.** Parcel B:
- 19.** Non-exclusive easement for the benefit of Parcel A reserved in Warranty Deed dated June 4, 1986 and recorded on June 24, 1986, on Reel 1904, Image 1258, as Document No. 5928957 as modified by Document No. 5928960 and by Document No. 6035719 and amended by Amendment to Easement Agreement dated November 9, 2020 and recorded on July 12, 2021, as Document No. 11137147 for ingress and egress as provided for therein.
- 20.**
- 21.** Parcel C:
- 22.** Storm Water and Sanitary Sewer Easement for the benefit of Parcel A as contained in a Storm Water and Sanitary Sewer Easement Agreement dated September 27, 2021 and recorded on September 27, 2021, as Document No. 11168143.

EXHIBIT A

Project Plans



EXHIBIT B (Cont)



EXHIBIT B

Project Schedule

Item	Description	Date	Entity
1	Closing	As defined in Development Agreement	DEVELOPER
2	Commence Construction	Within 45 days following Closing	DEVELOPER
3	Project Completion	28 months following the later of (a) Closing and (b) commencement of construction, subject to Force Majeure	DEVELOPER
4	Final Request for Certification of Completion	60 days following construction completion	DEVELOPER

EXHIBIT C

CERTIFICATE OF COMPLETION

Document Number	CERTIFICATE OF COMPLETION Document Title
CERTIFICATE OF COMPLETION Allis Yards Apartments	
Recording Area <hr/> Name and Return Address J	

Parcel Identification Number (PIN)

Property Address	
Developer:	LXL Allis Yards LLC, a Wisconsin limited liability company
Memorandum of Development Agreement:	Memorandum of Development Agreement dated as of _____, 2024, as amended or modified, recorded on _____, 2024, in the Register of Deeds Office in Milwaukee County, Wisconsin as Document Number _____.
Legal Description:	See attached Exhibit "A"

THIS IS TO CERTIFY that the undersigned, on behalf of the 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 Statutes, ("Authority") and the City of West Allis, caused the inspection of the above-described real estate and physical improvements constructed thereon, and that construction of said physical improvements has been substantially completed in accordance

with the final plans and specifications approved by the City's Plan Commission and in accordance with the Development Agreement dated as of _____, 2024, which is evidenced by that certain Memorandum of Agreements recorded on _____, 2024, in the Register of Deeds Office in Milwaukee County, Wisconsin as Document Number _____ (the "Memorandum").

Construction was deemed by Authority and the City to be timely completed.

THIS CERTIFICATE, when signed and bearing the seal of Authority and the City, this shall constitute a conclusive determination of satisfaction and termination of Developer's covenants and agreements set forth in the Development Agreement, including, without limitation, any provision related to (a) the obligation of Developer to complete the Project (as defined in the Development Agreement), and (b) the required date for completion of the Project.

Upon recording of this CERTIFICATE, the real estate described above shall specifically be "released" of record from the Development Agreement and the restrictions against the real estate set forth therein; provided, however, that Developer's obligations pursuant to Sections 2.G, 4.B, 12.A, and 12.C of the Development Agreement shall continue in effect until otherwise satisfied pursuant to the Development Agreement.

[Signature page follows]

1 Dated at West Allis, Wisconsin, this _____ day of _____, 2024.

**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

Name: Patick Schloss
Title: Executive Director

2
3 STATE OF WISCONSIN)
4)ss.
5 MILWAUKEE COUNTY)

6 Personally came before me this ____ day of _____, 2024, _____,
7 _____ of the Community Development Authority of the City of West Allis, to me
8 known to be the persons who executed the foregoing instrument, and to me known to be such
9 _____, and acknowledged that they executed the foregoing instrument as such
10 officers as the deed of said Community Development Authority by its authority.

(SEAL)

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

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EXHIBIT E
DEVELOPMENT FINANCING AGREEMENT
(TAX INCREMENTAL DISTRICT NUMBER 16)

THIS AGREEMENT is entered into as of this ____ day of July, 2024 (the “Effective Date”), between the Community Development Authority of the City of West Allis, Wisconsin , a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of Wisconsin Statutes (“Authority”), the City of West Allis (“City”), (Authority and City are collectively referred to as “West Allis”) and LxL Allis Yards LLC, a Wisconsin limited liability company, its successors and/or assigns (“Developer”).

WHEREAS, the Developer has entered into a binding purchase and sale agreement dated November 27, 2023 (as amended) (the “Purchase and Sale Agreement”) for the purchase and the sale of certain property owned by West Quarter East, LLC, an affiliate of Cobalt Partners (the “Property” or “Apartment Parcel”), which Property is more particularly described in **Exhibit A – Property** of the Development Agreement which is incorporated herein; and,

WHEREAS, as of the date hereof, the Developer has closed on the sale of the Property pursuant to the Development Agreement (the “Closing”), which Development Agreement was contingent upon, among other matters, the Developer’s commitment to construct the Project (as hereinafter defined) on the Property as more particularly set forth in that certain Development Agreement of even date herewith by and between the Authority and Developer (the “Development Agreement”) ”) for the development of real property (the “Property”), identified in the Development

1 Agreement constitutes the “Property,” to be used for the Project as defined below; and the Parties
2 entering into this Agreement; and,

3

4 **WHEREAS**, Pursuant to this Development Financing Agreement for the development of
5 certain property, described in the Development Agreement under **Exhibit A** of the Purchase and
6 Sale Agreement; and,

7

8 **WHEREAS**, as of the date hereof, West Allis has agreed to certain financial incentives to the
9 Developer pursuant to the Development Agreement which is contingent upon, among other
10 matters, the Developer’s commitment to construct a 246 market-rate multifamily apartment
11 building (the “Development Agreement”). 294 underground parking spaces and approximately 69
12 surface parking spaces for the apartment buildings. The development described above is
13 hereinafter referred to as the “Project” and is located within the Allis Yards redevelopment in the
14 City of West Allis, Wisconsin (the “District”). The Redevelopment District was declared to be a
15 rehabilitation – conservation district pursuant to the Project Plan for the creation of Tax
16 Incremental District No. 16 approved on July 31, 2018 (deemed to be and referred to herein as the
17 “Project Master Plan”). The Project will be developed pursuant to the terms of this Agreement.
18 The Plan Commission approved the site plan on **May 29, 2024**, and the Plan is outlined in the
19 Development Agreement under **Exhibit B – Project Plan**. The Developer’s Project Plan is
20 consistent with the TID Project Plan; and,

1 **WHEREAS**, the Property and Project are located in a Tax Incremental District Number 16
2 (the “District”) which City has established in order to finance project costs related to eliminating
3 blight within the District as permitted under Wis. Stats. Section 66.1105; and,

4 **WHEREAS**, pursuant to the Development Agreement, West Allis agreed to provide certain
5 financial incentives and assistance to allow the Developer to develop the Project and the
6 Developer would not undertake the development and construction of the Project without such
7 financial incentives and assistance; and,

8 **WHEREAS** the Parties desire to set forth in writing the terms of such financial incentives
9 and assistance in the terms and conditions under which West Allis will provide such financial
10 incentives and assistance; and,

11 **WHEREAS**, the Developer plans to expend certain costs to construct the Project and all
12 such costs as described on **Exhibit I– Project Costs of the Development Financing Agreement**
13 hereto (the “Project Costs”).

14 **WHEREAS**, the Project will serve the purpose of eliminating the blighted conditions which
15 exist in the District in accordance with Section 66.1105(4) (gm)4. a.-b. of the Wisconsin
16 Statutes.

