

LOAN AGREEMENT

THIS AGREEMENT is made and entered into this 15 day of September 2023, by and between Element 84, LLC, a Wisconsin Limited Liability Company (hereinafter the "Borrower"), having its principal offices at 1665 N Water St., Milwaukee, WI 53202 and the City of West Allis, a municipal corporation, organized and existing under the laws of the State of Wisconsin (hereinafter "City"). The City and the Borrower are each referred to herein as a party or together as "Parties."

WHEREAS, the City and Borrower executed Purchase and Sale and Development Agreement for the construction of a multifamily development referred to as Element 84 located 1482 S. 84 St. within the boundaries of Tax Increment District Number 11 – 84th and Greenfield Avenue; and,

WHEREAS, the Borrower applied to the City of West Allis for economic development assistance to address the unfinished commercial space at 1478 S. 84th Street; and,

WHEREAS, the Borrower desires to use the loan proceeds to build-out commercial space for a fitness business (hereinafter "Project") located at 1478 S. 84 St. West Allis, WI 53214 (hereinafter "Property"); and,

WHEREAS, the Borrower has made application for economic development assistance in the amount of Two Hundred Twelve Thousand and 00/100 Dollars (\$212,000.00) from the City for the purchase of operating equipment ("Loan"); at the Property and,

WHEREAS, the City is willing to make the Loan with proceeds from Tax Increment District Number 11 and the Borrower willing to accept the Loan in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, assurances, covenants and agreements hereinafter set forth, the parties agree as follows:

1. The City shall loan to the Borrower the following:
 - A. A loan from Tax Increment District 11 funds in the maximum sum of Two Hundred Twelve Thousand and 00/100 Dollars (\$212,000.00) pursuant to the terms and conditions of a Promissory Note and Amortization Schedule, hereby incorporated within, in the form attached hereto as **Exhibit "A"** (hereinafter the "Note A"); and,
 - B. For the loan, the Borrower must deliver to the City:
 1. An Guaranty of Payment from Element 84, LLC and West Allis 84 Properties, Inc.; and, attached hereto as **Exhibit "B"**; and
 2. An Unlimited Personal Guaranty from Jon Ross, Peter Ogden, Steven Hribar, Mark Hribar, Michael Hribar, Robert Chandler and Jason Pietsch attached hereto as **Exhibit "C"**; and,
 3. All documents listed above are collectively referred to along with the Loan Agreement as the "Loan Documents."
 4. The Borrower shall complete the renovation of the commercial space by September 1, 2023

2. The proceeds of the Loan will be disbursed by the City to Borrower upon closing of the loan with proper documentation at closing (i.e. invoices, evidence of payment, receipts, etc.).
 - a. The Borrower will provide AIA forms indicating the score and cost of work completed for reimbursement and to demonstrate the expenditure of the aggregate principal amount with three months following Closing.
 - b. Reimbursement will be as one check to the Borrower by the City.
 - c. Upon reimbursement, the Borrower will provide contractor lien waivers to the City for the association work.
3. As security for the Loan, the Borrower shall deliver to the City at closing:
 - A. An Guaranty of Payment from Element 84, LLC and West Allis 84 Properties, Inc. attached hereto as **Exhibit "B"**.
 - B. An unlimited Personal Guaranty from Jon Ross and Peter Ogden, attached hereto as **Exhibit "C"**.
4. In order to induce the City to enter into this Agreement, the Borrower shall make the following representations, assurances, covenants and certifications:
 - A. Create completed commercial space that will have certified occupancy.
 - B. Add additional development value by occupying the commercial space with a commercial tenant that benefits the overall adopted Tax Increment District and an enhances the commercial neighborhood.
5. The Project would not be undertaken unless the public funding provided by the Loan becomes available, as the Borrower can maximally raise only a portion of the debt and equity funds required to complete the Project.
6. This Agreement, the Notes and other Loan Documents are legal, valid, binding upon and enforceable against the Borrower, in accordance with their terms, except as such terms may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except as may be limited by general principles of equity.
7. Intentionally Left Blank.
8. During the term of the Loan:
 - A. The Borrower will file when due or obtain valid extensions for all federal and state income and other tax returns which are required to be filed and will pay all taxes shown on said returns and on all assessments received by them to the extent that such taxes shall have become due. The Borrower has no knowledge of any liabilities, which may be asserted against them, upon audit of their federal or state tax returns.
 - B. Except as disclosed by the Borrower to the City in writing prior to the date hereof,

there is no action, suit, proceeding or investigation before any court, public board or body pending or threatened against the Borrower or any of their property, which, if adversely determined, would have a material adverse effect upon the business, properties or financial condition of the Borrower.

C. The Borrower shall execute and deliver to the City such financing statements and other documents as may be required to create, perfect, preserve and maintain any security interest now or in the future granted to the City by the Borrower.

D. The Borrower shall preserve and maintain its business as presently conducted or contemplated, per the Loan Agreement and Loan Application to the City and all of its rights, privileges and franchises necessary or desirable in the normal conduct of said business, and conduct its business in an orderly, efficient and regular manner, keep its property useful or necessary to the operation of its business in good working order and condition, and from time to time make all needed repairs, renewals and replacements thereto, so that the efficiency of the Borrower's property shall be usefully preserved, and will comply with all applicable laws and regulations governing the conduct of the Borrower's business and the terms of any indenture, contract or other instrument to which the Borrower may be a party or under which it or its property may be bound, if noncompliance will have a material adverse effect upon its financial condition, except where contested in good faith and by proper proceedings.

