

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of March ~~\_\_\_\_~~, 21, 2019 by and between WEST QUARTER WEST, LLC, a Wisconsin limited liability company (“WQW), and WEST QUARTER EAST, LLC, a Wisconsin limited liability company (“WQE”), (collectively, the “Developer”) and the CITY OF WEST ALLIS, a Wisconsin municipal corporation (“City”). WEST QUARTER WEST LL, LLC, a Wisconsin limited liability company and an affiliate of Developer (“Leveraged Lender”) joins in execution of this Agreement to evidence its participation under the Project Loan (as defined herein).

### RECITALS

City and Developer acknowledge the following:

A. Developer intends to acquire not less than 18.21 acres of real property in the City of West Allis, Wisconsin, consisting of: (i) approximately 16.76 acres as depicted and described on **Exhibit A** attached hereto (“Development Site”) and (ii) the existing buildings and approximately 1.45 acres located on the west side of **South 70<sup>th</sup> Street** as depicted and described on **Exhibit A** attached hereto (“Existing Office Site”). The Development Site and the Existing Office Site, together with all improvements now or hereafter located thereon, are collectively referred to herein as the “Property”.

B. The Property is located within the boundaries of the City's Tax Increment District No. \_\_\_\_ (the “District”). Pursuant to Section 66.1105, Wis. Stats. (the “Tax Increment Law”), the City adopted a plan for redevelopment within the District (the “Project Plan”).

C. Subject to obtaining the benefits set forth herein, Developer plans on preparing the Property for redevelopment into a mixed-use project containing one or more office, health/fitness, retail, hospitality, restaurant, and residential components, including development of new public infrastructure (collectively, the “Project”). A preliminary site plan showing projected future development of and uses on the Property is attached hereto as **Exhibit B** (the “Preliminary Development Plan”). It is acknowledged that development of the Property pursuant to the Preliminary Development Plan is consistent with the Project Plan.

D. The projected aggregate assessed valuation for the Property, when fully developed, is anticipated to be approximately \$81,000,000, as shown on the valuation schedule attached hereto as **Exhibit C** (the “Property Valuations”).

E. The City desires to encourage economic development, eliminate blight, expand the City's tax base and create new jobs within the City, the District and upon the Property. The City finds that the development of the Property and the fulfillment of the terms and conditions of this Agreement will further such goals, are in the vital and best interests of the City and its residents, and will serve a public purpose in accordance with state and local law.

F. The development of the Property would not occur without the benefits to be provided to Developer as set forth in this Agreement.

G. The City, pursuant to Common Council action ~~dated \_\_\_\_\_~~, dated March 21, 2019, has approved this Agreement and authorized its execution by the proper City officials on the City's behalf.

H. The Developer has approved this Agreement and authorized its execution by the appropriate representatives on its behalf.

I. 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.

## AGREEMENTS

In consideration of the RECITALS and the terms and conditions set forth herein, the parties agree and covenant as follows:

### ARTICLE I THE PROJECT AND DEVELOPER OBLIGATIONS

A. Subject to satisfaction of the conditions set forth in this Agreement, Developer shall perform the following:

1. On or before ~~March 31~~ April 15, 2019, acquire the land and improvements comprising the Property and close on the New Market Tax Credit financing related to the development of the Existing Office Site.
2. Provide the debt service guaranties and collateral set forth herein.

Notwithstanding anything contained in this Agreement to the contrary, WQW shall only be responsible for acquiring the Existing Office Site, maintaining the minimum Assessed Value for the Existing Office Site as set forth in Article IV and **Exhibit I** attached hereto, and performing the Developer obligations set forth in Article V and Article VI, Paragraph B as they relate to the Existing Office Site.

B. Subject to the conditions set forth in this Agreement, WQE shall perform the following:

1. On or before September 30, 2020 (the "Demolition Completion Date"), complete the demolition of certain improvements located on the Development Site at Parcel Number 439-0001-026 in accordance with the projected schedule set forth on **Exhibit D** attached hereto (the "Phase I Work Schedule"). If WQE fails to complete the demolition of such improvements on the Development Site by the Demolition Completion Date, and WQE has not cured the same within thirty (30) days after City has given WQE written notice of such failure, the City may, at its option, complete such Development Site demolition, including without limitation the removal of any building foundations, and in such case, WQE shall promptly reimburse the City, within thirty (30) days after written request, for all costs and expenses reasonably incurred by the City in its completion of such demolition work (the "Demolition Reimbursement"). Pursuant to this Article I, Paragraph ~~B (1)-A(2)~~, the City shall have the right,

without liability to enter the Development Site for the purpose of completing such demolition work upon the failure of WQE to timely do so. The City is hereby empowered and authorized by WQE to levy a special assessment lien or special charge lien against the Development Site to collect any unpaid Demolition Reimbursement, which lien shall be a first priority lien against the Development Site. Any and all notice and hearing requirements which may be required under the law for such special assessment or special charge are hereby waived by the WQE.

2. On or before September 30, 2020, commence and diligently pursue the construction of an approximately 128-room hotel on the Development Site, as depicted on the Preliminary Development Plan, in accordance with the City-approved development and landscaping plans and specifications for said hotel as required by this Agreement (the "Hotel Project"). If WQE fails to commence and diligently pursue construction of the Hotel Project on or before September 30, 2020 and such delay is due to changed market conditions as evidenced by an updated market analysis prepared by a research firm mutually agreed upon by the City and WQE, then (subject to WQE fulfilling its obligations under Article III, Paragraph C of this Agreement) WQE shall have an additional ~~thirty-six (306)~~ months to commence construction of an alternative development as approved by the City, which approval shall not be unreasonably withheld. Failure of ~~the~~ WQE to commence and diligently pursue construction on a mutually agreed upon alternative development within said ~~306~~-month period shall constitute a Default (as hereinafter defined) under this Agreement. Notwithstanding anything herein to the contrary, the City and WQE agree that construction of the Hotel Project, if commenced and diligently pursued after September 30, 2020, but within said ~~306~~-month period, shall not constitute a Default under this Agreement.

3. On or before September 30, 2020, legally divide the Property into development parcels consistent with the Preliminary Development Plan or otherwise as appropriate based on user demand in order to either market and sell some or all of the parcels to third party users/developers or self-develop (by WQE or affiliates) some or all of the parcels. The work required of WQE under Article I, Paragraph B\_(1) through (3) hereof are collectively referred to herein as the "Phase I Work".

4. Within thirty (30) days after the City's issuance of the City permits necessary or required for each component of the Phase I Work (the "City Permits"), WQE shall commence the Phase I Work in accordance with the Phase I Work Schedule and the related final plans and specifications approved by the City at the time of or prior to the granting of such City Permits (the "Final Plans and Specifications"). Copies of the Final Plans and Specifications will be retained at the City's Planning Department, located at the West Allis City Hall. Subject to a Force Majeure Event (as hereinafter defined), WQE shall substantially complete the Phase I Work in compliance with the Final Plans and Specifications not later than March 31, ~~2023~~ ~~2022~~ (the "Outside Phase I Completion Date"). The Phase I Work shall be deemed to be substantially complete on the date that the City building inspector issues a final certificate of occupancy or certificate of completion (as applicable) for the entire Phase I Work (the "Phase I Completion Date"). The City building inspector shall not issue the certificate of occupancy or certificate of completion if the Phase I Work does not materially conform to the Final Plans and Specifications, subject to any changes to such Final Plans and Specifications that may have been requested by WQE and approved by the City.

5. Invest not less than \$2,160,000 in equity toward the costs of performing its Phase I Work obligations and obtain conventional financing (the “Bank Loans”) sufficient in amount to fund the remaining costs of WQE’s obligations, net of the City’s financial obligations set forth herein.

6. Individual building projects outside of the Phase I Work shall not be begun until the City’s issuance of building permits for each such building (the “Building Permits”) and shall be constructed in accordance with the final plans and specifications for such building approved by the City at the time of or prior to the granting of the Building Permit for that building (each, a “Final Building Plans and Specifications”). Copies of the Final Building Plans and Specifications for each building will be retained at the City’s planning department, located at the West Allis City Hall. The City building inspector shall not issue certificates of occupancy for individual buildings, if that building does not materially conform to the Final Building Plans and Specifications for the building, subject to any changes to such Final Building Plans and Specifications that may have been requested by WQE or the owner of that building and approved by the City.

