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PURCHASE AND SALE AGREEMENT

3 **THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made as of the 30th
4 day of December, 2016, between the Community Development Authority of the City of West
5 Allis, a separate body politic created by ordinance of the City of West Allis, pursuant to Section
6 66.1335 of the Wisconsin Statutes, ("Authority"), the City of West Allis, a Wisconsin municipal
7 corporation ("City"), Element 84, LLC, a Wisconsin Limited Liability Company, its successors
8 and/or assigns ("Element 84"), and West Allis 84 Properties, Inc. ("Corporation"), a Wisconsin
9 corporation, its successors and/or assigns (Element 84 and Corporation are collectively,
10 "Developers"). (Authority and City are collectively "West Allis"). Authority, City, Element 84
11 and Corporation are each referred to herein as a party or together as "Parties."

12 **FOR AND IN CONSIDERATION** of the promises and the undertakings and mutual
13 covenants of the Parties set forth herein, the receipt and sufficiency of which are hereby
14 acknowledged, Authority, City, and Developers hereby covenant and agree as follows:

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16 **1. Guarantor.** For purposes of this Agreement, the Developers and Element 84
17 Development Partners LLC, a Wisconsin limited liability company, are collectively the
18 "Guarantor" under this Agreement.

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20 **2. Public Property.** Authority hereby agrees to sell and convey unto Corporation, and
21 Corporation hereby agrees to buy and pay for the certain parcels of real property within the City
22 of West Allis, Milwaukee County, Wisconsin, consisting of approximately 4.790 acres of land
23 which is more particularly described and depicted as City tax key parcels in Table 1 (the "Public

1 Property):

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Table 1. Public Property

Parcels	Address	Parcel Number	Owner	Acres
1	82** W. Orchard St.	452-0711-000	CDA	2.828
2	1515 S. 83 St.	452-0712-000	CDA	1.344
3	15** S. 83 St.	452-0420-000	CDA	0.122
4	Parking Lot	452-0417-001	CDA	0.364
5	Parking Lot	452-0415-000	CDA	0.132
Total				4.790

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The legal description which is attached hereto as **Exhibit A-1 – Legal Description of Public Property**. The sale includes all of Authority’s interest in each parcel and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving the Public Property. Authority acknowledges and agrees that Corporation may convey a strip of land, approximately 49 feet wide by 390 feet long, which is currently part of the property located at 1515 S. 83rd Street (Parcel Number 452-0712-000) to the owner of the adjacent property located at 1510 S. 84th Street (the “Excluded Land”), and that upon such conveyance, the Excluded Land shall not be deemed part of the Property or the Project. Authority and City further agree to cooperate with Corporation in approving the certified survey map necessary for conveyance of the Excluded Land (which will establish a legal description of the Excluded Land), subject to an amended Special Use Permit being approved and further agree that the number of surface parking spaces referenced herein will be adjusted by the number of spaces attributable to the Excluded Land once conveyed to the adjacent property owner.

3. Private Property. Element 84 shall acquire approximately 1.224 acres of private land

1 and improvements and have evidence of ownership of of said land which is described and
2 depicted as City tax key parcels in Table 2 (the "Private Property") and attached hereto as
3 **Exhibit A -2 – Legal Description of Private Property.**

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5 **Table 2. Private Property**

	Address	Parcel Number	Owner	Acres
6	1525-27 S. 83 St.	452-0421-000	Private	0.122
7	1529-27 S. 83 St.	452-0422-000	Private	0.122
8	1533-35 S. 83 St.	452-0423-000	Private	0.243
9	1470-78 & 1480-88 S. 84 St.	451-0642-006	Private	0.737
Total				1.224

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7 **4. The Property.** The Public Property described under the **Exhibit A-1– Legal**
8 **Description of Public Property** and the Private Property described under **Exhibit A-2 – Legal**
9 **Description of Private Property** will sometimes be referred to herein collectively as (the
10 "Property") and encompass the entire site for the Project and described under **Exhibit A -3-**
11 **Legal Description of The Property.**

12
13 **5. Project.** The Project will include the construction of two 4-story multifamily apartment
14 buildings having in total approximately 203 apartment units. One of the buildings will also
15 include approximately 3,100 sq. ft. of commercial space. The Project will include approximately
16 241 underground parking spaces and approximately 144 surface parking spaces, which includes
17 the off-site parking lot referenced in Section 9. The Parties agree that the actual number of

1 surface parking spaces may be reduced by the number of spaces attributable to the Excluded
2 Land. Changes are subject to the amended Special Use Permit being approved. The Project is
3 depicted in the attached **Exhibit B – Project Elevation and Site Plan.**

4
5 **6. Purchase Price.** The purchase price for the Public Property shall be One Dollar (\$1.00)
6 per parcel (the "Purchase Price"), to be paid at Closing. Closing will occur after Plan
7 Commission Approval of the Site Plan, Architectural Review, Developers' closing on the loan
8 commitment described in Section 11. A (7) below and satisfaction or waiver of all West Allis's
9 contingencies and Developers' contingencies, but not later than 30 days following satisfaction or
10 waiver of the last of such contingencies, unless otherwise agreed by West Allis and Developers
11 in writing (the "Closing Date").

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13 **7. Conveyance.** Authority shall, at closing and upon receiving payment of the Purchase
14 Price, convey the Public Property to Corporation by Warranty Deed as in the form attached
15 hereto as **Exhibit C –Warranty Deed.**

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17 **8. As Is, Where Is.** Except as otherwise expressly set forth, the Public Property is being
18 conveyed "as is, where is" by Authority to Corporation. Developers are responsible for
19 demolition of the remaining structures and existing improvements on the Public Property. West
20 Allis has not made, and has no duty or obligation to make, any warranties or representations,
21 written or oral, express or implied, in any way related to the Public Property.

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23 **9. Parking Lot.** The existing parking lot located at S. 83 Street and W. Orchard Street

1 contained within the Public Property will be conveyed by Authority to Corporation for off-site
2 parking purposes. In addition, Developers agree to grant an easement to West Allis Hotel
3 Ventures, LLC for the permitted shared use of the off-site parking lot and providing for shared
4 maintenance of such off-site parking lot, on terms and conditions acceptable to Developers, in
5 their reasonable discretion.

6
7 **10. Site Preparation.** Authority shall convey the Public Property “AS IS” except as
8 expressly provided for in the Environmental Addendum attached as **Exhibit D –**
9 **Environmental Addendum.** Developers shall be responsible for all costs associated with
10 environmental remediation and all general site preparation unless expressly provided otherwise
11 in this Agreement.

12
13 **11. Conditions to Closing.**

14 **A. West Allis’s Contingencies to Closing.** The obligation of West Allis to
15 consummate the transaction contemplated hereby is subject to the fulfillment of all of the
16 following conditions on or before the Closing Date, except as provided in Section 11. A.
17 (9) (which may be waived by West Allis in whole or in part in its sole discretion):

18 (1). **Compliance with Agreement.** Developers shall have performed and
19 complied with all of their obligations under this Agreement to the extent such
20 obligations are to be performed or complied with by Developers on or before the
21 Closing Date.

22 (2). **No Litigation.** There shall be no litigation, threat, investigation, or other
23 proceeding challenging or affecting the legality of the transactions contemplated
24 by this Agreement, or seeking the restraint, prohibition, damages or other relief in

1 connection with this Agreement or the use intended for the Property by
2 Developers, and none of the same shall have been instituted or threatened by any
3 person, agency, or other entity prior to closing.

4 (3). Corporation shall pay the Purchase Price outlined in the above Section 6.

5 (4). Developers or Guarantor, as applicable, shall have executed, accepted the
6 terms, and signed this Agreement, the Development Agreement attached as
7 **Exhibit E**, Development Financing Agreement attached as **Exhibit F**, the
8 Memorandum of Agreements attached as **Exhibit G**, the Project Budget attached
9 as Exhibit H, the Pro Forma attached as Exhibit I, the Contingent Payment
10 Calculation attached as Exhibit J, the Guaranty of Completion attached as **Exhibit**
11 **K** and the Increment Guaranty Agreement attached as **Exhibit L**.

12 (5). Developers shall provide evidence of ownership of the Private Property,
13 described in **Exhibit A-2 – Legal Description of Private Property**.

14 (6). West Allis shall have determined that it is able and willing to meet the
15 Title and document requirements in Section 12. B. (4).

16 (7). West Allis approves the Developers' Project Financing. It shall be
17 deemed adequate proof if Developers demonstrate that they have secured a loan
18 commitment from a lender in the amount per **Exhibit I - Pro Forma** and upon
19 terms reasonably acceptable to Developers. A commitment letter approving the
20 financing must be provided to West Allis. Said commitment must be received by
21 West Allis on or before March 31, 2017.

22 (8). The requirements of Section 9 Parking Lot have been provided for in a
23 manner acceptable to the Parties.

1 (9). **Termination.** In the event the conditions in subparagraphs (1) – (8)
2 above have not been satisfied or waived by West Allis, by written notice to
3 Developers on or before March 31, 2017, West Allis may terminate this
4 Agreement; provided, however, if the condition set forth in subparagraph (7) has
5 not been satisfied or waived by such date, West Allis will in good faith consider
6 any request for an extension of this deadline requested by Developers if
7 Developers can demonstrate that they are pursuing satisfaction of the condition in
8 good faith and with due diligence. In case of such termination, no Party shall
9 have any further liability under this Agreement except as specifically set forth as
10 surviving termination. Closing on the conveyance of the Public Property shall be
11 deemed a satisfaction or waiver of the said conditions.

12 (10) **No Misrepresentation or Breach of Covenants and Warranties.** There
13 shall have been no breach by Developers in their performance of any of their
14 covenants herein, and each of the representations and warranties of Developers
15 outlined or referred to in this Agreement shall be deemed to be true and correct in
16 all respects on the Closing Date as though made on the Closing Date.

17 **B. Developers' Contingencies to Closing.** The obligation of Developers to
18 consummate the transaction contemplated hereby is subject to the fulfillment of all of the
19 following conditions on or before the Closing Date, except as provided in Section 11. B.
20 (9) (which may be waived by Developers in whole or in part, in their sole discretion):

21 (1). **Compliance with Agreement.** West Allis shall have performed and
22 complied with all of its obligations under this Agreement, to the extent such
23 obligations are to be performed or complied with by West Allis on or before the

1 Closing Date.

2 (2). **No Misrepresentation or Breach of Covenants and Warranties.** There
3 shall have been no breach by West Allis in the performance of any of its
4 covenants herein, and each of the representations and warranties of West Allis
5 outlined or referred to in this Agreement shall be deemed to be true and correct in
6 all respects on the Closing Date as though made on the Closing Date.

7 (3). **No Litigation.** There shall be no litigation, threat, investigation, or other
8 proceeding challenging or affecting the legality of the transactions contemplated
9 by this Agreement, or seeking the restraint, prohibition, damages or other relief in
10 connection with this Agreement or the use intended for the Property by
11 Developers, and none of the same shall have been instituted or threatened by any
12 person, agency, or other entity prior to closing. Such litigation or threat thereof
13 shall include, but not be limited to, challenges to West Allis's right to take or to
14 have taken the Public Property or the rights of tenants or occupants of the
15 Property to remain.

16 (4). **Developers' Project Financing.**

17 (a) Developers have secured sources of financing outlined in **Exhibit I**
18 - **Pro forma** with terms reasonably acceptable to Developers. A
19 commitment letter approving the loan financing must be provided to West
20 Allis.

21 (b) Developers have secured public financing per the terms and
22 conditions within the **Exhibit F – Development Financing Agreement.**

23 (5). **West Allis's Approvals, Test, and Reports.** West Allis shall have

1 furnished to Developers such documents in West Allis's possession or under its
2 control within fifteen (15) calendar days of execution, or which West Allis may
3 obtain hereafter, as may be requested by Developers for purposes of evaluating
4 the Property and their ability to use the Property for the use intended by
5 Developers. As a condition precedent to West Allis's obligations under this
6 provision, Developers shall furnish to West Allis, within fifteen (15) calendar
7 days after the date of the Effective Date of this Agreement, a comprehensive list
8 of documents, test results, studies and reports ("Document List") referred to or
9 described above that are already in the possession of Developers or their agents,
10 and West Allis shall not be obligated to provide anything to Developers which is
11 contained on the Document List.

12 (6). **Government Approvals.** Developers shall have confirmed not later than
13 90 days after signing of this Agreement, that Developers have obtained, or have
14 obtained adequate assurances of the availability of any governmental permits,
15 easement agreements, licenses, and approvals that are or may be necessary to
16 develop and use the Property in the manner intended by Developers; provided,
17 however, if any such approvals cannot be obtained within said time period, the
18 date for Closing shall be extended until all approvals have been obtained provided
19 Developers are pursuing such approvals in good faith and with due diligence.

20 (7). **Utilities.** Developers shall have been satisfied, in their sole discretion,
21 with the location, availability and suitability of municipal and other utilities in
22 connection with Developers' intended use of the Property. West Allis makes no
23 representations or warranties concerning the location or the condition of utilities.

1 (8) **Due Diligence.** Developers and their lender shall have been satisfied, in
2 their sole discretion, with the physical condition of the Property, including any
3 environmental conditions, and with the condition of title to the Property.

4 (9) **Termination.** If Developers fail to waive or acknowledge the satisfaction
5 or waiver of the conditions in (4) through (8) on or before March 31, 2017, then
6 any Party may terminate this Agreement; provided, however, if the condition set
7 forth in subparagraph (4) has not been satisfied or waived by such date, West
8 Allis will in good faith consider any request for an extension of this deadline
9 requested by Developer if Developer can demonstrate that it is pursuing
10 satisfaction of the condition in good faith and with due diligence. In case of such
11 termination, no party shall have any further liability under this Agreement except
12 as specifically set forth as surviving termination. Closing on the Public Property
13 shall be deemed as satisfaction or waiver of the said conditions.

14
15 **12. A. West Allis's Obligations under this Agreement include:**

16 (1). West Allis shall cooperate with the Developers through the term of this
17 Agreement and shall promptly assist in obtaining the necessary City review
18 and/or process all submissions and applications in accordance with the applicable
19 City ordinances.

20 (2). Subject to satisfaction of all the terms and conditions of this Agreement,
21 West Allis shall make available to the Project the following contributions and
22 assistance:

23 (a) Authority will convey the certain parcels in **Exhibit A-1 –Public**

1 **Property to Corporation.**

2 (b) The financial assistance as outlined under **Exhibit F -**
3 **Development Financing Agreement** shall be provided to Corporation.

4 (3). West Allis will cooperate with Corporation in its efforts to secure a
5 brownfield grant for the Project in the amount of \$500,000 from the Wisconsin
6 Economic Development Corporation ("WEDC"). If requested, West Allis agrees
7 to issue letters of support for Corporation's application to WEDC.

8 **B. Developers' Obligations under this Agreement include:**

9 (1). Developers will obtain all necessary governmental approvals and
10 financing without contingencies to construct the Project in accordance with the
11 Project Plans.

12 (2). Developers and Guarantor will deliver financial statements to West
13 Allis's financial consultant (which shall remain confidential) and financial
14 consultant will report to West Allis on the Strength Position of each said financial
15 statement. Strength Position defined as the overall net capacity of the Developers
16 and Guarantor to meet the financial obligations of this Agreement.

17 (3). Developers will deliver to West Allis the executed guaranties required
18 under this Agreement, the form of which is attached hereto and incorporated
19 herein as **Exhibit K – Guaranty of Completion and Exhibit L –Increment**
20 **Guaranty Agreement.**

21 (4). Title Evidence and Documents.

22 (a) Developers shall have received within fifteen (15) calendar days
23 after the date of this Agreement a commitment (the "Title Commitment")

1 from First American Title Insurance Company (the "Title Company") to
2 issue an owner's policy of title insurance ("Title Policy") to Corporation in
3 the amount of the Purchase Price of the Public Property, which Title
4 Commitment shall show Authority's title to be merchantable as of the
5 Closing Date, subject only to such liens as will be paid out of the proceeds
6 of closing and such exceptions to title which will not unreasonably inhibit,
7 prohibit or impair Developers' use of the Property for Developers'
8 intended uses.

9 (b) Developers shall be responsible for obtaining and the paying for an
10 ALTA/ASCM all-urban standards survey ("Survey") of the Public
11 Property.

12 (c) Developers, within fifteen (15) calendar days after receipt of the
13 last of the Title Commitment and Survey shall submit to West Allis in
14 writing a list of matters affecting the Public Property to which the
15 Developers object ("Title Objections"). West Allis shall have fifteen (15)
16 calendar days to remove or cause the Title Company to insure over the
17 Title Objections. Developers reserve the right to approve the means and
18 methods by which West Allis proposes to remove or cause the Title
19 Company to insure over the Title Objections. In the event that West Allis
20 is unable or unwilling to remove the Title Objections to Developers'
21 satisfaction, Developers shall have 5 days from receipt of notice thereof,
22 to deliver written notice waiving the Title Objections. If Developers do
23 not waive the Title Objections, then this Agreement shall be null and void

1 and both Developers and West Allis shall have no further liabilities under
2 this Agreement.

3 (5). **Assessments.** As of the date hereof and as of the Closing Date, there are
4 no special assessments or charges outstanding for public improvements, which
5 remain unpaid, that have been made, or will have been made against the Public
6 Property. If an unpaid property tax bill exists as of the Closing Date, any unpaid
7 taxes shall be prorated between the Developers and Authority. Developers shall
8 pay all taxes, special assessments, and charges made against the Public Property
9 after the Closing Date.

10 (6). **Developer Acceptance.** Corporation acknowledges that it is purchasing
11 the Public Property on the basis of its own environmental investigation and
12 accepts the existing condition of the Public Property and the availability, access,
13 and adequacy of existing public utilities.

14
15 **13. Savings Agreement.** Prior to start of construction, West Allis and Developers shall
16 agree on a final **Project Budget** substantially in the form attached as **Exhibit H**. West Allis will
17 be engaging its own construction cost consultant to review the Project Budget and to monitor
18 final costs. The Developers agree to cooperate with the consultant and provide such information
19 as it may request to satisfy this section.

20 **A. Net Savings.** Final determination of Net Savings shall be made by the
21 City's Construction Cost Consultant. If the aggregate final costs less any unspent
22 Development Contingency (defined below) on the Project are less than the total
23 cost of the Project set forth on the Project Budget attached as **Exhibit H**, as

1 measured at the time of Project Stabilization, (“Project Savings”), said Project
2 Savings shall be distributed as follows:

3 (a) Sixty percent (60%) to the City and Authority to reduce the final amount of
4 the Series II Bond.

5 (b) Forty percent (40%) to the Developers to establish a debt service reserve or
6 Debt Service Management Account.

7 The term “Project Stabilization” shall mean the first three-month period where the
8 Project reaches 90 % occupancy. Within 60 days following Project Stabilization,
9 Developers shall provide West Allis and its construction consultant with a
10 detailed description of the actual costs of the Project in a manner and format
11 consistent with the original Project Budget attached as **Exhibit H**. West Allis or
12 its consultant may request any additional support or verification as may be needed
13 including invoices and other proof of payments to compare the final cost to the
14 original Project Budget.

15 B. The term “Development Contingency” shall mean designated funds within the
16 Project Budget reserved and identified by the Developers for Project cost
17 overruns or unknown project expenditures. More specifically the amount
18 identified as the Development Contingency within the Project Budget attached
19 hereto as **Exhibit H- Project Budget**. The Development Contingency may only
20 be used by Developers to pay qualified Project costs, outlined in the Project
21 Budget, after exhausting all other sources, including the Debt Service
22 Management Account, or, following Project Stabilization, to pay to the equity
23 investors in the Project as a partial return of their capital. No amount in the

1 Development Contingency may be paid, directly, or indirectly to Developers or
2 West Allis.

3
4 **14. Tax Increment Financing**

5 **A. Tax Incremental District.** Pursuant to the Wisconsin Tax Increment Law, Wis.
6 Stats. §66.1105 *et seq.*, the Common Council of the City of West Allis created by
7 resolution Tax Incremental District Number 11 (TID), City of West Allis, as of
8 November 2, 2009 (the "District") and approved the project plan (the "Project Plan") for
9 the District (as amended). The Property is within the boundaries of the District and the
10 transaction contemplated by this Agreement and the Development Agreement is essential
11 to the viability of the District.

12 (1). The Project to be developed by Developers benefits the surrounding
13 neighborhood and West Allis as a whole. West Allis has determined that the
14 Project is consistent with the TID Project Plan and with the City's Master Plan as
15 amended dated January 26, 2011.

16 (2). West Allis desires to encourage economic development, expand the tax
17 base, and create new jobs within the area, all in furtherance of and in compliance
18 with the TID Project Plan and the Master Plan. West Allis finds that the Project
19 and this Agreement are in the vital and best interests of West Allis and its
20 residents and serves a public purpose in accordance with state and local law.

21 (3). The Project would not occur without the financial participation of West
22 Allis as provided herein.

23 (4). The financial participation of West Allis in the Project is more specifically

1 described in **Exhibit F – Development Financing Agreement**. Said financial
2 assistance consists of two components: the City Investment and the Developer
3 Financed Contribution, as such terms are defined in the Development Financing
4 Agreement.

5 **B. TID Law.** All terms that are Capitalized but not defined in this Agreement and
6 that are defined under the Tax Increment Law shall have the definitions assigned to such
7 terms by the Tax Increment Law.

8 **C. Shortfall Agreement.** In consideration of West Allis providing the City
9 Investment, Developers shall be obligated to make Shortfall Guarantee payments if Tax
10 Increments (as such terms are defined in Exhibit F, the Development Financing
11 Agreement) generated in the calendar year 2017 and in any calendar year thereafter are
12 not sufficient to pay annual debt service on the City Investment.¹

13 (1). Shortfall Guarantee Payment Calculations.

14 (a) The City shall structure its borrowing for the City Investment such
15 that, based upon the projected Tax Increments for the Project, the debt on
16 the City Investment can be fully repaid within 15 years following the date
17 of this Agreement (“Maximum Term”).

18 (b) If the Tax Increments generated by the Project in any given
19 calendar year are not sufficient to pay debt service on the City Investment
20 due in such calendar year, then Developers shall pay the City the Shortfall

1 The calendar year in which Tax Increments are to commence remains subject to change depending on actual Project commencement date and the corresponding final City financial model.

1 Payment allocable to the Property as required under the Development
2 Financing Agreement.

3 (c) If the Tax Increments generated by the Project in any given
4 calendar year exceed the amount necessary to pay debt service on the City
5 Investment and Administrative Costs due in such calendar year (per
6 Section 5 of the Development Finance Agreement), then City shall deposit
7 any such excess in a debt service reserve account, which shall be used to
8 offset any Shortfall Payments that may become due in future years and to
9 repayment of the Series II Bond, prior to the closure or expiration of the
10 Tax Increment District.

11 (d) Prior to closure or expiration of the Tax Increment District, the
12 City shall provide Developers with an accounting of any Shortfall
13 Payments made by Developers, and with an accounting of any excess Tax
14 Increments from the Project that remain in reserve pursuant to subsection
15 (c), above. If any such excess Tax Increments remain in reserve at that
16 time from the Project, then such funds shall be distributed first to
17 Developers to repay to the Developers any prior Shortfall Payment(s)
18 made by Developers, without interest, that have not been repaid
19 previously, and second to pay down any remaining balance on the Series
20 II Bond. All obligations for repayment of shortfall payments or unpaid
21 balance of Series II Bond shall terminate with the expiration or closure of
22 the Tax Increment District.

1 (2). Developer agrees to the following:

2 (a) Developers agree that the amount of any Shortfall Payment due
3 and owing to the City of West Allis in any given year may be treated as a
4 Special Charge (as defined in Wis. Stat. Section 74.01(4) levied against
5 the Property, without notice or hearing, such notice and hearing being
6 expressly waived by Developers. The special charge shall be a lien on
7 Developers' properties and shall be extended upon the tax roll for the year
8 in which it is due and owing against the Property and not against
9 Developers' other assets, interests, claims or rights of Developers or their
10 affiliates. All proceedings in relation to collection, return and sale of the
11 Property for delinquent real estate taxes shall apply to any such special
12 charge.

13 (c) The Developer agrees to guaranty the increment of the TID pursuant to
14 the conditions of the Increment Guaranty Agreement hereto incorporated
15 within as **Exhibit L**.

16
17 **15. Contingent Payment**

18 **A.** In further consideration of West Allis's participation in this Agreement, if the
19 actual financial returns from the Project are such that Developers' internal rate of return
20 on Investor Equity ("Developers' IRR") (as such term is hereinafter defined) exceeds
21 eighteen percent (18%) as determined herein (such excess hereinafter "Excess Return"),
22 then Developers agree to pay fifty percent (50%) of such Excess Return to West Allis
23 ("Contingent Payment"). For purposes hereof, the term "Investor Equity" shall mean the

1 sum of all of the investor equity, Developers' equity, and any manager or member loans,
2 together with any substitutes, replacements or supplements thereof or thereto, in any part
3 of the Project. The determination of Developers' IRR shall be calculated in accordance
4 with this Section and the example set forth in **Exhibit J** ("Contingent Payment
5 Example") upon the occurrence of the following, as more particularly provided below:

- 6 (1). Upon the closing of a sale of controlling interest in the Project by
7 Developers to an individual or entity that is not affiliated with or controlled by
8 Developers or a direct or indirect member of Developers (a "Sale");
- 9 (2). Upon a cash out refinancing (as defined below) of the Project;
- 10 (3). Upon a 1031 tax free exchange of the Project;

11 **B.** For purposes of this Agreement, the term "cash out refinancing" shall mean a
12 refinancing of the Project that generates sufficient cash that said refinancing directly
13 results in a cash distribution to the members of Developers and that results in the
14 members receiving a return of all of their capital and preferred returns. As necessary, the
15 amount of Net Proceeds for purposes of calculating Developers' IRR from partial cash
16 out financings, where cash is distributed to the Members but in insufficient amounts to
17 return all of the capital, preferred returns, and partial Sale events after which Developers
18 retain a continued ownership interest in the Project, will be accumulated for purposes of
19 establishing the total amount of Net Proceeds for purposes of calculating Developers'
20 IRR and will not be paid until the total amount of the Net Proceeds can be calculated.
21 Unless otherwise agreed to by Developers and West Allis, the Contingent Payment shall
22 be paid in one lump sum pursuant to the terms and provisions herein and as more
23 particularly set forth below.

1 C. Upon the occurrence of an event or events under Paragraph A, 1 through 3 above
2 that triggers the requirement that Developers make the Contingent Payment, Developers
3 shall have up to 90 days subsequent to the determination of the amount of the Contingent
4 Payment to make such payment.

5 D. **Terms.** “Net Proceeds” is herein defined to mean the gross sale proceeds, less:

6 (1). Cost of Sale and customary costs of closing, such as title insurance,
7 closing fees, taxes, recording fees, transfer fees, expense prorations, accounting
8 expenses and reasonable attorney’s fees;

9 (2). Amounts due lenders for the Project and amounts of any other
10 indebtedness, including the balance owed on the Developer Financed
11 Contribution, the proceeds of which were applied to the Project;

12 (3). Investor Equity;

13 (4). Any deferred portion of Developers’ Developers Fee and other deferred
14 fees (collectively, “Deferred Fees”), including any accrued and unpaid preferred
15 return thereon.

16 E. If a Sale or 1031 exchange occurs before closure of the District, and the full
17 repayment of the various financial obligations secured by the Guaranty or if any amounts
18 are still due to West Allis or to the Guarantors, West Allis agrees to (1) continue to make
19 the scheduled payments of the City Investment and Developer Financed Contribution (to
20 the extent not already fully disbursed), to disburse payments to the purchaser of the
21 controlling interest in the Project (to the extent not all ready fully disbursed) and to
22 disburse any amounts payable to the Guarantors or their assignees, and (2) to continue
23 administering and operating the District in accordance with this Agreement.

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16. Payment In Lieu of Taxes. Ownership of the Property by any person, partnership, corporation, or entity, which in any manner renders any part of the Property exempt from property taxation during the life of TID Number 11 shall result in a payment in lieu of taxes from the Developers, their successors, heirs and assigns, to City each year in an amount equal to the amount of taxes that would be due and owing on the Property if it was not tax exempt. Such payment shall be due, payable and collected in the same manner as property taxes, to the extent permitted by law. Developers, their successors, heirs, and assigns waive the right to contest the validity of this provision. This Section shall automatically terminate upon the termination of TID Number 11.

17. [Intentionally Omitted]

18. Memorandum of Agreements. West Allis and Developers agree that they will execute a memorandum of this Agreement and the Development Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County, Wisconsin in substantially the form attached hereto as **Exhibit G**. The Memorandum of Agreements shall be executed by the Parties at the time of Closing. The Parties further agree that the Memorandum of Agreements shall be recorded prior to Developers attaching any mortgage, lien, or other encumbrance on the Public Property except for any mortgage or lien granted to a lender in connection with their construction and permanent loans in an amount outlined in **Exhibit I - Pro Forma**.

19. Development Agreement. Simultaneously with the execution of this Agreement,

1 Developers and West Allis shall execute a Development Agreement (the "Development
2 Agreement") in the form attached hereto as **Exhibit E**.

3

4 **20. Environmental.** The provisions of this Agreement with regard to environmental matters
5 are set forth on the "Environmental Addendum" in the form attached hereto as **Exhibit D**.

6

7 **21. Closing.** The closing of the sale and purchase of the Public Property (the "Closing")
8 shall be held at such place as the Parties may mutually agree, on or before the Closing Date, or
9 another date, time, or manner specified in writing by mutual agreement of the Parties.

10 **A.** Closing will be into an escrow account with the Title Company.

11 **B.** Closing Costs will be allocated as follows:

12 (1). Developers shall pay the cost to record the Deed and their loan
13 documents;

14 (2). Authority shall pay any transfer fee arising by reason of transfer of the
15 Public Property;

16 (3). Authority shall pay the recording fee for any satisfaction of its existing
17 liens and encumbrances and Memorandum of Agreements;

18 (4). Each Party shall pay its own attorney's and other professional fees; and

19 (5). All other non-specified closing costs shall be paid by Developers.

