

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (this "Third Amendment") is made and entered into as of the ____ day of July, 2021 by and between West Quarter West, LLC ("WQW") and West Quarter East, LLC ("WQE", and collectively with WQW, the "Developer"), and the City of West Allis, a Wisconsin municipal corporation (the "City").

RECITALS

City and Developer acknowledge the following:

- A. City and Developer entered into that certain Development Agreement dated as of March 22, 2019 (the "Development Agreement") for development of the Project within the District.
- B. City and Developer desire to amend the Development Agreement as set forth herein.
- C. City, pursuant to Common Council action dated July 13, 2021, has approved this Third Amendment and authorized the execution by the proper City officials on the City's behalf.
- D. Developer has approved this Third Amendment and authorized its execution by the appropriate representatives on its behalf.

AGREEMENTS

In consideration of the Recitals and the promises and undertakings set forth herein, the parties do hereby amend the Development Agreement effective as of the date hereof as follows:

- 1. The City of West Allis, subject to Common Council approved dated July 13, 2021, approved a Limited Guaranty offered to Waukesha State Bank (the "Lender"), the lender to Cobalt Partners LLC and/or affiliate leverage lender for the development of a Home 2 Suites franchised hotel located at 12** S. 70th Street (Tax Key No. 439-9001-000) within the Allis-Yards Development area ("Project").
 - a. The Guaranty is hereby attached as **Exhibit A –Limited Guaranty by the City of West Allis** to the Third Amendment to the Development Agreement
 - b. The Guaranty provided by the City to Lender is limited to Four Million Dollars.
 - c. The Guaranty will require a one-time four percent (4.00%) fee paid to the City at Closing for providing the Guaranty.
 - d. As part of the Guaranty, the City requires that affiliate leverage lender and 70th Street Hotel Associates, LLC, the hotel operator, provide financial statements on a semi-annual basis to City or the City's financial consultant to monitor the performance of the hotel.
- 2. Section 4 of the Second Amendment to the Development Agreement is amended to change " June 30, 2021" to " December 30, 2021" for the commencement of construction of the hotel component Preliminary Development Plan outlined in the Development Agreement and subsequent amendments.
- 3. The parties to this Agreement, other than the City, are jointly and severally liable to the City for any amount of money paid by the City to Waukesha State Bank under the Guaranty.

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

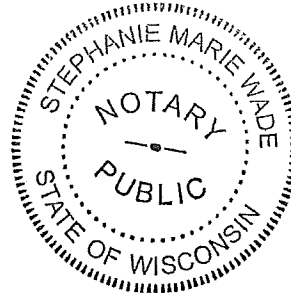
WEST QUARTER WEST, LLC
By: Cobalt Partners, LLC, Manager

By: [Signature]
Scott J. Yauk, Sole Member and Manager

STATE OF WISCONSIN)
Milwaukee COUNTY) ss.

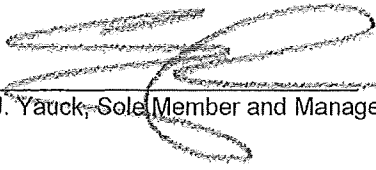
Personally appeared before me this 30th day of July, 2021, the above-named Scott J. Yauk, as the Sole Member and Manager of Cobalt Partners, LLC, the Manager of West Quarter West, LLC, and, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority and acknowledged the same.

[Signature]
Name: STEPHANIE MARIE WADE
Notary Public, State of Wisconsin
My commission expires: May 4, 2023



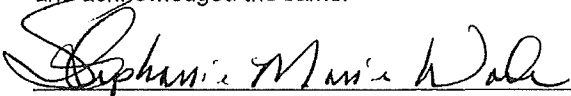
[Signatures Continue on Following Pages]

WEST QUARTER EAST, LLC
By: Cobalt Partners, LLC, Manager

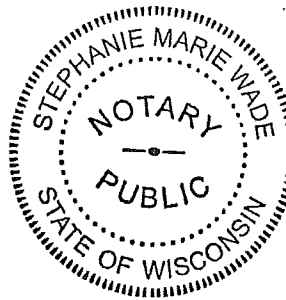
By: 
Scott J. Yauck, Sole Member and Manager

STATE OF WISCONSIN)
Milwaukee COUNTY) ss.

Personally appeared before me this 30th day of July, 2021, the above-named Scott J. Yauck, as the Sole Member and Manager of Cobalt Partners, LLC, the Manager of West Quarter East, LLC, and, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority and acknowledged the same.