17 **WHEREAS**, West Allis has determined that the Project and the City Investment (defined
18 below) related to the Project serve a public purpose by eliminating blighted conditions and
19 encouraging residential development within the City, enhancing the City’s tax base, promoting
20 employment opportunities, inducing appropriate development of the Property, and
21 encouraging redevelopment of nearby parcels; and,

1 **WHEREAS** Developers would not undertake the Project without the availability of tax
2 increment financing as provided in this Agreement; and

3 **NOW, THEREFORE**, the Parties, in consideration of the terms, mutual obligations and
4 conditions contained in this Agreement and for other good and valuable consideration, the receipt
5 and sufficiency of which are hereby acknowledged, agree as follows:

6 **1. Developer Investment, Equity and Financing.** On or prior to Closing, Developer will
7 demonstrate to the City that in connection with the Project: (i) Developer has obtained
8 approximately \$60 million in a combination of (a) debt financing from a private lending
9 institution (the “Debt Financing”) and (b) private equity (“Equity”). Developer shall have the
10 right to adjust the projected amounts of Debt Financing and Equity provided that Developer
11 shall, in the aggregate, have obtained sufficient Debt Financing and Equity that, together with
12 the public funding and financing assistance described in this Agreement, is sufficient to
13 complete development of the Project. Developer and/or its affiliates shall provide any and
14 all guaranties required to obtain the necessary Debt Financing provided any and all such
15 guaranties are on commercially reasonable terms and conditions and consistent with
16 Developer’s and its affiliates’ standard practices.

17
18 **2. Tax Increment Financing.** The Property is within the boundaries of Tax Increment
19 Financing District #16, (the “District”) the District and the transaction contemplated by the
20 Development Agreement and this Agreement is essential to the viability of the District.

21 a. The Project to be developed by the Developer benefits the surrounding
22 neighborhood and West Allis (i.e. the City and the Authority) as a whole. West Allis

1 has determined that the Project is consistent with Project Plan and the City 's 2040
2 Master Plan as of May 29, 2024.

3 b. West Allis desires to encourage economic development, expand the tax
4 base, and create new jobs within the area, all in furtherance of and in compliance
5 with the TID Project Plan and the Master Plan. West Allis finds that the Project and
6 this Agreement are in the vital and best interests of West Allis and its residents and
7 serve a public purpose in accordance with state and local law.

8 c. The Project would not occur without the financial participation of West Allis
9 as provided herein.

10 d. The City has created a Tax Incremental Financing District to facilitate the
11 actions and financings described in this Agreement. Property taxes paid on
12 properties located within TID in excess of those paid on the base valuation are
13 referred to as "Tax Increments."

14 **3. TID Law.** All terms that are capitalized but not defined in this Agreement and that are
15 defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax
16 Increment Law in Section 66.1105 of Wisconsin Statutes.

17 **4. Financial Assistance.** West Allis hereby agrees to provide to the Developer for the
18 Project the following financial incentives and financial assistance:

19 a. Tax Increment Financing Grant. The City agrees to pay the developer
20 \$2,600,000 from Tax Increment Finance District #7 as approved as an allowable expense
21 within ½ mile of the TIF #7 boundary, per approvals from Joint Review Board on June 4, 2024,
22 the Community Development Authority of the City of West Allis on June 18, 2024 and The City
23 of West Allis on July 10, 2024. This grant will be released after the following funding sources
24 are released to the project:

- 1 1. Developer equity (around \$16.6M)
- 2 2. Deferred equity which is his reinvested fee (around \$1.7M)
- 3 3. Ready for Reuse Loan (\$2M)
- 4 4. EPA Loan (\$2M)

5
6 **5. Tax Increment Financing Grant (\$2.6M)**

7
8 a. Developer Municipal Revenue Obligation. West Allis will provide to the
9 Developer an amount not to exceed \$18,057,343 of “Pay Go” TIF payments (referred to as
10 “D-MRO”) benefits to the Developer based on the estimates provided in **Exhibit III – TIF**
11 **Model of the Development Financing Agreement**. The amount of each annual payment
12 will vary based upon the Projects increment paid. The City will calculate the MRO by taking
13 the tax increment created each year, multiplying it by 85% and then subtracting out the
14 scheduled Administrative Fees scheduled within Exhibit C. Estimated payments are
15 provided on the Exhibit C and were prepared and modeled by the City’s TIF consultant Ehlers
16 and hereby attached. The Annual Payment will be made based upon the actual Tax
17 Increment received by West Allis but can be greater than or less than the amount shown in
18 Exhibit C. Adjustments to the amount paid in any year of the D-MRO Schedule shall not
19 amend or modify the maximum total amount of D-MRO, not to exceed \$18,057,343. This
20 Agreement shall evidence the obligation of West Allis to make D-MRO payments to the
21 Developer in accordance with the final –D-MRO Estimated Schedule. The sole source of the
22 repayment for the D-MRO will be the Tax Increments from the Project. Installments of the D-
23 MRO shall commence on October 1 in the first year that the Project generates Tax Increment
24 and will be due and payable on each October 1 thereafter, through October 1, 2046.

25 b. Environmental Assistance. West Allis will utilize funds from an EPA Revolving
26 Loan Fund as well as a WDNR Ready for Reuse Loan fund to assist with the environmental
27 costs. The aggregate principal amount of the EPA Revolving Loan and the WDNR Ready for
28 Reuse loan shall be at least \$4,000,000.

1 **6. Takeout Refinancing.** Developer anticipates a Takeout Refinancing (as hereinafter
2 defined) of Debt Financing within twelve (12) months following Project Stabilization (as hereinafter
3 defined). If sufficient Takeout Proceeds (as hereinafter defined) are available, Developer shall
4 make a payment to the Authority out of the Takeout Proceeds within fifteen (15) months following
5 Project Stabilization up to, but not in excess of \$1,250,000.

6 a. the Takeout Payment shall not cause the projected cash on cash return on the Investor
7 Equity (as hereinafter defined) for the year immediately following the date of the Takeout Refinancing
8 to be less than 9.00% based on the NOI (as hereinafter defined); and

9 b. the debt service coverage ratio (“DSCR”) in the year immediately following the closing of
10 the Takeout Refinancing must be at least 1.40 based upon the actual terms of the Takeout
11 Refinancing and the NOI.

12 As used herein, “NOI” shall mean the net operating income from the Project that is equal to
13 the actual in-place net operating income for the twelve (12) month period immediately preceding the
14 closing of the Takeout Refinancing.

15 c. Definition of Takeout Refinancing. As used herein, “Takeout Proceeds” shall mean
16 proceeds available to Developer from the Takeout Refinancing less: (i) payment of all closing costs
17 in connection with the Takeout Refinancing, (ii) payment of all sums required to satisfy existing
18 mortgages on the Property, (iv) establishment of reasonable reserves, including, without limitation,
19 any reserves required by the Takeout Lender (as defined below); and (vi) payment of all sums
20 required to pay the current year and any and all accrued preferred returns to investors in the
21 Project, under the Project’s limited liability company agreement.

1 d. Underwriting Criteria for Takeout Refinancing. The Parties acknowledge and agree that
2 the total loan amount for the Takeout Refinancing will be subject to Developer's sole discretion and
3 subject to Developer's then-current underwriting criteria.

4 **7. Application of Tax Increments.** The West Allis annual budget, as prepared by staff
5 and as submitted to City's Common Council for approval, will include payments on the D-MRO to
6 be made in such budget year, and that its staff will request the necessary appropriation from the
7 Common Council for 85% of the amount of the Tax Increments of the Property minus
8 administrative fees, to be generated that year, will advise the Common Council of any effect on
9 City's credit rating of any failure to appropriate sufficient funds toward payment of D-MRO, and will
10 exhaust all available administrative reviews and appeals in the event that that portion of the budget
11 is not approved.

12 Increments shall be applied as follows:

- 13 a. Payment of any outstanding City administration fees for certain expenses in
14 connection with the administration of the TIF #16 and administration of the D-MRO as outlined in
15 the **Exhibit II**.
- 16 b. Payment of annual payment of the D-MRO as set forth in **Exhibit IV** attached hereto.
- 17 c. The Tax Increments shall be calculated based on the tax incremental base value
18 and the actual value increment for the Property, as determined annually by the City.

