

SECOND AMENDMENT TO DEVELOPMENT FINANCING AGREEMENT

(Apartment Parcel)

This Second Amendment to Development Financing Agreement (this "Amendment") is dated as of the __ day of June, 2021 (the "Effective Date"), by the Community Development Authority of the City of West Allis, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes (the "Authority"), the City of West Allis, Wisconsin ("City") and Six Points West Allis Apartments II LLC, a Wisconsin limited liability company, its successors and/or assigns ("Developer").

RECITALS:

A. The Authority, City and Developer entered into that certain Development Financing Agreement as of March 29, 2019 (the "Financing Agreement"), being the same date that the Authority conveyed the Apartment Parcel (as defined in the Financing Agreement) to the Developer, and pursuant to which the Authority and City agreed to provide to the Developer certain financing, including tax incremental financing and certain loans, all as more particularly set forth in the Financing Agreement.

B. The Project has been completed and the CDA Loan (as defined in the Financing Agreement) has been paid in full.

C. The parties desire to amend the Financing Agreement to modify the terms relating to the Participating Loan and the Contingent Payment (as such terms defined in the Financing Agreement) as more particularly set forth herein.

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

1. Definitions. Unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Financing Agreement.

2. CDA Loan. The CDA Loan has been paid in full and the parties hereby agree and confirm that the CDA Note and MGI CDA Guaranty have been cancelled and/or released and are of no further force or effect.

3. Project Completion. The parties hereby agree and confirm that (i) the Project has been completed in accordance with the terms of that certain Development Agreement, dated the same date as the Financing Agreement, by and between Developer and the Authority (the "Development Agreement"), (ii) certificates of occupancy have been issued for all of the residential buildings, (iii) the Guaranty of Completion has been cancelled and released and is of no further force or effect, and (iv) the Certificate of Completion referenced in the Development Agreement has been or will be recorded as to the Project on or before the Effective Date.

4. Participating Loan. Within 7 days after the Effective Date, Developer will pay to the Authority \$1,500,000 by wire transfer to an account designated by the Authority towards payment of the outstanding principal balance of the Participating Loan and, upon such payment, the outstanding principal balance of the Participating Loan shall be \$1,000,000. The terms of the Financing Agreement as to the Participating Loan remain in full force and effect, including the obligation to pay interest on the outstanding principal balance and, under certain circumstances, upon a Sale or a Cash Out Refinancing of the Project to pay the then outstanding principal balance of the Participating Loan.

5. Amendment: Contingent Payment. Effective as of the Effective Date, Section 9 of the Financing Agreement is hereby amended as follows:

A. CDA Residual. The Financing Agreement is hereby amended to increase the amount of the CDA Residual to \$1,000,000 and specifically by deleting the reference to “\$750,000” in Section 9.b.i of the Financing Agreement and replacing it with “\$1,000,000.” Developer, at its sole option, may elect to prepay the CDA Residual at any time, in whole or in part, and upon such prepayment, Developer’s obligations with respect to the CDA Residual shall terminate in their entirety.

B. Contingent Payment. The Financing Agreement is hereby amended to reduce the percentage of the Contingent Payment from 50% to 40% and to cap the amount of the Contingent Payment at \$500,000 and specifically by deleting the following clause: “50% of the remaining proceeds after the payment of the CDA Residual shall be paid to the Authority (the “Contingent Payment”)” in Section 9.b.ii. of the Financing Agreement and replacing it with “40% of the remaining proceeds after the payment of the CDA Residual shall be paid to the Authority up to, but not to exceed, an amount equal to \$500,000 (the “Contingent Payment”).” Developer, at its sole option, may elect to prepay the Contingent Payment provided such prepayment shall be in the maximum amount of \$500,000 and upon such prepayment, Developer’s obligations with respect to the Contingent Payment shall terminate in their entirety.

6. Financing Agreement. Except as otherwise expressly modified in this Amendment, the terms and conditions of the Financing Agreement are and shall remain in full force and effect. In the event of any conflict or inconsistency between the terms and provisions of the Financing Agreement and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall govern and control.

7. Execution. This Amendment may be executed in any number of counterparts, all of which together shall be deemed to constitute one instrument, and each of which shall be deemed an original. This Amendment may be executed by facsimile or scanned signatures, and each party agrees that after execution by facsimile or scanned signatures, upon request of any party, each party shall deliver to the other party an executed original of this Amendment; however, notwithstanding the foregoing, facsimile or scanned signatures shall be deemed to be originals and effective as of the date of delivery, regardless whether signed originals are thereafter executed.

8. Binding Effect. The terms and conditions of this Amendment shall be binding upon and benefit the parties and their respective successors and assigns.

[Signatures appear on the following pages]

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

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

Dated: _____

By _____
Patrick Schloss, Executive Director

CITY OF WEST ALLIS

Dated: _____

By _____
Dan Devine, Mayor

Dated: _____

By _____
Rebecca Grill, City Administrator/Clerk

APPROVED AS TO FORM

this ____ day of _____, 2021.

City Attorney

Signature page to Second Amendment to Development Financing Agreement

COMPTROLLER'S CERTIFICATE

Countersigned this ____ day of June, 2021, 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.

Jason Kaczmarek
Finance Director

This instrument was drafted by and upon
Recording, return to:
Kail Decker, City Attorney

SIX POINTS WEST ALLIS APARTMENTS II LLC

By: Mandel/Six Points West Apartments LLC

Dated: _____

By _____

Name _____

Title _____

Signature page to Second Amendment to Development Financing Agreement