

**THE COLLECTIVE ON 4TH
DEVELOPMENT AGREEMENT
(NSA)**

This Collective on 4th Development Agreement (hereafter "Agreement") is made and effective as of [_____, 2024] by and among the **City of La Crosse**, Wisconsin, a Wisconsin municipal corporation with offices located at 400 La Crosse Street, La Crosse, Wisconsin, 54601 ("**City**"), **Cinnaire Solutions Corporation**, a Michigan nonprofit corporation with offices located at 10 East Doty Street, Suite 617, Madison, Wisconsin 53703 ("**Developer**"), and Collective on Fourth, LLC, a Wisconsin limited liability company, with offices located at 10 East Doty Street, Suite 617, Madison, Wisconsin 53703 ("**Owner**").

WITNESSETH:

Whereas, Developer proposes to cause Owner to own, construct and develop property into 62 apartments with a multi-purpose community center, defined below as the "**Project**," within the City of La Crosse on property it proposes to own, all of which property is more particularly described in **Exhibit A ("Real Estate")**;

Whereas, the goals for the Real Estate include residential development and undertaking public improvements that promote desirable and sustainable uses, which further serve the needs of the community as well as fulfilling the aesthetic character standards of the City;

Whereas, Section 66.1105, Wis. Stat., empowers cities to assist development projects by lending or contributing funds as well as performing other actions of a character which the City is authorized to perform for other general purposes;

Whereas, the City has found and determined that: (1) the economic vitality of the Real Estate is essential to the economic health of the City and other taxing jurisdictions within the City; (2) the proposed development of the Real Estate through the construction of the Project is an integral part of the residential needs of City residents, local businesses and the surrounding area; and (3) the benefits to be gained by the City as a result of the Project are greater than the costs to the City under this Agreement;

Whereas, Owner, Developer, and the City agree that the Real Estate's development and improvement shall (1) result in a social and aesthetic benefit to the City and the surrounding area, including, without limitation, growth in the tax base and an increase in affordable housing; and (2) be secured for the future benefit of the citizens and the community through the construction and development of the Project all in accordance with the Project Plan prepared by the Developer and approved by the Design Review Committee and Common Council;

Whereas, the City desires the Project to proceed for the reasons set forth above and ultimately to provide increased tax revenues for the City and various taxing jurisdictions authorized to levy taxes;

Whereas, in order to induce Developer and Owner to undertake the Project, the City has agreed to pay for certain costs included in the project plan through the use of existing municipal funds and/or the use of federal grant funds and to provide other assistance to Developer and Owner as provided by this Agreement, all in accordance with the terms and conditions of this Agreement;

This space is reserved for recording data
Return to City Attorney 400 La Crosse Street La Crosse WI 54601
Parcel Identification Number/Tax Key Number

Whereas, the City finds and determines that certain cash grant payments to Developer and certain loans to Owner, each as detailed in this Agreement, are necessary and convenient to the implementation of the Project Plan;

Whereas, Developer and Owner each declare that “but for” this Agreement, it would not undertake the Project;

Whereas, the City, Owner, and Developer wish to set forth in this Agreement their respective commitments, understandings, rights and obligations in connection with the Project as more fully described herein and to further provide for the implementation of the Project; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein exchanged, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I

PURPOSE; LAND; DEFINITIONS; EXHIBITS

1.1. Land Affected. The parties acknowledge that the Project will encompass and/or affect the following real property:

The Real Estate, described on **Exhibit A**, and certain public streets and rights-of-way serving the same.

1.2. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer and Owner to undertake the Project, to promote community development and to expand and enhance the tax base and stimulate residential activity within the City, the City intends to provide herein described funds and assistance to Developer and/or Owner so that Owner will undertake certain project costs and public improvements, if any, necessary for the Project, all as set forth in this Agreement. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed. Owner, Developer, and the City plan to work together to undertake the Project on the Real Estate all as more fully described herein and in the Project Plan and as approved by the Design Review Committee and Common Council. Developer guarantees the terms of this agreement applicable to Owner.

1.3. Certain Definitions. In addition to the words and phrases elsewhere defined in this Agreement, the following words and phrases, when having an initial capital letter, shall have the following meanings:

- a. **"Agreement"** means this Collective on 4th Development Agreement by and between the City, Owner, and Developer, as amended and supplemented from time to time.
- b. **"City"** means the City of La Crosse, Wisconsin, a Wisconsin municipal corporation.
- c. **"Construction Lender"** means Merchants Bank, National Association.
- d. **"Construction Loan"** means the first mortgage construction loan made by the Construction Lender to the Owner for the acquisition of the Real Estate and the construction of the Project as evidenced by the Construction Loan Documents.
- e. **"Construction Loan Documents"** means all agreements, assignments, certificates and/or other documents by and between the Construction Lender, Developer, Owner and/or others, relating to the Construction Loan.

- f. **"Construction Schedule"** means the construction timetable set forth on **Exhibit D**.
- g. **"Contribution"** means the financial contribution in the form of a loan to Owner and a cash grant to Developer, each of which is made through this Agreement to incentivize Owner to undertake the development.
- h. **"Developer"** means Cinnaire Solutions Corporation, a Michigan nonprofit corporation.
- i. **"Investor"** means Cinnaire Fund for Housing Limited Partnership 40, a Delaware limited partnership, its successors and/or assigns, who is the investor member of Owner.
- j. **"Owner"** means Collective on Fourth, LLC, a Wisconsin limited liability company.
- k. **"Plans and Specifications"** means the plans and specifications for the Project contained in the Project Plan (defined below), as approved by the City, as such Plans and Specifications are modified by Owner from time to time.
- l. **"Project"** means the development and improvement of the Real Estate by constructing at the 4th & Jackson St site: (1) a four-story apartment building consisting of sixty-two units in accordance with the Project Plan; and (2) a community room, as described in more detail on **Exhibit B** and in accordance with the Project Plan. Subject to the terms and conditions of this Agreement, uses for the Project shall be determined by zoning. The term, "Project" excludes personal property and land.
- m. **"Project Plan"** means the Project Plan for the Real Estate prepared by the Developer and approved by the Design Review Committee and Common Council as well as (i) all subsequent revisions thereto that are prepared by Developer and approved by the Design Review Committee and Common Council, and (ii) minor modifications made thereto in coordination with appropriate City inspectors and staff prior to or during construction of the Project.
- n. **"Project Cost Breakdown"** means the minimum construction costs of the Project and consists of the cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, construction, financing, contingency and all other direct and indirect costs of construction of the Project, all as described in more detail on **Exhibit C** and in accordance with the Project Plan.
- o. **"Real Estate"** means the real property described in **Exhibit A**.
- p. **"Signature Date"** has the same meaning as provided in Section 8.22 of this Agreement.
- q. **"Substantial Completion"** means the completion of the improvements to the Real Estate materially in accordance with the Plans and Specifications, (except for punch list items, exterior painting, and landscaping) and the issuance by the Project architect of a certificate of substantial completion and the issuance of a certificate of occupancy from the City with respect to the occupancy of the apartment units. Subject to unavoidable delays beyond the control of Owner, any such incomplete items shall be fully completed within a reasonable time after the date of Substantial Completion, but not to exceed ninety (90) days thereafter except site improvements such as landscaping shall be completed no later than two hundred forty (240) days after the date of Substantial Completion if weather or other conditions beyond the control of Owner prevent completion of the same.