C. A portion of the Property depicted on **Exhibit J** as the “Park ~~Area~~Parcels” is currently owned by the School District of West Allis – West Milwaukee (“School District”) and operated by the ~~City of West Allis School District~~ Recreation Department ~~as a park~~. The City has the right to repurchase the Park ~~Area~~Parcels if the School District were to convey the Park ~~Area~~Parcels (the “Repurchase Rights”); ~~and has exercised such right following notice from the School District of its intent to convey the Park Parcels to WQE.~~

1. At Closing (as defined herein), the City shall assign its Repurchase Rights to WQE pursuant to Article II, Paragraph A<sub>2</sub>(2) herein and WQE shall ~~(a) close on the purchase of the Park Area-Parcels from the School District, and (b) lease portions of the Park Area-Parcels to the City to operate as a park.~~ Such lease (the “Park Lease”) shall provide ~~that that (a) the City pay \$1.00 to WQE as annual rent for the Park Area-Parcels, (b) the City shall operate and maintain the Park Parcels at the City’s sole cost, (c) such other terms and conditions reasonably satisfactory to WQE and the City, including without limitation, that WQE the City shall indemnify WQE from any and all loss, liability, damage or expense arising out of or in any way connected to the City’s operation of a park upon the Park Parcels, and (d) WQE shall have the right to terminate the Park Lease in the event WQE intends to commence development of the Park Area-Parcels consistent with the terms of this Agreement.~~

2. ~~WQE may terminate the Park Lease with respect to those portions of the Park Parcels other than the “Park Area” as depicted on Exhibit J upon at least six (6) months’ prior written notice to the City that WQE intends to redevelop such portions of the Park Parcels. WQE shall have no obligation to replace such portions of the Park Parcels not included within the Park Area. WQE may terminate the Park Lease with respect to the Park Area upon at least six (6) months’ prior written notice to the City that WQE intends to redevelop the Park Area (the “Park Development Notice”), provided, however, that WQE shall not commence any development of the Park Area (the “Park Area Development”) until the City has acquired land deemed to be a suitable replacement park at the sole discretion of the City (“Replacement Park Parcel”). WQE shall not commence any development of the Park Area (the “Park Area Development”) until the following conditions have been met: (a) WQE providing the City with at least six months prior written notice of its intention to develop the Park Area (“Park~~

~~Development Notice”), and (b) the City taking title to and ownership of the Replacement Park Parcel (as defined herein). After the City’s receipt of the Park Development Notice, WQE and the City shall work together in good faith to identify a Replacement Park Parcel.~~

~~3.—3. The City finds that an acceptable Replacement Park Parcel shall consist of vacant land (a) consisting of at least a contiguous 3 acres, (b) located within the area of land that is east of 76th Street, west of 70th Street, south of the City’s northern boundary, and north of Greenfield Avenue, and (c) acquired at a Purchase Price (as defined herein) mutually agreed upon by WQE and the City. The City shall be responsible for the cost of developing the Replacement Park Parcel and shall utilize Park Improvement Increment (as defined in Article II, Paragraph C) for such development (“Replacement Park Improvements”). WQE and the City agree that an acceptable “Replacement Park Parcel” shall consist of a single parcel of vacant land (a) between 1 and 1.5 acres, (b) located in the area of land that is east of 76th Street, west of 70th Street, south of the City’s northern boundary, and north of Greenfield Avenue, and (c) acquired at a Purchase Price (as defined herein) mutually agreed upon by WQE and the City. The City shall be solely responsible for the cost of developing the Replacement Park Parcel. Subject to approval by the City, not to be unreasonably withheld, WQE may designate a name for the Replacement Park.~~

~~4.3. The purchase price of the Replacement Park Parcel (the “Purchase Price”) shall be paid as follows: (a) WQE shall be responsible for up to \$300,000 of the Purchase Price; (b) if the Purchase Price is greater than \$300,000, the City shall be responsible for up to an additional \$100,000; and (c) if the Purchase Price is greater than \$400,000, WQE shall be responsible for the remaining balance of the Purchase Price.~~

D. Prior to commencing any development within the Easement Area (as defined below), Developer shall grant to the City a perpetual easement across a portion of the Development Site, in a location and configuration and upon terms as mutually agreed upon by the City and Developer, to allow the City and its agents access to an electrical cabinet and related facilities required for the maintenance of City street lights, as depicted on the attached **Exhibit H** (the “Easement Area”).

E. Developer shall perform its development obligations in accordance with the development budget approved by the City (the “Development Budget”), which is set forth on the first page of the sources and uses schedule attached hereto as **Exhibit E** (“Sources and Uses”).

F. Developer’s obligation to perform under this Agreement shall be subject to Developer, in cooperation with the City (which shall be undertaken diligently and in good faith), obtaining all appropriate approvals and entitlements for the Project, including without limitation rezoning, special use permits, certified survey maps, site plan, architectural, landscaping, traffic and off-site improvements.

~~G.— If, prior to or in connection with the City’s acquisition of a Replacement Park Parcel pursuant to the terms of this Agreement, the City seeks to vacate any right of way adjacent to property owned by the Developer for the sole purpose of enlarging the Replacement Park Parcel, then Developer agrees (a) not to object to the City vacating that right of way and (b) to transfer or dedicate to the City any interest it may obtain in the land located within any vacated right of way.~~

**ARTICLE II  
CITY OBLIGATIONS**

A. At Closing, and subject to satisfaction of all the preconditions set forth in Article II, Paragraph B, the City shall:

1. Provide funding for the Project in the form of a forgivable loan in an amount equal to \$7,200,000 for acquisition and development costs related to Developer's purchase of the Property (the "Project Loan"). A total of \$5,226,440 of the Project Loan shall be advanced to the Leveraged Lender for use in the New Market Tax Credit financing. The balance of \$1,973,560 shall be advanced to WQE. The Project Loan shall be structured and documented in a manner mutually agreed upon by the City, Developer and Leveraged Lender. The Project Loan will be disbursed concurrently with the Developer's acquisition of the Property and closing on the New Market Tax Credit financing (collectively, the "Closing"); and

2. ~~Assign-Exercise and assign~~ the City's Repurchase Rights to WQE and cooperate with WQE in releasing the Repurchase Rights as an encumbrance on the Park Area.

B. Prior to disbursing the Project Loan, all of the following conditions shall have been satisfied:

1. Developer shall have concurrently closed the Bank Loans and all preconditions to the disbursement or future draw disbursement (subject only to customary construction draw requirements and release of the Escrowed Funds (as hereinafter defined)) of not less than \$7,250,000 under the Bank Loans shall have been satisfied.

2. There shall have been no material adverse change in the (a) environmental reports pertaining to the Property and (b) the personal financial statement of Scott J. Yauck ("Yauck") previously provided to the City.

3. Developer, Cobalt Partners, LLC and Yauck (collectively, the "Guarantors") shall have executed and delivered to the City the guaranty required hereunder (the "TIF Guaranty") in substantially the form attached hereto as **Exhibit F**.

4. City shall have received from WQE a combination of cash prepayments in the amount of ~~STBD~~ **\$700,000** ("**Cash Payments**") and a letter of credit (the "Letter of Credit") in the amount of ~~STBD~~ **\$300,000** to secure the Debt Service Guaranty set forth in Article III herein (collectively, the "TIF Guaranty Collateral"). The form of the Letter of Credit shall be consistent with **Exhibit G**, attached hereto, and the Letter of Credit shall be issued by a financial institution reasonably acceptable to City. Any ~~cash-Cash payments-Payments~~ received by the City under this Article II, Paragraph ~~B(B)~~ (4) shall be held by the City and the City may unilaterally apply such ~~cash-Cash prep~~ Payments toward any Debt Service Shortfall Payments due from the Developer before drawing on the Letter of Credit. WQE's obligation to maintain the Letter of Credit shall be released upon the terms set forth in Article III, Paragraph C herein.

5. WQE, City and WQE's lender (pursuant to the Bank Loans) shall enter into an escrow agreement in a form mutually agreed upon by the parties requiring that \$1,100,000 of the Project Loan allocable to WQE be held in escrow at Closing (the "Escrowed Funds") to be fully disbursed upon the City's receipt of a financing commitment for the Hotel Project reasonably acceptable to the City, subject only to the demolition of certain improvements located on the Development Site and customary preconditions to closing (the "Hotel Loan Commitment"). Notwithstanding the foregoing, if (a) the Hotel Loan Commitment is not delivered to the City on or before December 1, 2019, and (b) WQE fails to increase the amount of the Letter of Credit to the extent required under Article III, Paragraph C of this Agreement on or before January 15, 2020, then the Escrowed Funds shall be returned to the City and applied as a principal payment against the Project Loan allocable to WQE (and the Base Value defined in Article IV, Paragraph A herein and the allocations thereof in **Exhibit I** shall be reduced accordingly). If WQE timely increases the amount of the Letter of Credit as required under Article III, Paragraph C of this Agreement, then the Escrowed Funds shall remain in escrow and released as follows: (x) to WQE, upon the City's receipt of the Hotel Loan Commitment or as mutually agreed upon by the City and WQE in connection with an alternative development as described in Article I, Paragraph A(3) or (y) to the City, upon the date that is ~~forty-eight~~twenty-four (4824) months after Closing, and applied as a principal payment against the Project Loan allocable to WQE (and the Base Value and the allocations thereof in **Exhibit I** shall be reduced accordingly).