Name: STEPHANIE MARIE WADE
Notary Public, State of Wisconsin
My commission expires: May 6, 2023



[Signatures Continue on Next Page]

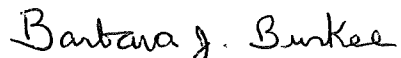
CITY OF WEST ALLIS

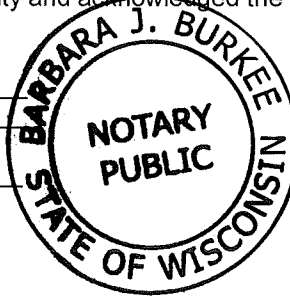
By: 
Dan Devine, Mayor

By: 
Rebecca Grill, City Clerk

STATE OF WISCONSIN)
) ss.
Milwaukee COUNTY)

Personally appeared before me this 30th day of July, 2021, the above-named Dan Devine and Rebecca Grill, the Mayor and City Clerk of the City of West Allis, and to me known to be the persons who executed the foregoing amendment on behalf of the City and by its authority and acknowledged the same.


Name: Barbara J. Burke
Notary Public, State of Wisconsin
My commission expires: 10-18-23



COMPTROLLER'S CERTIFICATE

Countersigned this 30th day of July, 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
City of West Allis
7525 West Greenfield Avenue, Room 232
West Allis, WI 53214

LIMITED GUARANTY

THIS LIMITED GUARANTY ("Guaranty") is made as of October 12, 2021 by the CITY OF WEST ALLIS ("Guarantor"), in favor of WAUKESHA STATE BANK ("Lender").

RECITAL

Guarantor is executing this Guaranty to induce Lender to enter into loan arrangements (the "Loan") with 70th Street Hotel Associates, LLC ("Borrower"), which loan arrangements are evidenced by a Loan Agreement dated October 12, 2021 (and as it may be amended from time to time, the "Loan Agreement") and by a Business Note in the maximum principal amount of Four Million 00/100 Dollars (\$4,000,000.00) executed by Borrower in favor of Lender dated October 12, 2021 (the "Note"). The Loan is made as a part of a transaction for the development of a Home 2 Suites franchised hotel located at 1212 S. 70th Street, West Allis, Wisconsin, to be operated by 70th Street Hotel Associates, LLC ("Operator").

GUARANTY

1. Guaranty of Payment. Subject to the terms of this Guaranty, Guarantor unconditionally guarantees prompt payment of the Loan and all Obligations. For purposes of this Guaranty, "Obligations" means the amount of the Loan and all debts, obligations and liabilities of the Borrower to Lender arising out of the Loan Agreement or the Note (collectively, "Loan Documents"). This is a guaranty of payment.

2. Limitation of Liability.

(a) Guarantor's liability to Lender is initially limited to Four Million and 00/100 Dollars (\$4,000,000.00).

(b) Provided that there is not then a default under the Loan Documents, at such time as Operator obtains an unrestricted certificate of occupancy and has obtained all necessary approvals to open the hotel to the public, Guarantor's liability to Lender will be reduced to Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00).

(c) Provided that there is not then a default under the Loan Documents, at such time as Operator has achieved, and maintained for twelve (12) consecutive months, a debt service coverage ratio, calculated in accordance with the Loan Agreement, of 1.35x, Guarantor's liability to Lender will be reduced to Three Million and 00/100 Dollars (\$3,000,000.00).

(d) Provided that there is not then a default under the Loan Documents, at such time as Operator has achieved, and maintained for twelve (12) consecutive months, a debt service coverage ratio, calculated in accordance with the Loan Agreement, of 1.5x, this Guaranty will finally terminate.

3. Notice and Demand. In the event of a default by Borrower which results in Lender declaring the Loan accelerated, due and payable in writing, Lender will provide Guarantor with a copy of the notice of such default and acceleration and a demand for payment by Guarantor under this Guaranty. Guarantor will thereafter, have One Hundred Eighty (180) days to pay its then applicable liability to Lender.