E. The Borrower shall pay to the City, upon demand, all reasonable charges, personal property taxes, real estate taxes, water utility bills, and special assessments, charges or fines, and expenses of every kind or description, including, but not limited to, actual and reasonable attorney's fees and expenses of litigation and any and all expenses incurred by the City in seeking relief from the automatic stay or any other bankruptcy proceedings, and other expenses (of the type customarily charged by the City) incurred or expended by the City in connection with or in any way related to the City's relationship with the Borrower, with respect to the transactions contemplated by this Agreement or any other Loan Document, whether hereunder or otherwise.

F. The Borrower as applicable, shall immediately notify the City in writing of the occurrence of any failure by it to observe or perform any covenant or agreement contained in any Loan Document or any other default hereunder or under any other Loan Document.

G. At closing of the Loan the Borrower shall have good and marketable title to the property and have the property insured for replacement cost value and to the extent required in the exercise of prudent business judgment.

9. All statements contained in any certificate, instrument or document delivered by or on behalf of any of the Parties pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the respective Parties hereunder unless otherwise expressly provided herein. The representations, assurances and covenants contained in this Agreement shall survive the closing and continue in full force and effect for the duration of the Loan. No examination or investigation by or on behalf of the City shall have the effect of estopping the City from asserting breach or failure of any such representation or warranty or constitute or operate as a waiver of any such representation or assurance in whole or in part.

10. The Loan shall be closed with the City of West Allis, City Hall, located at 7525 W. Greenfield Ave., West Allis, WI, at a mutually agreeable time within thirty (30) days of the date of execution of this Agreement. The City's obligation to fund the Loan is conditioned upon the Borrower, as applicable, providing the City, prior to the date of closing:

A. Any preconditions for closing set forth in the Commitment Letter attached hereto and incorporated within to this Agreement; the Loan Commitment Letter dated May 2, 2023 and accepted by the Borrower on May 22, 2023.

B. Any and all valid termination statements, releases or subordination agreements the City may require to guaranty that the security for the Loan has the priority positions called for by this Agreement.

C. All Loan Documents which the City shall deem necessary or required relative to the completion of the Loan, including the Note, and an Unlimited Personal Guaranty and such other financial statements as are required for the perfection thereof. Policies shall provide evidence of coverage acceptable to the City that includes fire and hazards coverage for all real property and equipment pertaining to this loan, liability coverage for the business, etc. Evidence of insurance shall be provided by a Certificate of Insurance listing the City of West Allis and its officers (elected and appointed), employees, agents and volunteers as additional insured on the insurance policies. The Borrower's, as applicable, evidence of insurance must insure the City for the replacement value of equipment and also for general liability per the terms of Borrower's, as applicable, policy during the term of the loan. If insurance is not maintained during the term of the loan, the lack of insurance is an event of default on the loan. The Borrower agrees to submit all documents as requested by the City Attorney. The insurance coverage must be in a form approved by the City Attorney.

D. The Borrower shall provide the Federal I.D. number and the Dun & Bradstreet number for Borrower's corporation to the City.

E. Intentionally left blank.

F. In the event the Borrower is unable to satisfy the conditions of this section, the City's obligation to fund the Loan shall terminate and be of no further force or effect.

11. In the event of a nonpayment by the Borrower of any sum of money at the time or times when the payment shall become due; or the failure to observe or perform any of the covenants or agreements by the Borrower to be kept and performed under the Loan Documents; or the breach of any representation, warranty or assurance made in the Loan Documents by Borrower or in any document furnished under the terms of any Loan Document; then, in such case, the whole amount of principal due on the Note(s) shall, at the option of the City, become immediately due and payable without any notice whatsoever, which is hereby waived, and the same, together with all sums of money which may be or have been paid by the City in connection therewith, plus interest thereon at the rate aforesaid, shall thereupon be collectible in a suit of law, in the same manner as if the whole of said principal sum had been made payable at the time when any such default shall occur; and, the Borrower covenants and agrees that it will pay to the City all expenses incurred therein, and in addition to the taxable costs in such suit, a reasonable sum of money as attorneys' fees, to be included with the expenses above mentioned in the

judgment or decree.

12. Each of the Parties to this Agreement is entitled to all remedies in the event of default or breach provided at law or in equity. Any forbearance by the City in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

13. Any notices or other communications required or permitted hereunder shall be in writing and shall be sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, addressed as follows:

If to the Borrower: Element 84, LLC
 1665 N Water St.,
 Milwaukee, WI 53202

If to the City: City of West Allis
 Economic Development
 7525 West Greenfield Avenue
 West Allis, Wisconsin 53214
 Attn: Economic Development, Executive Director

All such notices or other communications, if mailed, shall be deemed given three (3) days after having been post marked.

14. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder or of the Loan Documents shall be assigned without the prior written consent of the other Parties.

15. This Agreement and the performance of transactions contemplated hereby shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

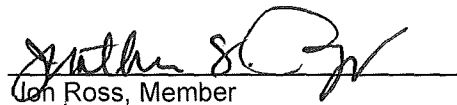
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date, month and year first above written.

Signatures on Following Page

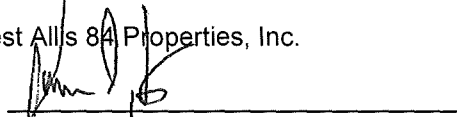
CITY OF WEST ALLIS ("City")

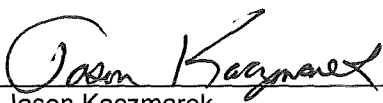
Element 84, LLC ("Borrower")

By: 
Patrick Schloss, Executive Director
Economic Development

By: 
Jon Ross, Member
Element 84, LLC

West Allis 84 Properties, Inc.

By: 
Peter Ogden, Member
West Allis 84 Properties, Inc.

Attest: 
Jason Kaczmarek
Finance Director/Comptroller