19 Any amounts due in any year for the City TID Administration Fee and the D-MRO shall carry
20 over until paid or waived upon closure of TID #16. The City TID Administration Fee and D-MRO shall
21 carry over without interest.

1 **8. Developer Completion Guaranty.** Developer, or an affiliate, shall provide West Allis
2 with a Guaranty of Completion for the Project. “Completion” shall be defined as the issuance of
3 the Certificate of Completion (as defined in the Development Agreement). Upon Completion, the
4 Guaranty of Completion shall be released in its entirety. The form of the Guaranty of Completion is
5 attached hereto as **Exhibit __**.

6 **9. Savings Agreement.** West Allis and the Developer have agreed on a final Project Budget
7 for the Project substantially in the form attached as **Exhibit I** (the “Project Budget”). West Allis will
8 be engaging, at its expense, a construction cost consultant to review the Project Budget and to
9 monitor final costs. West Allis agrees in good faith to consider using the same construction cost
10 consultant as is being used by the Developer’s Lender in connection with the Project. The
11 Developer agrees to cooperate with the consultant and provide such information as the consultant
12 may request to satisfy this section.

13 a. **Cost Savings Definition.** “Cost Savings” shall mean the difference, if any,
14 between (i) total disbursements by or on behalf of the Developer, its affiliates, or their
15 assignees in connection with the Project and (ii) the Project Budget. Amounts remaining
16 unspent in any category within the Project Budget may be used to offset cost overruns in
17 any other category of the Project Budget.

18 b. **Application of Cost Savings.** Upon Project Stabilization (defined below),
19 Cost Savings shall be applied in the following priority:

20 i. The Developer shall fund into an account (the “Capital Reserve Account”)
21 an amount equal to \$161,500 to pay for replacement costs, capital improvements
22 and non-routine operating expenses associated with the Project, including without

1 limitation, construction defects and failures to the extent not covered by applicable
2 warranties, and deductibles on insurance claims without the prior consent of the
3 West Allis; then

4 ii. Any remaining Costs Savings after item (i) above (“Net Savings”) shall be
5 paid 50% to the West Allis and 50% to the Developer. West Allis shall deposit any
6 Net Savings it receives into the TID.

7 c. Capital Reserve Account. Developer and West Allis hereby acknowledge
8 and agree that Developer shall have the right to withdraw funds from the Capital
9 Reserve Account during the two-year period commencing at Project Stabilization
10 (the “Reserve Period”) to pay for replacement costs, and non-routine operating
11 expenses, including without limitation, construction defects and failures to the
12 extent not covered by applicable warranties, and deductibles on insurance claims
13 without the prior consent of West Allis. Upon the expiration of the Reserve Period,
14 any funds remaining in the Capital Reserve Account shall be distributed 50% to
15 West Allis and 50% to the Developer. The West Allis shall deposit any such
16 distribution it receives into the TID.

17 d. Calculation of Net Savings. Final determination of Net Savings shall be
18 made by West Allis’s construction cost consultant, in good faith and acting
19 reasonably, subject to the reasonable review and approval of Developer. The
20 calculation of the actual cost of the Project and therefore the determination of Net
21 Savings will conform to the disbursement records of the Developer’s construction
22 lender and First American Title Insurance Company. Within 60 days following
23 Project Stabilization, Developer shall provide West Allis and its construction cost

1 consultant with a detailed description of the actual costs of the Project in a manner
2 and format consistent with the original Project Budget. West Allis or its consultant
3 may request any additional support or verification as may be reasonably needed,
4 including invoices and other proof of payments to compare the final cost to the
5 original Project Budget.

6 **10. Project Stabilization Definition.** “Project Stabilization” shall mean the earlier of
7 (a) the date upon which the Project has achieved and maintained 95% physical occupancy of
8 apartments available for rent (i.e., excluding from total apartment count, models and units
9 occupied for marketing and management purposes) continuously over any ninety (90) day period or
10 (b) the fifth (5th) anniversary of the date of Closing. Notwithstanding the foregoing, Developer may
11 make a distribution of all or any percentage of Net Savings payable to West Allis prior to achieving
12 95% physical occupancy if necessary or desirable to comply with any applicable loan covenants
13 and obligations in effect in connection with any Debt Financing.

14 **11. Profit Participation.**

15 a. Profit Participation Triggers. In further consideration of the participation by
16 West Allis in this Agreement, and as more particularly provided below, upon the occurrence
17 (during the time in which TID #16 remains open) of: 1) a sale by Developer or its affiliate of
18 the Project or the conveyance of greater than a majority and controlling interest in
19 Developer or its affiliate then owning the Project to any third-party unrelated to Developer (a
20 “Sale”); or 2) a Cash Out Refinancing (as defined below) of the Project (each a “Trigger
21 Event”), West Allis shall be entitled to a one-time Profit Participation as hereinafter
22 provided.

1 **12. Contingent Payment and Definition.** If Net Proceeds (as hereinafter defined)
2 resulting from a Sale or Cash Out Refinancing and provided further that the conditions
3 outlined below are satisfied, result in the greater of: (a) the total Investor Equity (as
4 hereinafter defined) realizing an Internal Rate of Return, to be determined based on the
5 methodology reflected in the example calculation attached hereto as **Exhibit H –**
6 **Calculation of Rate of Return** and in accordance with standard industry practice (“IRR”) in
7 excess of 15%, or (b) an Equity Multiple (as defined herein) on Investor Equity in excess of
8 2.50x then 50% of the remaining proceeds shall be paid to the Authority (the “Contingent
9 Payment”). There shall be no Contingent Payment if the IRR is below 15% or the Equity
10 Multiple is below 2.50x. As used herein, “Investor Equity” shall mean the cash invested into
11 the Fund but expressly excluding from the calculated return any Sponsor Created Savings,
12 any return on Sponsor Created Savings and any cash reinvestment of development fees by
13 Sponsor and any return thereon and expressly excluding therefrom any promote or carried
14 interest of Sponsor. As used herein, “Equity Multiple” shall mean a fraction whereby the
15 numerator is all of the net cash distributions made to the Investor Equity and the
16 denominator is the original amount of Investor Equity.

17 c. Definition of Investor Equity. As used herein, “Investor Equity” shall mean
18 the cash invested into the Project by investor members including the Developer.

19 d. Definition of Cash Out Refinancing. “Cash Out Refinancing” mean
20 refinancing of the Project that generates sufficient cash to directly result in a cash
21 distribution to the Developer that results in the members receiving a return of all their
22 capital and the preferred returns and distributions earned through the date of such event,
23 and the Developer receiving a return of all its capital and preferred returns. As necessary,
24 the amount of Net Proceeds for purposes of calculating the IRR from partial cash out

1 financings, where cash is distributed to the members but in insufficient amounts to return
2 all of such capital and returns, and partial Sale events after which Developer retains a
3 continued ownership interest in the Project, will be accumulated for purposes of
4 establishing the total amount of Net Proceeds for purposes of calculating the IRR and will
5 not be paid until the total amount of the Net Proceeds can be calculated. Unless otherwise
6 agreed to by the Developer and West Allis, the Profit Participation shall be paid in one lump
7 sum pursuant to the terms and provisions herein and as more particularly set forth below.

