

CITY OF WEST ALLIS BROWNFIELDS REVOLVING LOAN AGREEMENT

I. PARTIES

This Agreement is made effective as of December ____, 2021 (“Closing Date”) defined below, by and between the City of West Allis (“CITY”), with offices at 7525 W. Greenfield Avenue, West Allis, Wisconsin 53214 (“Lender”) and SoNa Lofts, LLC, a limited liability company organized and operating under the laws of the State of Wisconsin (“Borrower”), with its principal offices at 330 East Kilbourn Avenue Milwaukee, WI 53202.

II. RECITALS

- A. Whereas, CITY is a recipient of a grant to establish the Brownfields Revolving Loan Fund Program (the “BRLF”) from the USEPA and is authorized to make loans pursuant to the Enabling Federal Statute and Cooperative Agreement defined below; and
- B. Whereas, Borrower is the fee owner of the Property identified as 6675 W. National Avenue – SoNa - (Former 700 Properties) Site located at 1615 S. 66th Street, 6633-6709 West National Avenue and 6616 West Mitchell Street, West Allis, Wisconsin, 53214 (Tax Key # 454-0648-000, 454-0649-000, and 454-0650-000). (6.53 acres) , West Allis, Milwaukee County, Wisconsin; and
- C. Whereas, the Property is a Contaminated Site contaminated with the following hazardous substances: and
- D. Whereas, Borrower has entered into the WDNR NR 700 Site Closure Process and certifies that the cleanup will be consistent with the National Contingency Plan requirements for a non-time critical removal action and in accordance with Chapter NR 700 Wisconsin Administrative Code; and
- E. Whereas, the Property is a Contaminated Site and Borrower has received copies of a Phase I Environmental Site Assessment the Property conducted by the Community Development Authority of the city of West Allis; and
- F. Whereas, Borrower intends to develop the Property as described in the Application, and for a development known as headquarters and business offices for West Allis Heating and Cooling; and hereby referred to as the project (PROJECT)
- G. Whereas, Borrower has made Application to CITY for a loan to clean the Property (the “Loan”); and
- H. Whereas, CITY’S commitment to fund the Loan is subject to the availability of funds made available by the USEPA through Section 104(k) of CERCLA, 42 U.S.C. Section 9604(k) as amended by the Small Business Liability Relief and Brownfields Revitalization Act, and subject to the terms of the Cooperative Agreement defined below; and

I. Whereas, the total loan amount is \$500,000. (EPA)

IN CONSIDERATION OF MUTUAL PROMISES SET FORTH BELOW, THE PARTIES AGREE TO THE FOLLOWING TERMS:

III. DEFINITIONS

- A. "Agreement" means this Contaminated Site Loan Agreement by and between CITY and Borrower. The Application described below is incorporated into this Agreement by reference.
- B. "Application" means the Contamination Cleanup Grant Application submitted to CITY, and all other loan documents as described below and materials submitted by Borrower to CITY requesting or in support of its request for the Loan.
- C. "Authority" means the Community Development Authority of the City of West Allis.
- D. "Borrower" means SoNa Lofts, LLC, a limited liability company organized and operating under the laws of the State of Wisconsin, which is the fee owner of the Contaminated Site and an affiliate of the Required Assigns.
- E. "Closing Date" is the date on which the Note is executed or this Agreement becomes effective, whichever date shall occur last, and the date after which eligible contamination cleanup costs may be incurred for subsequent payment from the Loan Proceeds.
- F. "Contaminated Site" means a site contaminated with a release of a hazardous substance defined by both the federal CERCLA and under Section 292.01(5) Wis. Stats. (the Wisconsin Spill Law) as a pollutant or contaminant, presenting an imminent and substantial endangerment to the public health, welfare, or the environment.
- G. "Contractor" means a person, including the general Contractor, who shall be engaged to work on or to furnish materials or supplies for the Project.
- H. "Cooperative Agreement" means the agreement between the USEPA and CITY governing the administration and implementation of the Brownfields Revolving Loan Fund identified as Agreement No. 00E96501 and Agreement No. BF-00E43001-0.
- I. "Cost-Share Requirement" means Borrower's required contribution of not less than twenty percent (20%) of Total Eligible Project Costs set forth in the Project Budget. Section XII hereof, and as amended from time to time.
- J. "Default" means an Event of Default or any event that but for the passing of time or the giving of notice or both would be an Event of Default.
- K. "Due Date" means the day upon which the first Loan Payment is due, as specified in the Note.
- L. "Enabling Federal Statute" means Small Business Liability Relief and Brownfields Revitalization Act, Section 104(k) of CERCLA, 42 U.S.C. 9604(k).