Any tax increment payments received by the City for the total assessed valuation of the Property between \$18,900,000 and the Base Value in a calendar year during the unextended statutory term of the District ("Park Improvement Increment") shall be equally applied to the cost of the Replacement Park Parcel and Replacement Park Improvements and shall include an interest rate of 6% per annum.

C.D. Subject to Developer not being in default under any terms of this Agreement (beyond any applicable notice or cure periods) and the total assessed valuation of the Property exceeding ~~\$21,100,000~~the Base Value (as defined in Article IV, Paragraph A) in a calendar year during the unextended statutory term of the District, the City agrees to provide Developer with additional funding for the cost of any structured parking, infrastructure improvements or other Project costs pre-approved by the City and incurred by Developer in connection with vertical development projects on the Property, together with interest on such amounts at a commercially reasonable rate agreed upon by City and Developer, in the form of tax increment revenue bonds (each a "Developer Bond") upon terms and conditions mutually agreed upon by Developer and the City, and funded solely by ~~a percentage~~20% of the increase in all tax increments (as defined by the Tax Increment Law) collected and retained by the City from the Property in a calendar year that are attributable solely to the amount by which the total assessed valuation of the Property exceeds ~~\$21,100,000~~the Base Value ("MOB Surplus Tax Increment"); provided that the total principal amount of all Developer Bonds issued hereunder shall in no event exceed \$15,000,000. (For example, if the assessed valuation of the Property in a given year is the Base Value \$21,100,000 or less, there would be no MOB Surplus Tax Increment available to make any payments of principal or interest on the Developer Bonds and no such payments would be due. If the assessed valuation of the Property in a given year is equal to \$48,100,000, then only the tax increments generated by the \$27,000,000 difference between \$21,100,000 and \$48,100,000 would constitute MOB Surplus Tax Increment and would be available to make interest and principal payments on the Developer Bonds pursuant to its terms.) The City's

obligations under this Article II, Paragraph ~~C-D~~ are personal to the Developer or a Developer-controlled affiliate and conditioned on the following: (i) the Developer or a Developer-controlled affiliate submitting a pro forma analysis and supporting information documenting key assumptions and demonstrating the financing gap for subject project; (ii) the City conducting a full underwriting of the subject project to confirm, to its reasonable satisfaction, that the parameters set forth under this Article II, Paragraph ~~C-D~~ are met, (iii) the City's financial consultant concluding that the IRR on the subject project, taking into account the requested financial assistance, does not exceed 16%; (iv) the City's financial assistance not exceeding 25% of the projected assessable value of the project (as reasonably determined by the City); (v) the amount of the development fee for the subject project not exceeding 5% of the total project costs; and (vi) the subject project must be for commercial (office/retail) development (i.e., no residential development without the City's consent).

~~D-E.~~ If and to the extent Developer and the City determine it is necessary to develop infrastructure improvements ("Site Infrastructure"), the City agrees to cooperate with Developer in identifying funding sources for such work, including without limitation, additional TIF grants, additional forgivable loans, additional municipal revenue obligation bonds, or special assessments. Included within the Site Infrastructure may be certain improvements that will be dedicated or conveyed to the City ("Public Improvements"). All Public Improvements shall be bid and constructed in accordance with City requirements and shall be designed to City specifications. Prior to commencement of construction of the Public Improvements, Developer shall enter into a development agreement with the City pertaining to the design, bidding, installation, and dedication of public improvements by a private party to the City (the "Public Improvements Agreement"). The Public Improvements Agreement shall not require the posting of a bond or letter of credit to secure completion of any Public Improvements that are being funded 100% by the City. Upon completion of the Public Improvements, Developer shall dedicate and convey the same to the City.

~~E-F.~~ The City covenants and agrees to cooperate with the Developer, at no out-of-pocket cost to the City, to pursue one or more grants from the Wisconsin Economic Development Corporation or any agency of the State of Wisconsin or any federal agency that may be available to assist in the redevelopment of the Property, and the City further covenants and agrees that, to the extent any such grants are directed to or made payable to the City, the City shall, upon receipt, provide all such grant funds to the Developer for use in developing the Project.

~~F-G.~~ In consideration of the performance by WQE of its obligations under Article I, Paragraph C(4) herein and the development of the Park Area Development in a manner consistent with the terms of this Agreement, the City agrees to provide a Developer Bond to WQE upon terms and conditions mutually agreed upon by WQE and the City (the "Replacement Park Developer Bond") in a principal amount not to exceed the lesser of: (a) 25% of the total costs for the Park Area Development or (b) the Purchase Price, together with interest on such amounts at a commercially reasonable rate agreed upon by City and Developer (but not less than six percent (6%) per annum), and funded solely by ~~percentage of~~ of the increase in all Tax Increments collected and retained by the City from the Park Area in a calendar year that are attributable solely to the Park Area Development (specifically excluding the then-current assessed value of the Park Area prior to the commencement of the Park Area Development). The Park Area Development shall be deemed substantially complete on the date that the City



building inspector issues a final certificate of occupancy or certificate of completion (as applicable) for the entire Park Area Development, which certificate may be subject to completion of landscaping and similar seasonal items and other non-material corrective actions (the “Park Area Development Completion Date”). The City shall issue the Replacement Park Developer Bond described in this Article II, Paragraph F to WQE within thirty (30) days after the Park Area Development Completion Date. Upon issuance of the Replacement Park Developer Bond hereunder, the amount of “MOB Surplus Tax Increment” available to make interest and principal payments on any Developer Bonds issued by the City under Article II, Paragraph ~~C-D~~ of this Agreement shall subject to downward adjustment to reflect all payments made by the City pursuant to the Replacement Park Developer Bond.

### **ARTICLE III DEBT SERVICE GUARANTY**

A. In consideration of the Project Loan, the Guarantors shall jointly and severally guarantee that commencing in 2020 and for each calendar year thereafter that this guaranty remains in place (the “Debt Service Guaranty”), the sum of (i) the Tax Increments available from the Property, (ii) the capitalized interest included within the City’s bond issue for the Project Loan, and (iii) any Assessed Value Shortfall Payment (as defined in Article IV of this Agreement) paid to the City for the subject tax year (items (i), (ii) and (iii) hereunder are collectively referred to as the “Available Funds”), shall be equal to or greater than the City’s annual debt service obligations for the bonds issued to fund the Project Loan (the “Project Loan Debt Service”) for such year. If in any year the Available Funds are less than the Project Loan Debt Service, then Developer shall pay the difference to the City (a “Debt Service Shortfall Payment”) not later than fifteen (15) days following delivery of written notice from the City requesting such payment. As an example of calculating a Debt Service Shortfall Payment, assume: (a) the City’s debt service obligation for the Project Loan in 2019 is \$300,000; (b) the Tax Increments available from the Property are equal to \$150,000; (c) the capitalized interest available from the Project Loan bond issue for such year is equal to \$125,000, and (d) there is no Assessed Value Shortfall Payment due for 2019. In such instance, the Guarantors would owe a Debt Service Shortfall Payment to the City equal to \$25,000 ( $\$300,000 - \$275,000 = \$25,000$ ).

B. The Debt Service Guaranty shall be secured by the TIF Guaranty and the TIF Guaranty Collateral. If Developer fails to timely make a Debt Service Shortfall Payment to the City, then the City may draw upon the TIF Guaranty Collateral to fund such Debt Service Shortfall Payment. If the TIF Guaranty Collateral is drawn upon by the City, the Developer shall thereafter restore the TIF Guaranty Collateral to the amount required hereunder within thirty (30) days after the City’s draw either by making further cash prepayments to the City or by increasing the Letter of Credit or by a combination thereof. If Developer fails to restore the TIF Guaranty Collateral, the City may, without further notice to the Developer or Guarantors, draw the entire amount of the Letter of Credit and any cash prepayments held by the City, and hold the drawn funds to cover any future Developer obligations under the Debt Service Guaranty. Guarantors shall remain liable for any Debt Service Shortfall Payments in excess of such funds.

C. The Developer’s and Guarantors’ obligations and financial exposure under the Debt Service Guaranty and the TIF Guaranty Collateral shall be reduced and, ultimately, released as new development values from the Project, as assessed by the City, close any Tax Increment deficit created at the time of funding the Project Loan. Notwithstanding the

foregoing, if WQE fails to commence and diligently pursue construction of the Hotel Project on or before December 1, 2019, then, on or before January 15, 2020, WQE shall increase the TIF Guaranty Collateral to an amount equal to the projected aggregate Debt Service Shortfall Payment for the subsequent three-year period. Thereafter, until such time that the Letter of Credit is released as provided in this Article III, Paragraph C, WQE shall renew the Letter of Credit in an amount that, when added to any ~~prepaid amounts~~ Cash Payments held by the City as part of the TIF Guaranty Collateral, equals (on a rolling basis) the projected aggregate Debt Service Shortfall Payment for the then-subsequent three-year period. Failure by the WQE to (i) increase the amount of the Letter of Credit as required hereunder, (ii) restore the Letter of Credit to its then-required amount within thirty (30) days after a draw on the TIF Guaranty Collateral by the City, or (iii) renew the Letter of Credit as required hereunder shall constitute a Default (as hereinafter defined) under this Agreement. Developer's and Guarantors' obligation under the Debt Service Guaranty and the Letter of Credit shall be fully released upon the first date that the Tax Increments available from the Property for a given year are equal to or greater than 120% of the City's Project Loan Debt Service for such year, as reasonably determined by the City.

