

DEVELOPMENT FINANCING AGREEMENT

(SONA Lofts)

THIS DEVELOPMENT FINANCING AGREEMENT (“Agreement”), made and entered into as of the ____ day of _____, 2021, 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 (the “Authority”), the City of West Allis, Wisconsin (“City”) and SoNa Lofts LLC, a Wisconsin limited liability company, its successors and/or assigns (“Developer”). The Authority, City and Developer are each referred to herein as a party or together as the “Parties.” The Authority and City collectively are referred to as “West Allis.”

WHEREAS, the Developer and the Authority have entered into a Purchase and Sale Agreement (the “Purchase and Sale Agreement”) for the purchase and the sale of certain property owned by Authority, which is Lot 2 on the Certified Survey Map (the “CSM”) described in **Exhibit A** attached hereto (the “Property” or “Lot 2”).

WHEREAS, as of the date hereof, the Authority closed on the sale of the Property to Developer pursuant to the Purchase and Sale Agreement (the “Closing”).

WHEREAS, the Developer intends to construct one three-story multifamily apartment building having in total approximately 110 apartment units and approximately 5,177 square feet of retail space, including approximately 90 underground parking spaces and approximately 42 surface parking spaces. The development described above is hereinafter referred to as the “Project” and is located within Six Points/Farmers Market Redevelopment Area, south of W. National Ave., west of South 66th Street, in the City of West Allis, Wisconsin. The Property is located within a Redevelopment District (the “District”) that was declared to be a blighted area

district pursuant to the Project Plan for the creation of Tax Incremental District No. 15 approved on July 5, 2016 (deemed to be and referred to herein as the “Project Master Plan”). The Project will be developed pursuant to the terms of this Agreement.

WHEREAS, the Authority and City agree to provide certain financial incentives and assistance to allow the Developer to develop the Project, and the Developer would not undertake the development and construction of the Project without such financial incentives and assistance.

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

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

1. **Developer Investment, Equity and Financing**. On or prior to Closing, Developer will demonstrate to the City that in connection with the Project: (a) Developer or its sponsor, Mandel/SoNa Lofts LLC, a Wisconsin limited liability company (“Sponsor”) has through reduced fees (“Sponsor Created Savings”) “invested” the savings from such reduced fees in the Project in an amount equal to or greater than \$707,319, and (b) Developer or its parent company, SoNa Lofts OZ Fund LLC, a Wisconsin limited liability company (the “Fund”), has obtained approximately \$21,600,000 in a combination of (i) debt financing from a private lending institution (the “Debt Financing”) and (ii) private equity (“Equity”). Developer shall have the right to adjust the projected amounts of Debt Financing and Equity provided that Developer shall, in the aggregate, have obtained sufficient Debt Financing and Equity that, together with the public funding and financing assistance described in this Agreement, is sufficient to complete development of the

Project. Developer and/or its affiliates shall provide any and all guaranties required to obtain the necessary Debt Financing provided any and all such guaranties are on commercially reasonable terms and conditions.

2. **Tax Increment Financing.**

a. **Tax Incremental District.** Pursuant to the Wisconsin Tax Increment Law, Wis. Stats. §66.1105 *et seq.*, the Common Council of the City of West Allis created by resolution Tax Incremental District Number 15, City of West Allis (“TID #15”), as of July 5, 2016, and approved the Project Master Plan for the District (as amended). The Property is within the boundaries of the District, the District has been declared to be a blighted area, and the transaction contemplated by the Purchase and Sale Agreement, the Development Agreement and this Agreement is essential to the viability of the District.

i. The Project to be developed by the Developer benefits the surrounding neighborhood and West Allis as a whole. West Allis has determined that the Project is consistent with the Project Master Plan and with the City’s Master Plan as of May 25, 2016.

ii. West Allis desires to encourage economic development, expand the tax base, and create new jobs within the area, all in furtherance of and in compliance with the TID Project Master Plan and the City’s Master Plan. West Allis finds that the Project and this Agreement are in the vital and best interests of West Allis and its residents and serves a public purpose in accordance with state and local law.

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

iv. Property taxes paid on all properties within TID #15 in excess of those paid on the base valuations are referred to as “Tax Increments.”

v. The City, the Authority and Six Points West Allis Apartments II LLC, a Wisconsin limited liability company (“NoNa Developer”) entered into a Development Financing Agreement dated March 29, 2019, as amended (the “NoNa Development Finance Agreement,”) pursuant to which the City and the Authority agreed to provide certain financial incentives and assistance to NoNa Developer, including a “pay-go TID” D-MRO in an estimated amount of \$16,927,807 (the “NoNa D-MRO”) from the Tax Increments paid by a multifamily apartment project located at 6620 W. National Avenue known as “The West” (the “NoNa Project”) and a commercial building located at 6609 W. Greenfield Avenue (the “Commercial Project”). Tax Increments paid by the NoNa Project and the Commercial Project are referred to collectively in this Agreement as the “NoNa Tax Increment.”

vi. The City has included the Project in TID #15. As used in this Agreement, the term “SoNa Available Funds” means Tax Increment paid by the Project (“SoNa Tax Increment”), any NoNa Tax Increment remaining after being applied in accordance with the NoNa Development Finance Agreement in any given year (the “NoNa Available Funds”), and that portion of the TID #15 fund balance (the “TID Fund Balance”) that is available to pay the scheduled TID Fund Balance Withdrawal amount of the SoNa D-MRO pursuant to **Exhibit B** attached hereto (the “TID Fund Balance Withdrawal”).