- M. "Final Due Date" means the day upon which the final Loan Payment is due, or such other due date as may be specified in the Note, or such accelerated date upon which the entire outstanding balance of principal and accrued interest then due under the Note may become due and payable as the result of an Event of Default.
- N. "Lender" means the City of West Allis.
- O. "Loan Documents" means all of the following:
1. This Agreement
 2. The Term Credit Agreement
 3. The Note
 4. The Application including all attachments
 5. The Mortgage
 6. All other documents required as a condition of making the initial advance under the Term Credit Agreement
- P. "Loan Period" means the time period from the Closing Date until the Final Due Date.
- Q. "Loan Proceeds" means the total principal sum of the Loan disbursed to the Borrower.
- R. "Mortgage" means a Third Mortgage from Borrower to CITY, dated as of the Closing Date, in form and substance acceptable to CITY'S Director of Development, City Attorney and Borrower.
- S. "Note" means the Business Note for the Loan from Borrower to CITY dated as of the Closing Date.
- T. "Payment Request" means a document submitted to CITY by Borrower concurrent with invoices, requesting a draw of Loan Proceeds. Invoices submitted with the Payment Request shall reflect only Eligible Project Costs.
- U. "Project" means the Contaminated Site cleanup activities at the Property further described in the Remedial Action Plan, addressing different areas of the Property, which was provide and subject to approval by the WDNR on _____.
- V. "Project Budget" means the approved project budget and project activities, found in this Agreement, Section XII.
- W. "Project Costs" or "Eligible Project Costs" shall be defined as CITY-approved expenses incurred in performing and accomplishing contamination cleanup activities during the Loan Period to pay costs incurred after the Loan Closing Date in connection with the Project, which shall include, but are not limited to: the costs of labor, supplies, materials, program costs and services and WDNR oversight fees associated with the Project, and as described in the Budget of this Agreement and the Application. Eligible project costs shall have been pre-approved by CITY and submitted in the Application in conformance with the requirements of Small Business Liability Relief and Brownfields Revitalization Act, Section 104(k) of CERCLA, 42 U.S.C. 9604(k). Eligible costs shall not include:
1. Cleanup Project costs incurred by Borrower prior to the Closing Date;
 2. Costs of Loan Application preparation, Loan Document preparation or legal review;

- 3. Costs of financial management, audits or Payment Request preparation;
 - 4. Borrower facility, administrative, supplies, equipment or overhead costs.
- X. "Project Schedule" means the Timeline submitted in the Application, Part V and VI.
 - Y. "Property" means the Contaminated Site described on Exhibit 1.
 - Z. "Remedial Action Plan" means the documented Plan for Cleanup of the Contaminated Site approved by the WDNR on _____.
 - AA. "Term Credit Agreement" means the Term Credit Agreement for the Loan between CITY and Borrower dated as of the Closing Date.
 - BB. "USEPA" means the United States Environmental Protection Agency.
 - CC. "WDNR" means the Wisconsin Department of Natural Resources, a regulatory and technical assistance agency that oversees the methods, process and completion of cleanup on Contaminated Sites.

IV. LOAN TERMS AND CONDITIONS

In addition to the terms and conditions for advances of Loan Proceeds under the Term Credit Agreement, the following terms and conditions shall apply:

- A. **Use of Loan Proceeds.** Loan Proceeds shall be used to pay not more than eighty percent (80%) of Eligible Project Costs incurred during the Loan Period and according to the requirements of the Remedial Action Plan. **Exhibit 2 - Project Budget**
- B. **Cost-Share Requirement.** Borrower shall provide proof of payment of not less than twenty percent (20%) of Eligible Project Costs incurred during the Loan Period and according to the requirements of the Remedial Action Plan.
- C. **Disbursement of Loan Proceeds.** CITY shall disburse the loan proceeds to Borrower based upon the progress of the work completed and based upon receipt of satisfactory documentation of expenditures. Payment Requests must include supporting invoices and subcontractor invoices that describe the services performed and reference the date services were performed. Invoices must be consistent with the approved Project Budget. Borrower acknowledges that the Cooperative Agreement with the USEPA is the source of all Loan Proceeds and that CITY is under no obligation to lend any of its own funds to this association. **Exhibit 3 - Reimbursement Form**
- D. Reimbursements must align with the approved budget that was submitted with the application -

V. REPAYMENT, REPORTING, ADMINISTRATIVE RECORDS AND AUDITS

- A. **Project Reporting.** Borrower shall submit to CITY a report on the distribution of funds and the progress of the Project covered from the Loan Closing Date through the following December 31st and annually thereafter. The reports must be received by CITY no later than the 1st of each year. CITY will provide reporting forms.