- r. **“Available Cash Flow”** means that part of the gross operating income of the Project remaining as of the end of each fiscal year of Owner after payment of, or the reservation of funds for the payment of the following: (i) all costs and expenses of any type incident to the equipping, ownership and operation of the Project including, without limitation, costs of capital improvements to the Project; (ii) scheduled debt service payments for the permanent promissory note regarding the Project payable by Owner to Wisconsin Housing and Economic Development Authority (“WHEDA”); and (iii) all amounts due to be deposited or escrowed during such fiscal year under the terms of all loan documents by and between WHEDA and Owner regarding the Project. For clarification, the Available Cash Flow calculation will include all revenue available to the Project, including but not limited to residential rents, commercial revenue, parking revenue, laundry/vending revenue, and other miscellaneous Project revenue. Available Cash Flow shall be applied according to the Available Cash Flow waterfall set forth in the following subsections (i) to (vi), i.e., shall be used to make payments in the following order: (i) the Investor’s asset management fee; (ii) the annual payment due to WHEDA under the surplus cash permanent promissory note (“WHEDA Note #2”) regarding the Project by Owner payable to WHEDA, in full or in part, to the extent Owner has Available Cash Flow; (iii) replenishment of any operating deficit reserve, if required by Owner's to-be-executed amended and restated operating agreement; (iv) payment of the deferred developer fee, if any (no interest may be paid on the deferred developer fee until WHEDA Note #2 is paid in full); (v) fifty percent (50%) of the remaining balance of Available Cash Flow, if any, shall be applied to the then-outstanding principal balance of WHEDA Note #2; and (vi) the remaining balance, if any, to the City Loan.

1.4. **Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:

- a. **Exhibit A.** Legal Description of Real Estate
- b. **Exhibit B.** Description of Project
- c. **Exhibit C.** Project Cost Breakdown
- d. **Exhibit D.** Construction Schedule
- e. **Exhibit E.** ARPA Requirements
- f. **Exhibit F.** Staging Agreement
- g. **Exhibit G.** Land Use Restriction

ARTICLE II

DEVELOPER/OWNER OBLIGATIONS

2.1. **Acquire the Real Estate; Assignment and Assumption of Purchase Agreement Rights to Owner.** On or around April 1, 2024, but in no event later than August 30, 2024 if such delay is necessary, Owner shall acquire fee simple title to the Real Estate. The purchase price for the Real Estate shall be Two Hundred Thirty Thousand and NO/100th Dollars (\$230,000.00). The transfer of the Real Estate is governed by that certain WB-11 Residential Offer to Purchase dated August 29, 2021 and accepted June 10, 2022, as modified by that certain First

Amendment to WB-11 Residential Offer to Purchase dated January 13, 2023 by and between the Developer and the City, as further modified by that certain Second Amendment to WB-11 Residential Offer to Purchase dated July 31, 2023 by and between the Developer and the City (collectively, the “**Purchase Agreement**”). Developer has assigned its right, title and interest in and to the Real Estate pursuant to the Purchase Agreement to Owner, but remains guarantor to the Purchase Agreement, and Owner hereby assumes Developer’s right, title and interest in and to the Real Estate pursuant to the Purchase Agreement. The City acknowledges such assignment.

2.2. Develop the Real Estate. Owner agrees to develop and improve the Real Estate by undertaking the Project, in accordance with the Project Plan, the Project Cost Breakdown and the Construction Schedule.

- a. Site Preparation.** Owner shall prepare the Real Estate for construction of the Project, including, without limitation, any necessary demolition or other removal of improvements or preparation currently located on the Real Estate.
- b. Construction Schedule.** Owner shall commence or cause other entities to commence construction on the Project, as described in **Exhibit B**, no later than August 30, 2024 with Substantial Completion no later than October 31, 2025, all in accordance with the Construction Schedule set forth on **Exhibit D**.
- c. Contemplated Construction Costs.** Owner agrees that the buildings and improvements associated with the Project shall have an aggregate minimum construction cost of not less than eleven million five hundred thousand dollars (\$11,500,000.00). The Project Cost Breakdown is provided on **Exhibit C**.
- d. Rights of Access.** Owner shall permit the representatives of the City to have access to the Project at all reasonable times during and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement including, but not limited to, access for inspection of all work being performed in connection with the Project as set forth in the Project Plan. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Agreement. Any right of access is expressly subject to rights of tenants under applicable law to receive notice.
- e. Project Plan.** Owner has submitted a Project Plan setting forth all the details of construction and development to the City Plan Commission for review and approval. Said Project Plan must conform in all material respects to the provisions of this Agreement, all applicable federal, state and local laws, ordinances, rules and regulations and shall include preliminary and final building, site and operational Plans and Specifications, including, without limitation: (1) building plans and specifications; (2) architectural plans, renderings and specifications; (3) building material plans and specifications; (4) preliminary and final site plans; (5) landscaping plans; (6) stormwater and erosion control plans; (7) lighting plans; (8) signage plans and specifications; (9) water and sewer plans; and (10) any other preliminary or final plans, specifications or other requirements as determined by the City Planner. The City Planner may determine, in his sole and absolute discretion, whether one or more of the above requirements is applicable to the Project’s Project Plan.

2.3. Local Subcontractors. It is agreed by Owner that Owner shall engage (or cause its general contractor to engage) local subcontractors, workers as well as local suppliers for material. The term subcontractor is as defined in Section 66.0901(1)(d), Wis. Stat. The word, “local,” shall mean that the subcontractors and suppliers of material have their principal place of business within the City of La Crosse or within a seventy-five (75) mile radius of the City of La Crosse, Wisconsin. Owner further agrees to provide to the City Engineer a list of all subcontractors and it further agrees that eighty percent (80%) of all work performed by subcontractors for construction shall be performed by subcontractors located within the City or seventy-five (75) miles of the City of La

Crosse; provided, however, such calculations shall exclude precast and elevator subcontractors. In determining whether the eighty percent (80%) threshold has been met, the parties shall measure based upon the dollar values of said work, subject to the exclusion above. If Owner does not meet this requirement, it may request a waiver from the City Engineer providing reasons for the request of the same, such as the absence of available local contractors. This Section does not apply to fixtures, furnishings and equipment.

2.4. Compliance with Planning and Zoning; Use. Owner, at its own expense, shall obtain all approvals, permits and licenses as may be required by any governmental or non-governmental entity in connection with the Project. Any conditions imposed on Owner to obtain any approval, permit or license must be acceptable to the City. Neither Developer nor Owner will initiate, approve, consent to nor participate in any change or modification of the zoning in effect for the Real Estate or any portion thereof, or a proposal therefor, without the City's prior written consent. No property within the Real Estate shall be used for any use other than as set forth in the Project Plan and this Agreement and as approved by the City, including any conditions attendant with such approval, unless such use is further approved by the City under its normal zoning, review and approval procedures.

2.5. Maintenance and Repair. Owner agrees that at all times after construction of the Project, it will keep and maintain the Real Estate and the Project in good condition and repair.

2.6. Taxes. It is understood that the land and improvements resulting from the Project shall be subject to property taxes. During its ownership of the Real Estate, Owner shall pay when due all federal, state and local taxes in connection with the Real Estate and all operating expenses in connection with the Real Estate and Project.

2.7. Transfer or Sale of Real Estate.

- a. Notice of Intent to Transfer.** No property within the Real Estate may be sold, transferred, or otherwise conveyed unless the Owner first provides to the City written notice of intent to transfer the property at least forty-five (45) days before the sale, transfer or conveyance is to occur. This Section 2.7 shall not apply to nor restrict (i) a transfer to Owner's financing entity, e.g. placing a mortgage on the Real Estate nor a residential or commercial lease agreement for individual residential living units, individual commercial lease spaces, or parking spaces; (ii) the acquisition by Investor or an affiliate thereof of the managing member interests in Owner (to effect the unwinding of the tax credit structure); nor (iii) any other action taken by the Construction Lender in accordance with the Construction Loan Documents or in connection with the Construction Loan. Notwithstanding anything else, for the following transfers, Investor or the applicable senior lender of Owner (including, without limitation, the Construction Lender), as applicable, agrees to use commercially reasonable efforts to notify the City within a reasonable amount of time of such transfer: (x) a transfer of Investor's interest; (y) a transfer of the beneficial interests of Owner in accordance with Owner's to-be-executed amended and restated operating agreement with the Investor; and (z) foreclosure actions in accordance with Wisconsin Statutes.
- b. No Transfer to Exempt Entities.** No property within the Real Estate may be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would or may render any part of the Real Estate exempt from property taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement satisfactory to the Economic & Community Development Commission providing for payments in lieu of taxes to the City. This restriction shall terminate on April 1, 2040; provided, however, that notwithstanding an event thereafter that would otherwise render all or any part of the Real Estate exempt from property taxation, the Real Estate shall remain subject to the "Local Municipality" portion of such property taxation attributable to the Real Estate at all times from the period beginning on April 1, 2040 and ending on April 1, 2046. If requested by

the City, the Owner shall execute a separate agreement reasonably acceptable to the Owner to effect the intent of the foregoing sentence.