8 e. Definition of Net Proceeds. "Net Proceeds" is herein defined to mean the
9 gross sale or refinancing proceeds, less:

10 i. Costs of the sale and customary costs of closing or the costs of
11 refinancing, such as title insurance, closing fees, brokers' fees, lenders' fees and
12 points, taxes, recording fees, transfer fees, expense prorations, accounting
13 expenses and attorneys' fees;

14 ii. Amounts due lender(s) under the notes and financing agreements
15 for the Project (including any working capital loans or other advances of funds made
16 by Developer or any of its members or affiliates for the Project);

17 iii. Investor Equity, including any accrued and unpaid preferred return
18 thereon; and

19 f. Timing of Payment. Upon the occurrence of a Trigger Event that requires the
20 Developer to pay the Profit Participation, the Developer shall have up to ninety (90) days after
21 the determination of the amount of the Profit Participation to make such payments. Any
22 determination shall be made utilizing a final closing statement from such Trigger Event.

1 g. West Allis Ongoing Obligations. If a Sale occurs before closure of TID #16,
2 West Allis agrees to (i) continue to make the scheduled payments of the D-MRO (to the
3 extent not already fully disbursed), to disburse payments either to the Developer, or at
4 Developer’s option, to the purchaser of the Project or to the purchaser of the controlling
5 interest in Developer or to the then owner of the Project (to the extent not already fully
6 disbursed), and (ii) to continue administering and operating TID #16 in accordance with this
7 Agreement.

8 **13. Conditions to the Parties’ Obligations.** The parties’ obligations to complete their
9 respective obligations are conditioned on the following being satisfied:

10 a. Zoning & Design Review. The City shall have approved any and all licenses,
11 permits and approvals required for the construction of the Project.

12 b. Evidence of Financing. Evidence that the Developer has secured sufficient
13 financing commitments to enable the Project to proceed.

14 c. Legal Agreements. The Development Agreement and this Agreement have
15 been executed and delivered by the applicable parties thereto and all of the conditions to
16 the closing on the Property and the development of the Project have been satisfied or
17 waived by the party benefiting therefrom (collectively, the “Legal Agreements”).

18 d. City Financing Approvals. The City shall have approved and shall have taken
19 all actions necessary on the part of the municipality, to properly authorize the above-
20 contemplated actions, investments, contracts and findings, including issuance of the D-
21 MRO and the Legal Agreements.

22 **14. Prevailing Wage Not Required.** City is not aware of any obligations on the part of
23 the Developer arising out of any obligation of or to West Allis that would require Developer

1 to enforce, impose or apply any prevailing wage requirements or any other wage or labor
2 affiliation restrictions on its contractors in connection with any aspect of the Project. City
3 is not aware of any requirement that municipal bidding procedures be utilized to select a
4 contractor for any of the contemplated work.

5 **15. PILOT and Shortfall Agreement.**

6 a. PILOT. Ownership of the Property, or any part thereof, by any person,
7 partnership, corporation, or entity, which in any manner renders any part of the Property
8 exempt from property taxation during the life of TID #16 shall result in a payment in lieu of
9 taxes from the owner of that portion of the Property that is so exempt to the City each year
10 in an amount equal to the amount of taxes that would be due and owing on that portion of
11 the Property if that portion was not tax exempt (the "PILOT Payment"). The PILOT Payment
12 shall be calculated based on the value of the Property for the applicable tax year
13 determined by the City's Assessor's office multiplied by the City's property tax rate for the
14 applicable tax year. Such payment shall be due, payable and collected in the same manner
15 as property taxes, to the extent permitted by law. The Developer, its successors, and
16 assigns as the owners or occupants of the Property waive the right to contest the validity of
17 this provision. This Section shall automatically terminate upon the termination of TID #20.

18 b. Tax Contest. In consideration of West Allis providing the financial
19 assistance outlined in Section 4 of this Agreement, Developer, its successors, assigns, or
20 affiliates, agree to not challenge any property tax assessment levied against the Project
21 prior to the termination of TID #16 except that any or all of them may contest any such
22 property tax assessment but only in good faith and only if and to the extent any such

1 property tax assessment is in excess of the anticipated minimum assessed value of the
2 Property in the same particular tax year as set forth in Exhibit II.

3 c. Change in Method of Taxation. To the extent in compliance with applicable
4 law, if any tax, assessment or like charge is imposed on or assessed against the Project or
5 the use and operations thereof or income therefrom, as an alternative to, a replacement of,
6 or as supplemental to, any or all of the property taxes that are intended by the parties
7 hereto to constitute the Tax Increments, or increment or like revenues under the tax
8 increment law or any equivalent, then such taxes, assessments, and charges shall be
9 deemed to be Tax Increments hereunder and shall be disbursed as set forth in this
10 Agreement. Notwithstanding the foregoing, special assessments and special charges
11 levied by the City for permitted purposes, such as to pay for improvements and services,
12 shall not be included as Tax Increments.

13 **16. ASSIGNMENT OF AGREEMENT.** This Agreement and all rights and obligations
14 therein, including but not limited to the indemnification's provisions thereunder, may be assigned
15 in whole or in part by the Developer to an affiliated entity upon notice to West Allis. However, upon
16 notice to West Allis, Developers may assign this Agreement to an affiliated entity or to its lender in
17 connection with a mortgage on the Property, subject to all terms and conditions of this Agreement.
18 This Agreement may also be collaterally assigned in whole or in part by the Developer to any lender
19 or lenders holding a mortgage on all or any part of the Property. No such lender shall have any
20 liability hereunder unless said lender elects to effectuate such assignment and exercise the
21 Developer's rights hereunder. Upon any such assignment, references to Developer contained in
22 this Agreement shall refer to the assignee, unless the assignment expressly provides otherwise, it
23 being understood, for example, that Developer or any assignee of Developer may elect to retain the
24 benefits of the D-MRO and is not required to assign the D-MRO to the owner of the Property;

1 provided, however, that the obligations of Section 11 and 13 shall be binding on Developer and its
2 successors and assigns.

3 **17. No Partnership or Venture.** The Developer and its contractors or subcontractors shall
4 be solely responsible for the completion of the Project. Nothing contained in this Agreement shall
5 create or effect any partnership, venture or relationship between West Allis and the Developer or
6 any contractor or subcontractor employed by the Developer in the construction of the Project. No
7 elected official, member, officer, or employee of West Allis during his/her tenure or for one year
8 thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any
9 proceeds thereof.

10 **18. Notices.** All notices permitted or required by this Agreement shall be given in
11 writing and shall be considered given upon receipt if hand delivered to the party or person
12 intended, or one calendar day after deposit with a nationally recognized overnight commercial
13 courier service, or two (2) business days after deposit in the United States mail, postage prepaid,
14 by certified mail, return receipt requested, addressed by name and address to the party or person
15 intended as follows:

16 To Authority: City of West Allis and Community Development Authority of the City
17 of West Allis
18 Economic Development Executive Director
19 West Allis City Hall
20 7525 W. Greenfield Avenue
21 West Allis, WI 53214
22

23 To the City: City of West Allis
24 Office of the City Attorney
25 7525 W. Greenfield Avenue
26 West Allis, WI 53214
27 Attention: City Attorney
28

29 To Developer: LxL Allis Yards, LLC
30 Attn. Ian Martin

1 638 Milwaukee Street
2 Delafield, WI 53018
3 Email: ian.m@landbylabel.com
4

5 With a copy to: Godfrey & Kahn, S.C.
6 Attn.: Mark O'Neill
7 833 Eash Michigan Street
8 Suite 1800
9 Milwaukee, WI 53202
10 Email: moneill@gklaw.com
11

12 **19. REPRESENTATIONS AND WARRANTIES OF DEVELOPERS.**

13 The provisions of Section 22.B. of the Purchase Agreement are incorporated herein.

14 **20. TERM AND TERMINATION.** The term of this Agreement shall begin on the date of
15 this Agreement first set forth above and shall continue until, unless sooner terminated in
16 accordance with this Agreement, until the termination by the City of Tax Incremental District
17 Number 20 in accordance with this Agreement and pursuant to § 66.1105(7), Wis. Stats., as
18 amended.

19 **21. DEFAULT.** The provisions of Section 42 of the Purchase and Sale Agreement are
20 incorporated herein.