4. No Impairment of Guaranty. Lender may, with the consent of Guarantor, which consent will not be unreasonably withheld, conditioned or delayed, (a) agree with Borrower to amend any provision of the Loan Agreement or any Loan Document, including any change in the interest rate therein or any change in the amount thereof or the time or manner of payment thereunder, (b) make any agreement with Borrower for the extension, payment, compounding, compromise, discharge or release of any provision of the Loan Agreement or any Loan Document or for any modification of the terms thereof,

(c) release any other guarantor of the Obligations, and (d) release, modify or accept any security for the Obligations, and the liability of Guarantor hereunder shall not be impaired or affected by any of the foregoing. Subject to the limitations of liability in this Guaranty, this Guaranty is valid and enforceable against the Guarantor even though any Obligation is invalid or unenforceable against Borrower. Any Obligation that is invalid or unenforceable against Borrower shall have no legal effect on any agreement between Borrower and Guarantor.

5. Waivers.

(a) Guarantor waives any right, or claim of right, to cause a marshaling of Borrower's assets or to force Lender to proceed against Guarantor, Borrower, any other guarantor, or any other party, in any particular order.

(b) Guarantor expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of acceptance of this Guaranty, presentment for payment, protest or demand, notice of such protest, demand, dishonor or nonpayment, any failure to pursue Borrower or any collateral, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation and any defense arising by reason of any defense of Borrower or by reason of the cessation of the liability of Borrower. Guarantor further waives any defenses based on suretyship or impairment of collateral. Without limiting the generality of the foregoing (i) the liability of Guarantor hereunder shall not be modified in any manner whatsoever by any extension, discharge or rejection that may be granted to Borrower by any court in any proceeding under any bankruptcy act or amendments thereof and the undersigned expressly waives the benefit of any such extension, discharge or rejection, and (ii) this Guaranty shall be reinstated if at any time payment of any of the Obligations is rescinded or must otherwise be restored or returned by any party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower, or Operator, or upon, or as a result of, the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower, or Operator, or any substantial part of either's property, or otherwise, all as though such payment had not been made.

(c) Guarantor hereby waives any claim, including a claim for reimbursement, subrogation, contribution or indemnification, which Guarantor may have against a co-guarantor of any of the Obligations until all Obligations have been paid in full to Lender.

(d) With respect to any of the Obligations, Lender may from time to time, before or after revocation of this Guaranty, without affecting the liability of the Guarantor (i) surrender, release, impair, sell or otherwise dispose of any security or collateral for the Obligations, (ii) release or agree not to sue any guarantor or surety, (iii) fail to perfect its security interest in or realize upon any security or collateral, (iv) fail to realize upon any of the Obligations or to proceed against Borrower or any guarantor or surety, (v) renew or extend the time of payment, (vi) increase or decrease the rate of interest or the amount of the Obligations, (vii) accept additional security or collateral, (viii) determine the allocation and application of payments and credits and accept partial payments, and (ix) determine what, if anything, may at any time be done with reference to any security or collateral, and none of the foregoing shall affect the Guarantor's liability for the full amount of the unpaid Obligations. The Guarantor expressly consents to and waives notice of all of the above.

6. Independent Obligations. The obligations of Guarantor hereunder are independent of the obligations of Borrower and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Borrower is joined therein, or a separate action or actions is or are brought against Borrower. Lender's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies, or by any action, or by any number of successive actions, until and unless the Obligations have been paid and fully performed.

7. No Waiver. No delay on Lender's part in exercising any right, power or privilege under this Guaranty, or any other document executed in connection herewith, shall operate as a waiver of any such privilege, power or right.

8. Borrower and Operator Information. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Borrower and Operator and all other circumstances affecting Borrower's ability to perform its obligations to Lender, or any other party, and agrees that Lender nor any other beneficiary of this Guaranty will have any duty to report to Guarantor any information which such party receives about the financial condition of Borrower or operator. Upon Guarantor's request, and provided such disclosure has been authorized by Borrower or Operator, Lender will provide to Guarantor the most recent financial statements or reporting provided by Borrower and Operator to Lender and will and will respond to Guarantor's reasonable inquiry about the status of the Obligations.

9. (Reserved).

10. Tolling of Statute of Limitations. Any partial payment by Borrower, or other circumstance which operates to toll any statute of limitations as to Borrower, shall also toll the statute of limitations as to Guarantor.

11. Subordination. Guarantor subordinates to Borrower's obligations to Lender, all indebtedness of Borrower to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Borrower to Guarantor, Guarantor further agrees, except as otherwise expressly permitted in a written agreement between Guarantor and Lender, to make no claim therefor until any and all obligations of Borrower to Lender shall have been discharged in full, and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

12. Representations and Warranties. Guarantor hereby represents and warrants that:

(a) This Guaranty has been approved by all necessary municipal action and Guarantor has full power, authority and legal right to execute and deliver, and to perform its obligations under this Guaranty;

(b) this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms;

(c) the execution, delivery and performance of this Guaranty will not violate any provision of any law or regulation applicable to Guarantor.