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

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

a. **Property Conveyance.** The Authority owned the Property and has conveyed the Property to Developer or its affiliate for \$1.00 in accordance with the terms of the Purchase and Sale Agreement.

b. **Developer Municipal Revenue Obligation.** The City will provide Developer with an amount not to exceed \$15,725,000 (“SoNa D-MRO”) in “pay-go TID” benefits to the Developer. The amount of each annual payment will vary based upon the SoNa Tax Increment paid, NoNa Available Funds, and TID Fund Balance available, but payments are based on the estimates provided in **Exhibit B** attached hereto (the “SoNa D-MRO Schedule”). In the event the SoNa Tax Increment is greater than or less than the amount shown in Exhibit B for any year, then in such year the amount paid under the SoNa D-MRO shall increase or decrease by a like amount, without changing the amount to be paid from the TID Fund Balance pursuant to **Exhibit B**, as applicable. Adjustments to the amount paid in any year of the SoNa D-MRO Schedule shall not amend or modify the maximum total amount of SoNa D-MRO available (\$15,725,000). Annual payment will be made from the SoNa Available Funds. Until the NoNa D-MRO is fully satisfied, no NoNa Tax Increment will be used to pay the SoNa D-MRO. SoNa D-MRO payments are contingent upon the availability of funds pursuant to Section 5 and Section 6 below. Installments on the SoNa D-MRO shall commence on October 1 in the first year that the

Project generates Tax Increment and will be due and payable on each October 1 thereafter. If SoNa Available Funds are not sufficient in any given year to make the SoNa D-MRO payment set forth on **Exhibit B** attached hereto, then any unpaid amount will carry over into each subsequent year for payment to the extent there are sufficient SoNa Available Funds. If any balance remains after reaching the 27-year statutory time limit for TID #15, any remaining carry over balance is waived.

4. **Takeout Refinancing.** Developer anticipates that it will seek a Takeout Refinancing (as hereinafter defined) of the Debt Financing within twelve (12) months following Project Stabilization (as hereinafter defined). If sufficient Takeout Proceeds (as hereinafter defined) are available, Developer may make a payment to the Authority out of the Takeout Proceeds within fifteen (15) months following Project Stabilization (the "**Takeout Payment** in a multiple of \$50,000. .

a. **Effect of Making Takeout Payment.** If Developer makes a timely Takeout Payment pursuant to this Section 4, then the Authority Participation Percentage (defined in Section 9(b) below) shall be reduced as follows:

i. the Authority Participation Percentage shall be reduced by one percent (1%) for every \$50,000 paid to the Authority as a Takeout Payment up to and including \$500,000;¹ and

¹ For example, if the Developer were to make a \$250,000 Takeout Payment, then the Authority Participation Percentage would be reduced by 5% ($\$250,000/\$50,000 * 1\%$) such that the Authority Participation Percentage would be 20% (25%-5%). If the Developer were to make a \$450,000 Takeout Payment, then the Authority Participation Percentage would be reduced by 9% ($\$450,000/\$50,000 * 1\%$) such that the Authority Participation Percentage would be 16% (25%-9%).

ii. the Authority Participation Percentage shall be reduced by one half of one percent (0.5%) for every \$50,000 paid to the Authority as a Takeout Payment above \$500,000 and less than or equal to \$1,000,000.²

b. **Definition of Takeout Refinancing.** As used herein, a “Takeout Refinancing” shall mean the initial refinancing of the Debt Financing that provides enough proceeds to satisfy the Debt Financing but which proceeds are not sufficient, after paying all closing costs, current year and accrued preferred returns under the Fund’s limited liability company agreement, management fees, and reserves, to return the entire original capital contribution to all the members of the Fund.

c. **Definition of Takeout Proceeds.** As used herein, “Takeout Proceeds” shall mean proceeds available to Developer from the Takeout Refinancing less: (i) payment of all closing costs in connection with the Takeout Refinancing, (ii) payment of all sums required to satisfy existing mortgages on the Property, (iii) payment of all sums required to satisfy a loan from the City to the Developer pursuant to a Contaminated Site Loan Agreement for US EPA RLF Funds dated as of the date hereof (the “EPA Loan”), if Developer elects to satisfy the EPA Loan in connection with the Takeout Financing (iv) payment of all sums required to satisfy any working capital loans or cash advances made to Developer or the Fund by principals and affiliates of Developer or the Fund for the benefit of the Project, (v) establishment of reasonable reserves, including, without limitation, any reserves required by the Takeout Lender (as defined below); and (vi)

² For example, if the Developer were to make a \$750,000 Takeout Payment, then the Authority Participation Percentage would be reduced by 10% for the first \$500,000 of the Takeout Payment and by 2.5% ($\$250,000/\$50,000 * 0.5\%$) for the additional \$250,000 of the Takeout payment, for a total reduction of 12.5% such that the Authority Participation Percentage would be 12.5%. The maximum reduction in Authority Participation Percentage is 15% for a \$1,000,000 Takeout Payment, leaving a 10% Authority Participation Percentage.

payment of all sums required to pay the current year and any and all accrued preferred returns (but not return or pay in full the Investor Equity and Sponsor Created Savings) to investors in the Fund, including Sponsor, under the Fund's limited liability company agreement.