20 **22. Representation and Warranties.**

21 **A. Authority's Warranties.** Authority hereby represents and warrants that as of the
22 date hereof and as of the Closing Date:

23 (1). **Organization; Good Standing.** Authority is a Community Development

1 Authority duly organized and validly existing under Sec. 66.1335 of the laws of
2 the State of Wisconsin. Authority has full power and authority to sell, own, or
3 hold under lease its properties and assets and to carry on its business as presently
4 conducted, to enter into this Agreement, and to carry out the transactions
5 contemplated hereby.

6 (2). **Authorization.** The execution and delivery of this Agreement and the
7 consummation by Authority of the transaction contemplated hereby are within the
8 power and authority of Authority and have been duly authorized by all necessary
9 actions on the part of Authority and the persons executing this Agreement on
10 behalf of the Authority have been duly authorized.

11 (3). **No Violation or Conflict.** The execution, delivery, and performance of
12 this Agreement by Authority does not and will not conflict with or violate any
13 law, regulation, judgment, deed restriction, order, decree, or any contract or
14 agreement to which Authority is a party or by which it is bound.

15 (4). **Floodplain.** No part of the Property is located in a floodplain, flood
16 hazard area, shore land, wetland, or similarly restricted area.

17 (5). **Liens.** All work performed or materials furnished for lienable work on the
18 Public Property contracted for by West Allis shall have been fully paid for, and
19 West Allis shall provide Developers with appropriate lien waivers or releases
20 from any and all contractors, laborers, or materialmen furnishing labor or material
21 for lienable work on the Public Property during the six (6) months preceding the
22 Closing Date.

23 (6). **Brokers.** The Parties agree to indemnify and hold each other harmless for

1 any claim for commission made by any agent or broker claiming to have acted on
2 the Party's behalf.

3 (7). **Leases**. There are no written or oral leases affecting the Public Property.

4 (8). **Service Agreements**. There is no existing service, maintenance,
5 management or any other agreements with regard to the Public Property.

6 (9). **No Default, Violation or Litigation**. Regarding the Property, other than
7 as set forth in the Environmental Addendum, to West Allis's knowledge, West
8 Allis is not in violation of any regulation, law, order of any court, federal, state, or
9 municipal, or other governmental department, commission, board, bureau, agency
10 or instrumentality, or restriction or covenant contained in any agreement or
11 document of title (including, without limitation, legislation, regulations and
12 agreements applicable to environmental protection, civil rights, public and
13 occupational health and safety), nor has West Allis received any notice of
14 noncompliance that has not been remedied, except as set forth in subsection 10,
15 Laws. To West Allis's knowledge, there are no lawsuits, proceedings, claims,
16 governmental investigations, citations or actions of any kind pending or
17 threatened against West Allis or against the Public Property, nor is there any basis
18 known to West Allis for any such action, and there is no action, suit or proceeding
19 by any governmental agency pending or threatened which questions the legality,
20 validity or propriety of the transactions contemplated hereby nor is there any basis
21 known to West Allis for any such action.

22 (10). **Laws**. Except as disclosed in the Environmental Addendum, the exhibits
23 and schedules attached to this Agreement relating to environmental condition and

1 any documents listed thereon, there is no government agency or court order
2 requiring repairs, alterations, or corrections of or relating to the Public Property or
3 any condition which might be cause for any such order, and to West Allis's
4 knowledge, the Public Property complies with all laws. Further, except as
5 disclosed in the Environment Addendum, the exhibits and schedules attached to
6 this Agreement relating to the environmental condition and any documents listed
7 thereon, to West Allis's knowledge, there is no violation of any law or any
8 building, zoning, environmental, or other ordinance, code, rule, or regulation and
9 no notice from any governmental body or other person has been served upon
10 West Allis or upon the Public Property claiming the violation of any such law,
11 ordinance, code rule, or regulation; there are no legal actions, suits, or
12 administrative proceedings, including condemnation, pending or threatened
13 against the Public Property.

14 (11). **Access and Utilities**. West Allis makes no warranty or representation
15 with respect to access or the availability or adequacy of public and private utilities
16 required for the operation of the Project to be constructed on the Property.

17 (12). **Zoning**. West Allis shall provide assistance to obtain the proper zoning.
18 Developers are responsible at their sole cost to obtain zoning approvals from the
19 City's Development Department and approval from City's Plan Commission that
20 the Property and all improvements to be constructed thereon by Developers
21 pursuant to this Agreement and the Development Agreement conform and comply
22 in all respects without need of a variance or similar approval with the zoning of
23 the Property as contemplated in the Development Agreement.

1 (13). **Warranty.** West Allis acknowledges that the warranties and
2 representations made here and by West Allis are a material inducement to
3 Developers entering into this Agreement, Developers are entitled to rely upon
4 these warranties and representations despite independent investigation undertaken
5 by Developers and that the warranties and representations made here and by
6 West Allis shall survive the Closing and the execution and delivery of the Deed.

7 **B. Developers' Warranties.** Developers hereby represent and warrant that as of the
8 date hereof and as of the Closing Date:

9 (1). **Organization; Good Standing.** Element 84, LLC is a Wisconsin limited
10 liability company duly organized and validly existing under the laws of the State
11 of Wisconsin and authorized to do business in the State of Wisconsin. West Allis
12 84 Properties, Inc. is a Wisconsin corporation duly organized and validly existing
13 under the laws of the State of Wisconsin and authorized to do business in the
14 State of Wisconsin. Developers have full power and authority to acquire and own
15 real estate and to carry on their business as presently conducted, to enter into this
16 Agreement, and to carry out the transactions contemplated hereby.

17 (2). **Authorization.** The execution and delivery of this Agreement and the
18 consummation by Developers of the transaction contemplated hereby are within
19 the power and authority of Developers and have been duly authorized by all
20 necessary actions on the part of Developers, and the persons executing this
21 Agreement on behalf of Developers have been duly authorized.

22 (3). **No Violation or Conflict.** The execution, delivery, and performance of
23 this Agreement by Developers do not and will not conflict with or violate any

1 law, regulation, judgment, deed restriction, order, decree, or any contract or
2 agreement to which Developers are a party or by which they are bound.

3 (4). **Brokers.** Developers have not dealt with or engaged any brokers or
4 finders or others to whom a commission might be owing upon closing of this
5 transaction. Developers agree to indemnify and hold West Allis harmless from
6 any claim for commission made by any agent or broker claiming to have acted on
7 Developers' behalf other than as disclosed herein.

8 (5) **Litigation.** To Developers' knowledge, there are no lawsuits, proceedings,
9 claims, governmental investigations, citation or action of any kind pending or
10 threatened against Developers, nor is there any basis known to Developers for any
11 such action, and there is no action, suit or proceeding by any governmental
12 agency pending or threatened which questions the legality, validity or propriety of
13 the transactions contemplated hereby nor is there any basis known to Developers
14 for any such action.

15 (6) **Warranty.** Developers acknowledge that the warranties and
16 representations made here and by Developers are a material inducement to West
17 Allis entering into this Agreement, West Allis is entitled to rely upon these
18 warranties and representations despite independent investigation undertaken by
19 West Allis and that the warranties and representations made here and by
20 Developers shall survive the Closing and the execution and delivery of the Deed.

21 **C. Waiver and Release.** Except to matters otherwise specifically set forth herein,
22 including Section 10 of this Agreement, if this transaction closes, Developers agree that
23 they waive, release and forever discharge West Allis and West Allis' officers, employees

1 and agents or any other person acting on behalf of West Allis, of and from any claims,
2 actions, causes of action, demands, rights, damages, costs, expenses or compensation
3 whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which
4 Developers now have or which may arise in the future on account of or in any way
5 growing out of or connected with this transaction. This waiver and release does not
6 extend to any matter with respect to which West Allis had actual notice or knowledge
7 prior to Closing and failed to disclose to Developers or to any breach of this Agreement.
8

9 **23. Time of the Essence.** Time is of the essence with respect to all obligations arising
10 hereunder.
11

12 **24. Closing Documentation.** The closing on purchase and sale of the Public Property shall
13 occur by placing all documents and funds into a trust or escrow with a Title Company, and on
14 the date specified in the notice required under Section 21 above (the "Closing"). The Title
15 Company shall prepare a closing statement setting forth a summary of the Purchase Price and
16 debits and credits to Developers and Authority. . The Title Company shall provide for execution
17 at the Closing of a properly completed Wisconsin Real Estate Transfer Return. A Payout Letter
18 shall be delivered for any mortgages or other liens being satisfied as of the Closing Date.

19 **A.** At the Closing, the Authority shall deliver to Developers the following:

- 20 (1). **Possession.** Legal and physical possession of the Public Property.
21 (2). **Warranty Deed.** A General Warranty Deed to the Public Property.
22 (3). **Development Agreement.** The Development Agreement as required
23 under Section 11. A. (4) and is attached as **Exhibit E**.

1 (4). **Memorandum of Agreements.** The Memorandum of Agreements
2 required under Section 11. A. (4) in the form attached hereto as **Exhibit**
3 **G.**

4 (5). **Title Affidavits.** Owner's Affidavit and standard GAP affidavit required
5 by the Title Company for title insurance purposes.

6 **B.** At the Closing, Developers shall deliver to West Allis the following:

7 (1). **Purchase Price** set forth in Section 6.

8 (2). **Development Agreement.** The Development Agreement required under
9 Section 11 A. (4), above.

10 (3). **Development Financing Agreement.** The Development Financing
11 Agreement as required under Section 11. A. (4) and is attached as **Exhibit**
12 **F.**

13 (4). **Memorandum of Agreements.** The Memorandum of Agreements
14 required under Section 11 A. (4) in the form attached hereto as **Exhibit G.**

15 (5). **Private Property.** Proof of ownership of the Private Property.

16 (6). **Guaranties.** The Guaranty of Completion and Increment Guaranty
17 Agreement required under Section 11 A. (4). in the form attached hereto as
18 **Exhibit K and Exhibit L.**

19 **C.** At the Closing, City shall deliver to the Developers the following:

20 (1) City delivers the required Developer Financing Agreement required in Section
21 11 A. (4) in the form attached hereto as **Exhibit F.**

22 (2) The Memorandum of Agreements required under Section 11 A. (4) in the form
23 attached hereto as **Exhibit G.**

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25. Project Documents. If this Agreement is terminated prior to start of construction, Developers shall provide West Allis with copies of third-party consultant reports obtained by Developers for the Project, except for architectural drawings or other Project reports that Developers are not permitted to disclose by law or contract.

26. Condemnation. If, prior to the Closing Date, an authority other than West Allis itself takes the Public Property or any material portion thereof by power or exercise of eminent domain, or institutes any proceedings to effect such a taking, West Allis shall immediately give Developers notice of such occurrence, and Developers shall have the option to terminate this Agreement, whereupon no Party shall have any obligation to another under this Agreement; provided, however, if such action is instituted by West Allis, West Allis shall reimburse Developers for actual pre-development expenses incurred by Developers prior to the date of such notice. If this Agreement is not so terminated, the conveyance that is the subject of this Agreement shall be completed and Developers shall receive all proceeds of such condemnation. As used herein, a material portion of the Public Property shall be deemed taken if the same shall unreasonably interfere with the intended use of the Property by Developers.

27. No Partnership or Venture. Developers and their contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between West Allis and Developers or any contractor or subcontractor employed by Developers in the construction of the Project. No elected official, member, officer, or employee of West Allis during his/her tenure or for one

1 year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or
2 any proceeds thereof.

3

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

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To West Allis: Community Development Authority of the City of West Allis
Office of the Executive Director
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Executive Director

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With a copy to: City of West Allis
Office of the City Attorney
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Attorney

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To Developers: Element 84, LLC
Ogden Real Estate
1665 N. Water St.
Milwaukee, WI 53202
Attn: Mr. Jonathan S. Ross

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West Allis 84 Properties, Inc.
1665 N. Water St.
Milwaukee, WI 53202
Attn: Mr. Jonathan S. Ross

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With a copy to: Danielle Bergner
Michael Best & Friedrich LLP
100 East Wisconsin Avenue, Ste. 3300

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3 **29. Further Assurances.** Following the Closing Date, each of the Parties will take such
4 further actions and execute and deliver such additional documents and instruments as may be
5 reasonably requested by any other Party in order to perfect and complete the purchase and sale of
6 the Public Property as set forth herein as well as any other transactions specifically contemplated
7 herein.

8
9 **30. Waiver of Terms.** Except as otherwise provided herein, any of the terms or conditions
10 of this Agreement may be waived at any time by the Party or Parties entitled to benefit thereof,
11 but only by a written notice signed by the Party or Parties waiving such terms or conditions. The
12 waiver of any term or condition shall not be construed as a waiver of any other term or condition
13 of this Agreement.

14
15 **31. Right of Entry.**

16 **A. To Developers.** Authority grants to Developers, its agents and contractors, the
17 right to enter upon the Public Property at all reasonable times prior to closing for the
18 purpose of performing the physical and environmental tests, investigations, testing and
19 analysis of the Public Property and the feasibility of the Public Property/Project, however
20 Developers must restore the Public Property to substantially its previous condition if the
21 Closing does not occur and this Agreement and the Development Agreement are
22 terminated. Developers must provide Authority copies of all written reports generated
23 from such investigation.

1 **B. Cooperation.** The Parties shall cooperate with each other and their respective
2 agents and contractors to facilitate the timely and accurate completion of the aforesaid
3 tests, examinations, inspections and remedial activities.

4 **C. License.** The Parties acknowledge that this right of entry is a license only and
5 does not constitute a lease of or grant of any easement or other interests in real property;
6 and each agree that in the exercise of such right they shall comply with all valid laws,
7 ordinances, rules, orders or regulations of the United States, the State of Wisconsin, the
8 County of Milwaukee, City or any agencies, departments, districts or commissions
9 thereof.

10
11 **32. Amendment of Agreement.** This Agreement may be amended, supplemented, or
12 modified at any time, but only by a written instrument duly executed by West Allis and
13 Developers.

14
15 **33. Governing Law and Venue.** This Agreement shall, in all respects whether as to
16 validity, construction, capacity, performance, or otherwise, be governed by the laws of the State
17 of Wisconsin. Any suit or proceeding arising out of or related to this Agreement shall be
18 commenced and maintained only in a court of competent jurisdiction in the state or federal courts
19 located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the
20 exclusive jurisdiction of such courts.

21
22 **34. As Is, Where Is.**

23 **A. Sale.** The sale of the Public Property to Developers hereunder shall be **AS IS,**

1 **WHERE IS**, with all faults, and without representation or warranty of any kind except as
2 expressly provided in this Agreement (including but not limited to the Environmental
3 Addendum). Any other warranties or representations of any kind made either orally or in
4 writing by any agent or representative of West Allis or anyone purporting to be an agent
5 or representative of West Allis shall be of no force and effect. Developers hereby
6 acknowledge that they do not rely upon any representation or warranty made by West
7 Allis or by West Allis's agents, and that none have been made, except as expressly
8 provided in this Agreement.

9 **B. Developers' Investigation.** Prior to Closing, Developers, with the cooperation
10 and assistance of West Allis as provided in this Agreement, will have investigated and
11 will have knowledge of operative or proposed governmental laws and regulations
12 (including, but not limited to, zoning, environmental and land use laws and regulations)
13 to which the Property is or may be subject and, based upon the foregoing, Developers
14 shall accept the Public Property upon the basis of their review and determination of the
15 applicability and effect of such laws and regulations, except as expressly provided in this
16 Agreement.

17 **C. Warranties.** Developers further acknowledge that West Allis, its agents and
18 employees and other persons acting on behalf of West Allis have made no representation
19 or warranty of any kind in connection with any matter relating to the condition, value,
20 fitness, use or zoning of the Public Property upon which the Developers have relied
21 directly or indirectly for any purpose other than as may be expressly provided in this
22 Agreement.

23

1 **35. Successors and Assigns.** This Agreement and all rights and obligations therein,
2 including but not limited to the indemnification provisions thereunder, may be assigned by
3 Developers to an affiliated entity upon notice to West Allis. For purposes of this Section 35, the
4 term “affiliated entity” shall mean an entity controlling or controlled by or under common
5 control with either Developer.

6
7 **36. Execution in Counterparts.** This Agreement may be executed simultaneously in one or
8 more counterparts, each of which shall be deemed an original Agreement, but all of which
9 together shall constitute one and the same instrument.

10
11 **37. Titles and Headings.** Titles and headings to sections or subsections are for purposes of
12 references only and shall in no way limit, define, or otherwise affect the provisions herein.

13
14 **38. Entire Agreement.** This Agreement, including the schedules and Exhibits annexed
15 hereto, and listed as follows:

16 Exhibit A-1 - Legal Description of the Public Property,

17 Exhibit A-2 - Legal Description of Private Property

18 Exhibit A-3 - Legal Description of the Property

19 Exhibit B - Project Elevation and Site Plan

20 Exhibit C - Warranty Deed Form

21 Exhibit D - Environmental Addendum

22 Exhibit E - Development Agreement

23 Exhibit F - Development Financing Agreement

1 Exhibit G - Memorandum of Agreements

2 Exhibit H - Development Project Budget

3 Exhibit I - Pro Forma

4 Exhibit J - Contingent Payment Calculation

5 Exhibit K –Guaranty of Completion

6 Exhibit L – Increment Guaranty Agreement

7 constitutes the entire agreement and supersedes all other prior agreements and understandings,
8 both written and oral, by the Parties or any of them, with respect to the subject matter hereof.

9

10 **39. Interpretation.** Unless the context requires otherwise, all words used in this Agreement
11 in the singular number shall extend to and include the plural, all words in the plural number shall
12 extend to and include the singular, and all words in any gender shall extend to and include all
13 genders.

14

15 **40. Construction.** West Allis and Developers acknowledge that each party and its counsel
16 have reviewed and revised this Agreement and that the normal rule of construction to the effect
17 that any ambiguities are to be resolved against the drafting party shall not be employed in the
18 interpretation of this Agreement or any amendments or exhibits hereto.

19

20 **41. Severability.** If any term or provision of this Agreement is determined to be invalid,
21 illegal or incapable of being enforced by any rule or law, or public policy, all other conditions
22 and provisions of this Agreement shall nevertheless remain in full force and effect. If
23 Developers or their successors or assigns challenge or obtain a ruling that provisions of Section

1 13, 14, or 15 are invalid, this Agreement shall be void and the provisions of Section 42 shall
2 apply.

3

4 **42. Default Provisions and Remedies.**

5 **A.** Except as provided herein, should Developers default under this Agreement, in
6 addition to all other rights and remedies provided for in this Agreement and the
7 Development Agreement, West Allis shall have the following specific rights and
8 remedies:(1) with respect to matters that are capable of being corrected by West Allis,
9 West Allis may at its option enter upon the Public Property for the purpose of correcting
10 the default and West Allis's reasonable costs in correcting same, plus interest, shall be
11 paid by Developers to West Allis immediately upon demand; (2) injunctive relief; (3)
12 action for specific performance; and (4) action for direct money damages.

13 **B.** Except as provided herein, should West Allis default under this Agreement, in
14 addition to all other rights and remedies provided for in this Agreement and the
15 Development Agreement, Developers shall have the following specific rights and
16 remedies: (1) with respect to matters that are capable of being corrected by Developers,
17 Developers may at their option correct the default and Developers' reasonable costs in
18 correcting same, plus interest, shall be paid by Authority to the Developers immediately
19 upon demand; (2) injunctive relief; (3) action for specific performance; and (4) action for
20 direct money damages.

21 **C.** No Party shall be liable to another for consequential, indirect, incidental or
22 exemplary damages, whether based on contract, negligence, and strict liability or
23 otherwise. In any action to enforce this Agreement, the prevailing Party shall be entitled

1 to costs, including statutory attorney's fees. Actual attorney's fees shall not be awarded.

2 **D.** A breach of any of the material provisions of this Agreement shall constitute a
3 default. In addition, the following shall constitute a Developers' default under this
4 Agreement:

5 (1). Developers fail to perform or satisfy any of their obligations under this
6 Agreement or the Development Agreement within ten (10) days following written
7 notice from West Allis; provided, however, if the default is not reasonably
8 susceptible of cure within such ten (10) day period, then Developers shall have
9 such additional time to cure the default as may be reasonably necessary so long as
10 Developers are diligently pursuing such cure to completion.

11 (2). Developers become insolvent or generally do not pay or become unable to
12 pay or admit in writing to their inability to pay, their debts as they mature.

13 (3). Developers make an assignment for the benefit of creditors or to an agent
14 authorized to liquidate any substantial amount of assets.

15 (4). Developers become the subject of an "order for relief" within the meaning
16 of the United States Bankruptcy Code or file a petition in bankruptcy, for
17 reorganization or to affect a plan or other arrangement with creditors.

18 (5). Developers have a petition or application filed against them in bankruptcy
19 or any similar proceeding or have such a proceeding commenced against them,
20 and such petition, application or proceeding shall remain undismissed for a period
21 of ninety (90) days or Developers shall file an answer to such petition or
22 application, admitting the material allegations thereof.

23 (6). Developers apply to a court for the appointment of a receiver or custodian

1 for any of their assets or properties or have a receiver or custodian appointed for
2 any of their assets or properties, with or without consent, and such receiver shall
3 not be discharged within ninety (90) days after his appointment.

4 (7). Developers adopt a plan of complete liquidation of their assets.

5 **E.** In addition to all other remedies West Allis may have under this Agreement or at
6 law or in equity, and as an alternative thereto, but subject and subordinate to the rights
7 and interests of Developers' lenders and mortgagees, in the event Developers do not
8 commence and/or complete construction of the Project as set forth above, West Allis
9 may, but shall not be required to, purchase the Public Property for the price paid to West
10 Allis by Developers (assuming no construction has occurred on the Public Property), by
11 giving written notice to Developers of its intention to repurchase. If construction of the
12 Project has begun, the repurchase price shall be the sums expended toward the Project by
13 the primary mortgage and construction liens associated with the site improvements
14 together with the Purchase Price of the Public Property as Developers paid to West Allis.
15 If West Allis and Developers are not able to reach agreement as to the balance of the
16 primary mortgage and construction liens associated with site improvements, the value of
17 improvements (but not the land which remains the Purchase Price paid by Developers to
18 Authority) will be based upon the fair market value of the improvements. If the Parties
19 cannot agree on the fair market value of the improvements, such value will be determined
20 by appraisals as follows. Any party, may by notice to another, appoint a disinterested
21 MAI appraiser as one of the appraisers. Within ten (10) days thereafter another Party
22 shall, by written notice to the party appointing the first appraiser, appoint another
23 disinterested MAI appraiser as a second appraiser. The appraisers thus appointed shall

1 appoint a third disinterested MAI appraiser, and such three appraisers shall as promptly
2 as possible determine such value, provided however that:

3 (1). If the second appraiser shall not have been appointed as aforesaid, the first
4 appraiser shall proceed to determine such value; and

5 (2). If, within five (5) days after the appointment of the second appraiser, the
6 two appraisers appointed by the Parties shall be unable to agree upon the
7 appointment of a third appraiser, they shall give written notice of such failure to
8 agree to the Parties, and, if the Parties fail to agree upon the selection of such third
9 appraiser within five (5) days after the appraisers appointed by the Parties gave
10 notice as aforesaid, then within five (5) days thereafter either of the Parties upon
11 written notice to the other party hereto may apply for such appointment to the
12 Circuit Court of Milwaukee County in which the Public Property is located.

13 (3). The Parties shall each be entitled to present evidence and argument to the
14 appraisers. The determination of the majority of the appraisers or the sole
15 appraiser, as the case may be, shall be conclusive upon the Parties and judgment
16 upon the same may be entered in any court having jurisdiction thereof. The
17 appraisers shall give written notice to the Parties stating their determination, and
18 shall furnish to each Party a copy of such determination signed by them. The
19 expense of such appraisal(s) shall be borne equally by the Parties. In the event of
20 the failure, refusal or inability of any appraiser to act, a new appraiser shall be
21 appointed in his stead, which appointment shall be made in the same manner as
22 provided above for the appointment of the appraiser so failing, refusing or unable
23 to act.

1 (4). The notice of intention to exercise the repurchase right can be given or
2 withdrawn at any time after failure of Developers to comply with this section and
3 before this section terminates as provided below. If the Authority elects to pay
4 the appraisal amount to the Developer for the Public Property, Title to the Public
5 Property shall be conveyed to Authority “as is.” A Title insurance policy shall be
6 provided at the expense of Developers in the amount of the repurchase price and
7 insuring Authority’s title is in the aforementioned condition. The foregoing right
8 to repurchase shall be subject and subordinate to the lien and rights of any
9 mortgagee providing financing to the Project and shall automatically terminate
10 upon final completion of construction of the Project and related improvements on
11 the Property pursuant to plans approved in accordance with the terms hereof

12 (5). The term “commence construction” as used in this Agreement shall mean
13 the pouring of footings for a building within the Property. The term “completion”
14 as used in this Agreement shall mean the issuance of an occupancy permit by City
15 for each of the buildings on the Property.

16
17 **43. No Reliance.** No third party is entitled to rely on any of the representations, warranties,
18 or agreements of Developers or West Allis contained in this Agreement. Developers and West
19 Allis assume no liability to any third party because of any reliance on the representations,
20 warranties and agreements of Developers and West Allis contained in this Agreement.

21
22 **44. Survive the Closing.** The agreements, covenants, warranties and representations
23 contained herein shall survive the Closing of the transaction contemplated herein. Following

1 completion of the Project, West Allis agrees to provide upon request a written certificate of
2 completion in a form mutually agreed to by the parties that confirms completion of the Project
3 and termination of those provisions of this Agreement that, by their nature, terminate upon
4 Project completion.

5
6 **45. Representations and Warranties.** All statements contained in any certificate,
7 instrument or document delivered by or on behalf of any Party pursuant to this Agreement and
8 the transactions contemplated hereby shall be deemed representations and warranties by the
9 Parties unless otherwise expressly provided.

10
11 **46. Binding Effect.** The terms and conditions of this Agreement shall be binding upon and
12 benefit the Parties and their respective successors and assigns.

13
14 **47. Good Faith.** The Parties covenant and agree to act in good faith in the performance and
15 enforcement of the provisions of this Agreement.

16
17 **48. Confidentiality Agreement.** West Allis acknowledges that certain portions of the
18 materials to be exchanged pursuant to this Agreement (e.g., financial statements, project models)
19 contain sensitive and proprietary information relating to Developers, Guarantor and the Project
20 and that disclosure could cause irreparable harm if such materials were to be made available to
21 the general public. Additionally, certain of the materials to be exchanged may be trade secrets or
22 copyrighted. The Parties further acknowledge that West Allis is subject to the requirements of
23 the Wisconsin Public Records Law. Wis. Stats. §§19.21 et seq.. Under these statutes, all

1 documents and records are subject to public disclosure, unless there is a statutory, common law,
2 or public policy reason for nondisclosure. The Parties acknowledge that this Agreement is
3 subject to the provisions of the Public Records Law of the State of Wisconsin (Wis. Stat. Section
4 19.21 et seq.) This Agreement, the Development Agreement, the Development Financing
5 Agreement, the Environmental Addendum and other attachments to this agreement are deemed
6 to be public records. Should West Allis receive a records request for Developers' Pro Forma,
7 project financial models, or other documents that contain Developers' financial information,
8 West Allis shall notify Developers of the request and afford Developers a reasonable period of
9 time (not to exceed 10 days) to respond to West Allis. If Developers object to release of the
10 requested record(s) or part thereof, West Allis shall perform the common law balancing test. If
11 West Allis determines that the balance falls in favor of non-disclosure, it shall so inform
12 Developers and the requestor. If West Allis determines that the balance falls in favor of
13 disclosure, it shall so notify Developers and the requestor and afford Developers a reasonable
14 time (not to exceed 10 business days) to commence an action seeking to prevent disclosure of the
15 record(s).

16
17
18
19 **[Signature Pages Follow]**
20
21
22
23


AGREED TO BY AND BETWEEN Developers and Authority on the date first set forth above.

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

By: 
John F. Stibal, Executive Director

Dated: 1-9-17

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

By: 
Dan Devine, Mayor

Dated: 1/12/17

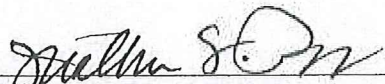
By: 
Monica Schultz, City Clerk

Dated: 1-12-17

ELEMENT 84, LLC

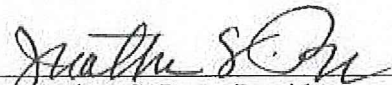
By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: Dec. 30, 2016

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: Dec. 30, 2016

Approved as to form this 12 day
of ~~December~~, 2016.

Jan. 2017


Scott E. Post, City Attorney

ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, Manager

Dated: _____

WEST ALLIS 84 PROPERTIES, INC.

By: _____
Jonathan S. Ross, President

Dated: _____

Approved as to form this ____ day
of December, 2016.

Scott E. Post, City Attorney

EXHIBITS TABLE

Exhibit A-1 – Legal Description (Public Property)

Exhibit A-2 – Legal Description (Private Property)

Exhibit A -3 Legal Description (Property)

Exhibit B –Project Elevation and Site Plan

Exhibit C - Warranty Deed

Exhibit D - Environmental Addendum

Exhibit E – Development Agreement

Exhibit F – Development Financing Agreement

Exhibit G - Memorandum of Agreements

Exhibit H – Project Budget

Exhibit I – Pro Forma

Exhibit J – Contingent Payment Example Calculation

Exhibit K –Guaranty of Completion

Exhibit L – Increment Guaranty Agreement

Exhibit A-1 – Legal Description (Public Property)

PARCEL I:

LOTS 36, 37 AND 38, IN BLOCK 4, IN HENDERSON PARK, IN THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE AND STATE OF WISCONSIN, TOGETHER WITH THE WEST ½ OF VACANT HONEY CREEK ADJOINING ON THE EAST (NOW A VACATED ALLEY PURSUANT TO A RESOLUTION RECORDED IN REEL 4672, IMAGE 1503, AS DOCUMENT NO. 7217), EXCEPTION THEREFROM THAT PART OF LOTS 37 AND 38 CONVEYED TO THE CITY OF WEST ALLIS BY DEED RECORDED JULY 16, 1993, ON REEL 3077, IMAGE 1358, AS DOCUMENT NO. 6795531, BOUNDED DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 36; THENCE NORTH 00°24'15" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF NORTH 83RD STREET 46.42 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG AN ARC OF A CURVE AND THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF SAID STREET; WHOSE CENTER LIES TO THE EAST, WHOSE RADIUS IS 55.00 FEET, WHOSE CHORD BEARS NORTH 43°50'56" EAST 76.76 FEET, A DISTANCE OF 84.96 FEET TO A POINT OF TANGENCY; NORTH 88°06'07" EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF WEST ORCHARD STREET 123.00 FEET; THENCE SOUTH 00°24'15" EAST 100.00 FEET; THENCE SOUTH 88°06'07" WEST 178.00 FEET TO THE POINT OF BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0417-001

PROPERTY ADDRESS: 1502 SOUTH 83RD STREET, WEST ALLIS, WI

PARCEL II:

LOT 35, IN BLOCK 4, IN HENDERSON PARK, IN THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE AND STATE OF WISCONSIN, TOGETHER WITH THE WEST ½ VACANT HONEY CREEK-ADJOINING ON THE EAST (NOW A VACATED ALLEY PURSUANT TO A RESOLUTION RECORDED IN REEL 4672, IMAGE 1503, AS DOCUMENT NO. 7217).

FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0415-000

PROPERTY ADDRESS: 15* SOUTH 83RD STREET, WEST ALLIS, WI

PARCEL III:

LOT 2 CERTIFIED SURVEY MAP NO. 8563, RECORDED ON NOVEMBER 6, 2013 AS DOCUMENT NO. 10310338, BEING A REDIVISION OF ALL OF LOT 3 OF CERTIFIED SURVEY MAP NO. 6510, LOTS 6 THROUGH 19, BLOCK 1 & LOTS 1, 2, 3, 4, BLOCK 5, TOGETHER WITH ADJACENT VACATED ALLEYS & VACATED HONEY CREEK IN "HENDERSON PARK", LOTS 3 & 4, BLOCK 3 IN "ASSESSOR'S PLAT NO. 257", PART OF THE FORMER CHICAGO & NORTHWESTERN RAILWAY COMPANY SPUR TRACK RIGHT OF WAY, VACATED W. ORCHARD STREET & S. 83RD STREET AND LANDS, ALL BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWN 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0711-000

PROPERTY ADDRESS: 82 WEST ORCHARD STREET, WEST ALLIS, WI

PARCEL IV:

LOT 3 CERTIFIED SURVEY MAP NO. 8563, RECORDED ON NOVEMBER 6, 2013 AS DOCUMENT NO. 10310338, BEING A REDIVISION OF ALL OF LOT 3 OF CERTIFIED SURVEY MAP NO. 6510, LOTS 6 THROUGH 19, BLOCK 1 & LOTS 1, 2, 3, 4, BLOCK 5, TOGETHER WITH ADJACENT VACATED ALLEYS &

VACATED HONEY CREEK IN "HENDERSON PARK", LOTS 3 & 4, BLOCK 3 IN "ASSESSOR'S PLAT NO. 257", PART OF THE FORMER CHICAGO & NORTHWESTERN RAILWAY COMPANY SPUR TRACK RIGHT OF WAY, VACATED W. ORCHARD STREET & S. 83RD STREET AND LANDS, ALL BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWN 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN

FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0712-000

PROPERTY ADDRESS: 1515 SOUTH 83RD STREET, WEST ALLIS, WI

PARCEL V:

LOT FIVE (5), IN BLOCK FIVE (5), IN HENDERSON PARK, IN THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE-COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0420-000

PROPERTY ADDRESS: 15* SOUTH 83RD STREET, WEST ALLIS, WI

Exhibit A-2 – Legal Description (Private Property)

PARCEL VI:

ALL EXCEPT THE SOUTH THREE-HUNDRED AND NINETY-TWO (392) FEET OF THAT PART OF LOT TWO (2), IN BLOCK THREE (3), IN ASSESSOR'S PLAT NO 257, BEING A PART OF THE NORTHWEST ONE-QUARTER (1/4) OF SECTION FOUR (4), AND PART OF THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), IN TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST ONE-QUARTER (1/4) SECTION, THENCE SOUTH 01°17'18" EAST ALONG THE WEST LINE OF SAID 1/4 SECTION 583.00 FEET TO A POINT, THENCE NORTH 88°07'03" EAST 51.25 FEET TO A POINT ON THE EAST LINE OF SOUTH 84TH STREET BEING THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED, THENCE SOUTH 01°17'18" EAST AND PARALLEL WITH THE WEST LINE OF SAID 1/4 SECTION 700.00 FEET TO A POINT, THENCE SOUTH 46°35'08" EAST 14.07 FEET TO A POINT ON THE NORTH LINE OF WEST LAPHAM STREET, THENCE NORTH 88°07'03" EAST ALONG THE NORTH LINE OF WEST LAPHAM STREET 89.67 FEET TO A POINT, THENCE NORTH 01°01'08" WEST 710.04 FEET TO A POINT, THENCE SOUTH 88°07'03" WEST 103.01 FEET TO THE POINT OF BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY:

ADDRESS: 1470-1488 SOUTH 84TH STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 451-0642-006

PARCEL VII:

LOT SEVEN (7), IN BLOCK FIVE (5) IN HENDERSON PARK, IN THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:

ADDRESS: 1529-1531 SOUTH 83RD STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 452-0422-000

PARCEL VIII:

LOT SIX (6), IN BLOCK FIVE (5) IN HENDERSON PARK, IN THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:

ADDRESS: 1525-27 SOUTH 83RD STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 452-0421-000

PARCEL IX:

LOTS EIGHT (8) AND NINE (9) IN BLOCK FIVE (5) IN HENDERSON PARK, IN THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:

ADDRESS: 1533-1535 SOUTH 83RD STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 452-0423-000

Exhibit A-3 – Legal Description (Property)

PARCEL I:

LOTS 36, 37 AND 38, IN BLOCK 4, IN HENDERSON PARK, IN THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE AND STATE OF WISCONSIN, TOGETHER WITH THE WEST ½ OF VACANT HONEY CREEK ADJOINING ON THE EAST (NOW A VACATED ALLEY PURSUANT TO A RESOLUTION RECORDED IN REEL 4672, IMAGE 1503, AS DOCUMENT NO. 7217), EXCEPTION THEREFROM THAT PART OF LOTS 37 AND 38 CONVEYED TO THE CITY OF WEST ALLIS BY DEED RECORDED JULY 16, 1993, ON REEL 3077, IMAGE 1358, AS DOCUMENT NO. 6795531, BOUNDED DESCRIBED AS FOLLOWS:

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FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0417-001

PROPERTY ADDRESS: 1502 SOUTH 83RD STREET, WEST ALLIS, WI

PARCEL II:

LOT 35, IN BLOCK 4, IN HENDERSON PARK, IN THE NORTHEAST ¼ OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE AND STATE OF WISCONSIN, TOGETHER WITH THE WEST ½ VACANT HONEY CREEK-ADJOINING ON THE EAST (NOW A VACATED ALLEY PURSUANT TO A RESOLUTION RECORDED IN REEL 4672, IMAGE 1503, AS DOCUMENT NO. 7217).

FOR INFORMATIONAL PURPOSES ONLY:

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FOR INFORMATIONAL PURPOSES ONLY:

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FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0712-000

PROPERTY ADDRESS: 1515 SOUTH 83RD STREET, WEST ALLIS, WI

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FOR INFORMATIONAL PURPOSES ONLY:

TAX KEY NO.: 452-0420-000

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FOR INFORMATIONAL PURPOSES ONLY:

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PARCEL IDENTIFICATION NO.: 451-0642-006

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FOR INFORMATIONAL PURPOSES ONLY:

ADDRESS: 1529-1531 SOUTH 83RD STREET, WEST ALLIS, WI

PARCEL IDENTIFICATION NO.: 452-0422-000

PARCEL VIII:

LOT SIX (6), IN BLOCK FIVE (5) IN HENDERSON PARK, IN THE NORTHEAST ONE-QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:
ADDRESS: 1525-27 SOUTH 83RD STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 452-0421-000

PARCEL IX:
LOTS EIGHT (8) AND NINE (9) IN BLOCK FIVE (5) IN HENDERSON PARK, IN THE NORTHEAST ONE
QUARTER (1/4) OF SECTION FOUR (4), TOWNSHIP SIX (6) NORTH, RANGE TWENTY-ONE (21) EAST, IN
THE CITY OF WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN.

FOR INFORMATIONAL PURPOSES ONLY:
ADDRESS: 1533-1535 SOUTH 83RD STREET, WEST ALLIS, WI
PARCEL IDENTIFICATION NO.: 452-0423-000

Purchase and Sale Agreement

Exhibit B – Project Elevation and Site Plan



Plan



Proposed Site Plan

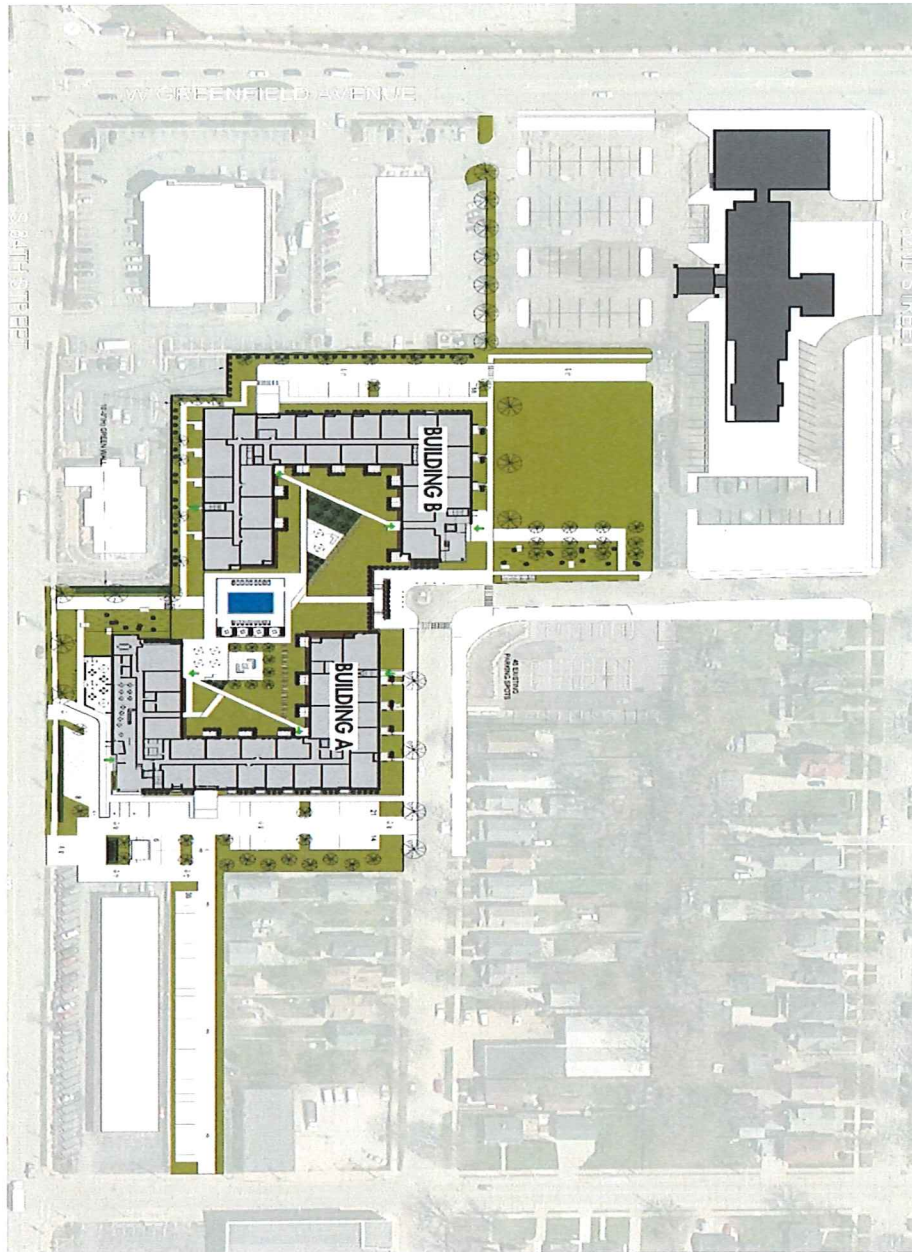


Exhibit C - Form of Warranty Deed

State Bar of Wisconsin Form 1-2003
WARRANTY DEED

Document Number	Document Name
THIS DEED , made between _____ _____ ("Grantor," whether one or more), and _____ _____ ("Grantee," whether one or more). Grantor, for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in _____ County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):	
Recording Area	
Name and Return Address	

Parcel Identification Number (PIN)
 This _____ homestead property.
 (is) (is not)

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except:

Dated _____.

_____(SEAL) _____(SEAL)
 * _____ *

_____(SEAL) _____(SEAL)
 * _____ *

AUTHENTICATION

ACKNOWLEDGMENT

Signature(s) _____
 authenticated on _____

STATE OF WISCONSIN)
) ss.
 _____ COUNTY)

* _____
 TITLE: MEMBER STATE BAR OF WISCONSIN
 (If not, _____
 authorized by Wis. Stat. § 706.06)

Personally came before me on _____,
 the above-named _____
 to me known to be the person(s) who executed the foregoing
 instrument and acknowledged the same.

THIS INSTRUMENT DRAFTED BY:

* _____
 Notary Public, State of Wisconsin
 My Commission (is permanent) (expires: _____)

1
2 **Purchase and Sale Agreement**

3
4 **Exhibit D –Environmental Addendum**

5
6 This Environmental Addendum, dated December 30, 2016, by and between the Community
7 Development Authority of the City of West Allis (“Authority”), City of West Allis (“City”)
8 (Collectively Authority and City are referenced herein as “West Allis”), and Element 84 LLC, and West
9 Allis 84 Properties, Inc. (collectively “Developers”), describes the environmental conditions of the
10 Public Properties as per Exhibit A-1 of the Purchase and Sale Agreement – Legal Description (Public
11 Property), herein referred to as the “Public Property,” located within the 84th and Greenfield
12 Redevelopment Area, the extent of environmental reports and investigations, and responsibilities and
13 obligations of each Party.

- 14
15 **1. Properties.** The properties covered by this environmental addendum are those outlined in Exhibit A
16 -1 of the Purchase and Sale Agreement – Legal Description (Public Property).
17
18 **2. Contingent on Sale of Property.** This Environmental Addendum and the obligations of West Allis
19 and Developers hereunder are contingent upon the closing of the sale of the Property. To the extent
20 the Property is not sold and conveyed by the Authority to Developers, this Environmental
21 Addendum shall be void and of no force or effect. To the extent the Property is sold and conveyed
22 by the Authority to the Developers under the Purchase and Sale Agreement, the terms of this
23 Environmental Addendum shall govern.
24
25 **3. Assessments and Investigations.** West Allis has contracted with various consultants to perform
26 environmental investigations and remediation for the Public Property described under Section 1
27 above. **Appendix I-List of Environmental Reports** provides a list of all reports and
28 communications generated for each parcel.

- 29
30 A. West Allis will provide to Developers a copy of all environmental reports for the properties
31 listed above.
32

33 **4. Current Environmental Conditions**

34
35 A. Asbestos and Other Hazardous Materials

36
37 1. Asbestos Containing Building Materials, “ACBM,” and other universal wastes are present
38 in the former Milwaukee Gray Iron office building located at 1515 S. 83 St., that will require
39 management and disposal in accordance with Wisconsin Department of Natural Resources (WDNR)
40 requirements during demolition.

- 41
42 B. Demolition of Structures. On-site buildings and related structures were demolished and
43 removed from Lot 2 of Certified Survey Map (CSM) 8563. Foundations and structures
44 located within 6 feet of existing grade at the time of demolition were removed.
45

- 1 C. Asphalt surface pavement or concrete will remain in place until start of construction.
2 Maintenance of surface pavement will prevent soil erosion and ponding/drainage problems,
3 as well as retain a temporary cap above impacted soils.
4
- 5 D. On-site utility laterals and connections to demolished structures were shut-off/abandoned and
6 terminated/removed at the excavation boundary or site boundary as determined by West Allis
7 and/or individual utility. There are existing utilities that remain in place because of their use
8 and will require preservation prior to, during, and following redevelopment. Various storm
9 water controls were left in place subject to removal and replacement during future
10 redevelopment in accordance with West Allis and Milwaukee Metropolitan Sewerage
11 District (MMSD) requirements.
12
- 13 E. On-site excavations produced by building demolition and/or contaminated soil removal were
14 backfilled and excavation side slopes were laid back per OSHA regulations. Backfilled areas
15 were filled and compacted to 95% modified proctor, when applicable.
16
- 17 F. There is residual soil and groundwater contamination associated with the historic Public
18 Property use such as foundry sand and underground storage tanks (USTs). The main
19 constituents of concern in soil consist of polycyclic aromatic hydrocarbons (PAHs). To a
20 lesser extent, there are volatile organic compounds (VOCs) present in soil at a few areas of
21 the Property. Low concentrations of petroleum volatile organic compounds (PVOCs) were
22 observed in a few groundwater samples collected from sample points located in close
23 proximity to the locations of a former USTs.
24
- 25 G. A Remedial Action Plan / Design Report (RAP/DR) and Development at Historic Fill Site or
26 Licensed Landfill Expedited Exemption Application (Historic Fill Exemption) were prepared
27 for the Former Milwaukee Gray Iron and was submitted to the WDNR for review and
28 approval. The RAP/DR and Historic Fill Exemption were approved on March 29, 2012, and
29 September 19, 2011. A Historic Fill Exemption will be required prior to redevelopment and
30 a NR726 Case Closure Report and Geographic Information System (GIS) Registry package
31 will be required once the redevelopment is complete.
32
- 33 H. Residual-impacted soil and groundwater will be managed through institutional and
34 engineering controls.
- 35 1. A Materials Management Plan has been prepared for the management of residual-
36 impacted soil, groundwater, and storm water during and post-construction. The Materials
37 Management Plan includes on-site reconsolidation, off-site disposal at a non-hazardous
38 solid waste disposal facility, or an off-site disposal location owned by the Authority and
39 approved by the WDNR. Developers are encouraged to propose alternate less-expensive
40 method for soil disposal approved by the WDNR prior to relocation from the site. If
41 dewatering is required, recovered groundwater shall be managed and disposed of in
42 accordance with applicable regulations, which typically require disposal at a Publicly
43 Owned Treatment Works (POTW) or licensed offsite disposal facility.
44
- 45 2. An updated Historic Fill Exemption will be required prior to construction. The updated
46 Historic Fill Exemption will require presentation of the proposed engineered barrier

1 which can consist of buildings, pavement, and/or landscaping. Vegetated landscaped
2 areas will require the placement of clean fill. Once construction is complete, a Cap
3 Maintenance Plan will be required to ensure the integrity of the cap is maintained.
4

- 5 I. West Allis has engaged the WDNR to allow the use of West Allis owned sites for disposal of
6 the residual-impacted soil. The West Allis Landfill is a potential location offered as an
7 option to the Developers for residual-impacted soil disposal.
8

9 **5. West Allis' Remedial Obligation.**

10
11 A. West Allis has completed the investigation and remediation work necessary such that remaining
12 work the WDNR would require are an updated Historic Fill Exemption, implementation of the
13 institutional and engineering controls and submittal of Case Closure documentation that coincide
14 with site redevelopment.

15 B. Developers shall have the right to review and use all reports and submittals prepared by or for
16 West Allis in conjunction with site redevelopment. West Allis shall cooperate fully and in good
17 faith with the Developers in obtaining Case Closure, as defined in section 292.12(1)(b), Wis.
18 Stat., including the execution of such documents that are usual and customary and reasonably
19 necessary for the Developers to obtain Case Closure.
20

21 **6. Developers' Remedial Obligation.** Developers will, to the extent required by WDNR, be
22 responsible for the following:

23
24 A. At the time of closing; assume all environmental investigation, remediation, and reporting
25 necessary for the redevelopment to achieve final Wisconsin Administrative Code Chapter
26 NR726 - Case Closure.

27 B. Provide the equipment, labor, materials to implement and maintain the institutional and
28 engineering controls for the redevelopment.

29 C. Provide for the tracking and control during soil management for all soil generated during
30 redevelopment of the Project.

31 D. If selected, the Developers will be required to follow the Landfill Modification Plan, Materials
32 Management Plan, and WDNR conditions for the West Allis Landfill. These conditions and
33 means and methods include, and are not limited to:

- 34 1. Providing the necessary equipment, labor and materials for the work
35 2. Health and safety
36 3. Loading, transportation and disposal
37 4. Place, grade and compact residual-impacted soil in lifts to 90% modified Proctor
38 5. Placement of topsoil (staged at the West Allis Landfill) and seed
39 6. Installation and maintenance of erosion controls until vegetative root is established
40 7. Oversight and load ticket tracking
41 8. Regulatory reporting

- 1 E. Coordinating with the WDNR and preparing the necessary deliverables including a Case Closure
2 – GIS Registry, Materials Management Plans, and Historic Fill Exemption.
- 3 F. Constructing any reasonable and necessary engineered barriers at the Property and adhering to
4 the terms of any WDNR approval including the Case Closure – GIS Registry, Materials
5 Management Plans, and Historic Fill Exemption.
- 6 G. Prepare a Cap Maintenance Plan for the redevelopment that will include the methods for cap
7 inspections and repair and submit to the WDNR.
- 8 H. Design and redevelop the Property in a manner that will maximize on-site reuse of contaminated
9 soil, consistent with any conditions of reuse established by the WDNR.

10 **7. Developers' Release and Waiver of Claims.** Developers acknowledge that Developers have had
11 the opportunity to undertake such studies and investigations, conduct such tests and surveys, and
12 engage such specialists as Developers deem appropriate to evaluate the Property and its risks from
13 an environmental standpoint. Accordingly, except as set forth in this Environmental Addendum or
14 the Purchase and Sale Agreement, Developers are acquiring the Property **"as is, where is,"** without
15 representation or warranty of any kind, express or implied, as to the environmental condition of the
16 Property. In addition to and not by way of limitation of the sale of the Property on an **"as is, where
17 is,"** basis, and except for a claim to enforce West Allis's obligation under paragraph 5 above,
18 Developers, on their own behalf and on behalf of any successors, heirs or assigns, hereby release
19 West Allis, their elected officials, agents, and employees (collectively "Released Parties") from, and
20 waive all claims and liability against the Released Parties arising out of or related to the
21 environmental condition of the Property, the presence of contamination thereon or migration there
22 from, including, but not limited to, claims for Remedial Action except to the extent that the Released
23 Parties i) caused or contributed to the contamination, ii) were negligent in completing or performing
24 Remedial Action or iii) breached a material representation or warranty related to environmental
25 disclosures or remediation in the Purchase and Sale Agreement. The waiver and release shall apply
26 to all claims and causes of action of any type whatsoever, known or unknown, arising in contract,
27 common law, or under applicable statutory law.
28

29 **8. No Admission of Liability.** Nothing in West Allis's completion of the demolition or environmental
30 work shall be construed as an admission or acknowledgment of any kind that West Allis is liable or
31 responsible for any contamination on the Property, such liability and responsibility is expressly
32 denied. West Allis is making the commitments in this Environmental Addendum to facilitate the
33 redevelopment of the Property.
34

35 **9. Survival of Rights and Obligations.** The parties' respective rights and obligations under this
36 Environmental Addendum shall survive the closing.
37

38 **10. Severability.** If any provision, clause or part of this Environmental Addendum is held invalid, the
39 remainder of this Environmental Addendum and the application of such provision, clause, or part
40 shall not be affected.
41

42 **11. Intentionally left blank**

1
2 **12. Amendment.** This Environmental Addendum may only be amended, modified or supplemented by
3 a writing signed by all Parties.
4

5 **13. Binding Effect.** This Environmental Addendum shall bind and inure to the benefit of the Parties
6 hereto and to their respective legal representatives, successors, assigns.
7

8 **14. Assignment.** This Environmental Addendum is not to be assigned by any Party without the prior
9 written consent of the others, in accordance with the Purchase and Sale Agreement. Upon
10 assignment, the obligations of the Developers shall have no further obligation under this
11 Environmental Agreement and West Allis shall look solely to the assignee associated with the
12 applicable parcel for enforcement of its rights and remedies hereunder. Provided, however, the
13 Release and Waiver of claims provided in Section 7 shall continue to be binding on the Developers
14 notwithstanding any such assignment.
15

16 **15. Relationship of the Parties.** Nothing in this Environmental Addendum shall be construed as
17 creating, between the parties, a partnership, joint venture or relationship other than as described
18 herein. West Allis and Developers each acknowledge that it is not an agent for any other party
19 hereto and may not bind or enter into agreements for any other party.
20

21 **16. Governing Law.** This Environmental Addendum and the legal relations between the Parties hereto
22 shall be governed by and construed in accordance with the laws of the State of Wisconsin.
23

24 **17. Construction.** The Parties acknowledge that they and their counsel have reviewed and approved
25 this Environmental Addendum, and they accordingly agree that the normal rule of construction to
26 the effect that any ambiguities are to be resolved against the drafting party shall not be employed in
27 the interpretation of this Environmental Addendum or any amendments thereto.
28

29 **18. Facsimile Signatures.** The Parties agree that signatures on documents delivered by facsimile
30 transmission shall be binding on all parties hereto.
31

32 **19. Counterparts.** This Environmental Addendum may be executed simultaneously in one or more
33 counterparts, each of which shall be deemed an original Environmental Addendum, but all of which
34 together shall constitute one and the same instrument.
35

36
37 **(SIGNATURES CONTINUED ON NEXT PAGE)**
38
39
40

AGREED TO BY AND BETWEEN the Parties as of the date first set forth above.

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


By: 
John F. Stibal, Executive Director

Dated: 1-9-17

CITY: CITY OF WEST ALLIS

By: 
Dan Devine, Mayor

Dated: 1/12/17

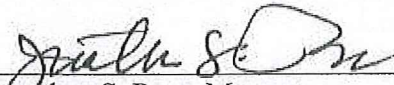
By: 
Monica Schultz, City Clerk

Dated: 1-12-17

DEVELOPERS: ELEMENT 84, LLC

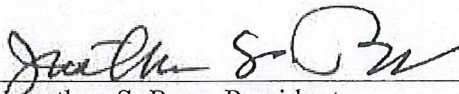
By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager


Dated: Dec 30, 2016

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: Dec. 30. 2016

Approved as to form this 12 day
of December, 2016.
Jan. 2017


Scott E. Post, City Attorney

DEVELOPERS: ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, Manager

Dated: _____

WEST ALLIS 84 PROPERTIES, INC.

By: _____
Jonathan S. Ross, President

Dated: _____

Approved as to form this ____ day
of December, 2016.

Scott E. Post, City Attorney

Appendix I
Environmental Addendum
Environmental Report and Letter List

1501 S. 82 St. & 8220R W. Orchard, 1502 S. 83rd St., and 15 S. 83 St.**
Milwaukee Gray Iron Site

Consultant:

AECOM, 1555 N. RiverCenter Drive, Suite 214, Milwaukee, WI 53212
Telephone: (414) 944-6171 Email: donna.volk@aecom.com

Phase I ESA	Date: March 21, 2010
Phase II ESA	Date: May 28, 2010
Additional Phase II ESA	Date: August 19, 2010
Pre-Demolition Asbestos Survey	Date: May 26, 2010
Land Fill Exemption and Remedial Action Plan	Date: June 22, 2011

1519 S. 83rd St.

Consultant

AECOM, 11425 W. Lake Park Dr., Milwaukee, WI 53224
Telephone: (414) 577-1310 Email: donna.volk@aecom.com

Phase I ESA	Date: June 24, 2014
Phase II ESA	Date: December 12, 2014
Asbestos Survey (KPH Environmental)	Date: July 2014

1501 S. 82 St. & 8220R W. Orchard, 1502 S. 83rd St., and 15 S. 83 St.**
Milwaukee Gray Iron Site

Consultant: Mr. Benjamin J. Verburg, P.E., (Principal Engineer)
Arcadis, 126 N Jefferson St., #400, Milwaukee, WI 53202
Telephone: (414) 277-6231 Email: ben.verburg@arcadis-com

Case Closure Request Former Gray Iron
Property Brew Pub Parcel Date: February 2, 2014
Case Closure Request Former Milwaukee
Gray Iron (Diesel UST) Date: October 21, 2013
Case Closure Request Former Milwaukee Gray Iron

Waste Oil UST	Date: October 21, 2013
Case Closure Request Former Gray Iron	
Property Warehouse Parcel	Date: February 12, 2014
Tank System Site Assessment Report Diesel	
Fuel Underground Storage Tank	Date: March 14, 2012
Tank System Site Assessment Report Waste	
Oil Underground Storage Tank	Date: March 14, 2012

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Purchase and Sale Agreement

EXHIBIT E

DEVELOPMENT AGREEMENT

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THIS DEVELOPMENT AGREEMENT ("Agreement"), made and entered into as of the 30th day of December, 2016 by and between 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"), the City of West Allis, a Wisconsin municipal corporation ("City"), Element 84, LLC, a Wisconsin Limited Liability Company, its successors and/or assigns ("Element 84"), and West Allis 84 Properties, Inc. ("Corporation"), a Wisconsin corporation, its successors and/or assigns (Element 84 and Corporation are collectively, "Developers"). (Authority and City are collectively, "West Allis"). Authority, City, Element 84 and Corporation are each referred to herein as a party or together as "Parties."