D. Debt Service Shortfall Payments made by the Developer or Guarantors will be treated by the City as contingent non-interest-bearing loans, repaid out of available Tax Increments after all debt incurred by the City to fund the Project Loan has been fully repaid. If the Developer or Guarantors fail to timely make a Debt Service Shortfall Payment and the City must exercise any remedies to collect same, any funds collected by the City in the exercise of such remedies shall not be treated as loans and will not be repaid. For purposes of this Paragraph D, drawing on the TIF Guaranty Collateral shall not constitute the City exercising "remedies to collect the same." If the unextended statutory term of the District expires prior to full repayment of any Debt Service Shortfall Payments, then the outstanding balance of such Debt Service Shortfall Payments shall be forgiven and the City shall have no further obligations to repay same.

#### **ARTICLE IV ASSESSED VALUATION GUARANTY**

A. Commencing in the first calendar year following the earlier of (a) the Phase I Completion Date or (b) the date that is forty-eight (48) months after Closing, and for each calendar year thereafter that this guaranty remains in place, Developer guarantees that the assessed valuation of the Property for real property tax purposes (the "Assessed Value") shall not be less than \$21,100,000 ~~18.9 million~~ (the "Base Value"). If in any year during the term of this guaranty the Assessed Value is less than the Base Value, then Developer shall make an Assessed Value Shortfall Payment (as defined below) to the City as provided herein. An "Assessed Value Shortfall Payment" shall mean the difference between: (x) the amount of property taxes that would have been assessed against the Property in the applicable year had the Assessed Value been equal to the Base Value; and (y) the actual amount of property taxes assessed against the Property for such year. Developer shall make the Assessed Value Shortfall Payment to the City not later than fifteen (15) days following the date that the property tax bill for the Property is issued. As an example of calculating an Assessed Value Shortfall Payment, assume: (i) the Assessed Value in 2021 is \$16.18.2 million; and (ii) the City's property tax rate (all taxing jurisdictions included) for 2021 is 2.8%. In such instance, Developer would owe an Assessed Value Shortfall Payment to the City equal to \$81,200 (\$18,900 ~~21,100,000~~ - \$16,000 ~~18,200,000~~ = \$2,900,000 x 2.8%) payable on or before fifteen (15) days following the issuance of the 2021 property tax bill for the Property.

B. Assessed Value Shortfall Payments made by the Developer or Guarantors will be treated by the City as contingent non-interest-bearing loans, repaid out of available Tax Increments after all debt incurred by the City to fund the Project Loan has been fully repaid. If the unextended statutory term of the District expires prior to full repayment to Developer of any Assessed Value Shortfall Payments, then the outstanding balance of such Assessed Value Shortfall Payments shall be forgiven and the City shall have no further obligations to repay same.

C. The assessed valuation guaranty set forth in this Article shall expire upon the closure of the District. Until such expiration, this valuation guaranty shall constitute a covenant running with the land, binding upon any and all owners of the tax parcels that constitute the Property (each a "Tax Parcel") and their successors and assigns, including any mortgagee that acquires title through foreclosure or a deed in lieu thereof, and any purchaser or assignee of such mortgagee. Notwithstanding the foregoing, an individual owner of a Tax Parcel shall not have any liability for any Assessed Value Shortfall Payment so long as that owner's individual Tax Parcel for the applicable tax year has an assessed value equal to or greater than the Base Value allocated to that parcel on Exhibit I. If an Assessed Value Shortfall Payment is due for any tax year, the owners of each Tax Parcel that has an assessed value below the Base Value allocated to such Tax Parcel on Exhibit I (a "Contributing Tax Parcel") shall be liable for their pro rata share of the Assessed Value Shortfall Payment, with such pro rata share equaling a fraction of the total Assessed Value Shortfall Payment, with the numerator being the difference between (i) the Base Value allocated to such Contributing Tax Parcel as set forth in the Base Value Allocation schedule attached hereto as Exhibit I and (ii) the actual assessed value for such Contributing Tax Parcel ("Individual Contributing Tax Parcel Shortfall") and the denominator being the sum of the Individual Contributing Tax Parcel Shortfalls for all of the Contributing Parcels. The City is hereby empowered and authorized by Developer to levy a special assessment lien or special change lien against any Contributing Tax Parcel to collect any unpaid Assessed Value Shortfall Payment related to such Contributing Tax Parcel as allocated herein, which lien shall be a first priority lien. Any and all notice and hearing requirements which may be required under the law for such special assessment or special charge are hereby waived by the Developer.

#### **ARTICLE V PAYMENT OF TAXES; PAYMENT IN LIEU OF TAXES**

A. Throughout the life of the District, Developer will pay (or cause to be paid) all ad valorem property taxes properly assessed against any portion of the Property owned by the Developer before such taxes become delinquent. The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Property (subject to the Article IV herein).

B. In the event that any portion of the Property becomes exempt from ad valorem taxes during the statutory life of the District and for a period of twenty (20) years thereafter (the "PILOT Term"), then the Developer or any successor owner of such exempt portion of the Property shall make (or cause to be made) during the PILOT Term annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes (~~based on the full tax rate~~~~all taxing jurisdictions included~~) would have been for such portion of the Property (as determined by the City assessor) had it not been exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable

for such year. If the Developer or any successor owner fails to make a payment in lieu of taxes when due, the City may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Property in the amount of the unpaid payments. Any and all notice and hearing requirements which may be required under the law for such special assessment are hereby waived by Developer. Notwithstanding the levying of such special assessment, the payment obligation under this Article shall be the personal obligation of the person or entity that is the owner of the Property at the time that any portion of the Property becomes exempt from ad valorem taxes. The covenant contained in this Article shall be deemed to be a covenant running with the land and shall be binding upon all owners of any portion of the Property for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all successor owners of the Property.

#### **ARTICLE VI COST SAVINGS; PROFIT-SHARING**

A. The amount of the Project Loan allocable to WQE shall be reduced at the Completion Date if the actual cost of such activities is less than the amount set forth in the Development Budget (such differential, if any, is defined as the "Cost Savings"). Any Cost Savings shall be shared by the City and WQE on a 65/35 basis, with 65% of the Cost Savings applied to reduce the Project Loan allocable to WQE. WQE shall provide the City with quarterly reconciliation statements showing actual expenditures incurred compared to the Project Budget and a final reconciliation statement within thirty (30) days following the Completion Date. WQE shall provide to the City any and all back up information and documentation with respect to the quarterly and final reconciliation statements as the City may reasonably request. If the City reasonably believes that there will be Cost Savings, WQE shall pay to the City the City's share of the Cost Savings within thirty (30) days following written demand therefor.

B. At the end of the seventh year following funding of the Project Loan, Developer shall provide to the City and its financial consultant all of Developer's financial records relating to the expenditures incurred and income received in connection with the Project. The City's financial consultant shall determine Developer's annualized internal rate of return ("IRR") on Developer's equity investment in the Project. If the Developer's IRR exceeds 16% (with any Project cost overruns, the approved Developer fee set forth in the Development Budget, and any amounts paid by Developer or Guarantors under the TIF Guaranty), then the City shall be entitled to a payment from the Developer equal to 40% of the amount of revenue that drove Developer's IRR above 16% (i.e., 40% of the excess above the specified IRR, not the total, shall be paid to City). Such payment shall be made not later than the later of (i) thirty (30) days following written request from the City after calculation of the IRR as set forth above and (ii) receipt by Developer of sufficient funds to pay such obligation from the disposition or refinancing of all or any part of the Property, it being understood that Developer shall not be required to accelerate the sale or refinancing of any portion of the Property but may do so in the ordinary course of its business operations. For purposes of the foregoing determination, the price of a land sale shall be the net selling price to a third party (including net of commissions) or, in the case of self-development, the land value as determined by a construction lender based on an independent appraisal for a particular parcel. Notwithstanding the foregoing, the IRR determination by the City's financial consultant hereunder may include, without limitation,

confirmation by an independent expert that the price of a land sale to a third-party was at or above the reasonable fair market value of the property at the time of sale.

**ARTICLE VII  
NO PARTNERSHIP OR VENTURE**

Developer and its contractors or subcontractors shall be solely responsible for the completion of all of Developer's obligations set forth in this Agreement. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the (i) City and (ii) Developer, or any contractor or subcontractor employed by Developer.