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

5. **Application of Tax Increments.**

a. Prior to the date that the NoNa D-MRO is fully satisfied, all NoNa Tax Increments shall be applied in accordance with the NoNa Development Finance Agreement, as set forth on **Exhibit B-1** attached hereto. From and after the date that the NoNa D-MRO is fully satisfied and any surplus NoNa Tax Increment has been applied in accordance with the NoNa Development Finance Agreement, all remaining NoNa Tax Increments shall be added to the TID Fund Balance.

b. If the Authority receives a profit participation payment pursuant to the NoNa Development Finance Agreement (the "**NoNa Profit Participation**"), then the Authority agrees to add the first \$1,000,000 of the NoNa Profit Participation (or the full amount of the NoNa Profit Participation if less than \$1,000,000) to the TID Fund Balance.

c. The SoNa Available Funds shall be applied as follows:

i. Payment to the City of any outstanding, current or past due City TID administration fees for certain expenses in connection with administration of the SoNa D-MRO in the annual fee amount as set forth on **Exhibit B-1** attached hereto

(the “City TID Administration Fee”), which shall be payable in any year thereafter during which TID #15 remains open and the SoNa D-MRO remains unpaid in full;

ii. Payment of the annual payment on the SoNa D-MRO as set forth on **Exhibit B** attached hereto, plus any amounts carried over from prior years, subject to

(1) Any adjustment to the portion of the SoNa D-MRO payment based on the actual SoNa Property Tax Increment pursuant to Section 3(b) above

(2) Any adjustment to the portion of the SoNa D-MRO payment to be made from NoNa Available Funds based upon the actual NoNa Available Funds; and

(3) Any adjustment to the portion of the SoNa D-MRO payment to be made from the TID Fund Balance Withdrawal based upon the availability of funds in the TID Fund Balance.

d. Any amounts due in any year for the City TID Administration Fee and the SoNa D-MRO but not paid from SoNa Available Funds shall carry over until paid or waived upon closure of TID #15. The City TID Administration Fee and SoNa D-MRO shall carry over without interest.

6. **TID Fund Balance**. The parties hereby acknowledge and agree that a portion of the TID Fund Balance will be used to pay the SoNa D-MRO pursuant to **Exhibit B** attached hereto, to the extent such funds are available. Provided that TID #15 receives sufficient revenue, after payment of the NoNa Project expenditures and Other Project Costs set forth on **Exhibit B-1** (the “Pre-Existing Obligations”), to fund the TID Fund Balance Withdrawal, the Authority shall retain

sufficient funds in the TID Fund Balance to make the TID Fund Balance Withdrawal as shown on **Exhibit B**. If the TID Fund Balance is insufficient in any year to make the TID Fund Balance Withdrawal, the City shall not withdraw or pledge the TID Fund Balance for any other purposes, other than the Pre-Existing Obligations, until the full amount of the TID Fund Balance Withdrawal for the current year, plus any amounts carried over from prior years, is paid in full, and the Authority reasonably and in good faith believes that such use or withdrawal will not result in a shortfall in the future. Subject to this Section 6, the City may use funds from the TID Fund Balance for other purposes permitted under the Tax Increment Law, including, without limitation, repayment of principal and interest on loans between the Authority and FIRE related to the NoNa Project (the “FIRE Loans”).

7. **Developer Completion Guaranty**. Developer shall provide the City with a Guaranty of Completion for the Project. “Completion” shall be defined as the issuance of the Certificate of Completion (as defined in the Development Agreement). Upon Completion, the Guaranty of Completion shall be released in its entirety.

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

a. **Cost Savings Definition**. “Cost Savings” shall mean the difference, if any, between (i) total disbursements by or on behalf of the Developer, its affiliates or their

assignees in connection with the Project and (ii) the Project Budget. Amounts remaining unspent in any category within the Project Budget may be used to offset cost overruns in any other category of the Project Budget.

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

i. The Developer shall fund into an account (the “Capital Reserve Account”) an amount equal to \$100,000.00 to pay for replacement costs, capital improvements and non-routine operating expenses associated with the Project, including without limitation, construction defects and failures to the extent not covered by applicable warranties, and deductibles on insurance claims without the prior consent of the Authority; then

ii. Any remaining Costs Savings after item (i) above (“Net Savings”) shall be paid 50% to the Authority and 50% to the Developer. The Authority shall deposit any Net Savings it receives into the TID Fund Balance.

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

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

e. **Calculation of Net Savings.** Final determination of Net Savings shall be made by West Allis’s construction cost consultant, in good faith and acting reasonably, subject to the reasonable review and approval of Developer. The calculation of the actual cost of the Project and therefore the determination of Net Savings will conform to the disbursement records of the Developer’s construction lender and First American Title Insurance Company. Within 60 days following Project Stabilization, Developer shall provide West Allis and its construction cost consultant with a detailed description of the actual costs of the Project in a manner and format consistent with the original Project Budget. West Allis or its consultant may request any additional support or verification as may be reasonably needed including invoices and other proof of payments to compare the final cost to the original Project Budget.