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WHEREAS, on even date herewith, the Parties have executed a Purchase and Sale Agreement for the purchase and the sale of certain property owned by the Authority "Public Property" described therein, which together with the "Private Property" Developers have acquired pursuant to the terms of the Purchase and Sale Agreement, constitutes the "Property"¹; and,

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WHEREAS, Developers intend to construct two 4-story multifamily apartment buildings having in total approximately 203 apartment units. One of the buildings will also include approximately 3,100 sq. ft. of commercial space. The development will include approximately 241 underground parking spaces and approximately 144 surface parking spaces.² The development will be generally consistent with the attached preliminary site plan and rendering hereby attached as **Exhibit 1 – Rendering and Preliminary Site Plan**, which West Allis agrees is acceptable to West Allis in all respects and satisfies, in West Allis’s opinion, the

¹ The term "Property" does not, however, include the Excluded Land as defined in the Purchase and Sale Agreement.
² Pursuant to the Purchase and Sale Agreement, the number of surface parking spaces will be adjusted to reflect the conveyance of the Excluded Land.

standards set forth in this Development Agreement. The development described above is hereinafter described as the “Project” located within the 84th and W. Greenfield Avenue Redevelopment Area in the City of West Allis, Wisconsin and will be developed pursuant to the terms of this Agreement; and,

WHEREAS, the sale of the Public Property is contingent upon Developers’ commitment to constructing the Project on the Property; and,

WHEREAS, Developers and West Allis desire to set forth in writing the terms and conditions under which Developers have agreed to develop and maintain the Project.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein and in the Purchase and Sale Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. WEST ALLIS’S OBLIGATIONS. Authority shall be obligated as follows:

A. Sale of the Property. Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, Authority shall close the sale of the Public Property to Corporation.

B. Zoning and Planning Approvals. Prior to closing as defined in the Purchase and Sale Agreement and after Closing (if necessary), West Allis shall use its best efforts to expedite the zoning and plan review process of City to accommodate Developers’ development schedule for the construction of the Project. To the extent not already approved on or prior to the date of this Agreement, all such required approvals are subject to final approval of City’s Common Council and City’s Plan Commission. West Allis agrees to use its best efforts to assist Developers in obtaining these approvals (and the approvals required of any other entity related to West Allis) and to expedite them.

2. DEVELOPERS’ OBLIGATIONS. Developers shall be obligated as follows:

A. Purchase of the Property. Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, Corporation shall close the purchase of the Public Property from Authority as provided in the Purchase and Sale Agreement.

1 **B. Environmental Remediation.** Developers shall be responsible for any additional
2 environmental remediation, geotechnical and site preparation beyond what West Allis is
3 responsible for in the Environmental Addendum to the Purchase and Sale Agreement.

4 **C. Construction of Project.** Subject to the obligations and contingencies set forth in the
5 Purchase and Sale Agreement and in the Development Financing Agreement incorporated therein,
6 Developers will undertake the following;

7 (1) Commence construction of the Project and substantially complete construction of the
8 Project in accordance with **Exhibit 2 – Project Schedule**. Failure of Developers to commence
9 construction as required by this Section and as set forth in **Exhibit 2 – Project Schedule** shall constitute
0 a breach of this Agreement; provided, however, such failure shall not constitute a default if Developers
1 are pursuing commencement of construction in good faith and with due diligence.

2 (2) The Project shall be landscaped in accordance with approved site, landscaping,
3 architectural, and building plans and specifications according to City review and the approval
4 procedures as herein referenced. The building elevations & materials and the landscaping plan will be in
5 accordance with **Exhibit 1- Rendering and Preliminary Site Plan**.

6 **D. Schedule.** Developers shall commence construction of the Project no later than the date
7 referred to in **Exhibit 2- Project Schedule** of this Agreement and shall proceed with due diligence to
8 completion and occupancy no later than the date referred to in **Exhibit 2 – Project Schedule** of this
9 Agreement.

0 **E. Information Sharing.** Developers have prepared a budget for the preparation,
1 construction and landscaping of the Project and have submitted the same to West Allis for their
2 approval. Developers shall maintain records such that its actual expenditures for the preparation,
3 construction and landscaping of the Project may be ascertained and reconciled against said budget.

1 From time to time, upon reasonable notice from West Allis, West Allis shall be entitled to examine such
2 records to verify construction costs.

3 **F. Availability of Funds and Approval for Construction.** Prior to the execution of this
4 Agreement, and from time to time thereafter, upon reasonable request of West Allis, not more than once
5 in a 12 month period, Developers shall provide to West Allis evidence satisfactory to West Allis and its
6 financial and/or construction cost consultants, in West Allis's reasonable discretion, that Developers
7 have available to them necessary corporate approvals and sufficient funds for the completion of the
8 Project upon the schedule set forth herein.

9 **G. Conveyance.** Prior to issuance of an Occupancy Permit, Developers shall not sell,
0 transfer or convey the Property to anyone other than an Affiliate (as hereinafter defined). For purposes
1 of this Agreement "Affiliate" shall mean an entity controlling, controlled by or in common with
2 Developers. Nothing herein shall preclude Developers from selling a majority membership interest in
3 the ownership of the Property. Following issuance of the Occupancy Permit, and so long as any portion
4 of the City Investment (as defined in the Development Financing Agreement) remains outstanding, the
5 Developers shall not assign this Agreement or transfer, sell, exchange, mortgage, lease or convey the
6 Property without City's prior written consent, which consent shall not be unreasonably withheld,
7 conditioned, or delayed.

8 **H. Nondiscrimination.** No owner or occupant of the Property shall restrict the use or
9 enjoyment of the Property or the Project of a protected status in the sale, use or occupancy thereof.
0

1 **3. ARCHITECTURAL DESIGN, URBAN FORM AND CONSTRUCTION STANDARDS.**

2 The Project shall create a quality development that fits the context and vitality of the surrounding
3 neighborhood redevelopment while utilizing contemporary design standards. The development shall
4 substantially increase the tax base and enhance the neighborhood. Building plans and specifications,

1 including architectural elevations, for the Project, to include construction materials, are subject to review
2 and final approval by City's Plan Commission, pursuant to the provisions of this Agreement.

3
4 The basic design and exterior construction materials of the Project shall be in conformity with *Exhibit 1*
5 *Rendering and Preliminary Site Plan*, which is attached hereto and made a part hereof. Architectural
6 and Site treatments must be aesthetically appropriate and compatible with the following standards.

7 **A. Building Placement and Composition.** The design and placement of buildings shall respond to
8 the general characteristics of the surroundings. Building form and scale shall:

- 9 1. Relate to other nearby buildings and incorporate interesting building elements from
0 surrounding buildings, where applicable.
- 1 2. Contain the three traditional parts of a building in appropriate proportions: base, mid-
2 section and top.
- 3 3. Be of a scale for new buildings that is compatible with adjacent buildings. Use
4 transitions to achieve compatibility between larger buildings next to small scale
5 buildings; transition techniques shall include building elements of different heights,
6 building or roof articulation, and building projections such as covered walkways.
- 7 4. Generally not contain “franchise” architecture, although the use of corporate identifying
8 elements may be appropriate on a building that otherwise reflects the desired vision of the
9 area.

0 **B. Building Elements.** A consistent architectural style shall be used for all buildings, auxiliary
1 structures, and all related site elements, such as screen walls, planters, trellises, and street
2 furniture.

- 3 1. **Building Base.** The lowest portion of a building at grade creates opportunity to establish
4 an architectural base. This base may be a projection, a change in surface texture, or a

1 change in material or color. The size of the base shall be in proportion to the overall size
2 of the building.

- 3 a. Base materials shall be highly resistant to damage, defacement, and general wear
4 and tear. Pre-cast decorative concrete, stone masonry, brick, slate, and
5 commercial grade ceramic tile are examples of excellent base materials. The use
6 of anti-graffiti coating on base materials is encouraged.
- 7 b. In general, the base materials shall appear “heavier” and “darker” in appearance
8 than the materials and color used for the building’s main exterior.
- 9 c. The first floor of any mixed-use building or public elements/rooms should be set-
0 off from the middle and top of the building through increased height and
1 fenestration.

2 **2. Windows, Doors and Openings.** Windows, doors, and other openings shall be detailed
3 to emphasize them as important parts of the building.

- 4 a. The placement of windows, door and openings shall be consistent in a manner
5 that produces a predictable rhythm.
- 6 b. Windows, doors and openings shall be offset from the general plane of the façade
7 to produce a pattern of solids and voids.
- 8 c. Windows, doors and openings shall be trimmed in a manner that emphasizes their
9 existence (examples include, but are not limited to: headers and sills).
- 0 d. Building entries shall be framed with architectural embellishment for articulation,
1 be visible from the street, and be easily recognizable.
- 2 e. Exterior AC units, if any, shall be integrated into the design of the window unit.
- 3 f. Operable windows that allow the circulation of fresh air are encouraged.
- 4 g. Spandrel glass should be avoided.

1 **3. Building Facades.**

- 2 a. No side, elevation or facade of the building is exempt from public view;
3 consequently, all sides, elevations or facades of the building shall be visually
4 pleasing and architecturally and aesthetically compatible with the surrounding
5 environment.
- 6 b. Building walls shall be broken up with articulation, including projections or
7 recessions to reduce any unbroken massing into lengths of approximately 30 feet
8 or fewer along all sides of the building.
- 9 c. Along any public street frontage, the building design should include vision
0 windows, arcades, awnings or other acceptable features along at least 60 percent
1 of the building length.

2 **4. Roofs.** Roofs shall be an integral part of the building design and overall form of the
3 structure.

- 4 a. A strong, but simple, roofline shall be used to cap the design of the building and
5 screen any mechanical equipment.
- 6 b. Decorative cornices and parapet walls shall be used to screen flat roofs and to
7 delineate the building's profile.
- 8 c. Vertical roof elements/projections shall be used to add interest to horizontally-
9 oriented rooflines.
- 0 d. Roof overhangs and arcades are encouraged to complement the architecture of the
1 building.

2 **C. Building Materials.** Buildings shall be constructed using durable, but attractive materials
3 which convey a substantial quality appearance.

- 1 1. Exterior building treatments, including colors, materials, and architectural detailing, shall
2 be consistent throughout the building.
- 3 2. Exterior building colors shall generally consist of earth-toned or neutral colors, with
4 vibrant or bright colors reserved for trim or accent use. Final colors are subject to review
5 and final approval by City's Plan Commission.
- 6 3. Building materials reflecting natural elements, such as stone or wood, are strongly
7 encouraged.
- 8 4. A minimum of 70% of the building's façade should consist of acceptable high-quality
9 materials including: brick, wood, sandstone or other native stone, cement board siding,
0 architectural panels and glass/fenestration. No primary material shall mimic another
1 material, without specific approval from City.
- 2 5. Secondary materials (like EIFS) should be used minimally, and only as a compliment.

3 **4. LANDSCAPING.** Landscaping improvements shall be required as an integral part of the Property.

- 4 **A.** All areas on the Property not used for building, storage, parking, walks, and access roads, shall
5 be suitably graded and drained, seeded, sodded landscaped and maintained as provided in Sec.
6 12.13 of the Revised Municipal Code.
- 7 **B.** Landscaped areas shall contain a variety of elements, including trees, shrubs, grass and/or other
8 suitable groundcover in accordance with a landscape plan for the Property to be approved by
9 City's Plan Commission.
- 0 **C.** All parking areas shall be surrounded by a landscaped buffer area to include canopy trees at
1 regular intervals or in clusters. Shade and ornamental trees (2 trees/island minimum) are also
2 required in landscape islands within parking areas.

1 **D.** All required landscaping shall be completed within one year of the completion of construction of
2 the principal building on the Property and shall, thereafter, be maintained in a manner acceptable
3 to City.

4 **E.** Developers will maintain the site landscaping in accordance with the final plans approved by
5 City's Plan Commission. Approved plans will run with the land and will remain in effect
6 regardless of changes in ownership of the subject property.

7 **5. SITE STANDARDS AND IMPROVEMENTS.** All buildings and other site improvements
8 (collectively "Improvements") to be constructed under this Agreement shall comply with the following
9 minimum standards:

0 **A. Plan Review.** Improvements shall be designed by an architect or engineer. Building
1 Improvements are subject to architectural review and approval by City's Plan Commission as
2 provided herein.

3 **B. Site Plan.** No building Improvements or structures shall be constructed on the Property until
4 plans (showing location, land coverage, building placement and intensity, landscaping, off-street
5 parking and other site improvements) have been submitted to and approved by City's Plan
6 Commission (the "Site Plan"). Improvements shown and determined on the Site Plan shall
7 include, but not be limited to:

- 8 1. Location of all building and other structures (to include a schedule
9 showing: lot area and total square feet in building (each floor) ;
- 0 2. A landscaping and screening plan showing the location, common and botanical names,
1 planting size, root condition and quantity of all plant material, including lawn areas. The
2 plan shall also show all ground cover and mulch areas, as well as construction materials,
3 including any retaining walls and edging.;
- 4 3. Fences (including types of materials);

- 1 4. Sidewalks, driveways and other paved areas (including types of materials);
- 2 5. Parking and access drive dimensions and locations, stall numbers and
- 3 dimensions, curbs, loading docks, and snow storage areas;
- 4 6. Loading areas (including types of materials);
- 5 7. Refuse areas, including location, screening and type;
- 6 8. Utility and storage areas (including types of materials);
- 7 9. Water impoundments;
- 8 10. Outdoor site and accent lighting (including fixtures and photometrics);
- 9 11. Areas of fill or cuts;
- 0 12. Storm water drainage plans and facilities;
- 1 13. On-site sewer, water and other utility locations, sizes and easement
- 2 locations;
- 3 14. Dimensions of all front, side, and rear yards, drives, etc.
- 4 15. Locations and dimensions of all easements.
- 5 16. Designation of future expansion areas.
- 6 17. Locations of all hydrants within the site.
- 7 18. A Grading Plan, including all finished grade levels.
 - 8 a. Existing and proposed grades and contours.
 - 9 b. Surface water drainage and detention and/or retention.
 - 0 c. Finished grade at building.
 - 1 d. Catch basins and storm sewer locations.
 - 2 e. Connection to existing utilities.

3 **C. Parking.** - Underground parking for approximately 241 parking stalls shall be the predominant
4 form of parking for the Project. Any surface parking shall be distributed throughout the Property

1 in a manner that no more than 30% of total surface parking should be located on any side facing
2 a street. Landscaping shall be used to define parking areas, primary vehicular drives and
3 pedestrian areas in an aesthetically and environmentally pleasing manner.

4 **6. REFUSE.** All trash containers, including dumpsters, must be enclosed by a solid masonry wall that
5 matches the building facade and provides a suitable visual screen. Enclosure areas will also feature a
6 rooftop structure/covering to limit sight lines into the refuse area from housing units on site and adjacent
7 to the property. Such wall shall be of sufficient height to cover the material stored and shall be
8 maintained so as to present an aesthetically appealing appearance at all times. All trash enclosures to be
9 permitted in side and rear yards only.

0 **7. UTILITIES AND SITE LIGHTING.** All existing and proposed utility lines on the property shall be
1 installed underground in easements provided therefore. No overhead electric power, telephone or cable
2 service will be permitted. Any existing or proposed utilities shall be located underground. Parking and
3 roadway lighting (fixture, height, type and intensity) where provided shall be approved by City. Area
4 lighting shall not be mounted on the building. Full cut off fixtures shall be utilized to prevent light splay
5 onto surrounding properties.

6 **8. PEDESTRIAN AND VEHICULAR ACCESS.**

7 **A.** All curb cuts and service drives shall be designed to minimize disruption of pedestrian activity
8 and movements and are subject to the approval of City's Board of Public Works.

9 **B.** Pedestrian and vehicle linkages and crossing access are encouraged between existing
0 neighborhoods and the proposed development area in an effort to promote walkability, traffic
1 safety, and reduction of the number of new driveways on major street arterials.

2 **C.** Loading docks and refuse areas shall be screened and concealed from street view.
3

1 9. **ACCESSORY STRUCTURES.** The location, size and design compatibility of all permitted accessory
2 structures in the Project, such as garages, maintenance buildings, etc., shall be approved in writing by
3 City's Plan Commission pursuant this Agreement, before construction. The term "accessory structure"
4 also includes, but is not limited to, the following (if such structures are to be located within the required
5 setbacks): ground-mounted telephone and electrical transformers, gas meters, ground-mounted air
6 conditioners, exhaust ducts and similar structures.

7
8 10. **SIGNAGE.** Signage placement shall be considered in the building and site design. A complete
9 signage package, indicating design, materials size, location, and illumination, shall be submitted to
0 City's Development Department for approval.

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2 11. **INTENTIONALLY LEFT BLANK**

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4 12. **MAINTENANCE RESPONSIBILITIES**

5 A. Developers shall keep the Property and easement areas on the Property in a well maintained,
6 safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the
7 following:

8 (1.) The removal of all litter, trash, refuse, and wastes.

9 (2.) The mowing of all lawn areas should be conducted in accordance with municipal code.

0 (3.) The maintenance of lawn and landscape areas in a weed-free, healthy and attractive
1 condition.

2 (4.) The care and pruning of trees and shrubbery outside of easements within Property
3 boundaries.

4 (5.) The maintenance of exterior lighting, signs, and mechanical facilities in working order.

- 1 (6.) The keeping of all exterior building surfaces in a clean, well maintained condition.
- 2 (7.) The striping and sealing of parking and driveway areas.
- 3 (8.) The removal of unlicensed or inoperable vehicles.
- 4 (9.) Snow and ice removal.

5 **B.** During construction, it shall be the responsibility of Developers to insure that construction sites
6 are kept free of unsightly accumulations of rubbish and scrap materials; and that construction material,
7 trailers, and the like are kept in a neat and orderly manner. If any street right-of-ways abutting the
8 Property are damaged as a result of Developers' construction activities, Developers shall repair said
9 damage to edge of pavement. Burning of excess or scrap construction material is prohibited. Construc-
0 tion site erosion control practices shall be implemented to prevent erosion, sedimentation and pollution
1 of air or water during construction. Erosion control plan to be submitted and approved by City's
2 Building Inspection & Neighborhood Services Department.

3 **C.** Storm Water Management and Controls.

4 (1). Developers are permitted to access and to direct stormwater to the Stormwater Management
5 System that was installed for the Property located within the parking lot of the abutting hotel
6 development. Developers are responsible for all costs associated with utilizing this System.

7 a. Upon Developers' acquisition of the Property, Developers will need to meet all City,
8 WDNR and Milwaukee Metropolitan Sewerage District (MMSD) storm water
9 management requirements. The requirements generally include removal of 40% of
0 the total suspended solids (WDNR regulation) and storm water detention that
1 accounts for a 20% reduction in the runoff rate from the Site compared to the year
2 2000 development conditions (an MMSD requirement).

1 **13. Bike Share Station:** If a public bike-share system is created in the City which is designed to include a
2 station located at the Project, Developers will permit the installation of said public bike-share station, which
3 station must be consistent with the capacity and other characteristics recommended or anticipated in the overall
4 system design. The location of the bike-share station shall be determined by City and its agents, except that final
5 location must be acceptable to Developers at mutually agreeable location in the general vicinity of the
6 Project. If such station is installed, Developers shall be responsible for the cost of such station, up to a
7 maximum of \$25,000, which costs shall be included as part of Project Costs. City shall be responsible for all
8 costs of installation over and above \$25,000. City or its agents, agree to maintain the bike-share station and
9 related equipment in first class condition at no cost to Developers.

0
1 **14. Shared Parking Lot.** The existing parking lot located at S. 83 Street and W. Orchard Street contained
2 within the Public Property will be sold by Authority to the Developers for off-site parking purposes. In
3 addition, Developers agree to grant an easement to West Allis Hotel Ventures LLC for the permitted shared
4 use of the site and shared maintenance, on the following general terms and conditions: (a) term 30 years, to run
5 with the land, benefiting the hotel property adjacent to the Property, (b) use rights shall be non-exclusive to each
6 party, (c) Developers shall be responsible for performing necessary maintenance, (d) mutual indemnification for
7 losses attributable to the other party's use of the parking lot, and (e) the parties shall share all costs associated
8 with the parking lot equally, including taxes, maintenance, snow removal, and capital repair or replacement.

9
0 **15. PURCHASE AND SALE AGREEMENT TO GOVERN.** All other terms and conditions of the
1 Purchase and Sale Agreement signed contemporaneously with this Agreement shall govern the interpretation
2 and application of this Agreement. Where the terms of this Agreement and the Purchase and Sale Agreement
3 are in conflict, the terms of the Purchase and Sale Agreement shall govern.

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16. **DEFINED TERMS:** Defined terms contained in the Development Agreement shall, unless a different specific definition is given, be governed by the definitions contained in the Purchase and Sale Agreement.

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

(SIGNATURES CONTINUED ON NEXT PAGE)

AGREED TO BY AND BETWEEN the Parties as of the date first set forth above.

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


By: 
John F. Stibal, Executive Director

Dated: 1-9-17

CITY: **CITY OF WEST ALLIS**

By: 
Dan Devine, Mayor

Dated: 1/12/17

By: 
Monica Schultz, City Clerk

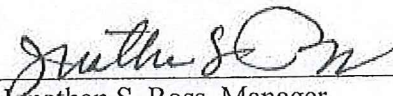
Dated: 1-12-17

DEVELOPERS:

ELEMENT 84, LLC

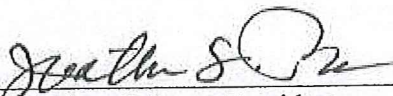
By: Element 84 Development Partners LLC, its Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: Dec. 30, 2016

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: Dec. 30, 2016

Approved as to form this 12 day
of ~~December, 2016.~~
Jan. 2017


Scott E. Post, City Attorney

DEVELOPERS: ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its Manager

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, Manager

Dated: _____

WEST ALLIS 84 PROPERTIES, INC.

By: _____
Jonathan S. Ross, President

Dated: _____

Approved as to form this ____ day
of December, 2016.

Scott E. Post, City Attorney

Development Agreement List of Exhibits

Exhibit 1 Rendering and Preliminary Site Plan
Exhibit 2 Project Schedule

Exhibit 1 – Building Rendering and Site Plan



BUILDING B4 - SOUTH-EAST VIEW
03/2018

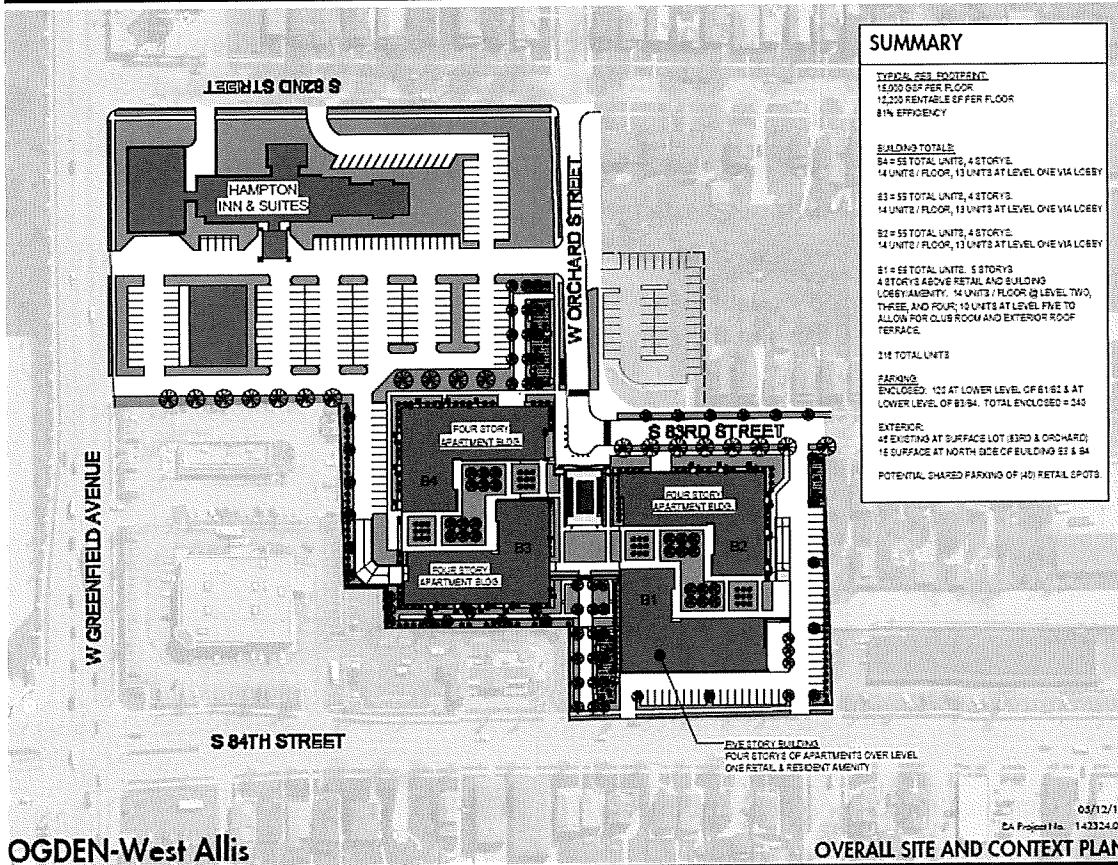


Exhibit 2 - Project Schedule

Item	Description	Date	Entity
1	Public Hearing to Sell Land	11/10/2015	Common Council/CDA
2	Execute Purchase Agreement (with negotiated Development Agreement as Exhibit)	12/31/2016	AUTHORITY DEVELOPERS
3	Site, Landscaping, Architectural Plan	90 days following full execution of Purchase Agreement	Plan Commission/ DEVELOPERS
4	Plan Commission Approval	90 days following full execution of Purchase Agreement	DEVELOPERS /Plan Commission
5	Common Council Approval	90 days following full execution of Purchase Agreement	AUTHORITY/ DEVELOPERS
6	Construction Drawings	30 days prior to the start of construction	Developers submits Plans to Building Inspection/ State of Wisconsin
7	Closing	Not later than 30 days following satisfaction or waiver of contingencies set forth in the Purchase Agreement	AUTHORITY \DEVELOPERS
8	Commence Construction	Within 45 days following Closing (subject to final financing schedule and model)	DEVELOPERS
9	Project Completion	300 days following start of construction, subject to force majeure	DEVELOPERS
10	Final Request for Certification of Completion	60 days following construction completion	DEVELOPERS

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Purchase and Sale Agreement

Exhibit F

**DEVELOPMENT FINANCING AGREEMENT
(TAX INCREMENTAL DISTRICT NUMBER 11)**

THIS AGREEMENT is entered into as of this 30th day of December, 2016 (the “Effective Date”), between the Community Development Authority of the City of West Allis, Wisconsin (“Authority”), the City of West Allis (“City”), Element 84, LLC. (“Element 84”) and West Allis 84 Properties, Inc., (“Corporation”) (together with Element 84, “Developers”). (Authority and City are collectively, “West Allis”).

WHEREAS, on even date herewith, West Allis and Developers have entered into a Purchase and Sale Agreement (the “Purchase and Sale Agreement”) for the sale of certain real property (the “Public Property”), which together with the Private Property identified in the Purchase and Sale Agreement constitutes the “Property,” to be used for the Project as defined below; and,

WHEREAS, pursuant to the Purchase and Sale Agreement and a separate Development Agreement of even date herewith (the “Development Agreement”), Developers have agreed to construct two 4-story multifamily apartment buildings having in total approximately 203 apartment units. One of the buildings will also include approximately 3,100 sq. ft. of commercial space. The Project will include approximately 241 underground parking spaces and approximately 144 surface parking spaces.¹ The improvements depicted on **Exhibit B – Project Elevation and Site Plan of the Purchase and Sale Agreement** are hereby referred to as the “Project,” and

WHEREAS, Corporation and Element 84, LLC are jointly undertaking the Project, will own the Property and the Project as tenants-in-common and are collectively referred to as “Developers” under the Purchase and Sale Agreement and the Development Agreement; and

WHEREAS, the Project is located in City's Tax Incremental District Number 11 (the “District”) which City has established in order to finance project costs related to eliminating blight within the District as permitted under Wis. Stats. Section 66.1105; and

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

¹ Pursuant to the Purchase and Sale Agreement, the number of surface parking spaces will be adjusted to reflect the conveyance of the Excluded Land.

1 **WHEREAS**, the Project will serve the purpose of eliminating the blighted conditions
2 which exist in the District in accordance with Section 66.1105(4)(gm)(4)(a)-(b) of the Wisconsin
3 Statutes; and

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

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

11 **WHEREAS**, the tax incremental financing provided for the Project consists of two
12 components: (i) a financial contribution from City to Developers in the amount of \$2,500,000
13 which City will finance through the issuance of its general obligation bonds (the “City
14 Investment”); and (ii) a Developer financed contribution in the amount of \$2,500,000 (the
15 “Developer Financed Contribution”) that will be repaid from available tax increments pursuant
16 to the terms of this Agreement; and

17 **WHEREAS**, the City Investment will be financed by 15- year debt service, general
18 obligation bonds (the “Series I Bonds”); and

19 **WHEREAS**, the Developer Financed Contribution will be financed through the issuance
20 of City’s Tax Increment Project Revenue Bond, in substantially the form attached as Exhibit III,
21 to be issued by City and purchased by Corporation (the “Series II Bond”).

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

25 **1. REPRESENTATIONS AND WARRANTIES OF DEVELOPERS.**

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

27 **2. CONSTRUCTION OF THE PROJECT.**

28 Developers shall construct the Project in accordance with the terms of the Purchase and
29 Sale Agreement and the Development Agreement.

30 **3. CITY INVESTMENT.**

31 City will make available the City Investment and the proceeds of the Developer Financed
32 Contribution to Corporation for construction of the Project concurrent with Developers’ closing
33 on its Project financing. Said funds will be made available for an account designated by
34 Developers and approved by Developers’ lender and disbursed according to procedures mutually
35 acceptable to the parties, which may, at the request of Developers or the Developers’ lender,

1 include an escrow and disbursement agreement under which Developers' title insurance
2 company shall act as the disbursement agent.

3 **4. WEST ALLIS'S CONSTRUCTION COST CONSULTANTS.**

4
5 Prior to start of construction, West Allis and Developers shall agree on a final **Project Budget**
6 substantially in the form attached as **Exhibit H of the Purchase and Sale Agreement**. West
7 Allis will be engaging their own construction cost consultant to review the Project Budget and to
8 monitor final costs. The Developer agrees to cooperate with the consultant and provide such
9 information as they may request to satisfy this section.

10
11 **5. ISSUANCE OF THE SERIES I BONDS.**

12 A. City will make available the City Investment funds pursuant to Section 3, in
13 accordance with a schedule and procedures mutually acceptable to the parties, which may, at the
14 request of Developers or the Developers' lender, include an escrow and disbursement agreement
15 under which Developers' title insurance company shall act as the disbursement agent. The
16 Series I Bonds shall be 15- year debt service, general obligation bonds. Immediately after
17 closing on the Series I Bonds, City shall generate and deliver to the Developers a schedule
18 setting forth the actual debt service payments on the Series I Bonds (the "Series I Debt Service
19 Payments").