- c. **Assignees and Transferees Bound by Agreement.** Any assignee or purchaser or transferee of any portion of the Real Estate shall be bound by the terms and conditions of this Agreement, which shall run with the land and be binding upon all such assignees, purchasers and transferees. Owner shall not sell or transfer any portion of the Real Estate to any entity unless and until Owner has provided the City with written evidence satisfactory to the Economic & Community Development Commission that such assignee or entity has agreed in writing to be bound by the terms of this Agreement. Any such sale, transfer or conveyance of any portions of the Real Estate shall not relieve Owner of its obligations hereunder.
- d. **Subdivision.** Property within the Real Estate shall not be further subdivided without approval of the City.

2.8. Easements. Owner shall grant the City or any public utility such easements as reasonably necessary for utilities or any other need necessary to effectuate development of the Real Estate in accordance with the Project Plan, at no cost to the City. The City shall grant to Owner a temporary construction staging agreement over adjacent property to the Real Estate that is owned by the City, such agreement to be substantially in the form attached hereto as **Exhibit F**.

2.9. Insurance. For so long as Owner owns the Real Estate, Owner shall maintain insurance in such amounts and against such risks both generally and specifically with respect to the Real Estate, as are customarily insured against in developments of like size, kind and character, including customary builders risk insurance during construction and customary casualty, property and liability insurance, with deductibles in accordance with reasonable industry practice. Notwithstanding, Owner shall carry casualty insurance for the Project at not less than the replacement value and further agrees and covenants to apply, and to require any purchasers or transferees of any portion of the Real Estate to apply, any and all insurance proceeds to rebuild the Project, maintain the Project and Real Estate and to name the City as an additional insured to the extent of this covenant provided in this Section. Owner shall provide to the City certificates of all such insurance. Upon repayment of by Owner of the indebtedness to the City, described below, Owner shall no longer have an obligation to name the City as an additional insured with respect to the Real Estate.

2.10. Indemnity.

- a. **Owner Indemnity.** Owner shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of action or inaction by Owner related to this Agreement, unless such claims, causes of action, or demands are due to: (a) the Indemnified Party failing to perform its obligations to Owner; or (b) any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Owner shall appear for and defend the Indemnified Party, at Owner's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.
- b. **Developer Indemnity.** Developer shall indemnify and hold harmless the City, its officers, employees and authorized representatives, ("Indemnified Party"), from and against any and all liabilities, including, without limitation, remediation required by any federal or state

agency having jurisdiction, losses, damages, costs, and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by the Indemnified Party on account of act or omission by Developer related to this Agreement, unless such claims, causes of action, or demands are due to: (a) the Indemnified Party failing to perform its obligations to Developer; or (b) any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action or proceeding to which the Indemnified Party may be made a party by reason of any of the foregoing.

2.11. Utilities.

- a. Other Utilities.** Owner shall be responsible for, pay for and cause electrical power, telephone facilities, cable TV lines, and natural gas facilities to be installed in such a manner as to make proper and adequate service available to each building in the Project, as described in the Project Plan. Plans indicating the proposed location of each such utility to service the Project shall be shown on the Project Plan and construction plans to be provided to the City Plan Commission for approval prior to the installation of the utility.
- b. Water and Sewer.** Owner shall be solely responsible for and shall pay all costs of connecting water and sewer service from the public streets, alley, right of way, or other approved infrastructure to the buildings within the Real Estate.

2.12. Restrictions. Owner agrees to neither use nor allow a third-party to use the Real Estate for adult entertainment, pawnshops, mini-warehouses, car title loan business, payday lenders, tattoo parlors, and/or off-premise signs for a period of twenty (20) years. "Payday lenders" and "car title loan business" shall exclude banks and credit unions. This shall be a deed restriction against the Real Estate and shall run with the land.

2.13. Record Retention. Developer and Owner each understand and acknowledge that the City is subject to the Public Records Law of the State of Wisconsin. As such, Developer and Owner each agree to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years. Likewise, Developer and Owner each agree to assist the City in complying with any public records request that it receives pertaining to this Agreement. Additionally, Developer and Owner each agree to indemnify and hold the City, its officers, employees and authorized representatives harmless for any liability, including without limitation, reasonable attorney fees relating to or in any way arising from Developer's or Owner's actions or omissions which contribute to the Indemnified Party's inability to comply with the Public Records Law. In the event Developer or Owner, as applicable, decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive termination of this Agreement.

2.14. Repair and/or Replacement of Infrastructure. Owner shall repair and/or replace any damaged City infrastructure or other City property that may occur as a result of the construction of the Project, including, without limitation, sidewalks, landscaping, asphalt and light poles. Said repair and/or replacement shall be to the satisfaction of the Board of Public Works.

ARTICLE III

CITY OBLIGATIONS

3.1. Project Assistance. The City has agreed to make the following Contributions to the development of the Project:

- a. **ARPA Grant.** On or about the date Owner acquires the Real Estate, the City will provide Seven Hundred Thousand and no/100ths Dollars (\$700,000.00) as a grant to Developer (the “**Grant**”), the proceeds of which derive from the American Rescue Plan Act – State and Local Fiscal Recovery Funds. Developer is obligated to provide the proceeds of the Grant to Owner as a loan, repayable over time to Developer. In connection with the City providing the Grant to Developer, which will be loaned to Owner, Developer and Owner agree that at all times their acts in connection with the Grant proceeds and use of the proceeds of the Grant in financing the Project will always be in conformance with the regulations and requirements imposed on subrecipients under 31 C.F.R. Part 35 adopted in connection with the Coronavirus State and Local Fiscal Recovery Funds (established under Section 602 and 603 of the Title VI of the Social Security Act by Section 9901 of the American Rescue Plan Act (“**ARPA**”)) and any compliance requirements or guidance issued in connection therewith, specifically including the federal requirements set forth on **Exhibit E** hereto (all collectively referred to as the “**Program Requirements**”). Additionally, Owner will cause a land use restriction agreement to be recorded against the Real Estate (which will run in favor of Wisconsin Housing and Economic Development Authority) restricting use of the Real Estate to affordable housing purposes, as more fully set forth hereinbelow.

- b. **City Loan.** The City shall make a loan to Owner in the original principal stated amount of One Million One Hundred Thousand and no/100ths Dollars (\$1,100,000.00) and with such other terms as approved by the parties (the “**City Loan**”). The City Loan will be repaid from Available Cash Flow of the Owner. Thus, repayment of the City Loan will only occur to the extent there is Available Cash Flow as defined hereinabove, so long as full repayment occurs on schedule. The City shall disburse the proceeds of the City Loan as reimbursement of Project costs incurred in accordance with the Project Plan, upon reasonable evidence provided to the City from time to time. The City will withhold 10% of the City Loan until the Owner is able to achieve Substantial Completion, as determined by the City in its sole but reasonable judgment. The City Loan will be evidenced by a promissory note, secured by a mortgage, not subject to an ongoing guaranty, and shall be non-recourse to the Owner and its members. The City Loan shall be subordinated to senior financing provided by Wisconsin Housing and Economic Development Authority.