9. **Profit Participation.**

a. **Profit Participation Triggers.** In further consideration of the participation by West Allis in this Agreement, and as more particularly provided below, upon the

occurrence (during the time in which TID #15 remains open) of: 1) a sale by Developer or its affiliate of the Project or the conveyance of greater than a majority and controlling interest in Developer or its affiliate then owning the Project to any third-party unrelated to Developer (a “Sale”); or 2) a Cash Out Refinancing (as defined below) of the Project (each a “Trigger Event”), West Allis shall be entitled to a one-time Profit Participation as hereinafter provided.

b. **Profit Participation and Definition.** If Net Proceeds (as hereinafter defined) result from a Sale or Cash Out Refinancing, and provided further that the conditions outlined below are satisfied in the event of such Sale or Cash Out Refinancing, in sufficient amounts to result in the total Investor Equity (as hereinafter defined) realizing an Internal Rate of Return, to be determined based on the methodology reflected in the example calculation attached hereto as **Exhibit D** and in accordance with standard industry practice (“IRR”) in excess of 15%, then, subject to adjustment pursuant to Section 4.a) above, twenty-five percent (25%) (the “Authority Participation Percentage”) of the excess Net Proceeds shall be paid to the Authority (the “Profit Participation”). There shall be no Profit Participation if the IRR realized on Investor Equity is less than 15%. The Authority shall deposit any Profit Participation it receives into the TID Fund Balance.

c. **Definition of Investor Equity.** As used herein, “Investor Equity” shall mean the cash invested into the Fund by investor members, but expressly excluding from the calculated return any Sponsor Created Savings, any return on Sponsor Created Savings, any cash reinvestment of development fees due Sponsor and any return thereon, and any “promote” or “carried interest” of Sponsor and any return thereon.

d. **Definition of Cash Out Refinancing.** “Cash Out Refinancing” means a refinancing of the Project that generates sufficient cash to directly result in a cash distribution to the direct and indirect members of Developer that results in the members receiving a return of all their capital and the preferred returns and distributions earned through the date of such event, and the Developer receiving a return of all its capital and preferred returns (including its Sponsor Created Savings and any return on Sponsor Created Savings). As necessary, the amount of Net Proceeds for purposes of calculating the IRR from partial cash out financings, where cash is distributed to the members but in insufficient amounts to return all of such capital and preferred returns, and partial Sale events after which Developer retains a continued ownership interest in the Project, will be accumulated for purposes of establishing the total amount of Net Proceeds for purposes of calculating the IRR and will not be paid until the total amount of the Net Proceeds can be calculated. Unless otherwise agreed to by the Developer and the Authority, the Profit Participation shall be paid in one lump sum pursuant to the terms and provisions herein and as more particularly set forth below.

e. **Definition of Net Proceeds.** “Net Proceeds” is herein defined to mean the gross sale or refinancing proceeds, less:

i. Costs of the sale and customary costs of closing or the costs of refinancing, such as title insurance, closing fees, brokers’ fees, lenders’ fees and points, taxes, recording fees, transfer fees, expense proration, accounting expenses and attorneys’ fees;

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

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

iv. Any Sponsor Created Savings, which represents savings created by Developer reducing its fees, as contained in the Project Budget, including any accrued and unpaid preferred return thereon or cash allocation related thereto.

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

g. **West Allis Ongoing Obligations.** If a Sale occurs before closure of TID #15, West Allis agrees to (i) continue to make the scheduled payments of the SoNa D-MRO (to the extent not already fully disbursed and paid and any accruals thereof), to disburse payments either to the Developer, or at Developer's option, to the purchaser of the Project or to the purchaser of the controlling interest in Developer or to the then owner of the Project (to the extent not already fully disbursed), and (ii) to continue administering and operating TID #15 in accordance with this Agreement.

10. **Conditions to the Parties' Obligations.** The parties' obligations to complete their respective obligations are conditioned on the following being satisfied:

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

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

c. **Legal Agreements.** The Purchase and Sale Agreement, the Development Agreement and the REA (as defined in the Purchase and Sale Agreement) have been executed and delivered by the applicable parties thereto and all of the conditions to the closing on the Property and the development of the Project have been satisfied or waived by the party benefiting therefrom (collectively, the “Legal Agreements”).

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

11. **Prevailing Wage Not Required.** City is not aware of any obligations on the part of the Developer arising out of any obligation of or to West Allis that would require Developer to enforce, impose or apply any prevailing wage requirements or any other wage or labor affiliation restrictions on its contractors in connection with any aspect of the Project. City is not aware of any requirement that municipal bidding procedures be utilized to select a contractor for any of the contemplated work.