20 B. In each year, beginning in 2018 and ending in 2032 (or sooner, if all of the
21 outstanding principal and interest on the Series I Bonds has been paid in full by City in
22 accordance with the Series I Bond documents)² City shall apply the tax increment generated by
23 the Property (the "Tax Increments") first to make Series I Debt Service Payments and to pay
24 administrative costs of City which are described on Exhibit II- Project Costs ("Administrative
25 Costs").³ The Administrative Costs shall be paid to City annually, prior to any disbursement of
26 Tax Increments. Second, to make Series II Debt Service Payments. Third, all Tax Increments in
27 excess of the amount required annually to make the Series I and Series II Debt Service Payments
28 and Administrative Costs shall be deposited into a special reserve account for the District and
29 applied as follows pursuant to Section 14 of the Purchase and Sale Agreement:

30 (1) First, to offset any Shortfall Payments owed by Developers in any given
31 year during the life of the Tax Incremental District, and

32 (2) Second, to payment of outstanding principal and interest on the Series II
33 Bond, and

34 (3) Third, if all of the outstanding principal and interest on the Series II Bond
35 has been paid in full, to the payment of other District project costs.

² The calendar years in which Tax Increments are to be generated remains subject to change depending on actual Project commencement date and the corresponding final City financial model.

³ Note: Exhibit H to reflect \$25,000 in year one, \$25,000 in year 2, and \$15,000 in each year thereafter for Administrative Costs, subject to final financial model. The Administrative Costs shall be paid to City annually, prior to any disbursement of Tax Increments.

1
2 **6. ISSUANCE OF THE SERIES II BOND.**

3 A. City shall issue and sell to Corporation or its assignee, the Series II Bond
4 concurrent with Developers' closing on its Project financing; provided that Developers have first
5 contractually committed to undertake the following:

6 (1) Acquire fee ownership of the portion of the Property described as the "Private
7 Property" further described in **Exhibit A-2 – Private Property of the Purchase and Sale**
8 **Agreement**; and

9 (2) Acquire fee ownership of the portion of the Property described as the "Public
10 Property" further described in **Exhibit A-1 – Public Property of the Purchase and Sale**
11 **Agreement**; and

12 (3) Construct the Project in accordance with all municipal ordinances of City and
13 the provisions of the Purchase and Sale Agreement, the Development Agreement, and the
14 Environmental Addendum.

15 B. In each year, beginning in 2018 and ending in 2032 (or sooner, if all of the
16 outstanding principal and interest on the Series I Bond has been paid in full by Tax Increment in
17 accordance with the Series I Bond documents)⁴, provided that Developers are not delinquent in
18 the payment of property taxes with respect to the Property, City shall apply the amount of the
19 Tax Increments generated by the Project in the subject year in excess of any remaining actual
20 Series I Bond Administrative Costs as set forth in Section 5. B., above.

21 (1) The Tax Increments shall be calculated based on the tax incremental base
22 value and the actual value increment for the Property, as determined annually by the Wisconsin
23 Department of Revenue for each tax year.

24 (2) The Series II Bond shall be in substantially the form set forth on **Exhibit**
25 **III - Tax Increment Project Revenue Bond**, provided that, notwithstanding any payment
26 schedule included in the Series II Bond, or any other provision of this Agreement or the Series II
27 Bond to the contrary, the amount of the outstanding principal and interest on the Series II Bond
28 (the "Series II Debt Service Payments") paid by City to the holder of the Series II Bond each
29 year shall be the full amount of the Tax Increments, in excess of the actual Series I Bond
30 Payments and Administrative Costs and any repayment of Shortfall Payments, generated that
31 year.

32 (3) The Series II Bond shall be in a principal amount equal to actual Project
33 Costs incurred by Developers, but not to exceed \$2,500,000. The Series II Bond shall be dated
34 its date of issuance and shall bear interest from that date at the Developer's cost of funds, but not
35 to exceed 6.19% per annum.⁵

⁴ The calendar years in which Tax Increments are to be generated remains subject to change depending on actual Project commencement date and the corresponding final City financial model.

⁵ The Developer's cost of funds shall be a blended rate determined by Developer's cost of debt and equity.

1 C. City covenants and agrees as follows:

2 (1) City's annual budget, as prepared by staff and as submitted to City's
3 Common Council for approval, will include payments on the Series II Bond to be made such
4 budget year, and that its staff will request the necessary appropriation from the Common Council
5 for the full amount of the Tax Increments of the Property to be generated that year, will advise
6 the Common Council of any effect on City's credit rating of any failure to appropriate sufficient
7 funds toward payment of the Series II Bonds, and will exhaust all available administrative
8 reviews and appeals in the event that that portion of the budget is not approved;

9 (2) If City's proposed annual budget does not in any year provide for
10 appropriation of amounts sufficient to make the payments due on the Series II Bond in the full
11 amount of the Tax Increments available in that year, City will notify Developers by certified
12 mail, (and, if the Series II Bond or rights to payments thereunder has been transferred or
13 assigned in accordance with the provisions of this Agreement, the holder of the Series II Bond or
14 the party entitled to receive payments thereunder) of that fact prior to the date the budget is
15 presented to the Common Council for final approval;

16 (3) Funds in the special fund of the District shall not be used to pay any other
17 project costs of the District or applied to any other purpose until all outstanding principal and
18 interest on the Series II Bond have been paid in full;

19 (4) City shall take no action to close or dissolve the District prior to October
20 1, 2032 or the date that all principal and interest due under the Series II Bonds have been paid in
21 full (whichever occurs first); and

22 (5) if on any Series II Bond payment date there are insufficient Tax
23 Increments appropriated to pay the principal and interest due on the Series II Bond, the amount
24 due but not paid shall accumulate and be payable on the next Series II Bond payment date until
25 the final Series II Bond payment date. City shall have no obligation to pay any amount of
26 principal or interest on the Series II Bond which remains unpaid after expiration or closure of the
27 Tax Incremental District and the holder of the Series II Bond shall have no right to receive
28 payment of such amounts.

29 **7. COST OF DEVELOPERS' IMPROVEMENTS; PRINCIPAL AMOUNT OF THE**
30 **SERIES II BOND.** As provided above, the principal amount of the Series II Bond shall be
31 equal to the actual Project Costs incurred by Developers, but not to exceed \$2,500,000. The
32 Project Costs, for purposes of this Agreement, shall be initially determined as of the date of
33 issuance of the Series II Bond and shall be recalculated by City based on the procedure described
34 in Section 13 of the Purchase and Sale Agreement.

35 **8. NO PROPERTY TAX EXEMPTION.** Developers shall not apply for an exemption
36 from property taxes with respect to the Property or transfer the Property to an entity that is
37 lawfully exempt from the payment of property taxes unless the transferee agrees to make a
38 payment in lieu of taxes in an amount equal to City's portion of all property taxes that would
39 have been paid by such transferee were it not exempt from taxation. Such payment shall be due,
40 payable and collected in the same manner as property taxes, to the extent permitted by law.

1 Developers, their successors, heirs, and assigns waive the right to contest the validity of this
2 provision. This covenant shall run with the land; provided, however, shall automatically
3 terminate upon the termination of Tax Incremental District Number 11.

4 **9. TERM AND TERMINATION.** The term of this Agreement shall begin on the date of
5 this Agreement first set forth above and shall continue until, unless sooner terminated in
6 accordance with this Agreement, until the termination by the City of Tax Incremental District
7 Number 11 in accordance with this Agreement and pursuant to § 66.1105(7), Wis. Stats., as
8 amended.

9 **10. DEFAULT.** The provisions of Section 42 of the Purchase and Sale Agreement are
10 incorporated herein.

11 **11. ASSIGNMENT OF AGREEMENT.** This Agreement shall not be assignable by
12 Developers without the prior written consent of West Allis; provided, however, that upon notice
13 to Authority and West Allis, Developers may assign this Agreement to an affiliated entity or to
14 its lender in connection with a mortgage on the Property, subject to all terms and conditions of
15 this Agreement.

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

20 **13. TRANSFER OR ASSIGNMENT OF THE SERIES II BOND.**

21 A. The Series II Bond may be transferred or assigned by the registered owner thereof
22 (in whole or in part) only with the consent of City by surrender of the Bond at the office of City's
23 City Clerk accompanied by an assignment duly executed by the registered owner or his attorney
24 duly authorized in writing.

25 B. The initial Series II Bond will be issued to and in the name of Corporation. In the
26 event that any such assignment results in legal or other costs, such costs shall be paid by
27 Developers within thirty (30) days of invoice. The aggregate amount of the Series II Debt
28 Service Payments made in any year shall not exceed the available amount of the Tax Increments
29 for the Property. In all events, the aggregate principal amount of the Series II Bond payments,
30 and of the Series II Bond issued, shall not exceed \$2,500,000.

31 **14. MISCELLANEOUS.**

32 A. **Mutual Assistance.** West Allis and Developers shall do all things reasonably
33 necessary or appropriate to carry out the terms, provisions and obligations of this Agreement and
34 to aid and assist each other in carrying out this Agreement, including, without limitation, the
35 giving of notices, the holding of public hearings, the enactment by City of resolutions and
36 ordinances, and the execution and delivery of documents, instruments, petitions and
37 certifications. West Allis and Developers shall cooperate fully with each other in seeking from
38 any or all appropriate governmental bodies (whether federal, state, county or local) any
39 approvals and permits that are reasonably necessary or 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 various
3 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 this
6 Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated in the first paragraph of this Agreement.

Community Development Authority of the City of West Allis

By: 
John F. Stibal, Executive Director

Dated: 6-9-17

CITY OF WEST ALLIS

By: 
Dan Devine, Mayor

Dated: 1/12/17

By: 
Monica Schultz, City Clerk

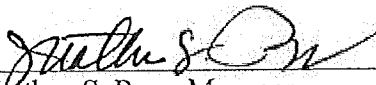
Dated: 1-12-17

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ELEMENT 84, LLC

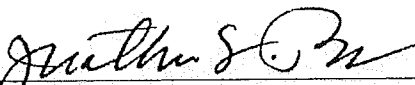
By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: Dec 30, 2016

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: Dec. 30, 2016

ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, Manager

Dated: _____

WEST ALLIS 84 PROPERTIES, INC.

By: _____
Jonathan S. Ross, President

Dated: _____

**EXHIBIT I
TO
DEVELOPMENT FINANCING AGREEMENT**

Project Costs

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**EXHIBIT II
TO
DEVELOPMENT FINANCING AGREEMENT**

Project Plan

6 The Project Plan for Tax Incremental District Number 11 is on file in the office of the
7 City Clerk and is incorporated herein by reference.

8

EXHIBIT III
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 West Allis 84 Properties, Inc. 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 _____, 2016, between the City of West Allis, the Community Development Authority of the City of West Allis, and West Allis 84 Properties, Inc., a Wisconsin corporation and Element 84, LLC., a Wisconsin Limited Liability Company (the “Development Financing Agreement”)) but not to exceed \$2,500,000. 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 Bond 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 \$2,500,000 this Bond shall be payable in installments of principal due on _____, in each of the years and amounts as follows:

Year

Principal

1 In the event that the total Project Costs incurred by Developers and therefore the final
2 Principal Amount of the Bond is less than \$2,500,000 there shall be a reduction in the principal
3 installments of the Bond beginning with the final maturity and then proceeding to the next
4 preceding maturity until the total of the principal installments on the Bond is equal to the amount
5 of the Project Costs incurred by Developers.

6 Interest shall be payable on _____ 1 in each year, commencing on
7 _____ 1, 2018 (the "Bond Payment Dates").

8 This Bond has been issued to finance a project which is a part of City's blight elimination
9 utility, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621,
10 Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and
11 revenues herein described, which income and revenues have been set aside as a special fund for
12 that purpose and identified as the "Special Redemption Fund." This Bond is issued pursuant to a
13 resolution adopted on _____, _____, by City's Common Council (the
14 "Resolution") and the Development Financing Agreement, and is subject to the terms and
15 conditions of said Resolution and Development Financing Agreement. This Bond does not
16 constitute an indebtedness of City within the meaning of any constitutional or statutory limitation
17 or provision. The principal of and interest on this Bond shall be payable solely in amounts that
18 do not exceed available Tax Increments (as defined in the Development Financing Agreement)
19 received by City with respect to its Tax Incremental District Number 11 (the "Revenues").
20 Reference is hereby made to the Development Financing Agreement for a more complete

1 statement of the revenues from which and conditions under which this Bond is payable, and the
2 general covenants and provisions pursuant to which this Bond has been issued.

3 Revenues shall be applied first by City for the payment of principal and interest on the
4 Series I Bonds, as set forth in the Development Financing Agreement, and for administration of
5 the District, followed by the payment of any interest due on the Bond Payment Date and then to
6 the payment of any principal due on that Bond Payment Date.

7 If on any Bond Payment Date there shall be insufficient Revenues to pay the principal or
8 interest due on this Bond, the amount due but not paid shall accumulate and be payable on the
9 next Bond Payment Date until the final Bond Payment Date. Interest at the rate of [5.25%] per
10 annum shall be paid on such unpaid amounts of principal and interest. The City shall have no
11 obligation to pay any amount of principal or interest on this Bond which remains unpaid after
12 October 1, [2037] and the owner of this Bond shall have no right to receive payment of such
13 amounts.

14 This Bond (a) shall be prepaid on each Bond Payment Date in an amount equal to the
15 amount by which the available Tax Increments collected by City in that Bond Year exceed the
16 amount of principal and interest due on the Bond Payment Date and (b) is subject to prepayment
17 in whole or from time to time in part at any time, at the option of City.

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

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

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

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

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

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

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

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

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

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

(SEAL)

By _____
Mayor

By _____
City Clerk

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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 I - Project Costs

ELEMENT 84
West Allis, WI



DEVELOPMENT BUDGET						
Equivalent Units (1) 207	QTY.	RESIDENTIAL			COST	%
		PER S.F.	PER UNIT			
LAND/PROPERTY ACQUISITION	240,385		15,000		\$ 3,105,000	7.61%
Land/Property Purchase Price-Residential	237,285				\$ 1,924,600	
Land/Property Purchase Price-Commercial	3,100				\$ 610,000	
Land/Property Purchase Price-Single/Duplex Family					\$ 570,400	
Easement Acquisition Costs/Misc					\$ -	
Subtotal Land/Property Acquisition	240,385		\$ 15,000		\$ 3,105,000	7.61%
(1) Commercial space equals approx. 4 additional units.						
CONSTRUCTION COSTS	240,385	\$ 137.03	\$159,128		\$ 32,939,510	80.73%
Site Improvements						
Off-Site Improvements		\$ -	\$ -		\$ -	
Abatement/Demolition		\$ 0.94	\$ 1,087		\$ 225,000	
Site Improvements (Utilities, Excavation, Hauling)		\$ 5.25	\$ 6,096		\$ 1,261,880	
Landscaping (Green Wall, Monument)		\$ 1.36	\$ 1,577		\$ 326,430	
Other (Pool, Fencing, Grill Stations, Fire Pit, Bike Racks)		\$ 0.31	\$ 363		\$ 75,170	
Subtotal Site Improvements		\$ 7.86	\$ 9,123		\$ 1,888,480	4.63%
Building Improvements						
Trade Contracts-Residential	237,285	\$ 99.82	\$ 114,426		\$ 23,686,130	
Trade Contracts-Commercial	3,100	\$ 100.00	\$ -		\$ 310,000	
White Box / Tenant Improvement Allowance	3,100	\$ -	\$ -		\$ -	
Structured Parking (Underground Parking)	242	\$ 17.11	\$ 17,000		\$ 4,114,000	
Other Construction Costs - Environmental	0	\$ -	\$ -		\$ -	
Subtotal Building Improvements		\$ 116.94	\$ 135,798		\$ 28,110,130	68.90%
General Conditions/Builders Profit & OH						
General Conditions	4.59%	\$ 5.37	\$ 6,236		\$ 1,290,900	
Contractor Overhead	1.00%	\$ 1.25	\$ 1,449		\$ 300,000	
Contractor Profit	2.50%	\$ 3.12	\$ 3,623		\$ 750,000	
Construction Contingency	2.00%	\$ 2.50	\$ 2,899		\$ 600,000	
Construction Management - Owner's Representative	0.00%	\$ -	\$ -		\$ -	
Performance and Payment Bond	0.00%	\$ -	\$ -		\$ -	
Subtotal General Conditions, Overhead and Profit	10.09%	\$ 12.23	\$ 14,207		\$ 2,940,900	7.21%

SOFT COSTS	% Hard Costs	\$10.80	\$	12,539	\$	2,595,490	6.36%	
Architecture and Engineering								
Architectural Design	0.87%	\$	1.19	\$	1,386	\$	287,000	
Architect-Construction Administration	0.41%	\$	0.56	\$	652	\$	135,000	
Structural Engineering	0.24%	\$	0.33	\$	386	\$	80,000	
Mechanical, Electrical and Plumbing Engineering	0.00%	\$	-	\$	-	\$	-	
Fire Protection	0.00%	\$	-	\$	-	\$	-	
Civil Engineering, ALTA Survey, CSM	0.13%	\$	0.17	\$	203	\$	42,000	
Landscape Design	0.02%	\$	0.03	\$	32	\$	6,600	
Geotechnical Testing	0.04%	\$	0.05	\$	63	\$	13,000	
Environmental Review	0.05%	\$	0.06	\$	75	\$	15,590	
Traffic Study	0.05%	\$	0.06	\$	72	\$	14,950	
Interior Design (Included in Architectural Design)	0.00%	\$	-	\$	-	\$	-	
Subtotal Architecture and Engineering	1.80%	\$	2.47	\$	2,870	\$	594,140	1.46%
Legal Services								
Organizational/Acquisition		\$	0.04	\$	48	\$	10,000	
Closing (Loan, Title Commitment & Exceptions)		\$	0.08	\$	97	\$	20,000	
Offering Documents (PPM, Operating Agreement)		\$	0.08	\$	97	\$	20,000	
Environmental		\$	0.04	\$	48	\$	10,000	
Development/Finance (TIF) Agreement		\$	0.08	\$	97	\$	20,000	
Condo Documents		\$	-	\$	-	\$	-	
Subtotal Legal Services		\$	0.33	\$	386	\$	80,000	0.20%
Governmental Impact Fees								
Parkland Fee		\$	-	\$	-	\$	-	
Wetland Preservation		\$	-	\$	-	\$	-	
Bublr Bike Donation		\$	0.08	\$	97	\$	20,000	
Performance Deposit - Refundable		\$	-	\$	-	\$	-	
Development Application Fees/Review Fees		\$	-	\$	-	\$	-	
City Review Fees		\$	0.03	\$	36	\$	7,500	
Utility Impact fee		\$	-	\$	-	\$	-	
Building Permit (Included Construction Contract)		\$	-	\$	-	\$	-	
Subtotal Impact Fees		\$	0.11	\$	133	\$	27,500	0.07%
Holding Costs								
Construction Loan Interest		\$	5.20	\$	6,039	\$	1,250,000	
Accounting/Tax Returns		\$	0.02	\$	24	\$	5,000	
Taxes During Construction		\$	0.23	\$	266	\$	55,000	
Subtotal Holding Costs		\$	5.45	\$	6,329	\$	1,310,000	3.21%
Insurance								
Construction Period Insurance		\$	0.49	\$	570	\$	118,000	
General Liability		\$	0.02	\$	28	\$	5,740	
Subtotal Insurance		\$	0.51	\$	598	\$	123,740	0.30%

Furniture and Equipment					
Model Unit(s)	\$ -	\$ -	\$ -		
FF & E	\$ 0.56	\$ 652	\$ 135,000		
Ground Floor and Lobby Furnishings	\$ -	\$ -	\$ -		
Business Center Furnishings	\$ -	\$ -	\$ -		
Media Lounge Indoor Furniture	\$ -	\$ -	\$ -		
Pool Lounge Outdoor Furniture	\$ -	\$ -	\$ -		
Public Area AV, Internet	\$ -	\$ -	\$ -		
Fitness Studio Equipment	\$ -	\$ -	\$ -		
Management Office	\$ -	\$ -	\$ -		
Subtotal Furniture and Equipment	\$ 0.56	\$ 652	\$ 135,000		0.33%
Loan Origination Expenses					
Loan Amount	26,675,000	TID Loan	\$ 2,500,000		
Loan Financing Fees	0.50%	\$ 644	\$ 133,375		
Developer Funded TID Loan	0.50%	\$ 60	\$ 12,500		
Pace Loan Fees/Closing Costs (Included in Interest Rate)	0.00%	\$ -	\$ -		
Legal - Loan Closing		\$ 97	\$ 20,000		
Market Study		\$ 29	\$ 6,000		
Appraisal Fee		\$ 29	\$ 6,000		
Environmental Phase 1/2		\$ 24	\$ 5,000		
Cost Review / Capital Needs Assessment		\$ 12	\$ 2,500		
Architectural Review (Incl. in Cost Review above)		\$ -	\$ -		
Audit / Accounting		\$ -	\$ -		
Miscellaneous Closing Costs - Draw Inspections		\$ 95	\$ 19,735		
Title and Mortgage Tax		\$ 97	\$ 20,000		
Subtotal Loan Origination Expenses	\$ 0.94	\$ 1,087	\$ 225,110		0.55%
Marketing/Property Start-up Expenses					
Marketing and Advertising	\$ 0.42	\$ 483	\$ 100,000		
Residential Leasing Fee	207	\$ -	\$ -		
Subtotal Marketing Expense	\$ 0.42	\$ 483	\$ 100,000		0.25%
Subtotal Land, Construction Costs and Soft Costs					
	\$ 160.74	\$ 186,667	\$ 38,640,000		94.71%
Project/Development Fees					
Acquisition Fee (% of Purchase Price)	\$ 0.33	\$ 386	\$ 80,000		
Equity Sourcing Fee (% of Total Equity)	0.00%	\$ -	\$ -		
Development Fee (% of Total Project Costs)	3.50%	\$ 4,74	\$ 5,507	\$ 1,140,000	
Deferred Development Fee	\$ 0.87	\$ 1,014	\$ 210,000		
Reserves/Contingency					
Rent-up Reserve	0.39%	\$ 0.62	\$ 725	\$ 150,000	
Operating Reserve	0.00%	\$ -	\$ -	\$ -	
Development Contingency	1.50%	\$ 2.41	\$ 2,802	\$ 580,000	
TOTAL PROJECT COST	\$ 169.73	\$ 197,101	\$ 40,800,000		100.00%

Purchase and Sale Agreement

EXHIBIT "G"

Document Number _____

MEMORANDUM OF AGREEMENTS

NOTICE IS HEREBY GIVEN that a Purchase and Sale Agreement and Development Agreement have been made and entered into as of the ____ day of November , 2016, by and between the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS ("Authority"), the City of West Allis, ("City), Element 84, LLC , ("Element 84") and West Allis 84 Properties, Inc., ("Corporation") (Element 84 and Corporation are collectively, "Developers"). (Authority and City are collectively "West Allis") and its successors and assigns, wherein the parties have set forth the terms, conditions, restrictions and property owner guarantees governing the sale, purchase, development and use of certain lands located in the City of West Allis, Milwaukee County, State of Wisconsin, legally described on Exhibit "I – Property ", attached hereto and made a part hereof.

This space is reserved for recording data

Return to

City Attorney's Office
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Parcel Identification Number/Tax Key Number

IN WITNESS WHEREOF, the undersigned have executed and delivered this Memorandum of Agreements.

(SIGNATURES ON THE FOLLOWING PAGES)

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

By: _____
Gerald C. Matter, Chairman

Attest:

John F. Stibal, Executive Director

State of Wisconsin)
) ss
Milwaukee County)

Personally came before me this _____ day of _____, 2016, Gerald C. Matter and John F. Stibal, the Chairman and Executive Director, respectively, of the Community Development Authority of the City of West Allis, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same on behalf of said Authority.

_____) (SEAL)
(
Notary Public, State of Wisconsin
My Commission Expires: _____

(SIGNATURES CONTINUE ON THE FOLLOWING PAGES)

City of West Allis

By: _____

Dan Devine, Mayor

Attest:

Rebecca Grill, City Administrator

State of Wisconsin)
) ss
Milwaukee County)

Personally came before me this _____ day of _____, 2016, Dan Devine and Rebecca Grill, Mayor and City Administrator, respectively of the City of West Allis to me known to be the person(s) who executed the foregoing instrument and acknowledged the same on behalf of said Authority.

() (SEAL)
Notary Public, State of Wisconsin
My Commission Expires: _____

(SIGNATURES CONTINUED ON THE FOLLOWING PAGES)

() (SEAL)
Notary Public, State of Wisconsin
My Commission Expires: _____

Element 84 , LLC .

By: _____
 , Manager

State of _____)
) ss
_____ County)

Personally came before me this _____ day of _____, 2016, the above-named Member , respectively, of Element 84 , LLC , to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said bank.

_____(SEAL)
(_____)
Notary Public, State of Wisconsin
My Commission Expires: _____

(SIGNATURES CONTINUED ON THE FOLLOWING PAGE)

West Allis 84 Properties, Inc.

By: _____
 , President, Board Chair

State of _____)
) ss

_____ County)

Personally came before me this _____ day of _____, 2016, the above-named Member, respectively, of West Allis 84 Properties, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said bank.

_____(SEAL)
(_____)
Notary Public, State of Wisconsin
My Commission Expires: _____

This instrument was drafted by:

Scott E. Post
City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

Exhibit I (The Property)

A tract of land, located in the Northeast $\frac{1}{4}$ of Section 4, Township 6 North, Range 21 East in the City of West Allis, Milwaukee County, more particularly described as follows:

Beginning at the Southeast corner of Lot 2, Certified Survey Map No. 8563; thence South $88^{\circ}06'07''$ West, 123.17 feet along the North right-of-way line of West Orchard Street to the point of curvature; thence Southwesterly, 177.64 feet along the arc of the curve to the left, having radius of 115.00 feet, chord length of 160.50 feet and chord bearing of South $43^{\circ}50'56''$ West to the point on the West right-of-way line of South 83rd Street; thence South $00^{\circ}24'15''$ East, 257.96 feet, to the Southeast corner of Lot 9 in Block 5 of the Henderson Park subdivision; thence South $88^{\circ}06'07''$ West, 150.99 feet along the South line of said Lot 9; thence South $01^{\circ}00'16''$ East, 349.93 feet to the North right-of-way line of West Lapham Street; thence South $88^{\circ}06'07''$ West, 50.00 feet along the said North right-of-way line; thence North $01^{\circ}00'19''$ West, 391.75 feet; thence South $88^{\circ}06'07''$ West, 101.25 feet to the East right-of-way line of South 84th Street; thence North $01^{\circ}17'32''$ West, 318.00 feet along the said East right-of-way line, to the Southwest corner of Lot 4, Certified Survey Map No. 6510; thence North $88^{\circ}07'04''$ East, 102.84 feet; thence North $01^{\circ}00'19''$ West, 224.74 feet; thence North $88^{\circ}07'09''$ East, 50.00 feet; thence North $01^{\circ}00'37''$ West, 47.51 feet; thence North $88^{\circ}04'54''$ East, 389.86 feet; thence South $01^{\circ}03'19''$ East, 262.30 feet to the Point of Beginning.

Said land contains 5.523 Acres, more or less.