3.2. **Certificate of Completion; Estoppel Certificates.**

- a. **Certificate of Completion.** Upon completion of the improvements by Owner and review of the improvements by the City, the City shall provide Owner with an appropriate recordable instrument certifying that the improvements have been made in accordance with this Agreement and the Project Plan, and any amendment or modifications thereto.

- b. **Estoppel Certificates.** Upon written request to the City by the Developer, the Owner, the Owner's senior lender or the Investor, the City shall provide customary estoppel certificates, certified to those parties identified by the requestor, certifying that (i) this Agreement has not been modified, changed, altered, assigned, supplemented or amended in any respect since the date of execution (or describing any such modification, change, alteration, assignment, supplement or amendment); (ii) to the best of the City's knowledge, neither the City, the Developer nor the Owner is in default of its obligations under this Agreement and, to the best of the City's knowledge, no event has occurred nor does any condition exist that with the giving of notice or the passage of time, or both, would

constitute such a default (or specifying such defaults and/or such conditions if any are claimed); and (iii) this Agreement is valid and in full force and effect. If the City does not deliver such estoppel certificate(s) within fifteen (15) days following the valid written request therefor, then such non-delivery shall automatically be deemed to be a certification as of the end of such fifteen (15) day period by the City of items (i) through (iii), above, non-inclusive of the parenthetical provisions therein.

3.3. Assistance with Zoning Changes. If necessary, the City Planning Department shall initiate the process in accordance with the City's zoning code to attempt to provide appropriate zoning for the Real Estate being developed by Owner so that the zoning for the Project is in accordance with the City's comprehensive plan for the area.

3.4. City Performance Subject to Required Government Approvals. Owner and Developer each acknowledge that various of the specific undertakings of the City described in this Agreement may require approvals from the City Council (and other City bodies) and other public bodies, some of which approvals may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Agreement are conditioned upon the obtaining of all such approvals in the manner required by law. The City cannot assure that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain them on a timely basis.

3.5. Subsequent Phases. Any subsequent development of the Real Estate will be addressed in a separate development agreement.

3.6 Collateral Assignment. If requested by a senior lender (including, without limitation, the Construction Lender), the City will reasonably consider entering into a collateral assignment of this Agreement, such that the senior lender (including, without limitation, the Construction Lender) in a foreclosure action is permitted to the rights, conditioned upon performing the responsibilities, of Owner and/or Developer as more fully set forth herein.

ARTICLE IV

CONDITIONS PRECEDENT TO CITY OBLIGATIONS

The City's obligations under this Agreement are conditioned upon the provisions contained herein. If all conditions contained in this Article are satisfied, or if the City waives in writing said conditions, then the conditions shall be deemed satisfied. Otherwise, the City, at its option, in its absolute and sole discretion, may at any time thereafter terminate this Agreement by giving notice in writing thereof to Developer. In such event, this Agreement shall be terminated and no party shall have any further liability or obligation to the other hereunder. All submissions given by Developer to the City to satisfy the conditions contained in this Article must be satisfactory in form and content to the City.

4.1. Existence. Developer and Owner shall have each provided a certified copy of Developer's formation documents and a good standing certificate issued by the appropriate governmental authority of the state of said entity's incorporation.

4.2. Incumbency; Due Authorization. Developer and Owner shall have each provided a certificate of incumbency and resolutions, which resolutions shall provide that Developer and Owner each have been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

4.3. No Violation or Default. Neither Owner nor Developer shall be in violation of any of its governing documents or other contracts. Neither Owner nor Developer shall be in material default under the terms of any other agreement or instrument to which it is a party or an obligor.

4.4. Financing Commitment. Owner shall obtain and provide to the City: (1) a written financial commitment from a conventional lender, (2) written construction contract to construct and finance the Project, (3) other written proof of financial resources to construct the Project, or (4) any combination thereof. Said documents shall demonstrate sufficient funds for the construction, furnishing, equipping and installation of the Project in an amount not less than sixteen million dollars (\$16,000,000.00). Said documents shall be acceptable in all respects to City, in the sole and absolute discretion of the Finance Director and Economic & Community Development Commission. Owner shall have closed the City Loan, or be prepared to close the City Loan. Owner shall have provided copies of the documents to be executed in connection with the senior construction loan to the City.

4.5. Plans and Specifications. Owner or Developer shall have provided the Project Plan, which Project Plan is acceptable in all respects to the City and has been approved by the City Plan Commission with input, if any, from the Board of Public Works.

4.6. Survey. Owner shall provide an ALTA survey of the Real Estate certified to the City by a Wisconsin registered land surveyor, showing the location of all improvements now prior to commencing construction and to be located thereon after said improvements are built pursuant to the Project Plan, all easements, pathways, exterior boundary lines, walkways, private and public streets, adjoining public streets and alleys, utilities, exits and entrances, all curbs, gutters, sidewalks, medians and lighting. The survey must show a state of facts acceptable to the Board of Public Works.

4.7. Insurance. Owner shall have delivered to the City certificates of all insurance required under this Agreement showing the City as a named insured. Said insurance shall not be cancelled, non-renewed nor have any material changes without providing thirty (30) days advanced written notice to the City.

4.8. Financial Statements. Developer shall present a copy to the City's Finance Director of the most recent audited financial statements by a certified public accountant for Developer and any successors or assigns or transferees of Developer and each of the members of any of the foregoing and each member of the Board of Directors (or equivalent) of any of the foregoing. The financial statements must show a financial condition acceptable to the City, in the judgment of the City's Finance Director, to be sufficient to carry out the duties of this Agreement. The financial statements must be in form and content acceptable to the City, in the judgment of the City's Finance Director. In the event the financial statements are in unacceptable form and content, the City's Finance Director may identify alternative financial records for production by Developer.

4.9. Acquisition of Real Estate. The Developer shall have acquired fee simple title to the Real Estate no later than August 30, 2024 in accordance with Section 2.1 of this Agreement and the Purchase Agreement. If this condition is not met, then this Agreement shall terminate without further action of the City, Owner, or Developer. Upon such termination of this Agreement, the parties shall have no further rights or obligations to the other hereunder.

4.10. Approvals and Permits. Owner shall at its expense have obtained all approvals and permits necessary to undertake the Project on the Real Estate, including but not limited to, site plan review, zoning approvals, and any other local, state or federal approvals or permits.

4.11. Compliance with Law. Owner and Developer shall each comply in all respects with any and all applicable federal, state and local laws, regulations and ordinances.

4.12. Compliance with Agreements. Developer and Owner shall each be in compliance with this Agreement and all other agreements it may have with the City.

ARTICLE V

CONDITIONS PRECEDENT TO DEVELOPER'S AND OWNER'S OBLIGATIONS

Developer's obligations and Owner's obligations under this Agreement are conditioned upon the following:

5.1. Acquisition of Real Estate. Owner shall have acquired fee simple title to the Real Estate no later than August 30, 2024 in accordance with Section 2.1 of this Agreement and the Purchase Agreement. If this condition is not met, then this Agreement shall terminate without further action of the City, Owner or Developer other than any rights or remedies arising from a breach of the Purchase Agreement by a party thereto. Upon such termination of this Agreement, the parties shall have no further rights or obligations to the other hereunder.

5.2 City Loan Documents Executed. Concurrent with the acquisition of the Real Estate by Owner, the City shall execute and deliver to Owner loan documents evidencing the City Loan on terms and conditions set forth herein and otherwise mutually and reasonably agreeable to the parties.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to and covenants with the City and Owner, Owner represents and warrants to and covenants with the City and Developer, and the City represents and warrants to and covenants with Developer and Owner as respectively follows:

6.1. Financial Statements / No Material Change. All copies of financial statements, documents, contracts and agreements which Developer and Owner has furnished to the City, or its agents are true and correct. There has been no material change in the business operations of Developer or Owner since the date of the last financial statement furnished to the City except pursuant to the conduct of its ordinary business.