B. Financial Information Reporting. Borrower agrees that, at the reasonable request of CITY, it shall maintain adequate financial records consistent with generally accepted accounting principles consistently applied by Borrower. Borrower shall provide the following financial reporting information to CITY:

1. Accounting system records that track the use of Loan Proceeds by eligible site-specific Project Costs. The records shall segregate expenditures based on federal or non-federal sources of funds.
2. An audit or acceptable alternative audit information such as deposit slips and cancelled checks, showing the receipts and expenditures of the Loan Proceeds. Accounts and records related to the Loan Proceeds shall be accessible to CITY, through any authorized representatives, for the purpose of examination and audit. Borrower shall obtain approval from USEPA prior to destroying such documents.
3. **Other Project Information.** Borrower agrees that it shall maintain Project information including properly executed contracts, invoices, correspondence and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures of Loan Proceeds. Borrower shall permit a representative of CITY at any reasonable time and place to inspect, audit and monitor the Project and related financial information. Borrower shall maintain Project and related financial information for at least six (6) years following the completion of the Project or the completion of any litigation, claim, negotiation, audit or other action involving those documents, previously disclosed to CITY. Borrower shall obtain approval from USEPA prior to destroying such documents.

C. Project Completion Information. Borrower agrees cleanup will be done in accordance with the WDNR NR 700 Voluntary Cleanup Process and the Remedial Action Plan and agrees that it shall obtain from the WDNR and submit to CITY an appropriate assurance of cleanup completion.

VI. REPRESENTATIONS AND WARRANTIES

A. Environmental Representations and Warranties. Borrower represents and warrants, to the best of Borrower's knowledge, that:

1. Borrower is the current owner of the Property but is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607, or a responsible person as defined Section 292.11 Wis. Stat. (the Wisconsin Spill Law). CITY submitted a Site Eligibility Determination Letter to the USEPA on November 16, 2021.
2. The Property satisfies the definition of a brownfield site as defined in Section 101(39) of CERCLA, 42 U.S.C. 9601(39); and,
 - a. The Property is not listed or, to Borrower's knowledge, proposed for listing on the National Priorities List of the USEPA;
 - b. Borrower did not generate or transport hazardous substances, pollutants or contaminants at or to the Property;
 - c. An affiliate of Borrower acquired the Property on _____ through _____.
 - d. _____ acquired the Property after the disposal or placement of hazardous substances, pollutants and contaminants on the Property;

- e. Borrower has not caused, contributed to, permitted or exacerbated the release of hazardous substances, pollutants or contaminants on or from the Property;
 - f. Neither the Property nor Borrower is subject to an administrative order, court order, penalty, consent or judicial consent decree issued to or entered under CERCLA, resulting from environmental non-compliance; and
 - g. The Property is not subject to the jurisdiction, custody or control of the United States government.
 2. Borrower further represents and warrants that:
 - a. Borrower will not at any time in the future generate or transport hazardous substances, pollutants or contaminants at or to the Property in violation of applicable law; and
 - b. Borrower will not at any time in the future cause, contribute to, permit or exacerbate the release of hazardous substances, pollutants or contaminants on or from the Property.
 3. CITY conducted an Analysis of Brownfields Cleanup Alternatives (ABCA) Public Comment period from December 1 – December 15, 2021 for a 15 day comment period , based upon Ch. NR 716 Site Investigation Report and Ch. NR 722 Remedial Action Options Plan and Addendum. This document serves to define the nature and extent of contamination; identify the objectives of the response action; provided an analysis of alternatives; and recommend the necessary response actions, which includes the removal of highly contaminated materials, to meet the cleanup standards in Ch. NR 722 and the closure standards in Ch. NR 726. The ABCA was prepared under the guidelines of the WDNR Voluntary Cleanup program, and in accordance with Ch. NR 714 and all public review and comment provisions therein. Any significant comments to the ABCA were considered on December 8, 2021 Public Information Meeting or a response given by December 15, 2021. On this basis, the Authority selected a final ABCA response action on December 16, 2021, which is the response proposed by the Authority in the Remedial Action Plan for the Site. The Remedial Action Plan incorporates requirements for sampling Plans and Quality Assurance Project Plans and certifications as are required by Ch. NR 700, et seq., including Ch. NR 712, Ch. NR 716 and Ch. NR 149.
 4. The Community Relations Plan (CRP) was submitted by Borrower to the Authority and EPA approval granted on November 23, 2021 the, the fund manager for BRLF Program. The CRP is being implemented by the City.