Exhibit H - Project Budget



ELEMENT 84
West Allis, WI

DEVELOPMENT BUDGET					
Equivalent Units (1) 207	QTY.	PER S.F.	RESIDENTIAL		%
			PER UNIT	COST	
LAND/PROPERTY ACQUISITION	240,385		15,000	\$ 3,105,000	7.61%
Land/Property Purchase Price-Residential	237,285			\$ 1,924,600	
Land/Property Purchase Price-Commercial	3,100			\$ 610,000	
Land/Property Purchase Price-Single/Duplex Family				\$ 570,400	
Easement Acquisition Costs/Misc				\$ -	
Subtotal Land/Property Acquisition	240,385		\$ 15,000	\$ 3,105,000	7.61%
(1) Commercial space equals approx. 4 additional units.					
CONSTRUCTION COSTS	240,385	\$ 137.03	\$159,128	\$ 32,939,510	80.73%
Site Improvements					
Off-Site Improvements		\$ -	\$ -	\$ -	
Abatement/Demolition		\$ 0.94	\$ 1,087	\$ 225,000	
Site Improvements (Utilities, Excavation, Hauling)		\$ 5.25	\$ 6,096	\$ 1,261,880	
Landscaping (Green Wall, Monument)		\$ 1.36	\$ 1,577	\$ 326,430	
Other (Pool, Fencing, Grill Stations, Fire Pit, Bike Racks)		\$ 0.31	\$ 363	\$ 75,170	
Subtotal Site Improvements		\$ 7.86	\$ 9,123	\$ 1,888,480	4.63%
Building Improvements					
Trade Contracts-Residential	237,285	\$ 99.82	\$ 114,426	\$ 23,686,130	
Trade Contracts-Commercial	3,100	\$ 100.00	\$ -	\$ 310,000	
White Box / Tenant Improvement Allowance	3,100	\$ -	\$ -	\$ -	
Structured Parking (Underground Parking)	242	\$ 17.11	\$ 17,000	\$ 4,114,000	
Other Construction Costs - Environmental	0	\$ -	\$ -	\$ -	
Subtotal Building Improvements		\$ 116.94	\$ 135,798	\$ 28,110,130	68.90%
General Conditions/Builders Profit & OH					
General Conditions	4.59%	\$ 5.37	\$ 6,236	\$ 1,290,900	
Contractor Overhead	1.00%	\$ 1.25	\$ 1,449	\$ 300,000	
Contractor Profit	2.50%	\$ 3.12	\$ 3,623	\$ 750,000	
Construction Contingency	2.00%	\$ 2.50	\$ 2,899	\$ 600,000	
Construction Management - Owner's Representative	0.00%	\$ -	\$ -	\$ -	
Performance and Payment Bond	0.00%	\$ -	\$ -	\$ -	
Subtotal General Conditions, Overhead and Profit	10.09%	\$ 12.23	\$ 14,207	\$ 2,940,900	7.21%

SOFT COSTS	% Hard Costs	\$10.80	\$ 12,539	\$ 2,595,490	6.36%
Architecture and Engineering					
Architectural Design	0.87%	\$ 1.19	\$ 1,386	\$ 287,000	
Architect-Construction Administration	0.41%	\$ 0.56	\$ 652	\$ 135,000	
Structural Engineering	0.24%	\$ 0.33	\$ 386	\$ 80,000	
Mechanical, Electrical and Plumbing Engineering	0.00%	\$ -	\$ -	\$ -	
Fire Protection	0.00%	\$ -	\$ -	\$ -	
Civil Engineering, ALTA Survey, CSM	0.13%	\$ 0.17	\$ 203	\$ 42,000	
Landscape Design	0.02%	\$ 0.03	\$ 32	\$ 6,600	
Geotechnical Testing	0.04%	\$ 0.05	\$ 63	\$ 13,000	
Environmental Review	0.05%	\$ 0.06	\$ 75	\$ 15,590	
Traffic Study	0.05%	\$ 0.06	\$ 72	\$ 14,950	
Interior Design (Included in Architectural Design)	0.00%	\$ -	\$ -	\$ -	
Subtotal Architecture and Engineering	1.80%	\$ 2.47	\$ 2,870	\$ 594,140	1.46%
Legal Services					
Organizational/Acquisition		\$ 0.04	\$ 48	\$ 10,000	
Closing (Loan, Title Commitment & Exceptions)		\$ 0.08	\$ 97	\$ 20,000	
Offering Documents (PPM, Operating Agreement)		\$ 0.08	\$ 97	\$ 20,000	
Environmental		\$ 0.04	\$ 48	\$ 10,000	
Development/Finance (TIF) Agreement		\$ 0.08	\$ 97	\$ 20,000	
Condo Documents		\$ -	\$ -	\$ -	
Subtotal Legal Services		\$ 0.33	\$ 386	\$ 80,000	0.20%
Governmental Impact Fees					
Parkland Fee		\$ -	\$ -	\$ -	
Wetland Preservation		\$ -	\$ -	\$ -	
Bublr Bike Donation		\$ 0.08	\$ 97	\$ 20,000	
Performance Deposit - Refundable		\$ -	\$ -	\$ -	
Development Application Fees/Review Fees		\$ -	\$ -	\$ -	
City Review Fees		\$ 0.03	\$ 36	\$ 7,500	
Utility Impact fee		\$ -	\$ -	\$ -	
Building Permit (Included Construction Contract)		\$ -	\$ -	\$ -	
Subtotal Impact Fees		\$ 0.11	\$ 133	\$ 27,500	0.07%
Holding Costs					
Construction Loan Interest		\$ 5.20	\$ 6,039	\$ 1,250,000	
Accounting/Tax Returns		\$ 0.02	\$ 24	\$ 5,000	
Taxes During Construction		\$ 0.23	\$ 266	\$ 55,000	
Subtotal Holding Costs		\$ 5.45	\$ 6,329	\$ 1,310,000	3.21%
Insurance					
Construction Period Insurance		\$ 0.49	\$ 570	\$ 118,000	
General Liability		\$ 0.02	\$ 28	\$ 5,740	
Subtotal Insurance		\$ 0.51	\$ 598	\$ 123,740	0.30%

Furniture and Equipment					
Model Unit(s)	\$	-	\$	-	\$ -
FF & E	\$	0.56	\$	652	\$ 135,000
Ground Floor and Lobby Furnishings	\$	-	\$	-	\$ -
Business Center Furnishings	\$	-	\$	-	\$ -
Media Lounge Indoor Furniture	\$	-	\$	-	\$ -
Pool Lounge Outdoor Furniture	\$	-	\$	-	\$ -
Public Area AV, Internet	\$	-	\$	-	\$ -
Fitness Studio Equipment	\$	-	\$	-	\$ -
Management Office	\$	-	\$	-	\$ -
Subtotal Furniture and Equipment	\$	0.56	\$	652	\$ 135,000 0.33%
Loan Origination Expenses					
Loan Amount		26,675,000	TID Loan		\$ 2,500,000
Loan Financing Fees	0.50%		\$	644	\$ 133,375
Developer Funded TID Loan	0.50%		\$	60	\$ 12,500
Pace Loan Fees/Closing Costs (Included in Interest Rate)	0.00%		\$	-	\$ -
Legal - Loan Closing			\$	97	\$ 20,000
Market Study			\$	29	\$ 6,000
Appraisal Fee			\$	29	\$ 6,000
Environmental Phase 1/2			\$	24	\$ 5,000
Cost Review / Capital Needs Assessment			\$	12	\$ 2,500
Architectural Review (Incl. in Cost Review above)			\$	-	\$ -
Audit / Accounting			\$	-	\$ -
Miscellaneous Closing Costs - Draw Inspections			\$	95	\$ 19,735
Title and Mortgage Tax			\$	97	\$ 20,000
Subtotal Loan Origination Expenses	\$	0.94	\$	1,087	\$ 225,110 0.55%
Marketing/Property Start-up Expenses					
Marketing and Advertising	\$	0.42	\$	483	\$ 100,000
Residential Leasing Fee	207	\$ -	\$	-	\$ -
Subtotal Marketing Expense	\$	0.42	\$	483	\$ 100,000 0.25%
Subtotal Land, Construction Costs and Soft Costs					
	\$	160.74	\$	186,667	\$ 38,640,000 94.71%
Project/Development Fees					
Acquisition Fee (% of Purchase Price)	\$	0.33	\$	386	\$ 80,000
Equity Sourcing Fee (% of Total Equity)	0.00%	\$ -	\$	-	\$ -
Development Fee (% of Total Project Costs)	3.50%	\$ 4.74	\$	5,507	\$ 1,140,000
Deferred Development Fee	\$	0.87	\$	1,014	\$ 210,000
Reserves/Contingency					
Rent-up Reserve	0.39%	\$ 0.62	\$	725	\$ 150,000
Operating Reserve	0.00%	\$ -	\$	-	\$ -
Development Contingency	1.50%	\$ 2.41	\$	2,802	\$ 580,000
TOTAL PROJECT COST	\$	169.73	\$	197,101	\$ 40,800,000 100.00%



Real Estate without Boundaries™

Exhibit I - Pro Forma

Prepared by Jon Ross

		INVESTMENT ASSUMPTIONS	
LOAN AMOUNT (\$)	Construction	Permanent	
\$40,800,000	\$26,675,000	\$26,675,000	
Capitalization Rate	76.11%	76.11%	
Gross Rent Multiplier (Stabilized Year)	3.28%	4.50%	
Building Area (Sq. Ft.)	36	10	
Offering Price Per Sq. Ft.	NA	30	
PURCHASE PRICE			
Capitalization Rate (Stabilized Year)	NA	0.060802	
Gross Rent Multiplier	NA	\$1,621,900	
Purchase Price Per Unit	NA	1.37	
Purchase Price Per Sq. Ft.	NA	65.38%	
APPRaised VALUE (Stabilized)			
Capitalization Rate (Stabilized Going In)	\$35,050,000		
Gross Rent Multiplier	6.00%		
Appraised Value Per Unit	10.01		
Appraised Value Per Sq. Ft.	NA		
Appraised Value Per Sq. Ft.	\$0.86		
ASSESSED VALUE (Stabilized Year)			
Improvements	\$24,269,000		
Land			
Mill Rate Per \$1,000 of Assessed Value	\$27.18		
Fair Market Value			
Assessment Ratio	99.74%		
RESALE ASSUMPTION			
Capitalization Rate (Going Out)	6.25%		
Brokerage Commission (% of Sales Price)	2.00%		
Other Closing Costs (% of Sales Price)	0.35%		
Holding Period	7-10 Years		
DEVELOPMENT SCHEDULE			
Closing of Construction Loan	Feb-17		
Completion of Construction-Building A	May-18		
Completion of Construction-Building B	Aug-18		
Stabilized Occupancy	Nov-19		
Permanent Mortgage Closing	NA		
	NA		
	NA		
COMPENSATION TO MANAGING MEMBERS OR AFFILIATES			
Annual Asset Management Fee (% of EGI)	0.50%		
Annual Guarantees Fee (% of Recourse Loan)	0.00%		
Property Management Fee (% of EGI)	4.00%		
Equity Sourcing Fee (% of Class A Equity)	0.00%		
LOAN AMOUNT (\$)			
Loan to Value	76.11%	76.11%	
Interest Rate (Interest Only/Amortized)	3.28%	4.50%	
Loan Term (Months/Years)	36	10	
Loan Amortization (Years)	NA	30	
Loan Constant	NA	0.060802	
Annual Debt Service	NA	\$1,621,900	
Debt Service Coverage (Perm & Pace)	NA	1.37	
Loan to Cost	65.38%	65.38%	
Secondary Loans	No	No	
SOURCES AND USES OF FUNDS			
Sources		Amount	% of Total
Cash/LOC	\$	5,050,000	12.38%
Managing Member/Land Investor Capital	\$	3,105,000	7.61%
Debt Borrowed/Loans (1)	\$	26,675,000	65.38%
Developer Funded TID (1)	\$	2,500,000	6.13%
General Obligation TID	\$	2,500,000	6.13%
Managing Member Cash	\$	260,000	0.64%
Deferred Development Fees	\$	210,000	0.51%
Grants - Brownfield	\$	500,000	1.23%
Total Sources	\$	40,800,000	100.00%
Uses			
Land/Property Acquisition	\$	3,105,000	7.61%
Construction Costs - Hard	\$	32,939,510	80.73%
Soft Costs	\$	594,140	1.46%
Architecture & Engineering	\$	80,000	0.20%
Legal Service	\$	27,500	0.07%
Impact Fees	\$	60,000	0.15%
Holding Costs (Taxes, Accounting)	\$	123,740	0.30%
Insurance	\$	135,000	0.33%
F.F. & E.	\$	225,110	0.55%
Loan Origination Expenses	\$	1,250,000	3.06%
Construction Interest Reserve	\$	100,000	0.25%
Marketing/Property Start-up Expense	\$	80,000	0.20%
Acquisition Fee	\$	-	0.00%
Equity Sourcing Fee	\$	-	0.00%
Development Fee	\$	1,350,000	3.31%
Rent-up Reserves	\$	150,000	0.37%
Operations Reserve	\$	-	0.00%
Development Contingency	\$	580,000	1.42%
Total Uses	\$	40,800,000	100.00%
DISCOUNT RATE:			
Non-managing Members - Share		58.55%	
Managing Members - Share		41.45%	
Tier 2 - Remainder Cash Flow Distribution			
Non-managing Members - Share		58.55%	
Managing Members - Share		41.45%	
SALES PROCEED DISTRIBUTION:			
Tier 3 - Return of Investment & Unpaid Tier 1		100.00%	
Tier 4 - Residual Net Sales Proceeds Distribution			
Non-managing Member - Share		58.55%	
Managing Member - Share		41.45%	
DISCOUNT RATE:			
Non-managing Members - Share		15.00%	
Managing Members - Share		0.25%	
RESERVE FUND INVESTMENT RATE:			
Marginal Tax Rate		35.00%	
Capital Gain Rate		20.00%	
Cost Recovery Recapture Rate		25.00%	
INFLATION RATES			
Income Inflation Rate	Year	1	2
Expense Inflation Rate		2.25%	2.30%
Real Estate Tax Inflation Rate		2.25%	2.30%
		1.50%	1.50%
		3	4-10
		2.40%	2.50%
		2.40%	2.50%
		1.50%	1.50%
VACANCY/CREDIT & COLLECTION LOSS			
	Year	1-3	4-10
		Per Lease-up Schedule	5.00%
NOTES			
(1) Loan Amount includes Debt Borrowed (Loans) and Developer TID above.			

CASH FLOW ANALYSIS (ANNUAL)

Year Ending:	1	2	3	4	5	6	7	8	9	10	11
	Jan-18	Jan-19	Jan-20	Jan-21	Jan-22	Jan-23	Jan-24	Jan-25	Jan-26	Jan-27	Jan-28
REVENUE											
Lease Revenue-Residential	3,089,280	0	2,467,113	3,315,465	3,998,351	3,483,310	3,570,393	3,659,653	3,751,144	3,844,923	3,941,046
Lease Revenue-Commercial	49,600	0	51,604	52,636	53,689	54,762	55,858	56,975	58,114	59,277	60,462
Other Income	363,609	0	101,986	323,832	331,832	340,031	348,433	357,043	365,866	374,907	382,315
- Rent Concessions	0	0	0	0	0	0	0	0	0	0	0
GROSS POTENTIAL INCOME	3,502,489	0	2,793,699	3,691,932	3,783,872	3,878,104	3,974,683	4,073,670	4,175,124	4,279,107	4,383,823
- Vacancy & Credit Loss-Residential	(171,761)	0	0	(181,013)	(185,539)	(190,177)	(194,932)	(199,805)	(204,800)	(209,920)	(215,168)
- Vacancy & Credit Loss-Commercial	(2,480)	0	(2,580)	(2,632)	(2,684)	(2,738)	(2,793)	(2,849)	(2,906)	(2,964)	(3,023)
EFFECTIVE GROSS INCOME	3,328,248	0	2,791,118	3,508,287	3,595,649	3,685,188	3,776,959	3,871,017	3,967,418	4,066,223	4,148,655
- Operating Expenses-Residential	(1,360,123)	0	(923,497)	(1,297,088)	(1,358,140)	(1,412,605)	(1,440,704)	(1,469,396)	(1,498,696)	(1,528,617)	(1,559,173)
- Operating Expenses-Commercial	(21,576)	0	(48,825)	(20,030)	(20,531)	(21,044)	(21,570)	(22,110)	(22,662)	(23,229)	(23,807)
NET OPERATING INCOME	1,946,549	0	1,474,489	2,190,030	2,251,539	2,251,539	2,314,685	2,379,511	2,446,060	2,514,376	2,589,481
+ Pace Financing	0	0	0	0	0	0	0	0	0	0	0
MRO TID Receipts	312,439	0	31,970	308,513	322,723	326,812	331,073	335,505	340,109	344,884	349,831
NET OPERATING INCOME with MRO TIF	2,258,988	0	1,610,303	2,438,630	2,512,755	2,578,351	2,645,757	2,715,016	2,786,169	2,859,260	2,939,313
NON-OPERATING INCOME (EXPENSE)											
- Interest Expense (Construction/Permanent Loan)	(53,820)	(700,593)	(1,072,376)	(1,188,338)	(1,171,802)	(1,151,125)	(1,129,498)	(1,106,877)	(1,083,217)	(1,058,470)	(1,033,723)
- Interest Expense (Developer Funded TID Loan)	0	(31,970)	(172,522)	(164,354)	(155,430)	(145,075)	(133,826)	(121,616)	(108,376)	(94,032)	(79,688)
- Depreciation Expense	0	(1,079,079)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)	(1,438,772)
- Amortization Expense	0	0	(93,344)	(93,344)	(93,344)	(93,344)	(93,344)	(93,344)	(93,344)	(93,344)	(93,344)
- Annual Asset Management Fee	0	(4,621)	(13,956)	(17,541)	(17,978)	(18,426)	(18,885)	(19,355)	(19,837)	(20,331)	(20,831)
+ Interest, Funded Reserves	(53,820)	(1,832,366)	(951,627)	(403,343)	(304,196)	(208,013)	(87,938)	22,432	130,004	241,693	353,382
+ Depreciation Expense	0	1,079,079	1,438,772	1,438,772	1,438,772	1,438,772	1,418,522	1,411,772	1,411,772	1,411,772	1,411,772
- Principal Payments (Permanent Loan)	0	0	(70,386)	(430,328)	(450,097)	(470,775)	(492,402)	(515,023)	(538,683)	(563,430)	(589,177)
- Principal Payments (Developer Funded TID Loan)	0	0	(131,957)	(144,159)	(167,295)	(181,737)	(197,247)	(213,889)	(231,733)	(250,852)	(270,581)
+ Amortization, Loan Points	0	0	33,344	33,344	33,344	33,344	33,344	33,344	33,344	33,344	33,344
- Capital Expenditures & Funded Reserves	0	0	0	0	0	0	0	0	0	0	0
CASH FLOW BEFORE TAXES	(53,820)	(753,287)	318,146	494,286	550,529	611,591	674,279	738,636	804,704	872,527	941,046
Reserves Utilized	0	0	0	0	0	0	0	0	0	0	0
Construction Loan Draw	53,820	753,287	0	0	0	0	0	0	0	0	0
NET CASH FLOW AFTER UTILIZING RESERVES	0	0	318,146	494,286	550,529	611,591	674,279	738,636	804,704	872,527	941,046
Cumulative Cash Flow BT After Reserve	0	0	318,146	812,432	1,362,961	1,974,552	2,648,831	3,387,467	4,192,170	5,064,697	5,945,743
Marginal Tax Rate	(18,837)	(641,328)	(333,069)	(141,170)	(106,469)	(72,805)	(30,778)	7,851	45,501	84,593	124,286
Income Tax Liability	0	0	0	0	0	0	0	0	0	0	0
- Income Taxes	0	0	0	0	0	0	0	0	0	0	0
AFTER TAX INCOME	0	0	318,146	494,286	550,529	611,591	674,279	730,784	759,202	787,935	816,739
Working Capital Loan	0	0	0	0	0	0	0	0	0	0	0
SPENDABLE CASH AFTER TAXES	0	0	318,146	494,286	550,529	611,591	674,279	730,784	759,202	787,935	816,739
Tax Savings	6,593	224,465	116,574	49,410	37,264	25,482	10,772	0	0	0	0
CASH FLOW AFTER TAX	6,593	224,465	434,721	543,695	587,793	637,073	685,051	730,784	759,202	787,935	816,739
Cumulative Cash Flow After Tax	6,593	231,058	665,779	1,209,474	1,797,267	2,434,339	3,119,391	3,850,175	4,609,377	5,397,312	6,214,051



Real Estate without Boundary™

Prepared by Jon Ross

SOURCES & USES OF FUNDS (ANNUAL)

	Closing Feb-17	1 Jan-18	2 Jan-19	3 Jan-20	4 Jan-21	5 Jan-22	6 Jan-23	7 Jan-24	8 Jan-25	9 Jan-26	10 Jan-27	TOTAL
SOURCES OF FUNDS												
Capital Contribution	5,050,000	5,050,000	0	0	0	0	0	0	0	0	0	5,050,000
Land Equity	3,105,000	3,105,000	0	0	0	0	0	0	0	0	0	3,105,000
Developer Funded TID Loan	2,500,000	2,500,000	0	0	0	0	0	0	0	0	0	2,500,000
Developer Funded TID MKO Receipts	0	0	31,970	304,479	308,513	322,723	326,812	331,073	335,505	340,109	344,884	2,646,068
General Obligation TID	2,500,000	2,500,000	0	0	0	0	0	0	0	0	0	2,500,000
Managing Member Cash	260,000	260,000	0	0	0	0	0	0	0	0	0	260,000
Deferred Development Fee	210,000	210,000	0	0	0	0	0	0	0	0	0	210,000
Grants	500,000	500,000	0	0	0	0	0	0	0	0	0	500,000
Funded Reserves Interest	0	0	0	375	376	377	378	379	380	381	382	3,026
Construction Loan Draw/Developer Funded TID	26,675,000	9,925,076	15,196,135	68,231	0	0	0	0	0	0	0	25,189,442
Permanent Loan (Net of Closing Costs & Fees)	0	0	0	26,341,563	0	0	0	0	0	0	0	26,341,563
Lease & Other Income	0	0	929,308	2,793,699	3,691,932	3,783,872	3,878,104	3,974,683	4,073,670	4,175,124	4,279,107	31,579,499
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0	0
Vacancy Allowance & Credit Loss	0	0	(5,059)	(2,580)	(183,645)	(188,223)	(192,915)	(197,725)	(202,654)	(207,706)	(212,884)	(1,393,391)
TOTAL RECEIPTS	40,800,000	24,050,076	16,152,354	29,505,766	3,817,176	3,918,749	4,012,378	4,108,410	4,206,901	4,307,908	4,411,488	98,491,208
USES OF FUNDS												
Land Purchase Price	3,105,000	3,105,000	0	0	0	0	0	0	0	0	0	3,105,000
Construction Costs - Hard	32,939,510	19,104,916	13,834,594	0	0	0	0	0	0	0	0	32,939,510
Soft Costs												
Architecture & Engineering	594,140	541,640	52,500	0	0	0	0	0	0	0	0	594,140
Legal Service	80,000	80,000	0	0	0	0	0	0	0	0	0	80,000
Impact Fees	27,500	27,500	0	0	0	0	0	0	0	0	0	27,500
RE Taxes During Construction	60,000	57,500	2,500	0	0	0	0	0	0	0	0	60,000
Insurance	123,740	123,740	0	0	0	0	0	0	0	0	0	123,740
F.F.&E.	135,000	67,500	67,500	0	0	0	0	0	0	0	0	135,000
Loan Origination Expenses	225,110	218,460	6,650	0	0	0	0	0	0	0	0	225,110
Marketing/Property Start-up Expense	100,000	0	100,000	0	0	0	0	0	0	0	0	100,000
Acquisition Fee	80,000	80,000	0	0	0	0	0	0	0	0	0	80,000
Equity Sourcing Fee	0	0	0	0	0	0	0	0	0	0	0	0
Development Fee	1,350,000	590,000	380,000	380,000	0	0	0	0	0	0	0	1,350,000
Rent-up Reserves	150,000	0	0	0	0	0	0	0	0	0	0	150,000
Operating Reserves	0	0	0	0	0	0	0	0	0	0	0	0
Annual Asset Management Fee	0	0	4,621	13,956	17,541	17,978	18,426	18,885	19,355	19,837	20,331	150,931
Construction - Principal	1,250,000	53,820	700,593	872,445	0	0	0	0	0	0	0	25,189,442
Construction - Interest	0	0	0	0	0	0	0	0	0	0	0	1,626,858
Permanent Loan - Principal	0	0	0	70,386	430,328	450,097	470,775	492,402	515,023	538,683	563,430	3,531,125
Permanent Loan - Interest	0	0	0	199,931	1,188,338	1,171,802	1,151,125	1,129,498	1,106,877	1,083,217	1,058,470	8,089,256
Developer Funded TID - Principal	0	0	0	131,957	144,159	167,293	181,737	197,247	213,889	231,733	250,852	1,518,867
Developer Funded TID - Interest	0	0	31,970	172,522	164,354	155,430	145,075	133,826	121,616	108,376	94,032	1,127,201
Operating Expenses	0	0	972,322	1,316,630	1,378,170	1,405,619	1,433,650	1,462,274	1,491,506	1,521,359	1,551,846	12,533,375
Contingency	580,000	0	0	0	0	0	0	0	0	0	0	0
TOTAL DISBURSEMENTS	40,800,000	24,050,076	16,152,354	28,347,268	3,322,890	3,368,220	3,400,787	3,434,131	3,468,266	3,503,205	3,538,961	92,587,055
CASH FLOW AVAILABLE FOR DISTRIBUTION	0	0	(896)	1,158,498	494,286	550,529	611,591	674,279	738,636	804,704	872,527	5,904,153

CASH FLOW PROJECTION
MONTHLY DETAIL CONSTRUCTION/LEASE-UP PERIOD

	Budget	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Total (Yr.)	(%)
RECEIPTS															
Capital Contribution	5,050,000	653,390	667,240	996,635	1,657,926	1,074,809	0	0	0	0	0	0	0	5,050,000	100.00
Land Equity	3,105,000	3,105,000	0	0	0	0	0	0	0	0	0	0	0	3,105,000	100.00
Developer Funded TID MRO Receipts	2,500,000	0	0	0	0	910,012	1,589,988	0	0	0	0	0	0	2,500,000	100.00
Developer Funded TID MRO Receipts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
General Obligation TID	2,500,000	0	0	0	0	0	394,832	2,052,321	52,847	0	0	0	0	2,500,000	100.00
Managing Member Cash	260,000	260,000	0	0	0	0	0	0	0	0	0	0	0	260,000	100.00
Deferred Development Fee	210,000	210,000	0	0	0	0	0	0	0	0	0	0	0	210,000	100.00
Grants	500,000	500,000	0	0	0	0	0	0	0	0	0	0	0	500,000	100.00
Funded Reserves Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Construction Loan Draw	26,675,000	0	0	0	0	0	0	0	1,951,973	1,990,101	1,995,541	2,000,995	2,006,465	9,925,076	37.21
Permanent Loan (Net of Closing Costs & Fees)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lease & Other Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vacancy & Credit Loss	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RECEIPTS	40,800,000	4,728,390	667,240	996,635	1,657,926	1,984,821	1,984,821	2,052,321	1,984,821	1,990,101	1,995,541	2,000,995	2,006,465	24,050,076	58.95
Cumulative Loan Draw	0	0	0	0	0	0	0	0	1,951,973	3,922,075	5,917,616	7,918,611	9,925,076		
Percent (%) Drawn	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	7.24%	14.70%	22.18%	29.69%	37.21%		
DISBURSEMENTS															
Land Purchase Price / Value	3,105,000	3,105,000	0	0	0	0	0	0	0	0	0	0	0	3,105,000	100.00
Construction Costs - Hard	32,939,510	0	658,790	988,185	1,646,576	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	19,104,916	58.00
Soft Costs															
Architecture & Engineering	594,140	459,140	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	541,640	91.16
Legal Service	80,000	80,000	0	0	0	0	0	0	0	0	0	0	0	80,000	100.00
Impact Fees	27,500	27,500	0	0	0	0	0	0	0	0	0	0	0	27,500	100.00
Holding Costs (Taxes, Accounting)	60,000	55,000	0	2,500	0	0	0	0	0	0	0	0	0	57,500	95.83
Insurance	123,740	123,740	0	0	0	0	0	0	0	0	0	0	0	123,740	100.00
F.F.&E.	135,000	0	0	0	0	0	0	67,500	0	0	0	0	0	67,500	50.00
Loan Origination Expenses	225,110	208,010	950	950	950	950	950	950	950	950	950	950	950	218,460	97.05
Marketing Expenses	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Acquisition Fee	80,000	80,000	0	0	0	0	0	0	0	0	0	0	0	80,000	100.00
Equity Sourcing Fee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rent-up Reserves (Included in Construction Interest)	150,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Reserves	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Development Fee/Deferred Development Fee	1,350,000	590,000	0	0	0	0	0	0	0	0	0	0	0	590,000	43.70
Annual Asset Management Fee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Construction - Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Construction - Interest	1,250,000	0	0	0	0	0	0	0	0	5,281	10,720	16,175	21,644	53,820	4.31
Permanent Loan - Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Permanent Loan - Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Developer Funded TID - Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Developer Funded TID - Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Expenses	580,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Contingency	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL DISBURSEMENTS	40,300,000	4,728,390	667,240	996,635	1,657,926	1,984,821	1,984,821	2,052,321	1,984,821	1,990,101	1,995,541	2,000,995	2,006,465	24,050,076	58.95
CASH FLOW AVAILABLE FOR DISTRIBUTION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cumulative Construction Interest/Rent-up Reserve	0	0	0	0	0	0	0	0	0	5,281	16,001	32,176	53,820		
Percent (%) of Construction Interest/Rent-up Budget	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.42%	1.28%	2.57%	4.31%		

ELEMENT 84
West Allis, WI



MONTHLY DETAIL CONSTRUCTION/LEASE-UP PERIOD - CONTINUED																
	Year 2															
	Budget	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Total (Yr.)	Total (Cum.)	(%)
RECEIPTS																
Capital Contribution	5,050,000	0	0	0	0	0	0	0	0	0	0	0	0	0	5,050,000	100.00
Land Equity	3,105,000	0	0	0	0	0	0	0	0	0	0	0	0	0	3,105,000	100.00
Developer Funded TID Loan	2,500,000	0	0	0	0	0	0	0	0	0	0	0	0	0	2,500,000	100.00
Developer Funded TID MRO Receipts	0	31,970	0	0	0	0	0	0	0	0	0	0	31,970	31,970		
General Obligation TID	2,500,000	0	0	0	0	0	0	0	0	0	0	0	0	0	2,500,000	100.00
Managing Member Cash	260,000	0	0	0	0	0	0	0	0	0	0	0	0	0	260,000	100.00
Deferred Development Fee	210,000	0	0	0	0	0	0	0	0	0	0	0	0	0	210,000	100.00
Grants	500,000	0	0	0	0	0	0	0	0	0	0	0	0	0	500,000	100.00
Funded Reserves Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Construction Loan Draw	26,675,000	2,110,217	2,082,674	2,102,551	2,070,564	2,067,441	2,045,902	2,427,225	75,993	62,654	54,670	49,411	46,833	15,196,135	25,121,211	94.18
Permanent Loan (Net of Closing Costs & Fees)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Lease & Other Income	0	5,224	5,224	5,224	34,550	55,938	73,048	90,185	111,572	125,822	134,404	140,098	142,959	924,249	924,249	
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Vacancy & Credit Loss	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TOTAL RECEIPTS																
	40,800,000	2,147,411	2,087,899	2,107,775	2,105,114	2,123,379	2,118,950	2,517,409	187,566	188,476	189,073	189,509	189,792	16,152,354	40,202,430	
Cumulative Loan Draw		12,085,293	14,117,967	16,220,518	18,291,062	20,358,523	22,404,425	24,831,650	24,907,643	24,970,297	25,024,967	25,074,378	25,121,211			
Percent (%) Drawn		45.12%	52.95%	60.81%	68.57%	76.32%	83.99%	93.09%	93.37%	93.61%	93.81%	94.00%	94.18%			
DISBURSEMENTS		6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	6.00%	0.00%	0.00%	0.00%	0.00%	0.00%	42.00%	100.00%	
Land Purchase/Acquisition	3,105,000	0	0	0	0	0	0	0	0	0	0	0	0	0	3,105,000	100.00
Construction Costs - Hard	32,939,510	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371	1,976,371						13,834,594	32,939,510	100.00
Soft Costs																
Architecture & Engineering	594,140	7,500	7,500	7,500	7,500	7,500	7,500	7,500						52,500	594,140	100.00
Legal Service	80,000	0	0	0	0	0	0	0						0	80,000	100.00
Impact Fees	27,500	0	0	0	0	0	0	0						0	27,500	100.00
Holding Costs (Taxes, Accounting)	60,000	0	2,500	0	0	0	0	0						2,500	60,000	100.00
Insurance	123,740	0	0	0	0	0	0	0						0	123,740	100.00
F.F.&E.	135,000	33,750	0	11,250	0	11,250	0	11,250						67,500	135,000	100.00
Loan Origination Expenses	225,110	950	950	950	950	950	950	950						6,650	225,110	100.00
Marketing Expenses	100,000	8,333	8,333	8,333	8,333	8,333	8,333	8,333						100,000	100,000	100.00
Acquisition Fee	80,000	0	0	0	0	0	0	0						0	80,000	100.00
Equity Sourcing Fee	0	0	0	0	0	0	0	0						0	0	
Rent-up Reserves (Included in Construction Interest)	150,000	0	0	0	0	0	0	0						0	0	
Operating Reserves	0	0	0	0	0	0	0	0						0	0	
Development Fee/Deferred Development Fee	1,350,000	0	0	0	0	0	0	380,000						380,000	970,000	71.85
Annual Asset Management Fee	0	0	0	0	0	0	0	451	558	629	700	715	715	3,725	3,725	
Construction - Principal	1,250,000	29,196	35,404	41,530	47,715	53,806	59,888	65,906	73,046	73,270	73,454	73,615	73,760	700,593	754,413	60.35
Permanent Loan - Principal	0	0	0	0	0	0	0	0						0	0	
Permanent Loan - Interest	0	0	0	0	0	0	0	0						0	0	
Developer Funded TID - Principal	0	31,970	0	0	0	0	0	0						31,970	31,970	
Developer Funded TID - Interest	0	59,341	59,341	59,341	64,245	65,169	65,908	66,648	105,628	106,244	106,614	106,960	106,983	972,322	972,322	
Operating Expenses	0	580,000	0	0	0	0	0	0						0	580,000	
Contingency	0	0	0	0	0	0	0	0						0	0	
TOTAL DISBURSEMENTS																
	40,800,000	2,147,411	2,087,899	2,107,775	2,105,114	2,123,379	2,118,950	2,517,409	187,566	188,476	189,073	189,509	189,792	16,152,354	40,202,430	96.54
CASH FLOW AVAILABLE FOR DISTRIBUTION																
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Cumulative Construction Interest/Rent-up Reserve		63,016	118,420	159,951	207,666	261,472	321,360	387,266	460,313	533,583	607,037	680,652	754,413			
Percent (%) of Construction Interest/Rent-up Budget		6.64%	9.47%	12.80%	16.61%	20.92%	25.71%	30.98%	36.83%	42.69%	48.56%	54.45%	60.35%			