12. **PILOT and Shortfall Agreement.**

a. **PILOT.** Ownership of the Property, or any part thereof, 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 #15 shall result in a payment in lieu

of taxes from the owner of that portion of the Property that is so exempt to the City each year in an amount equal to the amount of taxes that would be due and owing on that portion of the Property if that portion was not tax exempt (the “PILOT Payment”). The PILOT Payment shall be calculated based on the value of the Property for the applicable tax year determined by the City’s Assessor’s office multiplied by the City’s property tax rate for the applicable tax year. Such payment shall be due, payable and collected in the same manner as property taxes, to the extent permitted by law. The Developer, its successors, and assigns as the owners or occupants of the Property waive the right to contest the validity of this provision. This Section shall automatically terminate upon the termination of TID #15.

b. **Tax Contest.** In consideration of West Allis providing the financial assistance outlined in Section 3 of this Agreement, Developer, its successors, assigns, or affiliates, agree to not challenge any property tax assessment levied against the Project prior to the termination of TID #15 except that any or all of them may contest any such property tax assessment but only in good faith and only if and to the extent any such property tax assessment is in excess of the anticipated minimum assessed value of the Property in the same particular tax year as set forth in **Exhibit B-2.**

c. **Change in Method of Taxation.** To the extent in compliance with applicable law, if any tax, assessment or like charge is imposed on or assessed against the Project or the use and operations thereof or income therefrom, as an alternative to, a replacement of, or as supplemental to, any or all of the property taxes that are intended by the parties hereto to constitute the Tax Increments, or increment or like revenues under the tax increment law or any equivalent, then such taxes, assessments, and charges shall be

deemed to be Tax Increments hereunder and shall be disbursed as set forth in this Agreement. Notwithstanding the foregoing, special assessments and special charges levied by the City for permitted purposes, such as to pay for improvements and services, shall not be included as Tax Increments.

13. **Confidentiality**. The Parties further acknowledge that West Allis is subject to the requirements of the Wisconsin Public Records Law, Wis. Stats. §§19.21 et seq (the “Public Records Law”). Under these statutes, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. The parties agree that financial reports and information considered confidential by the Developer required to be provided by Developer to West Allis under this Agreement shall be provided to the Authority’s outside financial consultant for review on behalf of West Allis. At the request of the Developer, all financial reports and information provided to such financial consultant in connection with this Agreement shall be held and treated as confidential and shall not be part of the public record associated with the Project, if and as may be permitted under the Public Records Law. The Parties acknowledge that this Agreement is subject to the provisions of the Public Records Law and that all attachments to this Agreement are deemed to be public records.

14. **Assignment**. This Agreement and all rights and obligations therein, including but not limited to the indemnification provisions thereunder, may be assigned in whole or in part by the Developer to an affiliated entity upon notice to the Authority. For purposes of this Section 14, the term “affiliated entity” shall mean an entity controlling or controlled by or under common control with the Developer. This Agreement may also be collaterally assigned in whole or in part by the Developer to any lender or lenders holding a mortgage on all or any part of the Property. No such lender shall have any liability hereunder unless said lender elects to effectuate such

assignment and exercise the Developer's rights hereunder. Upon any such assignment, references to Developer contained in this Agreement shall refer to the assignee, unless the assignment expressly provides otherwise, it being understood, for example, that Developer or any assignee of Developer may elect to retain the benefits of the SoNa D-MRO and is not required to assign the SoNa D-MRO to the owner of the Property; provided, however, that the obligations of Section 9 shall be binding on Developer and its successors and assigns.

15. **No Partnership or Venture.** The Developer and its 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 the Developer or any contractor or subcontractor employed by the Developer in the construction of the Project. No elected official, member, officer, or employee of West Allis during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

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

To the Authority: 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

To the City: City of West Allis
Office of the City Attorney

7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Attorney

To Developer: SoNa Lofts LLC
330 East Kilbourn Avenue
Suite 600 South
Milwaukee, WI 53202
Attn: Barry R. Mandel

With a copy to: Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Joshua P. Roling

17. **Further Assurances.** Following the Closing, each of the Parties will take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by any other Party in order to perfect and complete the financing of the Project as described herein as well as any other transactions specifically contemplated herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

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

By: _____
Patrick Schloss, Executive Director

Dated: _____

CITY OF WEST ALLIS

By: _____
Dan Devine, Mayor

Dated: _____

By: _____
Rebecca Grill, City Clerk

Dated: _____

Approved as to form this _____ day
of _____, 2021.

_____, Deputy City Attorney

DEVELOPER: SONA LOFTS LLC

By: Mandel/SoNa Lofts LLC

By: BR Mandel LLC
Its: Manager

By: _____
Barry R. Mandel, Manager

Dated: _____

EXHIBITS TABLE

Exhibit A	-	Property
Exhibit B	-	SoNa D-MRO Schedule
Exhibit B-1	-	TID #15 D-MRO Schedule [page 5 of Ehlers projections]
Exhibit B-2	-	SoNa Tax Increment Worksheet [page 3 of Ehlers projections]
Exhibit C	-	Project Budget
Exhibit D	-	Calculation of Rate of Return

EXHIBIT A

Property

LOT 2 OF CERTIFIED SURVEY MAP NO. 9370, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR MILWAUKEE COUNTY, WISCONSIN ON DECEMBER 2, 2021, AS DOCUMENT NO. 11193094, BEING A REDIVISION OF LOTS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8866, BEING A PART OF THE SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