21 **22. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the
22 successors and assigns of Developers; however, this provision shall not constitute an
23 authorization for Developers to assign or transfer its rights and obligations under this Agreement
24 except as provided in this Agreement.

25 **23. Further Assurances.** Following the Closing, each of the Parties will take such
26 further actions and execute and deliver such additional documents and instruments as may be

1 reasonably requested by any other Party in order to perfect and complete the financing of the
2 Project as described herein as well as any other transactions specifically contemplated herein.

3 **24. Waiver of Terms.** Except as otherwise provided herein, any of the terms or
4 conditions of this Agreement may be waived at any time by the Party or Parties entitled to benefit
5 thereof, but only by a written notice signed by the Party or Parties waiving such terms or conditions.
6 The waiver of any term or condition shall not be construed as a waiver of any other term or
7 condition of this Agreement.

8 **25. Amendment of Agreement.** This Agreement may be amended, supplemented, or
9 modified at any time, but only by a written instrument duly executed by West Allis and the
10 Developer.

11 **26. Governing Law and Venue.** This Agreement shall, in all respects whether as to
12 validity, construction, capacity, performance, or otherwise, be governed by the laws of the
13 State of Wisconsin. Any suit or proceeding arising out of or related to this Agreement shall be
14 commenced and maintained only in a court of competent jurisdiction in the state or federal courts

1 located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the
2 exclusive jurisdiction of such courts.

3 **27. Execution in Counterparts.** This Agreement may be executed simultaneously in
4 one or more counterparts, each of which shall be deemed an original Agreement, but all of which
5 together shall constitute one and the same instrument.

6 **28. Titles and Headings.** Titles and headings to sections or subsections are for
7 purposes of references only and shall in no way limit, define, or otherwise affect the provisions
8 herein.

9 **29. Entire Agreement.** This Agreement, including the schedules and Exhibits annexed
10 hereto, constitute the entire agreement and supersede all other prior agreements and
11 understandings, both written and oral, by the Parties or any of them, with respect to the subject
12 matter hereof.

13 **30. Interpretation.** Unless the context requires otherwise, all words used in this
14 Agreement in the singular number shall extend to and include the plural, all words in the plural
15 number shall extend to and include the singular, and all words in any gender shall extend to and
16 include all genders.

17 **31. Construction.** The West Allis and the Developer acknowledge that each party and
18 its counsel have reviewed and revised this Agreement and that the normal rule of construction to

1 the effect that any ambiguities are to be resolved against the drafting party shall not be employed in
2 the interpretation of this Agreement or any amendments or exhibits hereto.

3 **32. Severability.** If any term or provision of this Agreement is determined to be invalid,
4 illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and
5 provisions of this Agreement shall nevertheless remain in full force and effect.

6 **33. Survive the Closing.** The agreements, covenants, warranties and representations
7 contained herein shall survive the Closing of the transaction contemplated herein.

8 **34. Binding Effect.** The terms and conditions of this Agreement shall be binding upon
9 and benefit the Parties and their respective successors and assigns.

10 **35. Good Faith.** The Parties covenant and agree to act in good faith in the performance
11 and enforcement of the provisions of this Agreement.

12 **36. MISCELLANEOUS.**

13 a. **Mutual Assistance.** West Allis and Developers shall do all things reasonably
14 necessary or appropriate to carry out the terms, provisions and obligations of this
15 Agreement and to aid and assist each other in carrying out this Agreement, including,
16 without limitation, the giving of notices, the holding of public hearings, the enactment by
17 City of resolutions and ordinances, and the execution and delivery of documents,
18 instruments, petitions and certifications. West Allis and Developers shall cooperate fully
19 with each other in seeking from any or all appropriate governmental bodies (whether
20 federal, state, county or local) any approvals and permits that are reasonably necessary or
21 desirable.

1 b. Captions. The captions in this Agreement are inserted only as matters of
2 convenience and for reference and in no way define or limit the scope or intent of the
3 various provisions, terms or conditions hereof.

4 c. Third-Party Beneficiaries. This Agreement creates rights and obligations only
5 for the Parties hereto and their permitted successors and assigns, except as stipulated in
6 this Agreement.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DRAFT

AGREED TO BY AND BETWEEN the Developer, the Authority, and the City on the date first set forth above.

**Community Development Authority of the City of
West Allis**

By: _____

Patrick M. Schloss, Executive Director

Dated: _____

CITY OF WEST ALLIS

By: _____

Dan Devine, Mayor

Dated: _____

By: _____

Rebecca Grill, City Administrator and City Clerk

Dated: _____

LxL Allis Yards, LLC

By: LxL Allis Yards Sponsor, its Manager

By: _____

Ian Martin, Owner and Manager

Dated: _____

DRAFT

EXHIBIT I (PROJECT COSTS)

TO

DEVELOPMENT FINANCING AGREEMENT

Allis Yards West Allis, WI ESTIMATED DEVELOPMENT BUDGET	
USES OF FUNDS	
Land	\$ 3,843,750
Construction	
General Conditions & Winter Conditions	5,257,706
Construction - Trade Subcontracts	48,240,690
Construction Fee	2,829,804
Construction Contingency	1,000,000
Bonds	-
Subtotal -- Construction	<u>57,328,200</u>
Development Costs	
Design & Engineering	1,500,000
Taxes & Insurance	715,000
Fees & Permits	154,400
Legal & Professional	205,000
Marketing & Property Start-Up	700,879
Subtotal -- Development Costs	<u>3,275,279</u>
Financing	
Construction Interest	3,500,000
Financing Fees	666,378
Other Financing Costs	275,000
Subtotal -- Financing	<u>4,441,378</u>
Operating Reserve	1,100,000
Development Contingency	150,000
Developer Fee	<u>\$ 2,651,794</u>
TOTAL DEVELOPMENT BUDGET	72,790,401
	Per Unit 295,896
SOURCES OF FUNDS	
Construction Loan	47,750,000
DNR Ready to Reuse Loan	2,000,000
EPA Loan	2,000,000
TIF Grant	2,600,000
Developer's Equity--Fees Contributed	1,749,879
Cash Equity	<u>16,690,522</u>
TOTAL SOURCES OF FUNDS	\$ 72,790,401

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EXHIBIT II
TO
DEVELOPMENT FINANCING AGREEMENT

Project Plan

The Project Plan for Tax Incremental District Number16 is on file in the office of the City Clerk
and is incorporated herein by reference.