CASH FLOW PROJECTION
MONTHLY DETAIL CONSTRUCTION/LEASE-UP PERIOD - CONTINUED

	YEAR 3														
	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Total (Yr)	Total (Cum.)	(%)
RECEIPTS															
Capital Contribution	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Land Equity	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Developer Funded TID Loan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Developer Funded TID MRO Receipts	304,479	0	0	0	0	0	0	0	0	0	0	0	304,479	336,449	100.00
General Obligation TID	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Managing Member Cash	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Deferred Development Fee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Grants	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Funded Reserves Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Construction Loan Draw	31,920	23,682	12,629	0	0	0	0	0	0	0	0	375	375	375	94.43
Permanent Loan (Net of Closing Costs & Fees)	0	0	0	0	0	0	0	0	0	0	26,341,563	0	26,341,563	26,341,563	94.43
Lease & Other Income	153,950	162,711	174,402	191,924	213,855	231,377	248,900	267,900	281,042	288,352	288,352	288,352	2,791,118	3,715,367	94.43
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vacancy & Credit Loss	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RECEIPTS	490,349	186,393	187,031	191,924	213,855	231,377	248,900	267,900	281,042	288,352	26,629,915	288,727	29,505,766	69,708,136	
Cumulative Loan Draw	25,159,131	25,176,813	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	25,189,442	100.00
Percent (%) Draw	94.29%	94.38%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	94.43%	100.00
DISBURSEMENTS															
Land Purchase Price	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Construction Costs - Hard	0	0	0	0	0	0	0	0	0	0	0	0	0	0	100.00
Soft Costs															
Architecture & Engineering	594,140	0	0	0	0	0	0	0	0	0	0	0	0	594,140	100.00
Legal Service	80,000	0	0	0	0	0	0	0	0	0	0	0	0	80,000	100.00
Impact Fees	27,500	0	0	0	0	0	0	0	0	0	0	0	0	27,500	100.00
Holding Costs (Taxes, Accounting)	60,000	0	0	0	0	0	0	0	0	0	0	0	0	60,000	100.00
Insurance	123,740	0	0	0	0	0	0	0	0	0	0	0	0	123,740	100.00
F.F.&E.	135,000	0	0	0	0	0	0	0	0	0	0	0	0	135,000	100.00
Loan Origination Expenses	225,110	0	0	0	0	0	0	0	0	0	0	0	0	225,110	100.00
Marketing Expenses	100,000	0	0	0	0	0	0	0	0	0	0	0	0	100,000	100.00
Acquisition Fee	80,000	0	0	0	0	0	0	0	0	0	0	0	0	80,000	100.00
Equity Sourcing Fee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rent-up Reserves (Included in Construction Interest)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Reserves	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Development Fee/Deferred Development Fee	1,350,000	0	0	0	0	0	0	0	0	0	0	0	0	1,350,000	100.00
Annual Asset Management Fee	0	770	814	872	960	1,069	1,157	1,244	1,340	1,405	1,442	1,442	13,956	17,681	100.00
Construction - Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Construction - Interest	1,250,000	79,132	79,232	79,307	79,347	79,347	79,347	79,347	79,347	79,347	79,347	79,347	25,189,442	25,189,442	100.00
Permanent Loan - Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Permanent Loan - Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Developer Funded TID - Principal	0	131,957	0	0	0	0	0	0	0	0	0	0	99,900	199,931	100.00
Developer Funded TID - Interest	0	172,522	0	0	0	0	0	0	0	0	0	0	0	131,957	100.00
Operating Expenses	0	105,969	106,347	106,852	107,609	108,555	109,312	110,069	111,740	112,307	112,623	112,623	1,316,630	2,268,952	100.00
Contingency	580,000	0	0	0	0	0	0	0	0	0	0	0	0	580,000	100.00
TOTAL DISBURSEMENTS	40,800,000	490,349	187,031	187,915	188,971	189,816	190,661	192,426	193,059	193,411	25,862,885	213,964	28,276,882	68,479,313	
CASH FLOW AVAILABLE FOR DISTRIBUTION	0	0	0	4,009	24,883	41,561	58,239	75,475	87,983	94,941	767,030	74,763	1,228,884	1,228,884	

	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20
Cumulative Construction Interest (Beginning Balance)	754,413	833,545	912,777	992,084	992,084	992,084	992,084	992,084	992,084	992,084	992,084	0
Monthly Construction Interest	79,132	79,232	79,307	79,347	79,347	79,347	79,347	79,347	79,347	79,347	79,347	0
Construction Interest Paid from Cash Flow	0	0	0	-79,347	-79,347	-79,347	-79,347	-79,347	-79,347	-79,347	-79,347	0
Cumulative Construction Interest (Ending Balance)	833,545	912,777	992,084	992,084	992,084	992,084	992,084	992,084	992,084	992,084	992,084	0
Contingency Payments												
Percent (%) of Construction Interest Budget	66.68%	79.02%	79.37%	79.37%	79.37%	79.37%	79.37%	79.37%	79.37%	79.37%	0.00%	0.00%

RESIDENTIAL REVENUE ASSUMPTIONS

RESIDENTIAL LEASE DATA:		NO. UNITS	TYPE UNIT	% OF TOTAL	SQ. FT. PER UNIT	SQ. FT. TOTAL	MONTHLY UNIT RENT	TOTAL MO. UNIT RENT	RENT/SF	UTILITY ALLOWANCE	TOTAL ANNUAL RENT
MARKET RATE UNITS		5	Studio	2.5%	646	3,230	975	4,875	1.51		58,500
		5		2.5%		3,230		4,875	1.51		\$58,500
1A	48		1/1	23.6%	733	35,184	1,085	52,080	1.48		624,960
1B	4		1/1	2.0%	736	2,944	1,090	4,360	1.48		52,320
1C	1		1/1	0.5%	739	739	1,100	1,100	1.49		13,200
1D	24		1/1	11.8%	747	17,928	1,105	26,520	1.48		318,240
1E	12		1/1	5.9%	778	9,336	1,140	13,680	1.47		164,160
1F	4		1/1	2.0%	793	3,172	1,160	4,640	1.46		55,680
1G	8		1/1	3.9%	855	6,840	1,225	9,800	1.43		117,600
1H	4		1/1	2.0%	863	3,452	1,235	4,940	1.43		59,280
		105		51.7%		79,595		117,120	1.47		\$1,405,440
1I	4		1/1/Den	2.0%	898	3,592	1,260	5,040	1.40		60,480
1J	3		1/1/Den	1.5%	928	2,784	1,285	3,855	1.38		46,260
1K	3		1/1/Den	1.5%	940	2,820	1,290	3,870	1.37		46,440
1L	3		1/1/Den	1.5%	946	2,838	1,295	3,885	1.37		46,620
1M	4		1/1/Den	2.0%	964	3,856	1,300	5,200	1.35		62,400
1N	4		1/1/Den	2.0%	1,051	4,204	1,385	5,540	1.32		66,480
1O	4		1/1/Den	2.0%	1,051	4,204	1,385	5,540	1.32		66,480
		25		12.3%		24,298		32,930	1.36		395,160
2A	4		2/2	2.0%	1,067	4,268	1,410	5,640	1.32		67,680
2B	4		2/2	2.0%	1,122	4,488	1,460	5,840	1.30		70,080
2C	4		2/2	2.0%	1,136	4,544	1,465	5,860	1.29		70,320
2D	3		2/2	1.5%	1,143	3,429	1,475	4,425	1.29		53,100
2E	16		2/2	7.9%	1,152	18,432	1,485	23,760	1.29		285,120
2F	4		2/2	2.0%	1,156	4,624	1,485	5,940	1.28		71,280
2G	3		2/2	1.5%	1,190	3,570	1,495	4,485	1.26		53,820
2H	3		2/2	1.5%	1,196	3,588	1,500	4,500	1.25		54,000
2I	3		2/2	1.5%	1,207	3,621	1,505	4,515	1.25		54,180
2J	4		2/2	2.0%	1,210	4,840	1,505	6,020	1.24		72,240
2L	1		2/2	0.5%	1,255	1,255	1,535	1,535	1.22		18,420
2M	4		2/2	2.0%	1,255	5,020	1,535	6,140	1.22		73,680
2N	4		2/2	2.0%	1,295	5,180	1,560	6,240	1.20		74,880
		57		28.1%		66,859		84,900	1.27		1,018,800



ELEMENT 84
West Allis, WI

Prepared by Jon Ross

2K	4	2/2/Den	2.0%	1,242	4,968	1,560	6,240	1.26	74,880
20	4	2/2/Den	2.0%	1,331	5,324	1,610	6,440	1.21	77,280
2P	3	2/2/Den	1.5%	1,378	4,134	1,645	4,935	1.19	59,220
	11		5.4%		14,426		17,615	1.22	211,380
TOTAL MARKET RATE			100.0%	928	188,408	1,268	257,440	1.37	3,089,280

OTHER INCOME:									
Pet Rent	25		35%			25	219		2,625
Pet Rent - NRF	13		20%			13	33		390
Parking	242		90%			60	13,068		156,816
RUBS/Trash	203		100%			28	5,684		68,208
Storage	150		60%			35	3,150		37,800
Corporate (Net)	4		100%			400	1,600		19,200
Misc./Amenity	203		100%			25	5,075		60,900
							28,828		\$345,939

POTENTIAL ANNUAL INCOME:			
Vacancy/Other Loss			\$3,435,219
EFFECTIVE GROSS INCOME:			(171,761)
Operating Expenses			\$3,263,458
NET OPERATING INCOME			(1,350,123)
Pace Financing			\$1,903,335
Municipal Revenue Obligation (MRO) TIF Payments			0
ADJUSTED NET OPERATING INCOME			312,439
			\$2,215,774

INFLATION ASSUMPTIONS					RESIDENTIAL EXPENSE ASSUMPTIONS												
Year	1	2	3	4-10	OPERATING EXPENSES:												
Rent Inflation	2.25%	2.30%	2.40%	2.50%	Management Fee	130,538	4.00%	\$/UNIT	643	\$/NRA	0.69						
Expense Inflation	2.25%	2.30%	2.40%	2.50%	Administrative	22,330	0.68%		110		0.12						
Tax Expense Inflation Factor	1.50%	1.50%	1.50%	1.50%	Utilities (Common Area, Vacant Units)	137,025	4.20%		675		0.73						
VACANCY LOSS/CONCESSIONS/CREDIT & COLLECTION LOSS					Repairs, Maintenance & Turnover	76,125	2.33%		375		0.40						
Year	1	2	3	4-10	Personnel	175,000	5.36%		862		0.93						
Per Lease-up Schedule					Contract Services, Grounds	42,080	1.29%		207		0.22						
Vacancy Loss	0.00%	0.00%	0.00%	4.50%	Marketing	35,525	1.09%		175		0.19						
Rent Concessions	0.00%	0.00%	0.00%	0.00%	Insurance	50,750	1.56%		250		0.27						
Credit & Collection Loss	0.00%	0.00%	0.00%	0.50%	Real Estate Taxes	640,000	19.61%		3,153		3.40						
OTHER INCOME PER UNIT					Replacement Reserves	50,750	1.56%		250		0.27						
Year	1	2	3	4	Subtotal Operating Expenses	1,360,123	41.68%		6,700		7.22						
Pet Rent	25	26	27	28													
Pet Rent - NRF	13	13	13	13													
Parking	60	61	62	63													
Utilities	28	29	30	31													
Storage	35	36	37	38													
Corporate Rental	400	409	418	428													
Miscellaneous	25	26	27	28													

RESIDENTIAL INCOME AND EXPENSES STATEMENT - 10 YEARS											
Pro Forma	Year 1 Jan-18	Year 2 Jan-19	Year 3 Jan-20	Year 4 Jan-21	Year 5 Jan-22	Year 6 Jan-23	Year 7 Jan-24	Year 8 Jan-25	Year 9 Jan-26	Year 10 Jan-27	Year 11 Jan-28
GROSS POTENTIAL INCOME:											
Rental Income	3,089,280	0	776,730	3,315,465	3,398,351	3,483,310	3,570,393	3,659,653	3,751,144	3,844,923	3,941,046
Other Income	345,959	0	84,828	304,918	312,423	320,234	328,239	336,445	344,857	353,478	362,315
Vacancy Loss	(154,585)	0	0	(162,912)	(166,985)	(171,159)	(175,438)	(179,824)	(184,320)	(188,928)	(193,651)
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0
Credit & Collection Loss	(17,176)	0	0	(18,101)	(18,554)	(19,018)	(19,493)	(19,980)	(20,480)	(20,992)	(21,517)
EFFECTIVE GROSS INCOME:	3,263,458	0	861,558	3,439,254	3,525,236	3,613,367	3,703,701	3,796,293	3,891,201	3,988,481	4,088,193
OPERATING EXPENSES:											
Management Fee	130,538	0	4,308	17,196	17,626	18,067	18,519	18,981	19,456	19,942	20,441
Administrative	22,330	0	23,358	24,516	25,129	25,757	26,401	27,061	27,738	28,431	29,142
Utilities	137,025	0	143,331	150,440	154,201	158,056	162,007	166,057	170,209	174,464	178,826
Repairs & Maintenance	76,125	0	19,580	79,461	81,447	83,483	85,570	87,710	89,902	92,150	94,454
Personnel	175,000	0	183,053	191,132	196,936	201,859	206,906	212,078	217,380	222,815	228,385
Contract Services/Grounds	42,080	0	33,012	45,073	47,355	48,538	49,752	50,996	52,271	53,577	54,917
Marketing	35,525	0	37,160	39,003	39,978	40,977	42,002	43,052	44,128	45,231	46,362
Insurance	50,750	0	53,085	55,718	57,111	58,539	60,003	61,503	63,040	64,616	66,232
Real Estate Taxes	640,000	0	413,557	700,500	711,007	721,673	732,498	743,485	754,637	765,957	777,446
Replacement Reserves	50,750	0	13,053	52,974	54,298	55,655	57,047	58,473	59,935	61,433	62,969
	1,360,123	0	923,497	1,358,140	1,385,088	1,412,605	1,440,704	1,469,396	1,498,696	1,528,617	1,559,173
NET OPERATION INCOME:	1,903,335	0	(61,959)	2,081,115	2,140,147	2,200,761	2,262,997	2,326,897	2,392,504	2,459,863	2,529,019
Pace Financing	0	0	0	0	0	0	0	0	0	0	0
Municipal Revenue Obligation Receipts	312,439	0	31,970	308,513	322,723	326,812	331,073	335,505	340,109	344,884	349,831
ADJUSTED NOI	2,215,774	0	(29,969)	2,389,628	2,462,871	2,527,573	2,594,070	2,662,402	2,732,613	2,804,747	2,878,850



Real Estate without Boundary™

ELEMENT 84
West Allis, WI

Prepared by Jon Ross

LEASE-UP SCHEDULE-RESIDENTIAL

Month Ending	YEAR 2												Total
	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	
Average Rent/Unit (Year 2)	1,297												
Monthly Unit Rent	0	0	0	25,934	45,385	60,945	76,506	95,957	108,924	116,704	121,891	124,484	776,730
Cumulative % Rented	0%	0%	0%	10%	17%	23%	29%	36%	41%	44%	46%	47%	
Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0
Units Rented During Month	0	0	0	20	15	12	12	15	10	6	4	2	
Cumulative Units Rented	0	0	0	20	35	47	59	74	84	90	94	96	
Total Unit Rental Income	0	0	0	25,934	45,385	60,945	76,506	95,957	108,924	116,704	121,891	124,484	776,730
Cumulative Pets	0	0	0	7	12	16	21	26	29	32	33	34	
Pet Rent/Pet (Year 2)	26												
Total Pet Rent	0	0	0	182	312	416	546	676	754	832	858	884	5,450
YEAR 3													
Average Rent/Unit (Year 3)	1,328												
Monthly Unit Rent	134,111	142,078	152,701	168,635	188,552	204,486	220,420	237,682	249,632	256,272	256,272	256,272	2,467,113
Cumulative % Rented	50%	53%	57%	63%	70%	76%	82%	88%	93%	95%	95%	95%	
Concession	0	0	0	0	0	0	0	0	0	0	0	0	0
Units Rented During Month	5	6	8	12	15	12	12	13	9	5	0	0	
Cumulative Units Rented	101	107	115	127	142	154	166	179	188	193	193	193	
Total Unit Rental Income	134,111	142,078	152,701	168,635	188,552	204,486	220,420	237,682	249,632	256,272	256,272	256,272	2,467,113
Cumulative Pets	35	37	40	44	50	54	58	63	66	68	68	68	
Pet Rent/Pet (Year 3)	27												
Total Pet Rent	945	999	1,080	1,188	1,350	1,458	1,566	1,701	1,782	1,836	1,836	1,836	17,577
YEAR 4													
Average Rent/Unit (Year 4)	1,361												
Monthly Unit Rent	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	3,075,260
Cumulative % Rented	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	
Concession	0	0	0	0	0	0	0	0	0	0	0	0	0
Units Rented During Month	0	0	0	0	0	0	0	0	0	0	0	0	
Cumulative Units Rented	193	193	193	193	193	193	193	193	193	193	193	193	
Total Unit Rental Income	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	256,272	3,075,260
Cumulative Pets	68	68	68	68	68	68	68	68	68	68	68	68	
Pet Rent/Pet (Year 4)	28												
Total Pet Rent	1,836	1,836	1,836	1,836	1,836	1,836	1,836	1,836	1,836	1,836	1,836	1,836	22,032

MONTHLY RESIDENTIAL INCOME & EXPENSE PRO FORMA (CONSTRUCTION/LEASE-UP PERIOD)													
	YEAR 2												
	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Total
RENTAL INCOME													
Residential Income	0	0	0	25,934	45,385	60,945	76,506	95,957	108,924	116,704	121,891	124,484	776,730
OTHER INCOME													
Pet Rent	0	0	0	182	312	416	546	676	754	832	858	884	5,460
Pet Rent - NRF	0	0	0	52	91	122	153	192	218	234	244	250	1,557
Parking	0	0	0	1,098	1,922	2,580	3,239	4,063	4,612	4,941	5,161	5,270	32,885
Utilities	0	0	0	580	1,015	1,363	1,711	2,146	2,436	2,610	2,726	2,784	17,371
Storage	0	0	0	160	279	375	471	591	670	718	750	766	4,780
Corporate Rental	0	0	0	800	800	800	800	800	800	800	800	800	7,200
Miscellaneous	0	0	0	520	910	1,222	1,534	1,924	2,184	2,340	2,444	2,496	15,574
Total Other Income	0	0	0	3,392	5,329	6,879	8,454	10,392	11,674	12,475	12,983	13,250	84,828
GROSS POTENTIAL INCOME	0	0	0	29,326	50,714	67,824	84,960	106,348	120,598	129,179	134,874	137,734	861,558
Vacancy Allowance	0	0	0	0	0	0	0	0	0	0	0	0	0
Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit & Collection Loss	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Economic Loss	0	0	0	0	0	0	0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME	0	0	0	29,326	50,714	67,824	84,960	106,348	120,598	129,179	134,874	137,734	861,558
OPERATING EXPENSES													
Management Fee	0	0	0	147	254	339	425	532	603	646	674	689	4,308
Administrative	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	1,946	23,358
Utilities	11,944	11,944	11,944	11,944	11,944	11,944	11,944	11,944	11,944	11,944	11,944	11,944	143,331
Repairs & Maintenance	0	0	0	654	1,144	1,536	1,929	2,419	2,746	2,942	3,073	3,138	19,580
Personnel	15,254	15,254	15,254	15,254	15,254	15,254	15,254	15,254	15,254	15,254	15,254	15,254	183,053
Contract Services/Grounds	0	0	0	3,668	3,668	3,668	3,668	3,668	3,668	3,668	3,668	3,668	33,012
Marketing	3,097	3,097	3,097	3,097	3,097	3,097	3,097	3,097	3,097	3,097	3,097	3,097	37,160
Insurance	4,424	4,424	4,424	4,424	4,424	4,424	4,424	4,424	4,424	4,424	4,424	4,424	53,085
Real Estate Taxes	18,606	18,606	18,606	18,606	18,606	18,606	18,606	18,606	18,606	18,606	18,606	18,606	223,272
Replacement Reserves	0	0	0	436	763	1,024	1,286	1,613	1,831	1,961	2,048	2,092	13,053
Total Operating Expenses	55,272	55,272	55,272	60,176	61,100	61,840	62,579	63,279	63,925	64,521	65,067	65,663	723,497
NET OPERATING INCOME	(55,272)	(55,272)	(55,272)	(30,850)	(10,387)	5,984	22,381	42,069	56,673	64,658	69,807	72,071	(61,939)
Asset Management Fee	0	0	0	147	254	339	425	532	603	646	674	689	4,308

MONTHLY RESIDENTIAL INCOME & EXPENSE PRO FORMA (CONSTRUCTION/LEASE-UP PERIOD)

	YEAR 3												Total
	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Total
RENTAL INCOME													
Residential Income	134,111	142,078	152,701	168,635	188,552	204,486	220,420	237,682	249,632	256,272	256,272	256,272	2,467,113
OTHER INCOME													
Pet Rent	945	999	1,080	1,188	1,350	1,458	1,566	1,701	1,782	1,836	1,836	1,836	17,577
Pet Rent - NRF	263	278	299	330	369	400	432	465	489	502	502	502	4,831
Parking	5,636	5,971	6,417	7,087	7,924	8,593	9,263	9,988	10,490	10,769	10,769	10,769	103,676
Utilities	3,030	3,210	3,450	3,810	4,260	4,620	4,980	5,370	5,640	5,790	5,790	5,790	55,740
Storage	806	854	918	1,013	1,133	1,229	1,325	1,428	1,500	1,540	1,540	1,540	14,827
Corporate Rental	800	800	800	800	800	800	800	800	800	800	800	800	9,600
Miscellaneous	2,727	2,889	3,105	3,429	3,834	4,158	4,482	4,833	5,076	5,211	5,211	5,211	50,166
Total Other Income	14,206	15,001	16,069	17,657	19,570	21,259	22,847	24,586	25,777	26,448	26,448	26,448	256,418
GROSS POTENTIAL INCOME	148,317	157,079	168,769	186,292	208,222	225,745	243,267	262,268	275,410	282,720	282,720	282,720	2,723,530
Vacancy Allowance	0	0	0	0	0	0	0	0	0	0	0	0	0
Concessions	0	0	0	0	0	0	0	0	0	0	0	0	0
Credit & Collection Loss	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Economic Loss	0	0	0	0	0	0	0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME	148,317	157,079	168,769	186,292	208,222	225,745	243,267	262,268	275,410	282,720	282,720	282,720	2,723,530
OPERATING EXPENSES													
Management Fee	742	785	844	931	1,041	1,129	1,216	1,311	1,377	1,414	1,414	1,414	13,618
Administrative	1,993	1,993	1,993	1,993	1,993	1,993	1,993	1,993	1,993	1,993	1,993	1,993	23,918
Utilities	12,231	12,231	12,231	12,231	12,231	12,231	12,231	12,231	12,231	12,231	12,231	12,231	146,770
Repairs & Maintenance	3,381	3,582	3,849	4,251	4,753	5,155	5,556	5,992	6,293	6,460	6,460	6,460	62,192
Personnel	15,621	15,621	15,621	15,621	15,621	15,621	15,621	15,621	15,621	15,621	15,621	15,621	187,446
Contract Services/Grounds	3,756	3,756	3,756	3,756	3,756	3,756	3,756	3,756	3,756	3,756	3,756	3,756	45,073
Marketing	3,171	3,171	3,171	3,171	3,171	3,171	3,171	3,171	3,171	3,171	3,171	3,171	38,052
Insurance	4,530	4,530	4,530	4,530	4,530	4,530	4,530	4,530	4,530	4,530	4,530	4,530	54,359
Real Estate Taxes	56,662	56,662	56,662	56,662	56,662	56,662	56,662	57,512	57,512	57,512	57,512	57,512	684,198
Replacement Reserves	2,254	2,388	2,566	2,834	3,169	3,437	3,704	3,994	4,195	4,307	4,307	4,307	41,461
Total Operating Expenses	104,340	104,719	105,223	105,980	106,927	107,684	108,441	110,111	110,679	110,994	110,994	110,994	1,297,088
NET OPERATING INCOME	43,977	52,360	63,546	80,312	101,295	118,061	134,826	152,157	164,731	171,726	171,726	171,726	1,426,442
Asset Management Fee	742	785	844	931	1,041	1,129	1,216	1,311	1,377	1,414	1,414	1,414	13,618



ELEMENT 84
West Allis, WI

Prepared by Jon Ross

RETAIL LEASE ASSUMPTIONS												
TENANT	Suite	Area (sf)	GLA %	Start Date	Lease Term	Options	Base Rent Annual	psf	Percentage Rent %	Breakpoint	Base Rent % /Yr	Expenses
Tenant A - Retail	3,100	100.00%					49,600	16.00			2.00%	NNN
Tenant B - Retail	0	0.00%					0	0.00			2.00%	NNN
Tenant C		0.00%										
Tenant D		0.00%										
Tenant E		0.00%										
Tenant F		0.00%										
Tenant G		0.00%										
Total	3,100	100.00%					\$49,600					

OTHER INCOME:			
	No. Units	Unit Price	Mo. Rent Annual Rent
Recoverable Expenses	3,100	6.00	1,550 18,600
Parking	0	0.00	0 0
Billboard			
Miscellaneous			
Total Other Income			\$1,550 \$18,600

ASSUMPTIONS:

RECOVERABLE EXPENSES	
CAM (psf)	6.00
Utilities	
Life Safety	
Repairs & Maintenance	
Grounds	
Administrative	
Insurance	0.60
Real Estate Taxes	4.50
Management Fee (% of Gross Income)	4.00%

NON-RECOVERABLE EXPENSES	
Marketing Fund (psf)	6.00%
Leasing Fees/Commissions (%)	
Legal	
Professional Fees	
Replacement Reserves	0.00
Other	

RESERVES/ALLOWANCES	
Tenant Improvement Allowance (psf)	30.00
Retail	
Restaurant	60.00
Tenant Allowance/Concessions (psf)	

EXPENSE INFLATION RATE	
Expense Inflation Rate	2.50%

VALUE INCOME APPROACH:				
Capitalization Rate (Retail)				6.00%
Value				\$720,233
				\$720,000

VACANCY LOSS/CONCESSIONS/BAD DEBT					
	Year	1	2	3	4-10
Lease-up Vacancy		100.00%	10.00%	5.00%	5.00%
Turnover Vacancy		0.00%	0.00%	0.00%	5.00%
Rent Concessions		0.00%	0.00%	0.00%	0.00%
Credit Loss		0.00%	0.00%	0.00%	0.00%

RETAIL ANNUAL CASH FLOW

Cash Flow	Pro Forma	Year 1		Year 2		Year 3		Year 4		Year 5		Year 6		Year 7		Year 8		Year 9		Year 10	
		May-18	May-19	May-20	May-21	May-22	May-23	May-24	May-25	May-26	May-27	May-28	May-29	May-30	May-31	May-32	May-33	May-34	May-35	May-36	May-37
RENTAL INCOME																					
Retail Rent	49,600	0	50,592	51,604	52,636	53,689	54,762	55,858	56,975	58,114	59,277										
Vacancy Loss	-2,480	0	-5,059	-2,580	-2,632	-2,684	-2,738	-2,793	-2,849	-2,906	-2,964										
Rent Concessions	0	0	0	0	0	0	0	0	0	0	0										
Credit Loss	0	0	0	0	0	0	0	0	0	0	0										
	47,120	0	45,533	49,024	50,004	51,004	52,024	53,065	54,126	55,209	56,313										
OTHER INCOME																					
Common Area Maintenance (CAM)	17,670	0	17,159	18,565	19,029	19,409	19,797	20,193	20,597	21,009	21,429										
Parking	0	0	0	0	0	0	0	0	0	0	0										
Storage	0	0	0	0	0	0	0	0	0	0	0										
Tenant Improvements (TI)	0	0	0	0	0	0	0	0	0	0	0										
TOTAL OTHER INCOME	17,670	0	17,159	18,565	19,029	19,409	19,797	20,193	20,597	21,009	21,429										
TOTAL INCOME	64,790	0	62,691	67,588	69,033	70,413	71,822	73,258	74,723	76,218	77,742										
RECOVERABLE EXPENSES (CAM)																					
Utilities																					
Life Safety																					
Repairs & Maintenance																					
Grounds																					
Administrative																					
Insurance																					
Real Estate Taxes																					
Management Fees																					
TOTAL RECOVERABLE EXPENSES (CAM)	18,600	0	19,065	19,542	20,030	20,531	21,044	21,570	22,110	22,662	23,229										
NON-RECOVERABLE EXPENSES																					
Marketing Expense	0	0	0	0	0	0	0	0	0	0	0										
Leasing Fees/Commissions	2,976	0	29,760	0	0	0	0	0	0	0	0										
Professional Fees	0	0	0	0	0	0	0	0	0	0	0										
Replacement Reserves	0	0	0	0	0	0	0	0	0	0	0										
Other	0	0	0	0	0	0	0	0	0	0	0										
TOTAL NON-RECOVERABLE EXPENSES	2,976	0	29,760	0	0	0	0	0	0	0	0										
NET OPERATING INCOME	43,214	0	13,866	48,047	49,003	49,883	50,778	51,688	52,614	53,555	54,513										

MONTHLY INCOME & EXPENSE PRO FORMA (DURING CONSTRUCTION/LEASE-UP PERIOD)													
YEAR 2													
	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Total
RETAIL RENTAL/OTHER INCOME	5,646	5,646	5,646	5,646	5,646	5,646	5,646	5,646	5,646	5,646	5,646	5,646	67,751
Rent Concession	0	0	0	0	0	0	0	0	0	0	0	0	0
Vacancy & Credit Loss	-422	-422	-422	-422	-422	-422	-422	-422	-422	-422	-422	-422	-5,059
TOTAL INCOME	5,224	5,224	5,224	5,224	5,224	5,224	5,224	5,224	5,224	5,224	5,224	5,224	62,691
EXPENSES	4,069	4,069	4,069	4,069	4,069	4,069	4,069	4,069	4,069	4,069	4,069	4,069	48,825
NET OPERATING INCOME	1,577	1,577	1,577	1,577	1,577	1,577	1,577	1,577	1,577	1,577	1,577	1,577	18,926
YEAR 3													
	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Total
RETAIL RENTAL/OTHER INCOME	5,847	5,847	5,847	5,847	5,847	5,847	5,847	5,847	5,847	5,847	5,847	5,847	70,168
Rent Concession	0	0	0	0	0	0	0	0	0	0	0	0	0
Vacancy & Credit Loss	-215	-215	-215	-215	-215	-215	-215	-215	-215	-215	-215	-215	-2,580
TOTAL INCOME	5,632	5,632	5,632	5,632	5,632	5,632	5,632	5,632	5,632	5,632	5,632	5,632	67,588
EXPENSES	1,628	1,628	1,628	1,628	1,628	1,628	1,628	1,628	1,628	1,628	1,628	1,628	19,542
NET OPERATING INCOME	4,219	4,219	4,219	4,219	4,219	4,219	4,219	4,219	4,219	4,219	4,219	4,219	50,627

Exhibit J – CONTINGENT PAYMENT EXAMPLE CALCULATION

(Per Section 15 of the Purchase and Sale Agreement)

The following is an example of Developers' IRR totaling 18.95 upon a Sale, cash out refinancing or upon a 1031 tax free exchange of the Project, where the Contingent Payment to the City would be \$39,500. This exhibit is provided solely for purposes of providing an example calculation and the methodology to be used for purposes of calculating Developers' IRR for purposes of Section 15 of the Purchase and Sale Agreement.