EXHIBIT B

SoNa D-MRO Schedule

SoNa D-MRO Schedule of Payments							
Sources of Funds							
Uses of Funds							
SoNa Available Funds					Uses of Funds		
TID Year	SoNa Tax Increment	Funds from NoNa	TID Fund Balance Withdrawal	Total MRO Sources	SoNa D-MRO Payment	TID Fund Balance Increase	
2024	\$ 107,821	\$ 81,202	\$ 385,977	\$ 575,000	\$ 575,000	\$ -	
2025	\$ 344,839	\$ 81,851	\$ 173,310	\$ 600,000	\$ 600,000	\$ -	
2026	\$ 466,192	\$ 82,501	\$ 76,307	\$ 625,000	\$ 625,000	\$ -	
2027	\$ 470,701	\$ 83,150	\$ 71,149	\$ 625,000	\$ 625,000	\$ -	
2028	\$ 475,205	\$ 83,800	\$ 90,995	\$ 650,000	\$ 650,000	\$ -	
2029	\$ 479,705	\$ 59,449	\$ 110,846	\$ 650,000	\$ 650,000	\$ -	
2030	\$ 484,201	\$ 60,099	\$ 105,700	\$ 650,000	\$ 650,000	\$ -	
2031	\$ 488,692	\$ 60,748	\$ 100,560	\$ 650,000	\$ 650,000	\$ -	
2032	\$ 493,178	\$ 61,398	\$ 95,424	\$ 650,000	\$ 650,000	\$ -	
2033	\$ 497,660	\$ 62,047	\$ 90,293	\$ 650,000	\$ 650,000	\$ -	
2034	\$ 502,137	\$ 62,697	\$ 85,166	\$ 650,000	\$ 650,000	\$ -	
2035	\$ 506,609	\$ 63,346	\$ 80,045	\$ 650,000	\$ 650,000	\$ -	
2036	\$ 511,076	\$ 63,996	\$ 99,928	\$ 675,000	\$ 675,000	\$ -	
2037	\$ 515,538	\$ 64,645	\$ 94,817	\$ 675,000	\$ 675,000	\$ -	
2038	\$ 519,995	\$ 1,011,589	\$ -	\$ 1,531,584	\$ 1,000,000	\$ 531,584	
2039	\$ 524,447	\$ 1,143,948	\$ -	\$ 1,668,395	\$ 1,100,000	\$ 568,395	
2040	\$ 528,893	\$ 1,153,566	\$ -	\$ 1,682,459	\$ 1,200,000	\$ 482,459	
2041	\$ 533,334	\$ 1,163,175	\$ -	\$ 1,696,509	\$ 1,300,000	\$ 396,509	
2042	\$ 537,769	\$ 1,172,776	\$ -	\$ 1,710,545	\$ 1,200,000	\$ 510,545	
2043	\$ 542,199	\$ 1,182,367	\$ -	\$ 1,724,566	\$ 950,000	\$ 774,566	
Total				\$ 18,989,058	\$ 15,725,000	\$ 3,264,058	