6.2. Taxes. Developer and Owner have each paid, and shall pay when due, all federal, state and local taxes, and shall promptly prepare and file returns for accrued taxes. If necessary, Owner shall pay when due all special charges required under the terms of this Agreement.

6.3. Compliance with Zoning. Owner covenants that the Real Estate, upon completion of the Project, will conform and comply in all respects with applicable federal, state, local and other laws, rules, regulations and ordinance, including, without limitation, zoning and land division laws, building codes and environmental laws.

6.4. Payment. All work performed and/or materials furnished for the Project shall be fully paid for by Owner.

6.5. Certification of Facts. No statement of fact by Developer or Owner, as applicable, contained in this Agreement and no statement of fact furnished or to be furnished by Developer or Owner, as applicable, to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

6.6. Good Standing. Owner is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is a nonprofit corporation duly formed and validly existing under the laws of the State of Michigan and is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

6.7. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer and Owner hereunder have been duly authorized by all necessary corporate action of Developer and Owner, respectively, and constitute valid and binding obligations of Developer and Owner, respectively, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally. The City represents and warrants to Developer and Owner that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by City under this Agreement.

6.8. No Conflict. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's Articles of Incorporation or Bylaws or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer. The execution, delivery, and performance of Owner's obligations pursuant to this Agreement will not violate or conflict with Owner's Articles of Organization or Operating Agreement or any indenture, instrument or material agreement by which Owner is bound, nor will the execution, delivery, or performance of Owner's obligations pursuant to this Agreement violate or conflict with any law applicable to Owner.

6.9. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer, Owner, or the Project or any guarantor that would adversely affect the Project, Developer, Owner, or any guarantor or the priority or enforceability of this Agreement, the ability of Owner to complete the Project or the ability of Owner or Developer to perform its respective obligations under this Agreement.

6.10. Certification of Costs. Developer and Owner represent and warrant that, as of the date hereof, the Project Cost Breakdown accurately reflects all costs of the Project that will be incurred by Owner in the completion and construction of the Project, and the City shall be entitled to rely on the Project Cost Breakdown submitted by Owner. Neither Developer nor Owner know of any circumstances presently existing or reasonably likely to occur which would or could result in a material adverse variation or deviation from the Project Cost Breakdown.

6.11. No Default. No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer and Owner are not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer or Owner, respectively, is a party or an obligor.

6.12. Fees and Commissions. The City shall not be liable for any broker fees or commissions incurred by the Developer or Owner in connection with any transactions contemplated by this Agreement.

6.13. Financing Accommodation.

- a. **No Assignment.** Owner, its successors, assigns and transferees will not transfer, assign, convey or encumber, nor will Developer, its successors, assigns or transferees agree to or permit the transfer, assignment, conveyance or encumbrance of the Project or any of the Real Estate except as provided in Sections 2.7 and 8.1 of this Agreement. The principals, shareholders, members, managers and/or partners of Developer, its successors, assigns and transferees will not transfer, assign, convey or encumber their respective interests in Owner, its successors, assigns or transferees, as the case may be, other than as set forth in Section 2.7 (and sunseting as set forth therein), if such anticipated transfer, assignment, conveyance or encumbrance would result in the original members of the Owner having less than majority voting control of Owner, without providing written notification thereof to the City at least forty-five (45) days prior to the date the proposed transfer, assignment, conveyance or encumbrance is to take effect. Any attempt to so act shall be void and have no effect.

- b. No Subordination.** Other than a subordination agreement or similar document to be entered into with the senior lender (including, without limitation, the Construction Lender), the City shall not subordinate any interest it has in this Agreement for any reason, unless it is determined to be in the best interests of the City. Any requests for subordination shall be submitted, in writing, explaining why the request is in the best interests of the City. Said request shall be received by the City not less than forty-five (45) days prior to any City Council action on said request. Said subordination may only be approved by the City Council. The parties agree and acknowledge that this Agreement and the documents evidenced by the City Loan will be subordinated or collaterally assigned to and for the benefit of the senior lender (including, without limitation, the Construction Lender) from time to time without the need for City Council approval.
- c. Developer Financing.** Notwithstanding this Section 6.13, Owner may transfer, assign or encumber the Real Estate in order to secure financing for the acquisition of the Real Estate and/or for construction of the Project. Said lender may place a lien and/or mortgage on the Real Estate, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgage and/or loan may be transferred or assigned by lender in a secondary market without prior City Council approval. In the event of a foreclosure against Owner by lender or a deed transfer in lieu of foreclosure, lender shall assume the duties, obligations and rights of Owner under this Agreement. In such a circumstance, lender may transfer or assign this Agreement and its accompanying duties, obligations and rights, to another developer without prior City Council approval. In any circumstance, lender shall provide reasonable notice to City of such actions. This Section shall survive any foreclosure proceeding.

6.14. Commencement and Completion. Owner shall commence and complete construction of the Project in accordance with Section 2.2 above.

6.15. Compliance with Plans. Owner will cause the Project to be constructed in accordance with the Project Plan and will promptly correct any defects in construction or deviations from the Project Plan.

6.16. No Changes. Developer and Owner shall not, without City's prior written consent: (i) consent to any amendments to any documents delivered to City pursuant to this Agreement; (ii) approve any changes in the Project or the Project Plan or permit any work to be done pursuant to any changes; (iii) modify or amend the Project Cost Breakdown; provided, however, that in the event the senior lender (including, without limitation, the Construction Lender) has approved change orders (either in its loan documents or otherwise) where reasonable and not materially affecting the City, its rights or position in relation to the Real Estate, then such change orders shall be deemed approved by the City unless such change orders require a change to the zoning of the Real Estate.

6.17. Inspection of Project. Owner shall permit City, its inspectors and/or its construction consultant, at all reasonable times and at no cost: (a) to inspect the Project and all matters relating to the development thereof, and (b) on reasonable notice, to inspect all of Owner's books and records pertaining to the Project. City assumes no obligation to Owner for the sufficiency or adequacy of such inspections, it being acknowledged that such inspections are made for the sole and separate benefit of City; provided, however, that the City will reasonably consider requests to share available written inspection reports with Owner's senior lender and/or the Investor. The fact that City may make such inspections shall in no way relieve Owner from its duty to independently ascertain that the construction of the Project and Owner's compliance with this Agreement is being completed in accordance with the approved Project Plan and the terms and conditions of this Agreement.

6.18. Notification. Developer and Owner shall:

- a. As soon as possible and in any event within five (5) business days after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Developer and/or Owner with respect thereto.
- b. Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Developer or Owner, as applicable, contained in this Agreement to be untrue.
- c. Notify City and provide copies, immediately upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Developer or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Owner, Developer or any guarantor under any environmental laws, rules, regulations or ordinances or which seeks damages or civil, criminal or punitive penalties from or against Owner, Developer or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

6.19. Unrelated Activity. It is the intention of Owner and City that the sole business of Owner shall be the construction, ownership and operation of the Project, and Owner shall take no action inconsistent with such intention, including without limitation the acquisition by Owner of real or personal property unrelated to the Project, investment by Owner in the assets or stock of any other person, joining by Owner with any other person in any partnership or joint venture, or the creation or incurring of indebtedness by Owner unrelated to the Project.

6.20. No Indebtedness. Except in the ordinary course of business and except for funds borrowed to provide the financing for the purchase of the Real Estate or the construction of the Project, Owner shall not incur, create, assume, permit to exist, guarantee, endorse or otherwise become directly or indirectly or contingently responsible or liable for any indebtedness. "**Indebtedness**" shall mean any liability or obligation of Owner: (a) for borrowed money or for the deferred purchase price of property or services (excluding trade obligations incurred in the ordinary course of business); (b) as lessee under leases that have been or should be capitalized according to generally accepted accounting principles; (c) evidenced by notes, bonds, debentures or similar obligations; (d) under any guaranty or endorsement (other than in connection with the deposit and collection of checks in the ordinary course of business), and other contingent obligations to purchase, provide funds for payment, supply funds to invest in any entity, or otherwise assure a creditor against loss; or (e) secured by any security interest or lien on assets of Owner, whether or not the obligations secured have been assumed by Owner.