**ARTICLE VIII  
CONFLICT OF INTEREST**

No elected official, member, officer, or employee of the City, 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.

**ARTICLE IX  
WRITTEN NOTICES**

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer of the City (as to the City) or to an officer of Developer (as to Developer), if hand delivered; (ii) two business days following deposit in the United States mail, postage prepaid, or (iii) upon delivery if delivered by a nationally recognized overnight commercial carrier that will certify as to the date and time of such delivery; and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Article of a change of address:

If to the City:	City of West Allis 7525 West Greenfield Avenue West Allis, WI 53214 Attn: City Clerk
If to the Developer:	West Quarter West, LLC c/o Cobalt Partners, LLC 207 N. Milwaukee Street Milwaukee, WI 53202 Attn: Scott J. Yauck
	West Quarter East, LLC c/o Cobalt Partners, LLC 207 N. Milwaukee Street Milwaukee, WI 53202 Attn: Scott J. Yauck
With a copy to:	Godfrey & Kahn, S.C. 833 E. Michigan Street, Suite 1800

Milwaukee, WI 53202  
Attn: Michael J. Dwyer

If to Leveraged Lender: West Quarter West LL, LLC  
c/o Cobalt Partners, LLC  
207 N. Milwaukee Street  
Milwaukee, WI 53202  
Attn: Scott J. Yauck

#### **ARTICLE X DEFAULT**

A. The occurrence of any one or more of the following events shall constitute a default (“Default”) hereunder:

1. Developer shall fail to pay any amounts when due under this Agreement or any guaranty by Developer and further fails to pay such amounts on or before five days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement shall prove to have been false in any material respect as of the time when made or given; or

3. Developer shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty (30) days following notice thereof from the City (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as Developer has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from the City or such longer period of time as is reasonably agreed to by the City); or

4. A Guarantor defaults under any guaranty by a Guarantor beyond any applicable grace period; or

5. City shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money, which shall be cured by the City on or before five days following written notice of such failure), and such failure shall continue for thirty days following notice thereof from Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the City has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from Developer); or

6. Developer:

(a) becomes insolvent or generally does not pay, or is unable to pay, or admit in writing its inability to pay, its debts as they mature; or

(b) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or

(c) becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or

(d) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or

(e) applies to a court for the appointment of a receiver or custodian for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or

(f) adopts a plan of complete liquidation of its/his assets; or

(g) shall cease to exist.

B. Upon the occurrence of any Default, without further notice, demand or action of any kind by the nondefaulting party, the nondefaulting party may, at its option, pursue any or all rights and remedies available at law and/or in equity. The City’s rights shall include, but not be limited to, the termination of this Agreement, the temporary or permanent suspension of any payment of the Project Loan, and/or the Right to Purchase specified in Article IX, Paragraph B(1) herein.

1. In the event WQE does not complete the Phase I Work on or before the Outside Phase I Completion Date, subject to a Force Majeure Event, the City may, but shall not be required to, purchase the Development Site from WQE for \$1.00 (the “Right to Purchase”) by giving at least ninety (90) days prior written notice to WQE of its intention to purchase if the Phase I Work is not substantially completed by that later date. Closing on the City’s purchase of the Development Site (“City Closing”) shall occur within one hundred twenty (120) days after the date of the City’s notice exercising its right to purchase. The notice of intention to exercise its Right to Purchase can be given or withdrawn by the City at any time after the Outside Phase I Completion Date and prior to the City Closing. The City’s Right to Purchase hereunder shall automatically terminate upon final substantial completion of the Phase I Work prior to the City Closing. At the City Closing, the City shall (i) pay in full any and all indebtedness incurred by the Developer to third party entities not affiliated with Developer, Cobalt Partners, LLC and/or Scott J. Yauck in connection with the acquisition and development of the Development Site for which Developer has notified City within ninety (90) days of receipt of the City’s notice exercising the City’s purchase right hereunder of the existence of such qualified indebtedness, as reasonably determined by the City, and secured by a mortgage or other lien on the Development Site, (ii) cause Developer and Scott J. Yauck and any of their affiliates to be released from any and all guaranty and indemnity obligations they may have to any third party lender arising out of or connected to the acquisition and development of the Development Site, and (iii) terminate this Development Agreement and release Developer and Scott J. Yauck and any of their affiliates from any and all further liability arising under this Development Agreement, including, but not

limited to, any debt service and valuation guarantees set forth in Articles III and IV hereof. The City's Right to Purchase hereunder is in addition to and does not in any way replace, amend or alter the first priority lien status of the City's special assessment rights provided for in this Agreement. Upon the sale of any parcels within the Development Site to an unrelated third party or upon the execution of a loan agreement with a construction lender for vertical development, the City shall waive its repurchase rights under this provision for the specific parcel or parcels to be sold or encumbered by a construction lender.

C. No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

D. In the event of a default by either party, all reasonable fees, costs and expenses incurred by the nondefaulting party, including reasonable attorneys' fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

#### **ARTICLE X MISCELLANEOUS**

A. Until such time as the IRR calculation has occurred pursuant to Article VI, Developer will provide or cause to be provided to the City, on or before one hundred twenty (120) days following the end of each calendar year, audited financial statements for Developer for the preceding calendar year, including balance sheets and income statements. All financial statements shall be certified to by Developer's auditor and/or accountant, as applicable, and the trade secret provisions for such financial statements shall be maintained in accordance with Paragraph L of this Article.

B. Developer shall have in effect at all times all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with Developer's development, construction, management and operation of the Project.

C. Developer shall maintain or cause to be maintained the following insurance policies (the "Insurance Policies") issued by insurers licensed in the State of Wisconsin, with ratings and in the financial size category as requested by the City, covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the City:

1. Following completion of construction of all components of the Project, "all risks" property insurance insuring against such risks as are insured against by owners of similar improvements, in amounts equal to 100% replacement cost of all such improvements with an extended replacement cost endorsement;

2. During the construction, builder's risk insurance in form and amounts reasonably satisfactory to the City;



3. During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by owners of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

4. Such other insurance as may be reasonably requested by City.

D. Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the City of any material change or cancellation of such policy. The City shall be named as an additional insured/loss payee on all policies of insurance except worker's compensation insurance.

E. If the Developer does not commence construction of the Project by June 1, 2019 (subject to extension pursuant to Paragraph I, below), then the City may, in its sole discretion, terminate this Agreement upon written notice to the Developer. The City shall thereafter have no further obligations under this Agreement.

F. Developer hereby indemnifies, defends, covenants not to sue and holds the City harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the City by reason of the following: (i) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (ii) any release by Developer or its contractors, subcontractors, agents, employees, or invitees of petroleum products or hazardous materials or hazardous substances on, upon or into the Property; (iii) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (i) and (ii) above; (iv) any violation by Developer or at the Project of any environmental law, rule, regulation or ordinance; (v) claims arising in connection with the Project under the Americans With Disabilities Act, and any other laws, rules, regulations or ordinances; (vi) the failure by Developer to comply with any term or condition of this Agreement; (vii) injury to or death of any person at the Project or injury to any property caused by or at the Project; and (viii) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project. The foregoing indemnity shall not apply to any claims or damages arising under clauses (i) through (viii) of the previous sentence to the extent such claims or damages are attributable to the negligence or willful misconduct of the City.

The terms "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

G. If in furtherance of the Project the Developer and the City enter into a Public Improvements Agreement, Developer agrees to pay prevailing wages for the Public Improvements. Developer shall further comply with the City's public bidding requirements where applicable. The Public Improvements shall at all times be subject to City inspection and

approval and City shall not be required to accept conveyance of the Public Improvements unless the Public Improvements have been constructed in a good and workmanlike manner, in accordance with the City-approved plans for the Public Improvements, and otherwise are in a condition reasonably acceptable to the City. The Developer shall pay the cost of all City inspections and review of the Public Improvements and the review and inspection of Developer's storm water plans and utility connections. Following approval by the City of the completed Public Improvements, the Public Improvements shall be conveyed to the City, to the extent appropriate. The Developer shall provide to the City from the Developer and all contractors and consultants involved in connection with the construction and installation of the Public Improvements, a one-year warranty against defects in construction, materials and workmanship, in a form reasonably acceptable to the City. The Developer shall also provide to the City as-built construction records for the Public Improvements in an electronic format reasonably acceptable to the City.

H. Time is of the essence of each and every obligation or agreement contained in this Agreement.

I. If Developer is delayed or prevented from timely commencing or completing construction of the Phase I Work or the Project, by reason of fire, earthquake, war, flood, material shortages, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, or other causes beyond the reasonable control of the party obligated to perform ("Force Majeure Event"), performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

J. A memorandum of this Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of any mortgages securing the Bank Loans, or any other mortgage on the Property, it being understood by the parties that this Agreement will run with the land and will be binding upon the Property and any owner and/or lessee and/or mortgagee of all or any portions of the Property and their successors and assigns.

K. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

L. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. The Developer warrants and represents the accuracy of its financial reports and information in all material respects. The parties acknowledge that some of the financial information to be provided to the City may qualify as proprietary or as "trade secrets" and that disclosure of same would have an adverse impact upon Developer and certain tenants of the Project. When financial information is provided to the City, the provider of such financial information shall identify the information that is proprietary or constitutes a trade secret and the City shall take reasonable steps to protect such trade secrets as allowed by law.

M. This Agreement may not be assigned by the Developer without the City's prior written consent, which may be granted or withheld in the City's reasonable discretion. Developer may collaterally assign this Agreement to Developer's construction lender or to other

lenders for the Project. In the event that such construction lender or any other lender forecloses on its collateral and succeeds to ownership any portion of the Property, the City shall fulfill its obligations hereunder provided that such construction lender or other lender assumes in writing all of the obligations of Developer hereunder.

N. Developer shall not be released from any of its obligations hereunder by any sale, foreclosure or other conveyance of all or any portion of the Property, either before or after completion of the Project, without the written consent of the City.

O. Subject to applicable laws, Developer and the City shall work together expeditiously and in good faith to obtain appropriate project entitlements, including, without limitation, approvals for zoning (PUD overlay), site plan, architectural, landscaping, traffic, and offsite improvements.

P. Subject to applicable laws, Developer and the City shall work together expeditiously and in good faith in support of optimizing the overall economic efficiency of the Project through appropriate structuring of such matters as site infrastructure financing and construction, etc.

Q. This Agreement contains the entire agreement between the City and Developer with respect to the subject matter of this Agreement and may be amended or modified only by subsequent written agreement duly signed by both parties hereto.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

**CITY OF WEST ALLIS, WISCONSIN**

By: \_\_\_\_\_  
Dan Devine, Mayor

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

STATE OF WISCONSIN     )  
  ) ss.  
MILWAUKEE COUNTY     )

Personally appeared before me this \_\_\_\_ day of March, 2019, the above-named Dan Devine and Steven A. Braatz, Jr., the Mayor and City Clerk, respectively, of the City of West Allis, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the City and by its authority and acknowledged the same.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission expires:

Approved as to form this \_\_\_\_ day of March, 2019

\_\_\_\_\_  
Kail Decker, City Attorney

**COMPTROLLER'S CERTIFICATE**

Countersigned this \_\_\_\_ day of March, 2019, and I certify that the necessary funds have been provided to pay the liability that may be incurred by the City of West Allis under this Agreement.

\_\_\_\_\_  
Peggy Steeno  
Finance Director, Comptroller, Treasurer

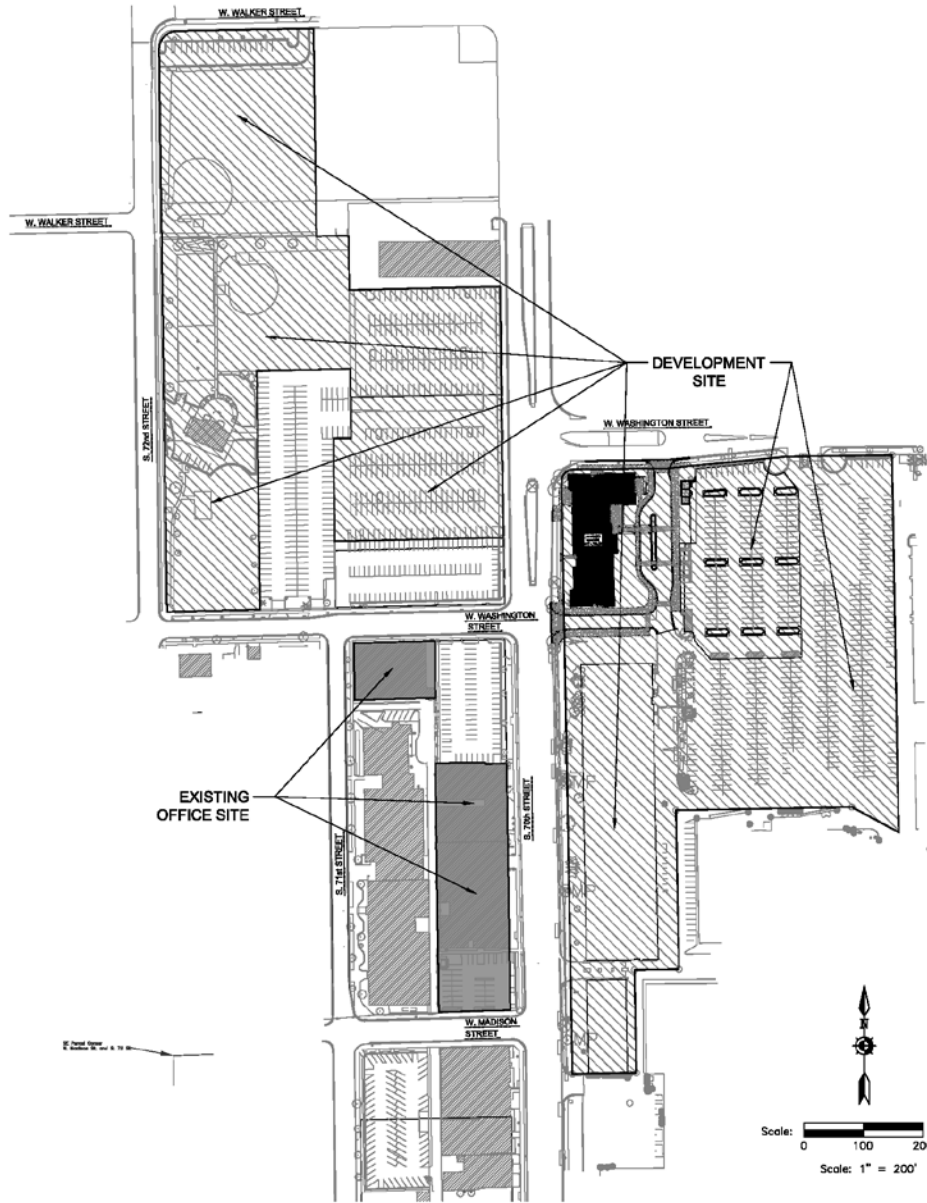
[Signatures continue on following page]



This instrument was drafted by  
and upon recording return to:

Richard W. Donner  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202

**EXHIBIT A**  
Legal Description of Property



**EXHIBIT A - PROPERTY**

**EXHIBIT B**

Preliminary Development Plan











**EXHIBIT D**

Phase I Work Schedule

| ~~Closing Date – 3/22/19~~

| West Building Improvements Start Date – 4/15/19

West Building Improvements End Date (relocated tenants from 1126 only) – 8/31/19

| Divide the Property into ~~development-Development parcels-Parcels~~ – ~~4/1/19~~30/20

| Move of ~~tenants-Tenants~~ from East to West Building Start – 8/1/19

| Move of ~~tenants-Tenants~~ from East to West Building End - 9/15/19

| Demolition of East Office Building Start Date –  
Asbestos ~~abatement to start in April, 2019, Demo start~~Abatement – 4/15/19  
Building Demolition – 9/15/19

| ~~Demo Completion~~Demolition of East Office Building End Date – 3/31/20

Construction of Hotel Start Date – 10/15/19

Construction of Hotel End Date – 11/30/20

| Note: Above dates reflect projected schedule for reference only. Failure to meet such dates shall not constitute a Default hereunder except to the extent the above dates are expressly stated as such in the Agreement.

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**EXHIBIT E**

Sources and Uses Schedule

**Cobalt Partners - West Quarter -- Sources & Uses**

<b>EXISTING OFFICE</b>	
<b>Sources</b>	<b>Total</b>
Sponsor Equity	204,187
Deferment of Developer fee	300,000
QLICI Note 1A	3,384,000
QLICI Note 1B	1,516,000
QLICI Note 3A	3,925,440
QLICI Note 3B	1,758,560
QLICI Note 2A	3,384,000
QLICI Note 2B	1,516,000
	<u>15,484,000</u>
Direct Loan	100,000
<b>Total Sources</b>	<b><u>16,088,187</u></b>
<b>Uses</b>	<b>Total</b>
Acquisition	6,700,000
Renovation	4,600,000
Tenant Relocation Incentives	100,000
Demolition/Remediation	260,000
Developer Fee	1,000,000
Developer Fee - Deferred	300,000
Closing/Holding Costs	100,000
Owner's Contingency	400,000
TIF Pmts	993,187
Surveys and Environmental	50,000
Parking Easement	250,000
NMTC Legal	300,000
Placement Fee - BTC	276,500
Charitable Contributions	158,000
Direct Loan Origination Fee	500
QLICI Interest Reserve	600,000
<b>Total Uses</b>	<b><u>16,088,187</u></b>
	-