B. Ownership. Borrower owns title to the Property.

C. Acknowledgement. Borrower acknowledges that the Cooperative Agreement between CITY and the USEPA regulates the use, and is the source of all Loan Proceeds. Borrower acknowledges that CITY is under no obligation to lend any of its own funds. Borrower further acknowledges that various federal rules, regulations, statutes and requirements are applicable to the Project by virtue of the Cooperative Agreement and Borrower covenants to comply with all such federal requirements.

VII. COVENANTS OF BORROWER

Borrower agrees that it will fully and faithfully comply with the covenants contained in this Article from the Closing Date until all of the Loan Proceeds and accrued interest have been repaid to

CITY in the manner provided in this Agreement; and the financial and project reporting obligations owed to CITY pursuant to this Agreement have been completed. The reporting obligations shall include the following:

- A. **Compliance.** Borrower agrees to complete the Project in accordance with the WDNR NR 700 Voluntary Cleanup Process, the Remedial Action Plan, Application, Project Schedule and the Project Budget.
- B. **Protection of Human Health and Environment.** Borrower agrees that cleanup activities shall protect human health and the environment.
- C. **Project Scope of Work Changes.** Borrower shall immediately report in writing to CITY any potential changes in the Remedial Action Plan and the discovery of hazardous substances, pollutants or contaminants not identified in the Remedial Action Plan. The WDNR and CITY shall approve all changes in or modifications to the Remedial Action Plan prior to such change or modification becoming effective. CITY will not require any changes to the Remedial Action Plan beyond those required by the WDNR. Borrower shall be responsible for all additional costs incurred as the result of any changes or modifications.
- D. **Project Completion Notice.** Borrower agrees that it will notify CITY of the Project's completion as described in this Agreement.
- E. **Notice of Default.** Promptly upon any officer of Borrower obtaining knowledge of any of the following Events of Default or Defaults, Borrower shall deliver to CITY a notice specifying the nature and period of existence of such condition or event and what action Borrower has taken, is taking and proposes to take with respect to any condition or event that constitutes an Event of Default or Default.
- F. **Government Notices.** Borrower will deliver to CITY promptly after receipt copies of all notices, requests, subpoenas, inquiries or other writings received from any governmental agency concerning: any violation or alleged violation of any environmental laws; the storage, use or disposal of any environmentally regulated substances; or the violation or alleged violation of any other law, ordinance, governmental regulation, or court order, including the violation or alleged violation of Borrower's payment or nonpayment of any taxes, if the events or circumstances related thereto could reasonably be expected to have a material adverse effect.
- G. **Expenses of Collection or Enforcement.** Borrower agrees that if at any time Borrower defaults on any provision of this Agreement it will pay CITY or its assigns (in addition to any other amounts that may be due from Borrower) an amount equal to the reasonable costs and expenses of collection or enforcement of CITY's claims, including attorney's fees and other legal expenses.
- H. **Erect a Sign.** Borrower agrees to erect a sign on the Property, approved by CITY, stating that the Work is being financed in part by USEPA BRLF Funds and providing the appropriate contacts for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities. The sign erected on the Property shall comply with 40 CFR Part 35, Subpart O (Section 35.6105 (a) (2) (ii)).

VIII. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- A. Default by Borrower under any of the Loan Documents that is not cured within the applicable cure period, if any;
- B. Any representation or warranty made by Borrower hereunder proves false or misleading in any material respect;
- C. Use of the Loan Proceeds for purposes other than provided in this Agreement;
- D. Default by Borrower in the performance of any other term, covenant or agreement contained herein, which default is not cured within thirty (30) days of receipt of a notice of default;
- E. Default by Borrower under the terms of any agreement or instrument pursuant to which Borrower has borrowed money from any person or entity for the Property, which default is not cured within thirty (30) days of a notice of default;
- F. Failure of Borrower to satisfy any judgment or remove any levy or other process against the assets of Borrower within thirty (30) days after the entry or levy thereof, or at least five (5) days prior to the time of any proposed sale under any such judgment or levy;
- G. Upon the occurrence of an Event of Default under this Section, Borrower promises to pay to CITY all collection and reasonable attorneys' fees and expenses actually incurred by CITY, whether or not litigation is commenced, including, but not limited to, penalties and/or fees due under this Agreement.