6.21. Correction of Defects. Owner shall, upon reasonable demand of City (and City may rely on the advice of its inspector and shall not be liable for any errors in such advice), correct any defect, structural or otherwise, in the Project or any departure from the Project Plan.

6.22. Not for Speculation. Owner represents and warrants that its acquisition of the Real Estate and its undertakings pursuant to this Agreement shall be for the sole and express purpose of the development of the Real Estate consistent with the Project Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings.

6.23. Affordable Housing Covenant and Use Restriction. Owner shall, upon purchase of the Real Estate, record a land use restriction against the Real Estate which encumbers and runs with the land, which restricts use of the Real Estate for Affordable Housing purposes for no less than 20 years following Substantial Completion. The Owner shall cause this covenant to be recorded against the Real Estate by the title company upon closing. The covenant shall be in substantially the form attached as Exhibit G.

ARTICLE VII

DEFAULT

7.1 Developer's or Owner's Default.

- a. **Remedies.** In the event (i) any representation or warranty of Developer or Owner herein or in any agreement or certificate delivered pursuant hereto shall prove to have been false in any material respect when made or (ii) of Developer's or Owner's default hereunder which is not cured within sixty (60) days after written notice thereof to Developer or Owner, as applicable (unless Developer or Owner are actively curing and such cure in progress takes longer than 60 days according to sufficient evidence showing same provided to City by Owner or Developer at their cost, in which case such cure period shall be reasonably extended up to an additional 120 days) then after the expiration of the cure period, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the City shall have the following specific rights and remedies:
- (1) With respect to matters that are capable of being corrected by the City, the City may at its option enter upon the Real Estate for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at three-quarters percent (0.75%) per month, shall be paid by Developer to the City immediately upon demand;
 - (2) Injunctive relief;
 - (3) Action for specific performance;
 - (4) Action for money damages;
 - (5) Any other remedy in this Agreement.
- b. **Reimbursement.** Any amounts expended by the City in enforcing this Agreement and the obligations of Developer or Owner hereunder, including reasonable attorney's fees, and any amounts expended by the City in curing a default on behalf of Developer and/or Owner, as applicable, together with interest at three-quarters percent (0.75%) per month, shall be paid by Developer or Owner, as applicable, to the City upon demand and shall constitute a lien against the Real Estate until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.
- c. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- d. **Failure to Enforce Not a Waiver.** Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision or any other provision in the event of a subsequent default.
- e. **Accepting Cures Proffered by Investor and Lender.** The City agrees to make commercially reasonable efforts to notify Owner's senior lender (including, without limitation, the Construction Lender) and the Investor, from time to time, of any default by Owner or Developer hereunder. The City further agrees to accept any cure proffered by Owner's senior lender (including, without limitation, the Construction Lender) or the Investor, as if such cure was proffered by Owner or Developer directly.

7.2 City's Default.

- a. **Remedies.** In the event of the City's default hereunder which is not cured within sixty (60) days after written notice thereof to the City, or such longer time as reasonably necessary to cure the default if sixty (60) days is not sufficient but City is actively pursuing a cure, then after the expiration of such cure period, Developer or Owner shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer and Owner, as applicable shall have the following specific rights and remedies:
 - (1) Injunctive relief;
 - (2) Action for specific performance; and
 - (3) Action for money damages.
- b. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
- c. **Failure to Enforce Not a Waiver.** Failure of Developer or Owner to enforce any provision contained herein shall not be deemed a waiver of Developer's or Owner's rights to enforce such provision or any other provision in the event of a subsequent default.

7.3 Mediation of Disputes Required. Unless the parties agree otherwise, prior to litigation and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The parties shall split the costs of mediation equally. In the event of impasse at mediation, the aggrieved party may then commence an action.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1. Assignment. Except as provided in Sections 2.7 and 6.13, Developer and Owner may not assign its respective rights or obligations under this Agreement without the prior written consent of the City. Developer and/or Owner, as applicable, shall provide not less than forty-five (45) days advance written notice of any intended assignment, with a copy to the Investor.

8.2. Nondiscrimination. In the performance of work under this Agreement, Developer and Owner each agree not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

8.3. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

8.4. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable

diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause; provided however that any such event of Force Majeure shall not be the basis of a delay of more than ninety (90) days.

8.5. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

8.6. Implementation Schedule and Time of the Essence. All phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum ninety (90) days. The Economic & Community Development Commission shall otherwise oversee the day-to-day operations of this Agreement.

8.7. Notices. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or (c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn: City Clerk City of La Crosse 400 La Crosse Street La Crosse, Wisconsin 54601
with a copy to:	Attn: City Planner City of La Crosse 400 La Crosse Street La Crosse, Wisconsin 54601
To the Developer:	Attn: Nicole Solheim Cinnaire Solutions Corporation 10 E. Doty St Ste 617 Madison, Wisconsin 53703
With a copy to:	Attn: Joseph D. Shumow Reinhart Boerner Van Deuren s.c. 22 East Mifflin Street, Suite 700 Madison, Wisconsin 53703
To Owner:	Attn: Nicole Solheim c/o Cinnaire Solutions Corporation 10 E. Doty St Ste 617 Madison, Wisconsin 53703
With a copies to:	Attn: Joseph D. Shumow Reinhart Boerner Van Deuren s.c. 22 East Mifflin Street, Suite 700 Madison, Wisconsin 53703

To Investor:

Attn: Chris Jillings
Cinnaire Fund for Housing Limited Partnership 40
1118 South Washington Avenue
Lansing, Michigan 48910

Attn: Asher Ball
Kutak Rock LLP
1650 Farnam Street
The Omaha Building
Omaha, Nebraska 68102

To Construction Lender:

Merchants Bank, National Association
3586 55th Street NW
Rochester, MN 55901
Attn: Katie V. Lund

8.8. Governing Law. This Agreement shall be governed by the laws of the State of Wisconsin and shall be deemed to have been drafted through the combined efforts of parties of equal bargaining strength. Any action at law or in equity relating to this Agreement shall be instituted exclusively in the courts of the State of Wisconsin and venued in La Crosse County. Each party waives its right to change venue.

8.9. Conflict of Interest. Developer and Owner shall each avoid all conflicts of interest or the appearance of a conflict of interest in the performance of this Agreement. Developer and Owner are each familiar with the City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Section 2-133 of the City of La Crosse Municipal Code. Developer and Owner each agree not to offer any City officer or designated employee any gift prohibited by said Code. The offer or giving of any prohibited gift shall constitute a material breach of this Agreement by Developer and/or by Owner. In addition to any other remedies the City may have in law or equity, the City may immediately terminate this Agreement for such breach. No member, officer or employee of the City shall have any personal financial interest, direct or indirect, in this Agreement, nor shall any such member, officer or employee participate in any decision relating to this Agreement.

8.10. Execution in Counterparts. This Agreement may be executed in several counterparts, each which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

8.11. Disclaimer Relationships. Developer and Owner each acknowledge and agree that nothing contained in this Agreement or any contract among Owner, Developer and the City or any act by the City or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship or third party beneficiary, principal or agent limited or general partnership or joint venture or of any association or relationship involving the City. It is understood and agreed that Developer and owner, in the performance of the work and services of these Project shall not act as an agent or employee of the City and neither the Developer nor Owner nor either party's officers, employees, agents, licensees, sublicensees, subcontractors shall obtain any rights to retirement benefits or the benefits which accrue to the City's employees and Developer and Owner each hereby expressly waive any claim it may have to any such rights. Each party shall be responsible for its own separate debts, obligations and other liabilities.