INTERNAL RATE OF RETURN (IRR)						
Definition/Return Promote						
PROJECT INTERNAL RATE OF RETURN (IRR)						
Year	0	1	2	3	4	5
Non-manager Distributions (1)	\$ (1,000,000)	\$ 100,000	\$ 110,000	\$ 120,000	\$ 140,000	\$ 160,000
Return of Capital (2)						\$ 1,000,000
Residual (3)						\$ 500,000
Total	\$ (1,000,000)	\$ 100,000	\$ 110,000	\$ 120,000	\$ 140,000	\$ 1,660,000
					IRR:	18.95%
INTERNAL RATE OF RETURN (IRR) EQUALLING 18%						
Annual Cash Flow	\$ (1,000,000)	\$ 100,000	\$ 110,000	\$ 120,000	\$ 140,000	\$ 160,000
Return of Capital						\$ 1,000,000
Residual						\$ 421,000
Total	\$ (1,000,000)	\$ 100,000	\$ 110,000	\$ 120,000	\$ 140,000	\$ 1,581,000
					IRR:	18.00%
Excess Residual (Actual vs. Calculated Residual Value to equal 18% IRR)						\$ 79,000
City Promote % Share						50.00%
						\$ 39,500
1. Annual Non-manager distributions. Not the same as Net Income, free cash flow, or EBITA. 2. Return of Non-manager(s) capital (investment). 3. Non-manager Net Sales Proceeds after return of investment capital.						

1
2 **Exhibit K - GUARANTY OF COMPLETION**

3
4 **(Element 84 Project)**

5
6 THIS GUARANTY OF COMPLETION (the "Guaranty") is made as of this 30th day of
7 December, 2016, by Element 84 Development Partners LLC, a Wisconsin limited liability
8 company ("Guarantor"), to and for the benefit of the Community Development Authority of the
9 City of West Allis, a separate body politic created by ordinance of the City of West Allis,
10 pursuant to Section 66.1335 of the Wisconsin Statutes, ("Authority") and the City of West Allis,
11 a Wisconsin municipal corporation ("City"), (Authority and City are, collectively "West Allis").

12 **Recitals**

13
14 A. Element 84, LLC, a Wisconsin limited liability company and West Allis 84
15 Properties, Inc., a Wisconsin corporation (collectively, "Developers"), are the owners in fee
16 simple of the real estate in West Allis, Wisconsin, legally described in EXHIBIT A attached
17 hereto and made a part hereof.

18 B. Developers have executed and delivered to West Allis that certain Development
19 Agreement of even date herewith ("Development Agreement"), which among other things
20 requires Developers to complete construction of the Project described therein in accordance with
21 plans and specifications approved by the West Allis.

22 C. The execution and delivery of this Guaranty by Guarantor is a condition precedent
23 to Developers receiving the City Investment described in the Purchase and Sale Agreement and
24 the Development Financing Agreement.

25 **Agreements**

26
27 NOW THEREFORE, in order to induce West Allis to disburse the proceeds pursuant to
28 the Purchase and Sale Agreement and related Development Financing Agreement, and in
29 consideration of the matters described in the foregoing Recitals, which are incorporated herein,
30 and for other good and valuable consideration, the receipt and sufficiency of which are hereby
31 acknowledged, Guarantor hereby agrees as follows:

32 1. Definitions: Unless the context otherwise requires, capitalized terms not otherwise
33 defined herein shall have the same meaning assigned to them in the Development Agreement.

34 2. Guarantor hereby absolutely and unconditionally guarantees the full and prompt
35 performance, when due, of the following obligations of Developers to West Allis under the
36 Development Agreement (hereinafter collectively referred to as the "Obligations"):

- 37 a. Substantial completion of the Project in accordance with the plans and specifications
38 approved by West Allis in accordance with **Exhibit 2 – Project Schedule** attached to the
39 Development Agreement, and

- 1 b. Payment of all costs of labor, materials, equipment and services required to be obtained
2 in order to perform and effect completion of the Project.
- 3 3. Upon the occurrence of an Event of Default by Developers that is not cured with respect
4 to any of the Obligations, Guarantor agrees:
- 5 a. on written demand by West Allis, to commence and thereafter diligently prosecute the
6 performance of such of the Obligations as West Allis may demand including, without
7 limitation, completion of the Project in accordance with all of the terms and conditions of
8 the Development Agreement and payment of any and all costs and expenses necessary
9 for said timely completion of the Project; and
- 10 b. to indemnify and hold West Allis free and harmless from and against any and all loss,
11 damage, cost, expense, injury, or liability West Allis may suffer or incur in connection
12 with the exercise in good faith and in a reasonable manner of its rights under this
13 Guaranty or the performance of the Obligations.
- 14 4. If Guarantor fails to commence and pursue diligently the performance of such of the
15 Obligations as West Allis may demand within thirty (30) days after receipt of written notice from
16 West Allis demanding the performance of Guarantor, then, either before or after pursuing any
17 other remedy of West Allis against Guarantor or Developers, West Allis shall have the following
18 rights and remedies against Guarantor in addition to any other rights and remedies available at
19 law or in equity or otherwise, subject and subordinate to the rights and interests of Developers'
20 lenders and mortgagees:
- 21 a. Without undertaking to complete any improvements and subject to the prior written
22 approval and to the rights of Developers' mortgagee and subject to any subordination
23 agreements to which West Allis is a party, West Allis shall have the right to proceed with
24 foreclosure proceedings and sale of the Property, and following such sale shall have an
25 immediate right to damages from Guarantor in an amount equal to the deficiency of the
26 indebtedness arising under or in connection with the City Investment, plus any
27 unreimbursed expenses incurred by West Allis in protecting, preserving, or defending its
28 interest in connection with the City Investment, including, without limitation, all
29 reasonable attorneys' fees and expenses and all other reasonable expenses incurred by
30 West Allis in connection with the foreclosure sale of all or any of the Project;
- 31 b. Subject to the prior written approval of Developers' mortgagee and to the rights of
32 Developers' mortgagee and subject to any subordination agreements to which West Allis
33 is a party, West Allis, at its option, shall have the right, but shall have no obligation, to
34 complete construction of Project improvements in the manner specified in the
35 Development Agreement by or through any agent, contractor, or subcontractor of its
36 selection. In the event West Allis shall so elect to complete construction of any
37 improvements, West Allis shall have an immediate right to recover, as damages or
38 otherwise, from Guarantor, the following:

- 1 i. the costs incurred in good faith and in a reasonable manner by West Allis to
2 complete construction of the Project in the manner specified above in this
3 subparagraph, plus
- 4 ii. any expenses incurred in good faith and in a reasonable manner by West Allis in
5 protecting, preserving, or defending its interest in the Project including, without
6 limitation, all attorney's fees and costs, plus
- 7 iii. to the extent not recovered under 4(b)(i) or (ii) above, the amount of any
8 outstanding deficiency of the indebtedness after applying the proceeds of any
9 foreclosure sale; plus
- 10 iv. to the extent not recovered under 4(b)(i) or (ii) above, all unreimbursed expenses
11 incurred in good faith and in a reasonable manner by West Allis in connection
12 with the foreclosure sale of the Property.
- 13 c. Subject to the rights of Developers' mortgagee and subject to any subordination
14 agreements to which West Allis is a party, West Allis may exercise all remedies available
15 under the laws of the State of Wisconsin for action on a matured contractual
16 indebtedness. Developers agree to assist West Allis in obtaining an intercreditor
17 agreement between Developers' mortgagee and West Allis on commercially reasonable
18 terms; however, Developers cannot guarantee mortgagees' approval of such agreement or
19 specific terms thereof.
- 20 d. During the course of any construction undertaken by West Allis or any other party on
21 behalf of West Allis, Guarantor shall pay on demand any amounts due to contractors,
22 subcontractors, and material suppliers and for permits and licenses necessary or desirable
23 in connection therewith.
- 24 e. Subject to the prior written approval and rights of Developers' mortgagee and subject to
25 any subordination agreements to which West Allis is a party, all of the alternative
26 remedies set forth in subparagraphs (a), (b), (c) and (d) above and/or remedies available
27 at law or in equity shall be equally available to West Allis, and the choice by West Allis
28 of one such alternative over another shall not be subject to question or challenge by
29 Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff,
30 or failure to mitigate damages in any action, proceeding, or counteraction by West Allis
31 to recover or seeking any other remedy under this Guaranty, nor shall such choice
32 preclude West Allis from subsequently electing to exercise a different remedy. The
33 parties have agreed to the alternative remedies hereinabove specified in part because they
34 recognize that the choice of remedies in the event of a failure hereunder will necessarily
35 be and should properly be a matter of business judgment, which the passage of time and
36 events may or may not prove to have been the best choice to maximize recovery by West
37 Allis at the lowest cost to Developers or Guarantor. It is the intention of the parties that
38 such choice by West Allis be given conclusive effect regardless of such subsequent
39 developments.

1 5. Guarantor hereby waives (a) notice of acceptance of this Guaranty by West Allis and any
2 and all notices and demands of every kind which may be required to be given by any statute, rule
3 or law, (b) any defense, right of setoff or other claim which Guarantor may have against the
4 Developers or which Guarantor or Developers may have against West Allis, (c) presentment for
5 payment, demand for payment (other than as provided in Sections 3 and 4 above), notice of
6 nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all
7 formalities which otherwise might be legally required to charge Guarantor with liability, and (d)
8 any failure by West Allis to inform Guarantor of any facts West Allis may now or hereafter
9 know about Developers or the Project, it being understood and agreed that West Allis has no
10 duty so to inform and that the Guarantor is fully responsible for being and remaining informed
11 by the Developers of all circumstances bearing on the existence or creation, or the risk of
12 non-performance, of the Obligations. Credit may be granted or continued from time to time by
13 West Allis to Developers without notice to or authorization from Guarantor, regardless of the
14 financial or other condition of Developers at the time of any such grant or continuation. West
15 Allis shall have no obligation to disclose or discuss with Guarantor its assessment of the
16 financial condition of Developers. No modification or waiver of any of the provisions of this
17 Guaranty shall be binding upon West Allis except as expressly set forth in a writing duly signed
18 and delivered on behalf of West Allis.

19 6. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or
20 affected by any renewals or extensions which may be made from time to time, with or without
21 the knowledge or consent of Guarantor, of the time for payment of interest or principal on the
22 City Investment or by any forbearance or delay in collecting interest or principal on the City
23 Investment, or by any waiver by West Allis under the Development Agreement or Development
24 Financing Agreement, or by West Allis's failure or election not to pursue any other remedies it
25 may have against Developers, or by any change or modification in the Development Agreement
26 or Development Financing Agreement, or by the acceptance by West Allis of any additional
27 security or any increase, substitution or change therein, or by the release by West Allis of any
28 security or any withdrawal thereof or decrease therein, or by the application of payments
29 received from any source to the payment of any obligation of Developers to West Allis other
30 than the Obligations, even though West Allis might lawfully have elected to apply such
31 payments to any part or all of the Obligations, it being the intent hereof that, except as otherwise
32 set forth herein, Guarantor shall remain liable as principal for performance of the Obligations
33 until expiration of this Guaranty, notwithstanding any act or thing which might otherwise operate
34 as a legal or equitable discharge of a surety. Guarantor further understands and agrees that West
35 Allis may at any time enter into agreements with Developers to amend and modify the
36 Development Agreement, Development Financing Agreement, and documents ancillary thereto,
37 and may waive or release any provision or provisions of such documents and, with reference to
38 such instruments, may make and enter into any such agreement or agreements as West Allis and
39 Developers may deem proper and desirable, without in any manner impairing or affecting this
40 Guaranty or any of West Allis's rights hereunder or any of Guarantor's obligations hereunder.

41 7. This is an absolute, present and continuing guaranty of payment and performance and not
42 of collection, as more particularly set forth herein. Subject to the rights of Developers' mortgagee
43 and subject to any subordination agreements to which West Allis is a party, Guarantor agrees
44 that this Guaranty may be enforced by West Allis without the necessity at any time of resorting
45 to or exhausting any other security or collateral given in connection herewith or with the

1 Development Agreement or Development Financing Agreement, or resorting to any other
2 guaranties, and Guarantor hereby waives the right to require West Allis to join Developers in any
3 action brought hereunder or to commence any action against or obtain any judgment against
4 Developers or to pursue any other remedy or enforce any other right. Subject to the rights of
5 Developers' mortgagee and subject to any subordination agreements to which West Allis is a
6 party, Guarantor further agrees that nothing contained herein or otherwise shall prevent West
7 Allis from pursuing concurrently or successively all rights and remedies available to it at law or
8 in equity or under the Development Agreement or Development Financing Agreement, and the
9 exercise of any of its rights or the completion of any of its remedies shall not constitute a
10 discharge of any of Guarantor's obligations hereunder, it being the purpose and intent of the
11 Guarantor that Guarantor's obligations hereunder shall be absolute, independent and
12 unconditional under any and all circumstances whatsoever.

13 8. If any provision or provisions, or if any portion of any provision or provisions, in this
14 Guaranty is found by a court of law to be in violation of any applicable local, state or federal
15 ordinance, statute, law, administrative or judicial decision, or public policy, and if such court
16 should declare such portion, provision or provisions of this Guaranty to be illegal, invalid,
17 unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such
18 portion, provision or provisions shall be given force to the fullest possible extent that they are
19 legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such
20 illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not
21 contained therein, and that the rights, obligations and interest of West Allis under the remainder
22 of this Guaranty shall continue in full force and effect.

23 9. Guarantor hereby submits to personal jurisdiction in the State of Wisconsin for the
24 enforcement of this Guaranty and waives any and all personal rights to object to such jurisdiction
25 for the purposes of litigation to enforce this Guaranty.

26 Guarantor hereby consents to the jurisdiction of either the Circuit Court for Milwaukee
27 County, Wisconsin or the United States District Court for the Eastern District of Wisconsin, in
28 any action, suit, or proceeding which West Allis may at any time wish to file in connection with
29 this Guaranty or any related matter. Guarantor hereby agrees that an action, suit, or proceeding to
30 enforce this Guaranty may be brought in any State or Federal Court in the State of Wisconsin
31 and hereby waives any objection which Guarantor may have to the laying of the venue of any
32 such action, suit, or proceeding in any such Court; provided, however, that the provisions of this
33 Section shall not be deemed to preclude West Allis from filing any such action, suit, or
34 proceeding in any other appropriate forum.

1 10. Notices. Any written notice required to be sent to the parties shall be forwarded to the
2 following:

If to Guarantor:

Element 84 Development Partners LLC
1665 North Water Street
Milwaukee, WI 53202
Attn: Jonathan S. Ross

With a copy to:

Danielle M. Bergner
Michael Best & Friedrich LLP
100 E. Wisconsin Ave., Suite 3300
Milwaukee, WI 53202

If to West Allis:

City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214
Attn: Commissioner of City Development

With a copy to:

City of West Allis
City Attorney's Office
7525 W. Greenfield Avenue
West Allis, WI 53214
Attn: Scott Post, Esq.

3
4 or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall
5 designate to the others in the manner provided herein for the service of notice. Rejection or
6 refusal to accept or inability to deliver because of changed address or because no notice of
7 changed address was given, shall be deemed receipt.

8
9 Notice shall be deemed to have been given (i) upon the date of personal delivery, or (ii)
10 two business days following deposit in the United States mail, with sufficient postage prepaid, or
11 with a nationally recognized overnight commercial carrier, airbill prepaid.

12 11. This Guaranty shall be binding upon the heirs, successors and assigns of Guarantor.

13 12. This Guaranty shall be construed and enforced under the internal laws of the State of
14 Wisconsin, without regard to conflict of laws rules, policies or principles.

15 13. This Guaranty shall expire upon issuance of a certificate of occupancy for the Project.

16 14. Notwithstanding anything contained herein to the contrary, West Allis covenants and
17 agrees that recovery against the Guarantor under this Guaranty shall be limited to the assets of
18 the Guarantor.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty to be executed and delivered as of the day and year first above written.

CITY OF WEST ALLIS

By: 

Dan Devine, Mayor

By: 

Monica Schultz, City Clerk

**ELEMENT 84 DEVELOPMENT
PARTNERS LLC**

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, Manager

Dated: _____

EXHIBIT A
Legal Description

Purchase and Sale Agreement

EXHIBIT L

INCREMENT GUARANTY AGREEMENT

(Element 84 Project)

This Increment Guaranty Agreement (“Guaranty”) is made as of the ___ day of _____, 2016, (the “Effective Date”) by and between Element 84 Development Partners LLC, a Wisconsin limited liability company (“Guarantor”) and the City of West Allis, a Wisconsin municipal corporation, (“CITY”) in connection with the obligations of Guarantor under that certain Purchase and Sale Agreement (“Purchase and Sale Agreement”) of even date herewith between Guarantor, CITY and the Community Development Authority of the City of West Allis (“CDA”). The Guarantor, in order to induce CITY and CDA to enter into the Purchase and Sale Agreement, voluntarily and knowingly enters into this Guaranty pursuant to the terms defined herein.

WHEREAS, the capitalized terms used in this Guaranty which are not defined herein shall have the meanings set forth in the Purchase and Sale Agreement; and

WHEREAS, Guarantor contemplates implementation of the Project pursuant to the terms of the Purchase and Sale Agreement and has authorized the execution of this Guaranty; and

WHEREAS, the Common Council of the CITY adopted File No. _____ on _____, 2016, which authorized execution of this Guaranty; and

WHEREAS, in order to assist CITY in paying debt service on the Series I Bond, as defined in that certain Development Financing Agreement of even date herewith (the “City Funds”) and to provide for other matters set forth herein, the parties are entering into this Guaranty.

NOW, THEREFORE, Guarantor and CITY, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, mutually agree as follows:

I.

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. In addition to the words and terms defined elsewhere in this Guaranty and in the Purchase and Sale Agreement, the following words and terms, when used in this Guaranty, shall have the following meanings:

“Anticipated Value” means [\$____] million which is anticipated to be the minimum assessed value of the Property as of [____], and in subsequent years provided.

“Actual Assessed Value” means the actual assessed value of the Property as of January 1 in any given tax year.

“Development Agreement” means the Development Agreement dated even herewith.

“Development Financing Agreement” means the Development Financing Agreement dated even herewith.

“Shortfall Payment” means, in any tax year subsequent to [2017] in which the Actual Assessed Value is less than the Anticipated Value, the difference between the Tax Increment that would be due or owed on the Project Site if the assessed value of the taxable portions of the Project Site was equal to the Anticipated Value for that tax year and the Tax Increment that is due or owed on the Actual Assessed Value for that same tax year.

“Tax Increment” shall have the meaning in Section 66.1105(2)(i), Wis. Stats.

1.2 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Guaranty:

Words importing the singular number shall include the plural number and vice versa.

The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Guaranty nor shall they affect its meaning, construction or effect.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

II.

GUARANTY

2.1 Guarantor hereby guarantees that as of [January 1, 2018]¹ and in each subsequent tax year until termination of this Guaranty, the Actual Assessed Value shall be equal to or greater than the Anticipated Value.

2.2 Beginning [January 1, 2018], in the event that the Actual Assessed Value is less than the Anticipated Value in any tax year, Guarantor shall make payment to the CITY in an amount equal to the Shortfall as more fully set forth in this Guaranty.

Beginning [January 1, 2018], in any year in which there is a Shortfall, CITY shall, by December 1 of the tax year in which the Shortfall occurs, send an invoice to Guarantor showing the amount of the Shortfall. Guarantor shall pay the amount of the Shortfall to CITY by the next [January 31] following receipt of the invoice, or, if Guarantor elects to pay in installments, according to the following schedule: one-tenth of the Shortfall by the last day of each month for the first 10 months in the year following the calendar year for which the particular Shortfall applies.

III.

TERM

3.1 The term of this Guaranty shall commence on the Effective Date and will terminate upon the occurrence of any of the following: (1) the Actual Assessed Value is equal to or greater than the Anticipated Value on January 1, 2018 or in any subsequent tax year; (2) retirement of the Series I Bond principal and interest; or (3) termination of TID 11.

3.2 Following termination of this Guaranty pursuant to (1), (2) or (3) above, neither Guarantor nor its Affiliate shall take any steps to challenge the Actual Assessed Value, or any portion of it, in any tax year for the life of TID 11. This provision shall survive termination of this Guaranty.

¹ The calendar year in which Tax Increments are to commence remains subject to change depending on actual Project commencement date and the corresponding final City financial model.

IV.
NOTICES

Any notice required to be sent to the parties shall be in writing and forwarded to the following:

If to CITY:

City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214
Attn: Commissioner of City Development

With a copy to:

City of West Allis
City Attorney's Office
7525 W. Greenfield Avenue
West Allis, WI 53214
Attn: Scott Post, Esq.

If to Guarantor:

Element 84 Development Partners LLC
1665 North Water Street
Milwaukee, WI 53202
Attn: Jonathan S. Ross

With a copy to:

Danielle M. Bergner
Michael Best & Friedrich LLP
100 East Wisconsin Ave., Suite 3300
Milwaukee, WI 53202

IN WITNESS WHEREOF, the parties hereto have caused this Increment Guaranty Agreement to be executed and delivered as of the day and year first above written.

CITY OF WEST ALLIS

By: *Dan Devine*
Dan Devine, Mayor

By: *Monica Schultz*
Monica Schultz, City Clerk

ELEMENT 84 DEVELOPMENT PARTNERS LLC

By: Ogden Midwest Funding LLC, its Manager

By: _____
Jonathan S. Ross, its Manager

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into by and between the undersigned Parties, effective as of April 11, 2017.

RECITALS

The undersigned Parties entered into a Purchase and Sale Agreement dated December 30, 2016, regarding a Project to be located in the City of West Allis, commonly referred to as “Element 84” (the “**Purchase Agreement**”). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

Subject to the terms of this Amendment, Authority, City and Developers now desire to amend the Purchase Agreement upon the terms and conditions stated below.

AGREEMENTS

NOW THEREFORE, for and in consideration of Ten Dollars, the agreements of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Parties hereby agree to the following deadlines for the satisfaction of certain Project milestones:

A. An invitation to apply for HUD 221(d)(4) Firm Commitment shall be issued by HUD on or before May 1, 2017.

B. A Firm Commitment shall be issued by HUD on or before September 1, 2017.

C. Closing on the HUD 221(d)(4) Loan shall occur on or before October 1, 2017.

D. Closing on the Public Property shall occur on or before October 15, 2017.

In the event one or more of the deadlines specified above are not met, the Purchase Agreement may be terminated by any Party upon written notice to the other Parties.

2. Authority is authorized to allow Developers to commence demolition activities prior to the Closing Date, subject to an Early Start Agreement in a form and substance acceptable to the City Attorney.

3. Miscellaneous. This Amendment may be executed in several counterparts, and by the parties hereto in separate counterparts, and each counterpart, when so executed and delivered (which delivery may be by facsimile or via electronic mail), shall constitute an original, and all such separate counterparts shall constitute but one and the same instrument. This Amendment embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. To the extent inconsistent with any provisions of the Purchase Agreement, the terms and provisions of this Amendment shall control.

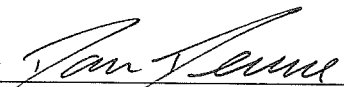
AGREED TO BY AND BETWEEN Developers, Authority, and City on the date first set forth above.

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

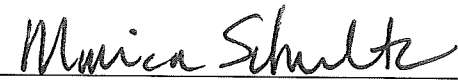
By: 
John F. Stibal, Executive Director

Dated: 5-2-17

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

By: 
Dan Devine, Mayor

Dated: 5/3/17

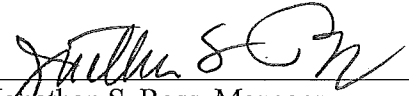
By: 
Monica Schultz, City Clerk

Dated: 5/3/17

ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: 5/5/17

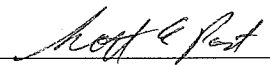
WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: 5/5/17

Approved as to form this 4 day
of ~~April~~, 2017.

May


Scott E. Post, City Attorney

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “**Amendment Number Two**”) is entered into by and between the undersigned Parties, effective as of August 8, 2017.

RECITALS

The undersigned Parties entered into a Purchase and Sale Agreement dated December 30, 2016, and Amendment Number One dated April 11, 2017, regarding a Project to be located in the City of West Allis, commonly referred to as “Element 84” (the “**Purchase Agreement**”). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

Subject to the terms of Amendment Number Two, Authority, City and Developers now desire to amend the Purchase Agreement upon the terms and conditions stated below.

AGREEMENTS

NOW THEREFORE, for and in consideration of Ten Dollars, the agreements of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Parties hereby agree to the following deadlines for the satisfaction of certain Project milestones:
 - A. A Firm Commitment shall be issued by HUD on or before October 27, 2017.
 - B. Closing on the HUD 221(d)(4) Loan shall occur on or before November 29, 2017.
 - C. Closing on the Public Property shall occur on or before November 29, 2017.

In the event one or more of the deadlines specified above are not met, the Purchase Agreement may be terminated by any Party upon written notice to the other Parties.

2. Authority is authorized to allow Developers to commence demolition activities prior to the Closing Date, subject to an Early Start Agreement in a form and substance acceptable to the City Attorney.

3. Miscellaneous. This Amendment Number Two may be executed in several counterparts, and by the parties hereto in separate counterparts, and each counterpart, when so executed and delivered (which delivery may be by facsimile or via electronic mail), shall constitute an original, and all such separate counterparts shall constitute but one and the same instrument. This Amendment Number Two embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. To the extent inconsistent with any provisions of the Purchase Agreement, the terms and provisions of this Amendment Number Two shall control.

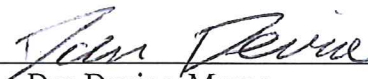
AGREED TO BY AND BETWEEN Developers, Authority, and City on the date first set forth above.

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

By: 
John F. Stibal, Executive Director

Dated: 8-9-17

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

By: 
Dan Devine, Mayor

Dated: 8-10-17

By: 
Monica Schultz, City Clerk

Dated: 8-10-17

ELEMENT 84, LLC

By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: 8-17-17

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: 8-17-17

Approved as to form this 11 day
of August, 2017.


Scott E. Post, City Attorney