EXHIBIT B-1

TID#15 D-MRO Schedule

City of West Allis Tax Increment District # 15 (The Market) Cash Flow Projection																												
Year	Projected Revenues							Expenses										Balances										
	Tax Increments	Interest Earnings/ (Cost)	Dev. Loan Repayment	Const. Savings Pymt	Investor Profit Distribution	SoNo Profit Sharing Pymt	SoNo Profit Cash Out to City	Proceeds of LT Debt			FIRE Loan Financed		SoNo Project		Dev. Incentives - MROs		Other Project Costs				TID Fund Balances		MRO & FIRE Loan Balances*					
							FIRE	Other	Misc. Revenue	Total Revenues	Developer Loan	Developer Grant	MRO Payment†	Variable (SoNo)	Fixed From TID FB	Total MRO Payment†	Env. Costs	Inf. Costs	FIRE Loan Repayments*	Other Loan Repayments	Admin. & Prof. Services	Total Expenditures	Annual	Cumulative	Year			
2016										0												41,402	41,402	(41,402)	2016			
2017										0												180,029	180,029	(180,029)	2017			
2018	0						2,700,000			2,700,001		2,700,000										54,586	2,754,586	(54,586)	(276,016)	2,767,500		
2019	20,412						4,000,000			4,020,412	4,000,000						15,366					84,476	4,100,842	(80,430)	(156,446)	23,829,647		
2020	214,474	98,861	1,540,000							1,839,155			95,660				262					53,034	1,46,956	1,704,139	1,847,793	23,934,647		
2021	1,036,709			665,000		1,500,000				3,201,709			788,321									15,000	803,321	2,398,388	3,746,141	23,270,076		
2022	1,005,126						375,000			1,380,126			899,382					375,000	2,040,000			15,300	3,329,682	(1,940,555)	1,796,585	36,136,194		
2023	1,094,631									1,094,631			908,472									15,608	1,005,961	(1,130,31)	1,795,255	35,309,659		
2024	1,132,698									1,132,698			917,557	107,821	81,202	385,977	575,000					81,883	26,118	1,600,558	(467,860)	1,827,994	34,017,040	
2025	1,179,966					500,000				1,879,966			926,636	344,839	81,851	173,310	600,000					81,883	26,640	1,635,150	244,807	1,572,201	32,600,342	
2026	1,511,574									1,511,574			985,758	466,192	82,201	76,207	625,000					81,883	27,173	1,890,794	(158,130)	1,414,011	31,149,571	
2027	1,526,341									1,526,341			944,773	470,701	83,150	71,149	625,000					81,883	27,717	1,879,378	(153,032)	1,260,979	29,669,736	
2028	1,541,108					1,500,000				3,041,108			983,832	475,205	83,800	90,995	650,000		1,500,000			81,883	28,271	1,132,103	(90,995)	1,189,964	28,699,841	
2029	1,555,875									1,555,875			987,884	478,705	98,469	110,846	650,000					81,883	28,817	1,696,721	(110,846)	1,099,138	25,175,634	
2030	1,570,642									1,570,642			996,930	484,201	60,999	105,701	650,000					81,883	29,413	1,676,348	(105,701)	953,438	21,646,363	
2031	1,585,410									1,585,410			1,005,968	488,692	60,748	100,560	650,000					81,883	30,002	1,685,970	(100,560)	652,678	22,108,093	
2032	1,600,177									1,600,177			1,014,999	493,178	61,298	95,424	650,000					81,883	30,602	1,695,901	(95,424)	797,453	20,560,772	
2033	1,614,944									1,614,944			1,024,023	497,660	62,047	90,293	650,000					81,883	31,214	1,705,237	(90,293)	669,161	20,004,427	
2034	1,629,711									1,629,711			1,033,039	501,137	62,897	85,166	650,000					81,883	31,838	1,714,877	(85,166)	581,994	17,439,065	
2035	1,644,478									1,644,478			1,042,048	506,609	63,346	80,045	650,000					81,883	32,475	1,724,523	(80,045)	501,950	15,864,698	
2036	1,659,245									1,659,245			1,051,049	511,076	63,996	99,028	675,000					81,883	33,124	1,739,173	(99,028)	402,022	14,256,325	
2037	1,674,012									1,674,012			1,060,042	515,538	64,645	94,816	675,000					81,883	33,787	1,746,826	(94,816)	307,206	12,636,961	
2038	1,688,780									1,688,780			1,069,000	519,995	1,011,889	0	1,060,000		500,000			81,883	34,462	1,657,195	(1,518)	338,790	11,133,906	
2039	1,703,547									1,703,547			1,077,912	524,447	1,143,948	0	1,100,000		500,000			81,883	35,152	1,635,152	68,395	407,185	9,651,584	
2040	1,718,314									1,718,314			1,086,766	528,893	1,153,566	0	1,200,000		500,000			81,883	35,845	1,735,655	(1,754)	309,645	8,096,283	
2041	1,733,081									1,733,081			1,095,561	533,334	1,163,175	0	1,300,000		600,000			81,883	36,572	1,936,572	(20,491)	186,134	6,284,744	
2042	1,747,848									1,747,848			1,104,156	537,769	1,172,776	0	1,300,000		700,000			81,883	37,303	1,837,303	(89,453)	96,699	4,588,113	
2043	1,762,615									1,762,615			1,112,941	542,199	1,182,367	0	1,300,000		750,000			81,883	38,049	1,738,049	24,566	121,265	2,979,065	
2044	1,777,382									1,777,382			1,121,726									81,883	38,810	1,896,647	(121,265)	0	1,110,705	2044
Total	37,839,320	98,861	1,540,000	665,000	0	3,000,000	500,000	6,700,000	375,000	49,917,782	4,000,000	2,700,000	16,709,057	9,330,190	7,798,852	1,640,517	15,725,000	16,628	375,000	8,840,837	400,415	1,132,645	49,917,782				Total	

Notes:
 *Assumed payment amounts and timing per information received from City staff on 4-13-2021.
 †Assumes estimated 2021/22 real estate taxes in the amount of \$929,656 will increase thereafter by 1% per year. MRO payment is less than taxes paid due to reductions for City administrative costs and interest due on the Participating Loan.
 *MRO payments taken from "SoNo Proposed MRO Structure City Enhanced Taxes 09/02/2021.pdf"
 †Includes 2.5% accrued interest on unpaid loan balances.
 *Balances shown include unpaid accrued interest on FIRE loans.

Projected TID Closure

EXHIBIT B-2

SoNa Tax Increment

Worksheet (To Be Inserted)

EXHIBIT C (Project Budget)

SoNa Apartments / Mixed-Use West Allis, WI		
Sources and Uses		
Development Program	110 Units	
USES OF FUNDS		
	Residential	
Land	\$ 1	
Land Carry/Maintenance	64,410	
Subtotal -- Land	<hr style="width: 100%;"/>	64,411
Construction		
Extraordinary Site Work	803,895	
Building Construction & General Conditions	16,362,856	
General Contractor and Owner Contingencies	788,166	
Construction Management Fees/Insurance	981,771	
Tenant Improvement Allowance	258,850	
Subtotal -- Construction	<hr style="width: 100%;"/>	19,195,538
Development Costs		
Design	451,300	
Taxes/Insurance/Closing Costs	207,100	
Fees & Permits	122,200	
Legal & Professional	296,500	
Subtotal -- Development Costs	<hr style="width: 100%;"/>	1,077,100
Marketing & Property Start-Up		385,570
Financing		
Financing Fees & Costs	262,500	
Construction Interest	300,000	
Subtotal -- Financing	<hr style="width: 100%;"/>	562,500
Operating Reserve		250,000
Development Contingency		212,500
Development Fee		1,087,381
TOTAL DEVELOPMENT BUDGET USES		<hr style="width: 100%;"/> 22,835,000
SOURCES OF FUNDS		
Private First Mortgage Debt	66%	15,000,000
Sponsor Grants/Awards		27,681
Private Investor Equity		6,600,000
Private Sponsor Created Savings		707,319
Public Mezz Debt		-
EPA Loan		500,000
Public Grants		-
TOTAL SOURCES OF FUNDS		<hr style="width: 100%;"/> 22,835,000