IX. REMEDIES OF CITY

- A. **Rights Available.** Upon the occurrence of an Event of Default, CITY may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Agreement and all other remedies available to CITY under the Loan Documents, at law or in equity, at any time and from time to time. The exercise of any one right or remedy shall not constitute a waiver of any other right or remedy, whether or not the indebtedness evidenced by the Note shall be due and payable and whether or not CITY shall have instituted any actions for the enforcement of its rights under the Note.
- B. **Secure Site.** Upon an Event of Default, Borrower shall secure the Property. The cost of securing the Property is the responsibility of Borrower. If Borrower fails to secure the Property within twenty-four (24) hours, CITY may, but shall not be obligated, to do so at Borrower's sole cost.

X. CERTIFICATIONS

Borrower agrees to do the following for so long as amounts remain due under the Note:

- A. **Compliance With All Laws.** Borrower shall carry out the Project activities in accordance with all applicable state, local and federal laws, regulations, orders, writs, judgments, injunctions, decrees or awards, including but not limited to the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as

amended (42 U.S.C. §§ 9601 et seq.) (“CERCLA”); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 C.F.R. Part 31; the National Oil and Hazardous Substances Contingency Plan (“NCP”), 40 C.F.R. Part 300; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally-assisted construction contracts; the Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 U.S.C. §§ 276a to 276a-5 and 42 U.S.C. § 3222 as set forth in CERCLA § 104 (g))¹; all applicable “cross-cutting requirements” described in this section, including those federal requirements agreed between the USEPA and CITY set forth in the Cooperative Agreement; MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. Failure to comply with this provision shall not be a breach of this covenant if such failure does not have, or is not reasonably expected to have a materially adverse effect on the properties, business prospects or condition (financial or otherwise) of Borrower and Borrower is acting in good faith and with reasonable dispatch to cure such noncompliance.

- B. **Buy American Requirements.** Borrower understands that the Loan Proceeds are being funded with Federal monies requiring provisions commonly known as “Buy American” which requires all of the iron, steel and manufactured goods used in the Project to be produced in the United States (“Buy American Requirements”). Borrower hereby represents and warrants to and for the benefit of CITY that: (i) Borrower has reviewed and understands the Buy American Requirements; (ii) all of the iron, steel and manufactured goods used in the Project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (iii) Borrower and its agents will provide any further verified information, certification or assurance of compliance herewith, or information necessary to support a waiver of the Buy American Requirements, as may be requested by CITY. Notwithstanding any other provision of this Agreement, any failure to comply herewith shall entitle CITY to recover as damages against Borrower any loss, expense or cost (including without limitation attorney’s fees) incurred by CITY resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part from USEPA).
- C. **Litigation.** Borrower shall promptly give notice in writing to CITY of any litigation pending or threatened against Borrower or the Property in excess of Twenty Thousand Dollars (\$20,000).
- D. **Non-Discrimination and Equal Opportunity.** Borrower agrees to comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex, sexual orientation and disability. In addition, Borrower shall undertake good faith efforts in compliance with 40 C.F.R. § 31.36 (e) or 30.44(b) to give opportunities to qualified Small Business Enterprises, Minority Business Enterprises and Women-Owned Business Enterprises to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. Borrower shall submit a report of such efforts at the request of CITY.

¹ Compliance with the Davis-Bacon Act requires payment of federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with WABRLF Funds. Borrower must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