EXHIBIT III

Development Finance Agreement TIF #16 Cash Flow

City of West Allis, Wisconsin																																		
Tax Increment District # 16 - "West Quarter Project" (70th St. Corridor)																																		
Cash Flow Projection																																		
Year	Projected Revenues										State Trust Fund Loan										Fire Loan						Total							
	Tax Increments	Investment Income	Personal Property Aid	Assessed Value Shortfall Payment ¹	Debt Service Shortfall Payment ²	Special Assessment ³	Proceeds from LT Debt	Adv. Incentive ⁴	TID 7 Funded Dev. Incentive	Developer Loan Guaranty Fee	Sale of Property	Total Revenues	Dated Date: 02/15/19	Rate	Interest	Prin (12/15)	Rate	Interest	Prin (12/15)	Rate	Interest	Prin (12/15)	Rate	Interest	Total	Dated Date: 02/15/19	Rate	Interest	Prin (12/15)	Rate	Interest	Total		
2018						7,200,000					0																							
2019	26,548				62,026	2,650,000					7,306,000																							
2020	283,464				226,977	6,296,387				160,000	7,286,827																							
2021	338,285	3,894			326,571	29,366					698,116																							
2022	318,291	10,572			340,516	29,366				181,344	2,800,000																							
2023	531,236				151,701	340,516					3,894,163																							
2024	470,925				7,080	340,516					709,936																							
2025	475,634				7,080	180,227					710,836																							
2026	1,005,897				7,080	176,218					1,064,681																							
2027	1,541,462				7,080	51,724					1,600,246																							
2028	1,556,877				7,080	51,724					1,615,661																							
2029	1,572,446				7,080	51,724					1,631,230																							
2030	1,588,170				7,080	51,724					1,646,954																							
2031	1,604,052				7,080	22,358					1,633,470																							
2032	1,620,292				7,080	22,358					1,649,510																							
2033	1,636,293				7,080	22,358					1,665,711																							
2034	1,652,656				7,080						1,682,376																							
2035	1,669,183				7,080						1,699,549																							
2036	1,685,875				7,080						1,717,300																							
2037	1,702,733				7,080						1,735,821																							
2038	1,719,761				7,080						1,754,018																							
2039	1,736,958				7,080						1,772,881																							
2040	1,754,328				7,080						1,791,388																							
2041	1,771,871				7,080						1,778,931																							
2042	1,789,590				7,080						1,796,650																							
2043	1,807,486				7,080						1,814,546																							
2044	1,825,561				7,080						1,832,621																							
2045	1,843,816				7,080						1,850,876																							
2046																																		
Total	35,529,491	14,466	155,317	492,217	1,352,499	517,240	16,146,387	181,344	2,800,000	160,000	57,248,961	6,500,000	721,321	3,350,000	1,226,535																			

City of West Allis, Wisconsin																																	
Tax Increment District # 16 - "West Quarter Project" (70th St. Corridor)																																	
Cash Flow Projection																																	
Year	Projected Revenues										State Trust Fund Loan										Fire Loan						Total						
	Tax Increments	Investment Income	Personal Property Aid	Assessed Value Shortfall Payment ¹	Debt Service Shortfall Payment ²	Special Assessment ³	Proceeds from LT Debt	Adv. Incentive ⁴	TID 7 Funded Dev. Incentive	Developer Loan Guaranty Fee	Sale of Property	Total Revenues	Dated Date: 02/15/19	Rate	Interest	Prin (12/15)	Rate	Interest	Prin (12/15)	Rate	Interest	Prin (12/15)	Rate	Interest	Total	Dated Date: 02/15/19	Rate	Interest	Prin (12/15)	Rate	Interest	Total	
2018						7,200,000					0																						
2019	26,548				62,026	2,650,000					7,306,000																						
2020	283,464				226,977	6,296,387				160,000	7,286,827																						
2021	338,285	3,894			326,571	29,366					698,116																						
2022	318,291	10,572			340,516	29,366				181,344	2,800,000																						
2023	531,236				151,701	340,516					3,894,163																						
2024	470,925				7,080	340,516					709,936																						
2025	475,634				7,080	180,227					710,836																						
2026	1,005,897				7,080	176,218					1,064,681																						
2027	1,541,462				7,080	51,724					1,600,246																						
2028	1,556,877				7,080	51,724					1,615,661																						
2029	1,572,446				7,080	51,724					1,631,230																						
2030	1,588,170				7,080	51,724					1,646,954																						
2031	1,604,052				7,080	22,358					1,633,470																						
2032	1,620,292				7,080	22,358					1,649,510																						
2033	1,636,293				7,080	22,358					1,665,711																						
2034	1,652,656				7,080						1,682,376																						
2035	1,669,183				7,080						1,699,549																						
2036	1,685,875				7,080						1,717,300																						
2037	1,702,733				7,080						1,735,821																						
2038	1,719,761				7,080						1,754,018																						
2039	1,736,958				7,080						1,772,881																						
2040	1,754,328				7,080						1,791,388																						
2041	1,771,871				7,080						1,778,931																						
2042	1,789,590				7,080						1,796,650																						
2043	1,807,486				7,080						1,814,546																						
2044	1,825,561				7,080						1,832,621																						
2045	1,843,816				7,080						1,850,876																						
2046																																	
Total	35,529,491	14,466	155,317	492,217	1,352,499	517,240	16,146,387	181,344	2,800,000	160,000	57,248,961	6,500,000	721,321	3,350,000	1,226,535																		

Notes:
¹Per Article IV of the Development Agreement, Developer will pay an Assessed Value Shortfall Payment equal to the taxes that would have been paid on any difference between the Base Value (\$25,100,000) and the actual assessed value.
²Per Article III of the Development Agreement, Developer will pay a Debt Service Shortfall Payment equal to any difference between the City's payments due on the Project Loan, and any tax increments, capitalized interest amounts, or Assessed Value Shortfall Payments rec'd.
³The City will pay the cost of streetscape improvements with advances to be recovered through special assessment levied on the benefitted property.
⁴Assessed Value Shortfall and Debt Service Shortfall Payments made by the Developer will be treated as contingent non-interest-bearing loans, repaid out of available Tax Increments after all debt incurred by the City to fund the Project Loan has been fully repaid.

EXHIBIT III (Cont)

Expenditures										Balances			Year
TID Admin. & Other Costs	Streetscape Expense ^a	Advance Repayment ^a	Develop. Incentive	Develop. Incentive - Allis Yards	Finance Related Expense	Replacement Park Imp.	Reimburse Developer Shortfall Payments ^a	Total Expenditures	Annual	Cumulative Fund Balance	Liabilities Outstanding		
85,510								85,510	(85,510)	(85,510)		2018	
79,800			7,200,000					7,279,800	20,200	(65,310)	6,500,000	2019	
57,993			2,650,000					3,225,759	(487,185)	(552,495)	9,644,768	2020	
29,535	293,657				106,889			7,133,635	(166,808)	(719,303)	9,355,000	2021	
6,728					400			435,157	262,959	(456,344)	9,080,000	2022	
6,688					400			436,165	302,543	(153,801)	8,790,000	2023	
25,000	181,344			2,600,000				3,686,572	147,592	(6,210)	8,418,578	2024	
7,000		22,358		0				680,511	29,426	23,216	26,027,883	2025	
7,000		22,358		0				681,211	29,426	52,642	25,566,272	2026	
7,000		22,358		446,680				1,128,291	(63,610)	(10,968)	24,644,314	2027	
10,000		22,358		897,628				1,582,538	17,708	6,740	23,257,453	2028	
25,000		22,358		906,806				1,606,316	9,345	16,085	21,847,763	2029	
25,000		22,358		915,874				1,614,884	16,345	32,430	20,415,058	2030	
25,000		22,358		925,033				1,628,168	18,786	51,216	18,954,148	2031	
25,000		22,358		934,283				1,633,681	(211)	51,005	17,474,840	2032	
25,000		22,358		943,626				1,646,468	3,043	54,048	15,971,940	2033	
25,000		22,358		953,062				1,653,928	11,784	65,831	14,450,246	2034	
25,000				962,593				1,638,641	21,075	86,906	12,909,556	2035	
25,000				972,219				1,650,164	26,079	112,985	11,344,662	2036	
25,000				981,941				1,661,068	31,866	144,851	9,755,355	2037	
25,000				991,760				1,671,541	38,252	183,103	8,141,418	2038	
25,000				1,001,678		426,688		1,678,366	48,455	231,558	6,937,635	2039	
25,000				1,011,695		219,095	214,289	1,695,079	48,939	280,497	5,718,782	2040	
25,000				1,021,811			440,148	1,711,959	49,428	329,925	4,484,634	2041	
25,000				1,032,030			370,444	1,729,008	49,923	379,848	3,158,424	2042	
25,000				1,042,350			819,835	1,887,185	(90,535)	289,313	2,116,074	2043	
25,000				1,052,773				1,077,773	736,772	1,026,085	1,063,301	2044	
25,000				1,063,301				1,088,301	744,319	1,770,405	(0)	2045	
25,000								25,000	1,825,876	3,596,281	(0)	2046	
772,253	475,001	223,581	9,850,000	20,657,340	107,688	645,784	1,844,716	53,652,680				Total	
Present Value of 2027-2044 MRO Payments at 5.5%				9,618,671									
Optional Redemption		Total Assessed Value, Debt Service and Developer Deposit Payments					1,844,716		Projected TID Closure				
							Unrecovered Amount ^a		0				
MRO Payment Percentage		85%											