<b>DEVELOPMENT SITE</b>	
<b>Sources</b>	<b>Total</b>
Sponsor Equity	2,252,832
TIF Funds - Forgivable Loan	873,560
TIF Funds - Forgivable Loan (Escrowed)	1,100,000
Parking Easement Revenue	250,000
Direct Mortgage Loan	4,050,000
Brownfield Grant	250,000
Hotel Land Sale (Net of Curtailment)	-
<b>Total Sources</b>	<b>8,776,392</b>
<b>Uses</b>	<b>Total</b>
Acquisition (East of 70th)	4,400,000
Acquisition (West of 70th)	750,000
Demolition/Remediation	2,800,000
Developer Fee	100,000
Closing/Holding Costs	315,000
Owner's Contingency	201,392
Capitalized Interest	120,000
Surveys & Environmental	50,000
Real Estate Taxes/OpEx	40,000
<b>Total Uses</b>	<b>8,776,392</b>

**EXHIBIT F**

Form of TIF Guaranty

**GUARANTY: TIF OBLIGATIONS**

THIS GUARANTY is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by SCOTT J. YAUCK (“Yauck”), a Wisconsin resident, COBALT PARTNERS, LLC, a Wisconsin limited liability company (“Cobalt”), WEST QUARTER WEST, LLC, a Wisconsin limited liability company and WEST QUARTER EAST, LLC, a Wisconsin limited liability company (collectively, the “Developer”), (each individually a “Guarantor”, and collectively, the “Guarantors”) to the CITY OF WEST ALLIS, a Wisconsin municipal corporation (“City”).

WITNESSETH:

A. City and Developer have entered into that certain development agreement of even date herewith (the “Development Agreement”), pursuant to which City agreed to, among other matters, provide financial assistance to the Developer in furtherance of the Project (as such term is defined in the Development Agreement);

B. Developer warrants and represents to the City that but for the assistance to be provided by the City under the Development Agreement, Developer would not be able to proceed with the Project; and

C. It is a condition precedent to City’s willingness to enter into the Development Agreement that the Guarantors guaranty to the City, jointly and severally, the full performance and completion of the Guaranteed Obligations (as defined below) and the full, prompt and faithful payment of all amounts owed to the City in connection with the Guaranteed Obligations under the Development Agreement.

NOW THEREFORE, in consideration of the foregoing and to induce the City to enter into the Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Guarantors hereby covenant and agree as follows:

1. Unless otherwise defined herein, all capitalized terms herein shall have the meanings ascribed to them in the Development Agreement.

2. Guarantors hereby unconditionally and irrevocably guaranty to:

2.1 Pay to the City, as and when due, any and all Debt Service Shortfall Payments;

2.2 Pay to the City, as and when due, any and all Assessed Value Shortfall Payments;

2.3 Present to the City, on or before the distribution of the Project Loan, the TIF Guaranty Collateral required under Section II.B.4 of the Development Agreement and perform all of Developer's obligation relating to the TIF Guaranty Collateral pursuant to Article III, Paragraph C of the Development Agreement;

2.4 Pay to the City, as and when due, any and all payments due the City pursuant to Article I, Paragraph ~~A-B~~ (21) of the Development Agreement.

The obligations described in Section 2.1 through and including Section 2.4 above are included within the Development Agreement and collectively referred to herein as the "Guaranteed Obligations." The Guarantors shall remain jointly and severally liable under this Guaranty notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of any Guarantor until the date on which the Guaranteed Obligations are fully performed and completed in accordance with the Development Agreement. Discharge of the Guaranteed Obligations covered by this Guaranty under the Federal Bankruptcy Code or under any other state or federal bankruptcy, insolvency or similar proceeding shall not affect the liability of any Guarantor.

3. Failure by any Guarantor to perform any of the Guaranteed Obligations within ten (10) days after written demand by the City shall constitute an event of default under this Guaranty ("Event of Default") and shall entitle the City, at its option, and without notice (notice being expressly waived by the Guarantors) to exercise any remedies available to it under the Development Agreement and, in addition thereto, Guarantors shall immediately pay all amounts due under the Guaranteed Obligations. Notwithstanding the foregoing, if the Development Agreement provides for a time period of less than ten (10) days after written demand, such shorter time period shall control and failure by any Guarantor to perform within said shorter time period shall constitute an Event of Default under this Guaranty.

4. Guarantors shall have no right of subrogation whatsoever with respect to any Guaranteed Obligation evidenced by the Development Agreement unless and until all of the Guaranteed Obligations guaranteed hereby have been fully performed.

5. Guarantors agree to pay the City the amount of any payments made to City in connection with any of the Guaranteed Obligations that are recovered from the City by a trustee, receiver, creditor or other party pursuant to applicable law.

6. Without limitation, lessening or affecting in any manner whatsoever the liability of the Guarantors under this Guaranty, the City may, with or without consideration, and without notice to any Guarantor:

6.1 Grant Developer extensions of time to perform its obligations to the City, or any other indulgences under the Development Agreement;

6.2 Take, give up, modify, vary, exchange, release, substitute, renew or abstain from perfecting or taking advantage of any security for Developer's obligations under the Development Agreement; and



6.3 Accept or make compromises or other arrangements with Developer under the Development Agreement, realize on any security for the Development Agreement and otherwise deal with Developer and other parties and security as the City may deem expedient.

7. This Guaranty shall be a continuing guaranty and shall not be revoked by death and shall inure to the benefit of and be enforceable by any successor to the City, and shall be binding upon and enforceable against each Guarantor and its respective heirs, legal representatives, successors and assigns.

8. The Guarantors hereby waive the right to require the City to proceed against Developer or any other party, or to proceed against or apply any security it may hold, and waives the right to require City to pursue any other remedy for the benefit of any Guarantor and agrees that City may proceed against any Guarantor without taking any action against any other party and without proceeding against or applying any security it may hold. This is a guaranty of payment and not of collection.

9. Guarantors shall be jointly and severally liable for costs and expenses associated with the enforcement of the City's rights against the Guarantors under this Guaranty, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving any Guarantor. Any and all such fees, costs and expenses incurred by the City which are to be paid by the Guarantors shall be paid by the Guarantors to the City on demand following default.

10. No delay on the part of the City in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights. No modification or waiver of the provisions hereof shall be effective unless in writing, nor shall any waiver be applicable except in the specific instance or matter for which given.

11. Guarantors represent and warrant that any and all financial material delivered to City or City's agents by Guarantor is true and correct in all material respects. To the extent these materials include financial statements, those statements will have been prepared in accordance with tax basis accounting principles consistently applied unless otherwise noted therein, and fairly present the financial conditions of the subjects thereof as of the respective dates thereof. No materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

12. Notice to a Guarantor hereunder shall be given in writing and given by personal delivery to Guarantor or by registered or certified mail, mailed postage prepaid, return receipt requested, or by a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, airbill prepaid, to said Guarantor at the following address:

If to Yauck:                    Scott J. Yauck  
    c/o Cobalt Partners, LLC  
    207 N. Milwaukee Street  
    Milwaukee, WI 53202

If to Developer: West Quarter West, LLC  
c/o Cobalt Partners, LLC  
207 N. Milwaukee Street  
Milwaukee, WI 53202  
Attn: Scott J. Yauck

West Quarter East, LLC  
c/o Cobalt Partners, LLC  
207 N. Milwaukee Street  
Milwaukee, WI 53202  
Attn: Scott J. Yauck

With a copy to: Godfrey & Kahn, S.C.  
833 E. Michigan Street, Suite 1800  
Milwaukee, WI 53202  
Attn: Michael J. Dwyer

If to Cobalt: Cobalt Partners, LLC  
207 N. Milwaukee Street  
Milwaukee, WI 53202  
Attn: Scott J. Yauck

Notice shall be deemed to have been given (i) upon the date of personal delivery, or (ii) two business days following deposit in the United States mail, with sufficient postage prepaid, or with a nationally recognized overnight commercial carrier, airbill prepaid. Guarantor may change the address to which notices to Guarantor shall be sent by giving written notice to City pursuant to this section.

13. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

14. Yauck acknowledges and represents that the obligations undertaken pursuant to this Guaranty are undertaken by him in the interest of and for the benefit of his marriage or family and that there is no Marital Property Agreement, Unilateral Statement under Sec. 766.59, Wisconsin Statutes, or a Court Decree under Section 766.70, Wisconsin Statutes, that adversely affects the liability recognized hereunder to the City.

**15. GUARANTOR KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO THIS GUARANTY, THE GUARANTEED OBLIGATIONS OR ANY CONDUCT, ACT OR OMISSION OF CITY, AND AGREES AND CONSENTS THAT ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY. GUARANTOR ACKNOWLEDGES AND UNDERSTANDS THAT THIS WAIVER AND CONSENT CONSTITUTES A MATERIAL INDUCEMENT TO CITY TO ENTER INTO THE TRANSACTION WITH THE DEBTOR.**

IN WITNESS WHEREOF, Guarantors hereby execute this Guaranty as of the date first set forth above.