8.12. Severability. Should any part, term, portion or provision of this Agreement or the application thereof to any person or circumstance be in conflict with any state or federal law or otherwise be rendered unenforceable, it shall be deemed severable and shall not affect the remaining provisions, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.

8.13. Termination. Except for Sections 2.10 (Indemnity), 2.13 (Record Retention) and 8.5 (Survival), and any covenants or restrictions running with the land, all of which shall survive the termination of this Agreement, this Agreement and all obligations hereunder, other sections hereof that explicitly terminate prior to the 20-year anniversary of the date hereof, shall terminate twenty (20) years following Substantial Completion. This Agreement may also be terminated as provided in Article IV (Conditions Precedent to City), Article V (Conditions Precedent to Developer Obligations) and Section 8.9 (Conflict of Interest) hereof. Any default existing pursuant to Article VII hereof shall survive termination as well.

8.14. Memorandum of Agreement. Promptly upon full execution of this Agreement and subsequent to the recording of any mortgage or other security instrument related to the Construction Loan, the Owner agrees that the City may record this Agreement, or a memorandum thereof, with the Register of Deeds for La Crosse County, Wisconsin. Any such memorandum shall be in form and substance reasonably acceptable to the City and the Owner.

8.15. Covenants Running with Land. All of the covenants, obligations and promises of Owner set forth herein shall be deemed to encumber the Development and run with the land described in **Exhibit A** and shall bind any successor, assignee or transferee of Owner until such time as this Agreement is terminated.

8.16. Amendments. No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City, Owner, Developer, and the Investor.

8.17. Time Computation. Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

8.18. JURY TRIAL. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL ON ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

8.19. Construction. This Contract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. The headings, table of contents and captions contained in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require. In the event that any of the provisions, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected.

8.20. Incorporation of Proceedings and Exhibits. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans or specifications on file with the City and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of the parties hereto whether or not herein enumerated.

8.21. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City shall be deemed controlling.

8.22. Execution of Agreement. Developer and owner shall sign, execute and deliver this Agreement to the City on or before the close of regular City Hall business hours forty-five (45) days after its final adoption by the City. Developer's or Owner's failure to sign, execute and cause this Agreement to be received by the City within said time period shall render the Agreement null and void, unless otherwise authorized by the City. After Developer and Owner each has signed, executed and delivered the Agreement, the City shall sign and execute the Agreement. The final signature date of the City shall be the signature date of Agreement ("Signature Date").

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date first set forth above.

Cinnaire Solutions Corporation

City of La Crosse

Christopher Laurent, President

Mitch Reynolds, Mayor

_____, _____

Nikki Elsen, City Clerk

Collective on Fourth, LLC

Subscribed and sworn to before me this
____ day of _____, 2023.

By: Collective on Fourth MM, LLC, its managing member

Notary Public, State of Wisconsin
My Commission: _____

By: CSC Taxable, LLC, its manager

By: Cinnaire Solutions Corporation, its manager

Christopher Laurent, President

_____, _____

Subscribed and sworn to before me this
____ day of _____, 2023.

Notary Public, State of Wisconsin
My Commission: _____

Exhibit A
Legal Description of Real Estate

The East 90 feet of Lot 1, all of lots 2, 3, 4, 5, 6 and the East 43 feet of the West 112 feet of Lot 7, Block 4 of Burns Addition to the City of La Crosse, La Crosse County Records.

Exhibit B
Description of Project

The Collective on Fourth is a new construction 4-story building including 62 residential units, 52 of which will be rented to households at or below 60% of Area Median Income at an affordable rate as detailed herein. The development includes covered and surface parking for residents and visitors. The Collective on Fourth is the result of a City-led Request for Proposals for the property that was issued in 2021.

Exhibit C
Project Cost Breakdown

[To be added]

**Exhibit D
Construction Schedule**

Anticipated Construction Start: April 2024

Anticipated Construction Completion: June 2025

Exhibit E

ARPA Requirements

Owner agrees to comply with the requirements of section 602 of ARPA, regulations adopted by Treasury pursuant to section 602(f) of ARPA, and guidance issued by Treasury regarding the foregoing. Owner also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Owner shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

A. Federal regulations applicable to this award include, without limitation, the following:

1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, including the procurement standards in 2 C.F.R. 200.318 through 2 C.F.R. 200.327, other than such provisions as Treasury may determine are inapplicable to the Grant and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
3. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
4. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
5. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
6. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
7. New Restrictions on Lobbying, 31 C.F.R. Part 21.
8. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
9. Generally applicable federal environmental laws and regulations, unless otherwise specified in ARPA or Treasury guidance. As specified in Treasury Department guidance, the National Environmental Policy Act (NEPA) does not apply.

10. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

B. Protections for Whistleblowers.

1. In accordance with 41 U.S.C. § 4712, Owner may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

2. The list of persons and entities referenced in the paragraph above includes the following:

- a. A member of Congress or a representative of a committee of Congress;
- b. An Inspector General;
- c. The Government Accountability Office;
- d. A Treasury employee responsible for contract or grant oversight or management;
- e. An authorized official of the Department of Justice or other law enforcement agency;
- f. A court or grand jury; or

- g. A management official or other employee of the City, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

3. Owner shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

C. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Lender should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

D. **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Owner should encourage its employees, grantees, and contractors to adopt and enforce policies that ban text messaging while driving, and Owner should establish workplace safety policies to decrease accidents caused by distracted drivers.

E. Reserved.

F. **Assurances of Compliance with Civil Rights Requirements.**

1. Owner provides the following assurances with respect to the construction and operation of the Project:

- a. Owner will ensure its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
- b. Owner acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). The City understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, the City shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. The City understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the City’s programs, services, and activities.

- c. Owner agrees to consider the need for language services for LEP persons when Owner develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
- d. Owner acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of Grant proceeds and is binding upon Owner and its successors, transferees, and assignees for the period in which such assistance is provided. Owner understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Owner, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Owner for the period during which it retains ownership or possession of the property.
- e. Owner acknowledges and agrees that it must require any contractors, subcontractors, successors, transferees, and assignees to comply with assurances a-d above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between Owner and its contractors, subcontractors, successors, transferees, and assignees:

Any agent, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

2. Owner shall cooperate with the City in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Owner shall comply with information requests, on-site compliance reviews and reporting requirements.

3. Owner shall maintain a complaint log and inform the City of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome.

4. Owner must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Owner and the administrative agency that made the finding. If Owner settles a case or matter alleging such discrimination, Owner must provide documentation of the settlement. If Owner has not been the subject of any court or administrative agency finding of discrimination, please so state.

5. Owner is responsible for ensuring that its agents, contractors, and subcontractors also comply with Title VI and other applicable authorities covered in this document.

G. If the amount of the award under this Agreement is greater than \$100,000.00 the undersigned signatory on behalf of Owner that to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned or Owner, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Owner shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. Owner shall require that the language of this certification be included in the award documents for all recipients of Grant proceeds at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the Grant was made or entered into. Submission of this certification is a prerequisite for making or entering into the Grant imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

H. Except as otherwise provided under 41 C.F.R. Part 60, the following are incorporated herein by reference: the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" in all contracts financed in whole or in part with any Award Amount that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3.; and such shall be incorporated into any contract or subcontract.

I. Owner, and all contracts awarded by Owner that shall receive in excess of \$100,000 of Grant proceeds and that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

J. Owner must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and agrees to include these requirements in each contract or subcontract exceeding \$150,000 financed in whole or in part with Grant proceeds. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

K. Pursuant to 2 C.F.R. § 200.323, Owner represents and warrants that it shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

L. Owner is prohibited from obligating or expending any Award Amount to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or

3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as defined in Public Law 115-232, section 889) as a substantial or essential component of any system, or as critical technology as part of any system.