Exhibit IV

TO

DEVELOPMENT FINANCING AGREEMENT

TAX INCREMENT PROJECT REVENUE BOND

UNITED STATES OF AMERICA

STATE OF WISCONSIN

COUNTY OF MILWAUKEE, CITY OF WEST ALLIS

<u>Number</u>	<u>Rate</u>	<u>Date of Original Issue</u>	<u>Amount</u>
R-	[____%]	March 1, 20____	Principal Amount, as defined herein

FOR VALUE RECEIVED, the City of West Allis, Milwaukee County, Wisconsin (the "City"), promises to pay to LxL Allis Yards, LLC, or registered assigns, but only in the manner, at the times,

from the source of revenue and to the extent hereinafter provided, the Principal Amount (as defined below) together with interest thereon from the date of original issue set forth above, or the most recent payment date to which interest has been paid, to the stated due dates of the principal installments of this Bond, at the rate per annum set forth above.

The “Principal Amount” of this Bond shall be a principal amount equal to the actual Project Costs incurred by the Developers (as such terms are defined in the Development Financing Agreement dated as of _____, 2024, between the City of West Allis, the Community Development Authority of the City of West Allis, and LxL Allis Yards, LLC, a Wisconsin Limited Liability Company (the “Development Financing Agreement”)) but not to exceed \$9,678,661 (D-MRO). The Principal Amount shall be determined initially as of the date of issuance of this Bond based on the Project Costs which Developers have contractually committed itself to incur. A final determination of the total Project costs and the Principal Amount of the Bond shall be made upon substantial completion of the Project as provided in the Development Financing Agreement.

For each Year (defined below), interest shall accrue on the outstanding Principal Amount of the Bond and the outstanding interest on the Bond determined as of the first day of that Bond Year. The outstanding Principal Amount of the Bond as of any date shall be reduced by the amount of any principal payments previously made on the Bond. For purposes of this Bond, “Bond Year” shall mean the one year period commencing on each _____ 1 and ending on the following _____ 30, except that the first Bond Year shall commence on the effective date of original issue of this Bond and end on _____, ____.

Assuming that the Principal Amount of the Bond is equal to the maximum Principal Amount \$18,057,343 this Bond shall be payable in installments of principal due on _____, in each of the years and amounts as follows:

<u>Year</u>	<u>Principal</u>
-------------	------------------

In the event that the total Project Costs incurred by Developers and therefore the final Principal Amount of the Bond is less than \$9,678,661 there shall be a reduction in the principal installments of the Bond beginning with the final maturity and then proceeding to the next preceding maturity until the total of the principal installments on the Bond is equal to the amount of the Project Costs incurred by Developers.

Interest shall be payable on _____ 1 in each year, commencing on _____ 1, 20__ (the "Bond Payment Dates").

This Bond has been issued to finance a project which is a part of City's blight elimination utility, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621, Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the "Special Redemption Fund." This Bond is issued pursuant to a resolution adopted on _____, _____, by City's Common Council (the "Resolution") and the Development Financing Agreement, and is subject to the terms and conditions of said

Resolution and Development Financing Agreement. This Bond does not constitute an indebtedness of City within the meaning of any constitutional or statutory limitation or provision. The principal of and interest on this Bond shall be payable solely in amounts that do not exceed available Tax Increments (as defined in the Development Financing Agreement) received by City with respect to its Tax Incremental District Number 16 (the "Revenues"). Reference is hereby made to the Development Financing Agreement for a more complete statement of the revenues from which and conditions under which this Bond is payable, and the general covenants and provisions pursuant to which this Bond has been issued.

Revenues shall be applied first by City for the payment of Administrative Fees for the District, as set forth in the Development Financing Agreement, followed then by the payment of any principal due D-MRO).

If on any Bond Payment Date there shall be insufficient Revenues to pay the principal or interest due on this Bond, the amount due but not paid shall accumulate and be payable on the next Bond Payment Date until the final Bond Payment Date. Interest at the rate of [6.55%] per annum shall be paid on such unpaid amounts of principal and interest. The City shall have no obligation to pay any amount of principal or interest on this Bond which remains unpaid after October 1, {2037} and the owner of this Bond shall have no right to receive payment of such amounts.

This Bond (a) shall be prepaid on each Bond Payment Date in an amount equal to the amount by which the available Tax Increments collected by City in that Bond Year exceed the amount of

principal and interest due on the Bond Payment Date and (b) is subject to prepayment in whole or from time to time in part at any time, at the option of City.

Notwithstanding any payment schedule included in this Bond, or any other provision of the Development Financing Agreement or this Bond to the contrary, the amount to be paid by City each year shall be the full amount of the available Tax Increments generated that year; and in each case, the amount (if any) by which the available Tax Increments collected that year exceed the interest due and the principal installment (as stated herein) to be paid that year, shall be regarded as a mandatory prepayment of the principal hereof.

City makes no representation or covenant, express or implied that the available Tax Increments or the Revenues will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

City's payment obligations hereunder are subject to appropriation by City's Common Council of amounts sufficient to make payments due on this Bond and are conditioned upon Developers not being delinquent in the payment of property taxes with respect to the Property.

This Bond is a special, limited revenue obligation and not a general obligation of City and is payable by City only from the source and subject to the qualifications stated or referenced herein. This Bond is not a general obligation of City, and neither the full faith and credit nor the taxing powers of City are pledged to the payment of the principal of this Bond and no property or other asset of City, except the Revenues, are or shall be a source of payment of City's obligations hereunder.

This Bond is issued by City pursuant to and in full conformity with the Constitution and laws of the State of Wisconsin.

This Bond may be transferred or assigned in whole or in part, only with the consent of City on the terms and conditions set forth in the Resolution and the Development Financing Agreement. In order to transfer or assign the Bond, the transferee or assignee shall surrender the same to City either in exchange for a new fully registered bond or for transfer of this Bond on the registration records for the Bond maintained by City. Each permitted transferee or assignee shall take this Bond subject to the foregoing conditions and subject to all provisions stated or referenced herein.

Notwithstanding the foregoing paragraph, upon the request of the holder of the Bond, the holder may assign its rights to payments on the Bond in accordance with the terms and provisions of the Development Financing Agreement, provided, however in no event shall the aggregate amount of the payments made to the holder or its assigns exceed the amount of the available Tax Increment.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this Bond have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of West Allis, Milwaukee County, Wisconsin, has caused this Bond to be signed on behalf of said City by its duly qualified and acting Mayor and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

**CITY OF WEST ALLIS
MILWAUKEE COUNTY, WISCONSIN**

(SEAL)

By _____

Mayor

By _____

City Clerk

REGISTRATION PROVISIONS

This Bond shall be registered in registration records kept by the City Clerk of the City of West Allis, Wisconsin, Milwaukee County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this Bond may thereafter be transferred only upon presentation of this Bond together with a written instrument of transfer approved by the City and duly executed by the Registered Owner or his attorney, such transfer to be made on such records and endorsed hereon.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of City Clerk</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Exhibit __

COMPLETION GUARANTY

This Guaranty by is made by LXL Funding Company LLC, a Wisconsin Limited Liability Company (“**Guarantor**”) to and for the benefit of the City of West Allis, Wisconsin (the “**City**”) and the Community Development Authority of the City of West Allis (the “**Authority**”). The City and the Authority will be combined parties within this Agreement and hereby called the “West Allis”.

