

FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIFTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is entered into by and between the undersigned Parties, effective as of May 9, 2018.

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," as subsequently amended (the "Purchase Agreement").

The undersigned Parties also entered into a Development Agreement (the "Development Agreement") and a related Development Finance Agreement (the "Development Financing Agreement"), both dated December 30, 2016 and related to the same Project.

On February 6, 2018, (File Number R-2018-0094), the City Common Council approved an amendment to the Purchase Agreement ("the revised Fourth Amendment"), Development Financing Agreement, and Development Agreement authorizing, among other things, a loan by the City from the Wisconsin State Trust Fund Program to Element 84, LLC, in the amount of \$2,500,000 to be part of the Project financing, the Developer to have no payment obligations to the City until 2021, and a closing date of no later than March 15, 2018.

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.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement, the Development Agreement, or the Development Financing Agreement, as applicable.

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. **Purchase Agreement.** The Parties hereby agree to amend the Purchase Agreement as follows:

A. Section 13.A.(a) is revised to state that any Project Savings shall be distributed as follows: (a) Sixty percent (60%) to the City to reduce the principal balance of the City Loan, and (b) Forty percent (40%) to the City to reduce the principal balance of the loan used to source the City Investment. The foregoing distribution of Project Savings shall be made after the general contractor receives its contractual share of Project Savings, which may be up to fifty percent (50%) of the total Project Savings.

B. Section 13.B. is revised to define the term "Development Contingency" as follows: The term "Development Contingency" shall mean designated funds within the

Project Budget reserved and identified by the Developers for Project cost overruns or unknown project expenditures. More specifically the amounts identified as the "Working Capital Reserve" and the "Operating Reserve" within the Project Budget attached hereto as Exhibit H- Project Budget.

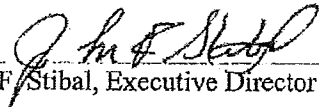
C. Closing on the HUD 221(d)4 Loan shall occur on or before June 15, 2018.

D. Closing on the Public Property shall occur on or before June 15, 2018.

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

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**

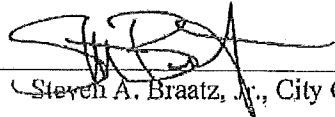
By: 
John F. Stibal, Executive Director

Dated: 5-4-18

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

By: 
Dan Devine, Mayor

Dated: 5/4/18

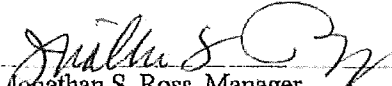
By: 
Steven A. Braatz, Jr., City Clerk

Dated: 5/4/18

ELEMENT 84 LLC

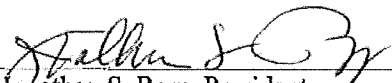
By: Element 84 Development Partners LLC, its
Manager

By: Ogden Midwest Funding LLC, its Manager

By: 
Jonathan S. Ross, Manager

Dated: 5-16-18

WEST ALLIS 84 PROPERTIES, INC.

By: 
Jonathan S. Ross, President

Dated: 5-16-18

Approved as to form this 4th day
of May, 2018.


Jenna Merten, Deputy City Attorney