- E. Debarment and Suspension.** Borrower certifies that Borrower and, to its knowledge, any Contractor(s):
1. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereinafter "public") transactions;
 2. Have not within a three (3) year period preceding this agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; (ii) violation of federal or state antitrust laws; or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under subsection 2, above; and
 4. Have not within the preceding three (3) years had a public transaction terminated for cause or default.
- F. Environmental Compliance.** Borrower certifies that it is not now, and has not in the past been, subject to any penalties resulting from environmental non-compliance at the Property. Borrower further certifies that it will conduct cleanup activities in accordance with the CITY program, WDNR NR 700 Voluntary Cleanup Process and the Remedial Action Plan. Based on public involvement requirements or unforeseen site circumstances, Borrower shall consult with the appropriate state response program to determine if it is necessary to formally amend the Remedial Action Plan or Project. All changes or modifications to the Project or Remedial Action Plan shall be approved in writing by the state response program prior to such change or modification becoming effective.
- G. Notice of Change in Remedial Action Plan.** Borrower shall immediately report in writing to CITY and its consultants any changes in the Remedial Action Plan and the discovery of hazardous substances, pollutants or contaminants not identified in the Remedial Action Plan. The WDNR oversight staff shall approve all changes in or modifications to the Remedial Action Plan prior to such change or modification becoming effective. CITY will not require any changes to the Remedial Action Plan above and beyond those required by the WDNR oversight staff. Borrower shall be responsible for all additional costs incurred as the result of any changes or modifications. In the event that unforeseen conditions are discovered during the course of the Project, CITY reserves the right to revise the Budget and Project Activities (Section XII of this Agreement) and other Project documents.
- H. Project Start and Completion.** Borrower agrees to begin the Project within three (3) months of the Closing Date and to complete the Project in accordance with the Project Schedule of the Application to last not more than 12 months from when it starts, subject to unavoidable delay. As used herein, the term unavoidable delay shall mean delays due to acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment or labor, governmental restrictions or any similar cause over which Borrower is unable to exercise control. Borrower shall notify CITY when the Project is complete. The notice of completion shall contain certification or documentation necessary to establish the following:
1. Borrower has prepared, and the WDNR has approved, a Closure Request Report. This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the Project, if any. Borrower shall supply supplemental information as needed by CITY to complete a "Cleanup Closeout Report."
 2. The WDNR has issued an appropriate assurance of cleanup completion letter.

3. All Loan Proceeds were expended for eligible Project activities

- I. **Inspection and Right to Stop Work.** Lender and the state response program shall have full authority to enter the Property and inspect the Project at all times during the execution of the Project. Borrower recognizes that Lender or the state response program has the right to stop the Project immediately and take reasonable and necessary action in the event that the Project is unsatisfactory or is not substantially in accordance with the Remedial Action Plan, or that a condition exists which creates an imminent and substantial threat to human health, welfare or the environment.

XI. MISCELLANEOUS

- A. **Governing Law and Inconsistent Provisions.** The Loan Documents shall be construed in accordance with and governed by the laws of the State of Wisconsin except where superseded by federal statutes or regulations. Where provisions of the Application are inconsistent with provisions of this Agreement, this Agreement takes precedence over the Application.
- B. **Null and Void Covenants.** Borrower agrees that, in the event that any provision of this Agreement or any other instrument executed at closing shall be declared null and void, invalid, or held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are now and shall hereafter be deemed separate.
- C. **Notices.** Except as otherwise expressly provided herein, all notices, payment requests, requests for changes in the Project budget, schedule or scope of work, and other communications provided for in this Agreement shall be in writing and mailed by certified mail, postage prepaid, or delivered by a recognized overnight express delivery service or sent by electronic mail, telecopy or facsimile transmission to the applicable party at its address indicated below:

To CITY: City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214
FAX: (414) 302-8401
Telephone: (414) 302-8462
Attn: Patrick Schloss
Executive Director, Economic Development

To Borrower: SoNa Lofts, LLC
330 East Kilbourn Avenue
Milwaukee, WI 53202
Attn:

With a copy to: City of West Allis

7525 W. Greenfield Avenue
West Allis, WI 53214
Attn: Kail Decker
City Attorney

All such notices, requests, demands and other communications shall, when mailed, be effective when deposited in the mails, provided that a copy of such document shall also have been sent via facsimile transmission on the same day as the mailing. Without this facsimile transmission, notices, requests, demands or other communications shall be effective, when mailed, or electronically mailed only upon receipt.

D. **Amendments.** Amendment, modification, termination or waiver of any provision of any portion of this Agreement or consent to any departure by Borrower therefrom shall not be effective unless it is in writing and signed by an authorized representative of CITY, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. This Agreement may not be amended unless by a written instrument signed by CITY.

XII. APPROVED PROJECT BUDGET AND PROJECT ACTIVITIES

The following Activities and Costs are based on the Project Budget submitted by Borrower in the Application. Modifications to the following Project activities or Project Costs must be approved in writing by CITY.

XIII. SIGNATURES

CITY and Borrower, as of the Loan Closing Date, hereby acknowledge their assent to this Agreement and agree to be bound by its terms through their signatures entered below:

BORROWER:

CITY:

SoNa Lofts, LLC

By _____

By _____

Title: Manager

Title: _____

By _____

Title: Jason Kacmarek
Finance Director

Examined and approved as to form
and execution this _____ day of
_____, 2021.

Kail Decker, City Attorney

EXHIBIT 1

Description of Property