13. Miscellaneous.

(a) Binding Effect. The terms, provisions, covenants and conditions contained in this Guaranty shall apply to and bind the heirs, administrators, legal representatives, successors and assigns of the Guarantor. The terms, provisions, covenants and conditions contained in this Guaranty shall inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of Lender and each other beneficiary of this Guaranty, including, but not limited to, any subsequent holder of the Loan Documents.

(b) Execution. The parties executing on behalf of Guarantor do so only in their below stated capacity for Guarantor and not individually.

(c) Severability. If any term, provision, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(d) Interpretation. This Guaranty will not be construed against any party by virtue of its drafting.

(e) Governing Law; Venue. The laws of the State of Wisconsin shall govern the validity, construction, performance and effect of this Guaranty. Except as otherwise required by applicable law, Guarantor hereby irrevocably:

(i) AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY MANNER RELATING TO, OR ARISING OUT OF, THIS AGREEMENT OR THE OBLIGATIONS MAY BE BROUGHT ONLY IN COURTS OF THE STATE OF WISCONSIN LOCATED IN MILWAUKEE COUNTY OR THE FEDERAL COURT FOR THE EASTERN DISTRICT OF WISCONSIN AND THE GUARANTOR CONSENTS TO THE JURISDICTION OF SUCH COURTS.

(ii) WAIVES ANY OBJECTION GUARANTOR MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH COURT AND ANY RIGHT GUARANTOR MAY HAVE NOW OR HEREAFTER HAVE TO CLAIM THAT ANY SUCH ACTION OR PROCEEDING IS IN AN INCONVENIENT COURT.

(f) Attorneys' Fees. In the event any action is commenced between Lender and Guarantor in connection herewith, or in the event of any other proceeding with respect to, or affecting, this Guaranty, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

(g) Revocation. This is a continuing guaranty and shall remain in full force and effect until Lender receives written notice of its revocation by Guarantor. Upon revocation, this Guaranty shall continue in full force and effect as to all Obligations contracted for or incurred before revocation, and as to them Lender shall have the rights provided by this Guaranty as if no revocation had occurred. Any renewal, extension or increase in the interest rate of any such Obligation, whether made before or after revocation, shall constitute an Obligation contracted for or incurred before revocation. Obligations contracted for or incurred before revocation shall also include credit extended after revocation pursuant to commitments made before revocation.

(h) Notice. Any notice required or permitted to be given hereunder, shall be deemed given two days after deposit of such notice in the U.S. mail, postage prepaid, return receipt requested; one day after deposit of same with a national commercial overnight delivery service; or upon transmission by facsimile transmission, provided that confirmation of such facsimile transmission is received and a copy of such transmission is within one day thereafter forwarded by U.S. Mail or commercial overnight delivery service; in the case of any of the foregoing, addressed as follows:

To Guarantor:

CITY OF WEST ALLIS
Attention: Patrick Schloss
7525 W. Greenfield Avenue
West Allis, WI 53214

and

CITY OF WEST ALLIS
Attention: Kail Decker
7525 W. Greenfield Avenue
West Allis, WI 53214

To Lender:

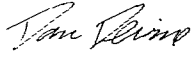
WAUKESHA STATE BANK
Attention: Kyle R. Kees
151 E. St. Paul Avenue
Waukesha, WI 53188

(i) **WAIVER OF JURY.** THE GUARANTOR AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE), BETWEEN OR AMONG THEM, ARISING OUT OF OR IN ANY WAY RELATED TO, THIS GUARANTY, THE LOAN DOCUMENTS, OR ARISING OUT OF, OR IN ANY WAY RELATED TO, THE RELATIONSHIP AMONG THE PARTIES AS GUARANTOR AND LENDER OR OTHERWISE.

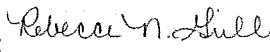
[Signature Page Follows]

[Signature Page – Limited Guaranty]

CITY OF WEST ALLIS

By: 
Print: Dan Devine
Title: Mayor

ATTEST:

By: 
Print: Rebecca Grill
Title: City Clerk

Countersigned at West Allis this 5th day of
October, 2021, and I hereby certify that provisions
have been made to pay the liability that will accrue
under this contract by the City of West Allis.

By: 
Print: Jason Kaczmarek
Title: Comptroller