\_\_\_\_\_  
Scott J. Yauck, individually

**WEST QUARTER WEST, LLC**

By: Cobalt Partners, LLC, Manager

By: \_\_\_\_\_  
Scott J. Yauck, Sole Member and  
Manager

**WEST QUARTER EAST, LLC**

By: Cobalt Partners, LLC, Manager

By: \_\_\_\_\_  
Scott J. Yauck, Sole Member and  
Manager

**COBALT PARTNERS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT G**

Form of Letter of Credit

[bank letterhead]

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

**BENEFICIARY**

City of West Allis, Wisconsin  
7525 West Greenfield Avenue  
West Allis, WI 53214

**DATE**

\_\_\_\_\_, 2019

**INITIAL AMOUNT**

\_\_\_\_\_

**ACCOUNT PARTY**

\_\_\_\_\_

**INITIAL TERM**

\_\_\_\_\_

At the request and for the account of our Account Party we establish this Irrevocable Letter of Credit (the "Letter of Credit") in your favor by our signature and your receipt. We irrevocably agree to honor demands for full or partial payment, which comply with the terms of this Letter of Credit. The amount available under this Letter of Credit is \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), which amount is subject to reduction as provided herein and reinstatement as provided herein. Multiple drawings are allowed on this Letter of Credit. Each draw on this Letter of Credit shall permanently reduce the amount available to be drawn on this Letter of Credit by the amount of such draw unless a Reinstatement Amendment (as defined below) has been delivered to the Beneficiary. Notwithstanding the foregoing, the maximum amount available to be drawn on this Letter of Credit may be reinstated by us to the full face amount of this Letter of Credit, if we deliver to the Beneficiary a written amendment to this Letter of Credit, signed by us, stating that such face amount has been reinstated (a "Reinstatement Amendment"). If this Letter of Credit is drawn upon by the Beneficiary, the Account Party shall thereafter restore the Letter of Credit to the original amount of \$\_\_\_\_\_ within fifteen (15) days following the date of the draw down. If the Account Party fails to restore the Letter of Credit to the original \$\_\_\_\_\_ amount within fifteen (15) days following the draw, then Beneficiary may obtain immediate payment of the full amount then available to be drawn under this Letter of Credit by presenting the Beneficiary's signed statement to us requesting a draw on this Letter of Credit, which

statement must state that the “Beneficiary is entitled to draw on this Letter of Credit in accordance with the terms hereof because the Account Party failed to restore the Letter of Credit to \$\_\_\_\_\_ within the required fifteen (15) day period.”

Each demand for payment under this Letter of Credit must be made by presentation of a document in the form of Exhibit 1 to this Letter of Credit not later than the Expiration Date (as defined below). If a complying demand for immediate payment is presented, then we shall honor such demand by initiating a wire transfer to you of our funds and advising you of the wire transfer identification number (by telephone, confirmed in writing) on the date that is three Business Days (as hereinafter defined) after we receive such demand from you. As used herein, the term “Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks in the State of Wisconsin are required or authorized to close, or a day on which we have elected to be closed.

If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice within three Business Days that the purported demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore, and that we are holding any documents at your disposal or are returning the same to you, as we may elect. Upon being notified that the purported demand for payment was not effected in accordance with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment prior to the Expiration Date.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended without amendment for one year from the Initial Expiration Date hereof, or any future expiration date thereafter, unless not less than 90 days prior to any expiration date we shall notify (such notification, a “Non-renewal Notice”) the Beneficiary by written notice sent by overnight courier or certified mail to the address of the Beneficiary above that we elect not to consider this Letter of Credit renewed as of such expiration date (herein, the “Expiration Date”) for any such additional period.

In the event we provide the Beneficiary with a Non-renewal Notice, the Beneficiary may obtain immediate payment of the full amount then available to be drawn under this Letter of Credit by presenting the Beneficiary’s signed statement to us requesting a draw on this Letter of Credit, which statement must state that the “Beneficiary is entitled to draw on this Letter of Credit in accordance with the terms hereof because the Bank has delivered to the Applicant a Non-renewal Notice.”

No notice to the Account Party is required in connection with any draw on this Letter of Credit by the Beneficiary.

To the extent not inconsistent with the express terms thereof, this Letter of Credit shall be governed by, and construed in accordance with, the terms of the Uniform Customs and Practice for Documentary Credits 2007 Revisions, International Chamber of Commerce Publication No. 600 (the “UCP 600”), except for Articles 18-28, Article 32 and the first sentence of Article 38(d). Additionally, if this Letter of Credit expires during an interruption of our business as

described in UCP 600, we hereby specifically agree to effect payment if this Letter of Credit is drawn against within thirty (30) Business Days after resumption of our business. This Letter of Credit may not be transferred or assigned to any other party or person.

As to matters not governed by UCP 600, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of Wisconsin, including without limitation, Article Five of the Uniform Commercial Code as in effect in the State of Wisconsin.

Pursuant to U. S. Law, we are prohibited from issuing, transferring, accepting or paying letters of credit to any party or entity identified by the Office of Foreign Assets Control, U. S. Department of Treasury, or subject to the Denial of Export Privileges by the U. S. Department of Commerce.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Letter of Credit, except only the UCP 600, and any such reference shall not be deemed to incorporate herein any reference to any such document, instrument or agreement.

All communications with respect to this Letter of Credit shall be in writing, effective upon receipt by us, and shall be addressed to us at: \_\_\_\_\_

All bank charges and commissions are for the account of the Account Party.

Very truly yours,

[BANK]

By: \_\_\_\_\_  
Authorized Officer

**Exhibit 1**

[Beneficiary's letterhead]

\_\_\_\_\_, 20\_\_

[BANK]

[ADDRESS]

City of West Allis, Wisconsin (the "Beneficiary") hereby demands payment to our order of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) under your Letter of Credit No. \_\_\_\_ (the "Letter of Credit"). Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms by the Letter of Credit.

The Beneficiary hereby certifies to you that the Account Party, as guarantor under (i) that certain Development Agreement dated as of March \_\_\_\_, 2019 between the Account Party and the Beneficiary, and (ii) that certain TIF Guaranty dated as of March \_\_\_\_, 2019 in favor of the Beneficiary, has failed to pay such party's obligations to the Beneficiary as provided in Article III and Article IV of such Development Agreement.

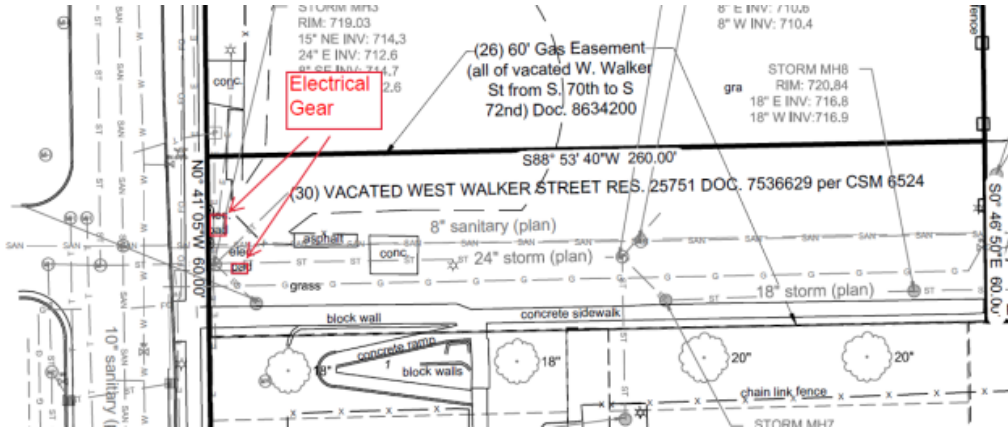
Please wire the transfer amount demanded hereby to: \_\_\_\_\_

CITY OF WEST ALLIS, WISCONSIN

By: \_\_\_\_\_  
Authorized Officer

# EXHIBIT H

## Easement Area





**EXHIBIT I**

Base Value Allocation

**Base Value Allocation**  
(see aerial map next page for Parcel References)

<u>Parcel Reference</u>	<u>Parcel Size</u>	<u>Total</u>	<u>Notes</u>
1	0.78	\$ 4,817,000	
2	0.37	\$ 2,368,000	
3	0.30	\$ 100,000	
4	1.53	\$ 513,000	
5	1.05	\$ 352,000	
6	0.99	\$ 332,000	
7	2.41	\$ 807,000	
8	1.72	\$ 576,000	
9a	0.99	\$ 8,532,000	Hotel Parcel
9b	8.07	\$ 2,703,000	Balance of East Side Parcel(s)
	<u>18.21</u>	<u>\$ 21,100,000</u>	

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**EXHIBIT J**

Park Area

**EXHIBIT J - PARK PARCELS & PARK AREA**