EXHIBIT D

Calculation of Rate of Return

John Apartments / Mixed-Use West Allis, WI												
SALE IN YEAR TEN & IRR												
Assumes Sale at End of Year 10 of Operations		Baseline Projection Investor IRR Summary			Alternative Sale Analysis #1 - assumes maximum Takeout Payment Investor IRR Summary to 15% with City Profit Participation				Alternative Sale Analysis #2 - assumes no Takeout Payment Investor IRR Summary to 15% with City Profit Participation			
City Takeout Proceeds		\$ 1,000,000			\$ 1,000,000				\$0			
Year Ten NOI (Yr 11 Proj) Net of TIF		\$ 1,191,381			\$ 1,191,381				\$ 1,191,381			
Cap Rate		6.00%			3.50%				3.50%			
		Year			Year				Year			
		Return			Return				Return			
Sales Price	\$	19,856,352	\$	(6,600,000)	\$	34,039,460	\$	(6,600,000)	\$	34,039,460	\$	(6,600,000)
NPV of Remaining TIF Payments (10 years)	\$	6,976,694	\$	602,847	\$	6,976,694	\$	602,847	\$	6,976,694	\$	609,722
Less Costs of Sale	2.00%	(536,661)	\$	543,137	\$	(820,323)	\$	543,137	\$	(820,323)	\$	584,139
Gross Sales Proceeds	\$	26,296,385	\$	525,665	\$	525,665	\$	525,665	\$	525,665	\$	576,495
				4	\$	554,814		4	\$	554,814		605,644
				5	\$	462,000		5	\$	462,000		509,727
				6	\$	462,000		6	\$	462,000		529,462
First Mortgage Balance	\$	15,006,649	\$	484,590	\$	15,006,649	\$	484,590	\$	14,097,155	\$	544,548
Mesz Debt Balance	\$	50	\$	501,360	\$	50	\$	501,360	\$	50	\$	559,959
EPA Loan Balance	\$	333,810	\$	517,101	\$	333,810	\$	517,101	\$	333,810	\$	575,699
Investor Preferred Return (accrued)	\$	50	\$	9,322,341	\$	50	\$	16,502,000	\$	50	\$	15,646,303
Investor Equity Balance	\$	6,600,000	\$	6,600,000	\$	6,600,000	\$	6,600,000	\$	6,600,000	\$	6,600,000
Mandel Preferred Return (accrued)	\$	50	\$	50	\$	50	\$	50	\$	50	\$	50
Mandel Sponsor Created Savings	\$	707,319	\$	707,319	\$	707,319	\$	707,319	\$	707,319	\$	707,319
Subtotal	\$	22,647,778	\$	22,647,778	\$	22,647,778	\$	22,647,778	\$	21,738,284	\$	21,738,284
Distributable Cash	\$	3,648,607	\$	17,548,053	\$	17,548,053	\$	18,457,547	\$	18,457,547	\$	18,457,547
Distributable Cash to Investor 15% IRR				IRR	10.03%		IRR	15.00%		IRR	15.00%	
Investor	60.00%	\$ 2,189,164	\$	9,368,832	\$	9,368,832	\$	8,454,528	\$	8,454,528	\$	8,454,528
Mandel Group	40.00%	\$ 1,459,443	\$	8,245,888	\$	8,245,888	\$	5,636,352	\$	5,636,352	\$	5,636,352
Distributable Cash after Investor 15% IRR		\$0	\$	1,933,333	\$	1,933,333	\$	4,366,667	\$	4,366,667	\$	4,366,667
City Profit Participation Amount	25%	\$0	\$	193,333	\$	193,333	\$	1,091,667	\$	1,091,667	\$	1,091,667
							10% City Profit Participation				25% City Profit Participation	
Distributable Cash after City Profit Participation Payment		\$0	\$	1,740,000	\$	1,740,000	\$	3,275,000	\$	3,275,000	\$	3,275,000
Investor	50.00%	\$0	\$	870,000	\$	870,000	\$	1,637,500	\$	1,637,500	\$	1,637,500
Mandel Group	50.00%	\$0	\$	870,000	\$	870,000	\$	1,637,500	\$	1,637,500	\$	1,637,500

Notes/Clarifications/Assumptions
 The Alternative Sale Analyses use hypothetical Capitalization Rates to calculate a Sale Price. No representation is made with regards to the possibility of these sales values being achieved.
 Investor annual cash flow distributions under each of the Alternative Sale Analyses are subject to the debt service associated with the loan amount at the time of refinance.
 The Mandel Group distribution calculated at the time an Investor achieves a 15% IRR is proportionate to the 60%/40% allocation. Mandel distribution = 66.67% of Investor distribution.
 The City Profit Participation Amount at 25% assumes \$0 borrowed by Developer at the time of refinance to make a Takeout Payment. The City Profit Participation Amount at 10% assumes \$1,000,000 borrowed by Developer at the time of refinance to make a Takeout Payment.
 If Developer disburses to City \$0-\$500,000 as Takeout Proceeds, then the City's Participation Amount is reduced 1% for every \$50,000.
 If Developer disburses to City any amounts above \$500,000 up to \$1,000,000 as Takeout Proceeds, the City's Participation Amount is reduced 1% for every \$100,000 of such overage amount.