WHEREAS, Pursuant to that certain Development Agreement and Development Finance Agreement dated of even date herewith (as amended, restated, supplemented or otherwise modified from time to time,(the “**Development Agreement**”) and (the “Development Finance Agreement:”) by the LXL Allis Yards LLC, an affiliate of Guarantor (“**Developer**”), the City, and the Authority, pursuant to Section 66.1335 of the Wisconsin Statutes , have agreed to make certain financial accommodations available to Developer, on the terms and subject to the conditions set forth in the Development Agreement and Development Financing Agreement; and,

WHEREAS, pursuant to that certain Development Agreement dated of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “**Development Agreement**”) by and among the City, Authority, and the Developer, the Developer agreed to certain terms and conditions with respect to the development and maintenance of a multifamily apartment project more particularly described in the Development Agreement (the “**Project**”); and

WHEREAS, West Allis requires, as a condition of entering into the Development Financing Agreement and the transactions related thereto, that Guarantor guaranty certain obligations of Developer to West Allis pursuant to the terms hereof; and,

WHEREAS, Guarantor will derive substantial benefits from the conduct of the Developer's business and operations; and, by reason of the relationship with the Developer, has agreed to execute this Guaranty; and,

WHEREAS, it is in the interests of the Developer to obtain the benefits under the Development Financing Agreement.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Financing Agreement

2. So long as this Guaranty is outstanding, the Guarantor represents and warrants as follows:

A. This Guaranty is legal, valid, binding upon and enforceable against such Guarantor in accordance with its terms, except as it may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights and except as may be limited by general principles of equity. The Guarantor agrees to file, when due, all federal and state income and other tax returns, which are required to be filed, and will pay all taxes shown on said returns and on all assessments received by it to the extent that such taxes shall have become due

and all extensions have expired. The Guarantor has no knowledge of any liabilities as to it, which may be asserted against it upon audit of its federal or state tax returns for any period that remains subject to audit.

B. Except as disclosed by the Guarantor to West Allis, in writing, prior to the date hereof, there is no action, suit, proceeding or investigation before any court, public board or body pending or threatened against the Guarantor, or any of its properties, which, if adversely determined, would have a material adverse effect upon the business, properties or financial condition of the Guarantor.

C. The Guarantor acknowledges that West Allis has not made any representations or warranties with respect to, and agrees that West Allis does not assume any responsibility to the Guarantor for and has no duty to provide information to the Guarantor regarding the collectability or enforceability of the Development Financing Agreement or the financial condition of Developer. The Guarantor has independently determined the issues relating to completion of the Project.

3. The Guarantor hereby absolutely and unconditionally guarantees to West Allis (i) the prompt and complete performance of Developer's obligation to complete the construction of the Project as set forth in the Development Agreement ("**Guaranteed Obligations**"). In the event that Developer fails to substantially complete construction of the Project as required under the terms of the Development Agreement and applicable grace and cure periods, if any, then, upon receipt of written notice from West Allis, Guarantor will within thirty (30) days after receipt of such notice undertake to complete construction of the Project pursuant to the provisions of this Section

3 and thereafter pursue such construction through to substantial completion of the Project. If West Allis elects to require Guarantor to complete the Project, then within thirty (30) days after written demand by West Allis , Guarantor will commence such construction of the Project.

4. The Guarantor's Obligations hereunder shall be binding upon the Guarantor, its successors, and permitted assigns; however, the Guarantor shall not transfer or assign its Obligations to an affiliate or another entity without the written consent of the West Allis . This Guaranty shall remain in full force and effect so long as any of the Guaranteed Obligations are outstanding, without any right of offset and irrespective of:

A. The genuineness, validity, regularity or enforceability of the Development Agreement or any of the terms thereof, the continuance of any Guaranteed Obligations on the part of the Developer on the Development Agreement, or the power or authority or lack of power or authority of the Developer or any other party to execute and deliver the Development Financing Agreement, Development Agreement, or to perform any of the Guaranteed Obligations thereunder.

B. Any failure or lack of diligence in connection or protection, failure in presentment or demand, protest, notice of protest, notice of default and of nonpayment, failure of notice of acceptance of this Guaranty, failure to give notice of failure of the Developer to perform any covenant or agreement under the terms of the Development Agreement, or the failure to resort for payment to the Developer or to any other person or entity or to any rights or remedies of any type (the Guarantor hereby expressly waiving all of the foregoing).

C. The acceptance or release of any security or other guaranty, extension of the Development Financing Agreement and/or Development Agreement or amendments,

modifications, consents or waivers with respect to the Development Financing Agreement and/or Development Agreement or any subordination of the Guaranteed Obligations to any other obligations of the Developer (the Guarantor hereby expressly consenting to all of the foregoing).

D. Any defense whatsoever that the Developer might have to the payment or to the performance or observance of any of the Guaranteed Obligations, other than full payment or performance thereof, as applicable.

E. Any legal or equitable principle of marshalling or other rule of law requiring a creditor to proceed against specific property, apply proceeds in a particular manner or otherwise exercise remedies so as to preserve the several estates of joint obligors or common debtors (the Guarantor hereby expressly waiving the benefit of all of the foregoing).

F. Any act or failure to act with regard to any of the Guaranteed Obligations or anything which might vary the risk of the Guarantor; provided that the specific enumeration of the above mentioned acts, failures or omissions shall not be deemed to exclude any other acts, failures or omissions, though not specifically mentioned above, it being the purpose and intent of this Guaranty that the Guaranteed Obligations of the Guarantor shall be absolute and unconditional and shall not be discharged, impaired or varied, except by the full payment or performance of the Guaranteed Obligations, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of or defense to the Guarantor. Without limiting any of the other terms or provisions hereof, it is understood and agreed that in order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the City to resort in any manner or form for payment to the Developer or to any other person, firm or corporation, their

properties or assets, or to any security, property or other rights or remedies whatsoever, and the City shall have the right to enforce this Guaranty irrespective of whether or not proceedings or steps are pending seeking resort to or realization upon from any of the foregoing. It is further understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Developer shall default in the performance of the Guaranteed Obligations under the terms of the Development Agreement beyond any applicable grace or cure period and that, notwithstanding recovery hereunder for or in respect of any given default or defaults, this Guaranty shall remain in full force and effect and shall apply to each and every subsequent default until terminated as herein provided.

5. This Guaranty shall be a continuing guaranty so long as any of the Guaranteed Obligations remain unpaid or unperformed, as applicable, and may be enforced by West Allis or any successor in interest under the Development Agreement; provided that West Allis may only transfer this Guaranty, the Development Agreement and the Development Financing Agreement to West Allis, in each case, affiliated with West Allis and to no other party without the consent of Guarantor and provided further that notice is given to the Guarantor within a reasonable time after such assignment.

6. This Guaranty shall terminate and Guarantor shall be released from all further liability hereunder upon the issuance of the Certificate of Completion (as defined in the Development Agreement).

7. Notices hereunder shall be given in accordance with the provisions of the Development Financing Agreement.

8. This Guaranty shall be governed by and construed in accordance with the laws of the State of Wisconsin.

(SIGNATURES CONTINUED ON NEXT PAGE)

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty, to take effect as of the day of _____, 2024.

LXL Funding Company LLC

Name: Ian Martin
Title: Manager

State of Wisconsin)
) ss.
Milwaukee County)

Personally, came before me this ____ day of _____, 2024 the above-named Ian Martin the Manager of LXL Funding Company LLC me known to be the person who executed the foregoing instrument and acknowledged same on behalf of such company.

Witness my hand and official seal.

Notary Public, State of Wisconsin

Print Name: _____
My Commission: _____

Acceptance:

This Guaranty is hereby accepted this ____ day of _____ 2024, by the City of West Allis and the Community Development Authority of the City of West Allis.

CITY OF WEST ALLIS (“City”)

By: _____

Dan Devine, Mayor

By: _____

Rebecca Grill, City Clerk

By _____

Patrick Schloss, Executive Director