M. Pursuant to 2 C.F.R. § 200.322, as appropriate, and to the extent consistent with law, Owner should, to the greatest extent practicable under this Agreement, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this section:

1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Exhibit F

STAGING AGREEMENT

This STAGING AGREEMENT (this "Agreement") is dated as of March 1, 2024 (the "Effective Date") by and between Collective on Fourth, LLC, a Wisconsin limited liability company ("Project Owner"), and City of La Crosse, Wisconsin, a Wisconsin municipal corporation ("City").

RECITALS

A. City owns the property commonly known as 1020 5th Avenue South, La Crosse, Wisconsin (Parcel No. 17-30089-130) (the "City Property").

B. Project Owner wishes to use the City Property for purpose of staging for construction of a mixed-use development on property near the City Property (the "Project"), and the City has agreed to allow for such use, all on the terms and conditions set forth in this Agreement.

AGREEMENTS

In consideration of the Recitals, the mutual agreements that follow and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Project Owner hereby agree as follows:

1. Grant. City hereby grants to Project Owner and its invitees, agents, contractors and subcontractors, including but not limited to Borton Construction, Inc., a Wisconsin corporation, (collectively, the "Licensed Parties") a license to use the City Property for construction staging for the Project, including, without limitation locating a construction trailer, storage of goods and materials and any other construction staging purposes related to the development of the Project.

2. Term. The term of this Agreement shall commence on the Effective Date and shall expire on the earlier of December 31, 2025, or upon the completion of the Project and the vacation of the City Property by the Licensed Parties.

3. Use; Security. During the term of this Agreement, the Licensed Parties shall secure the City Property with temporary construction fencing and such other security as is reasonable for the Licensed Parties' use of the City Property. Project Owner agrees to use, and to cause the Licensed Parties to use, the City Property in accordance with all applicable laws, ordinances, rules or regulations. Project Owner assumes all responsibility for damage, theft or vandalism of equipment or materials during the term of this Agreement. The City Property shall be monitored by Project Owner for litter and construction packaging or debris, and all litter, packaging or debris shall be disposed of in a timely manner so as not to detract from the surrounding area. Upon vacation of the City Property by the Licensed Parties, all construction

material, equipment, fencing and litter or debris shall be removed, and the City Property will be returned to the City in the condition the same was in prior to use by the Licensed Parties, ordinary wear and tear for the type of use contemplated by this Agreement excepted. Project Owner's duties upon surrender shall include removing any construction fencing.

4. Utilities. Project Owner shall be responsible, at Project Owner's sole cost, for obtaining any and all utility service necessary in connection with the Licensed Parties' use of the City Property.

5. Insurance. During the term of this Agreement, Project Owner shall keep in full force and effect, at its expense: a policy of commercial general liability insurance covering the City Property, in the amounts of \$1,000,000 for any one occurrence and \$3,000,000 in the aggregate. Project Owner shall maintain during the life of this contract statutory workmen's compensation and employer's liability insurance for all his employees engaged in work on the City Property and otherwise in connection with the Project.

6. Indemnification. To the fullest extent permitted by law, Project Owner shall indemnify and hold harmless the City, its officers, representatives, elected and appointed officials, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees and other expenses of litigation (together, "Claims"), arising out of or resulting from the Licensed Parties' performance of work or use of the City Property under this Agreement, other than Claims arising due to the City's negligence or willful misconduct.

7. Default. If Project Owner fails to perform any covenant, term, agreement or condition of this Agreement, then City, in addition to all other rights and remedies available to City at law or equity or by other provisions hereof, may immediately terminate this Agreement and remove all persons and property from the City Property. Notwithstanding the foregoing, prior to City declaring this Agreement in default, City shall provide Project Owner with written notice of such default, and provide Project Owner with a 15-day cure period after receipt of such notice to cure any monetary default and 30 days to cure any nonmonetary default, provided, however, in the event such nonmonetary default cannot reasonably be cured within such 30-day period, and Project Owner has commenced its efforts to cure such default within such 30-day period and thereafter diligently prosecutes it to completion, Project Owner shall not be deemed in default. City agrees to use commercially reasonable efforts to provide copies of notices of defaults under this Agreement to Project Owner's investor member (any such investor member, the "Investor") and senior lender, from time to time. City will accept any cure proffered by the Investor or senior lender as if such cure was proffered directly by Project Owner.

8. Notices. All notices, demands and communications required or which either party desires to give or make hereunder shall be effective, at the time described herein below, if in writing signed by or on behalf of the party giving or making the same, and if served/delivered to the addresses set forth below and in any of the following manners: (i) personally; (ii) by United States registered or certified mail, return receipt requested; or (iii) by a national courier service for next business day delivery.

To Project Owner: Collective on Fourth, LLC
c/o Cinnaire Solutions Corporation
Attn: Nicole Solheim
10 East Doty Street, Suite 617
Madison, Wisconsin 53703

With a copy to: Reinhart Boerner Van Deuren s.c.
Attn: Joseph D. Shumow
22 East Mifflin Street, Suite 700
Madison, Wisconsin 53703

To Investor: Cinnaire Fund for Housing Limited Partnership 40
Attn: Chris Jillings
1118 South Washington Avenue
Lansing, Michigan 48910

With a copy to: Kutak Rock LLP
Attn: Asher Ball
1650 Farnam Street
The Omaha Building
Omaha, Nebraska 68102

To Senior Lender: Merchants Bank, National Association
3586 55th Street NW
Rochester, MN 55901
Attn: Katie V. Lund

With a copy to: Winthrop & Weinstine, P.A.
Attn: Joshua N. Noah
Capella Tower
225 S 6 St., STE 3500
Minneapolis, MN 55402

To City: City of La Crosse
Attn: City Clerk
400 La Crosse Street
La Crosse, Wisconsin 54601

With a copy to: City of La Crosse
Attn: City Planner
400 La Crosse Street
La Crosse, Wisconsin 54601

Notices given personally shall be deemed to have been given upon receipt. Notices mailed by United States mail shall be deemed to have been given on the third business day after the date of mailing or upon receipt by either party if a written receipt is signed therefor. Notices

sent by United States mail or national courier service for next day or next business day delivery shall be deemed to have been given on such next day or next business day, as the case may be, following deposit. Any party hereto may change its address for the service as aforesaid by giving written notice to the other of such change of address in accordance with the provision of this Section.

9. Miscellaneous.

(a) This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same agreement.

(b) This written Agreement constitutes the entire agreement between the parties and their affiliates and supersedes any prior oral or written agreements between the parties regarding the City Property. There are no verbal agreements which can or will modify this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

(c) The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

(d) This Agreement shall be construed and enforceable in accordance with the laws of the State of Wisconsin.

(e) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(f) In the event of a default under this Agreement that is resolved by litigation, the nondefaulting party hereto shall be entitled to recover reasonable costs and attorneys' fees incurred by the nondefaulting party as a result of such default.

(g) This Agreement and any and all documents and signatures relating thereto may be executed and/or transmitted electronically, including by DocuSign or .pdf files transmitted by e-mail. If required to properly evidence such execution and/or delivery, all of such documents and signatures shall be deemed to be originals.

(h) No agreement or understanding changing, modifying or extending this Agreement shall be binding upon either party unless in writing, approved and executed by the City, the Project Owner, the Investor and the Project Owner's senior lender.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE TO STAGING AGREEMENT

This Agreement has been entered into as of the Effective Date.

COLLECTIVE ON FOURTH, LLC,
a Wisconsin limited liability company

By: Collective on Fourth MM, LLC,
a Wisconsin limited liability company,
its managing member

By: CSC Taxable, LLC,
a Wisconsin limited liability company,
its manager

By: Cinnaire Solutions Corporation,
a Michigan nonprofit corporation,
its manager

By: _____
Christopher Laurent, President

CITY OF LA CROSSE, WISCONSIN,
a Wisconsin municipal corporation

By _____
Name _____
Its _____

**Exhibit G
Land Use Restriction**

Document Number	AFFORDABLE HOUSING USE RESTRICTION
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WHEREAS, Collective on Fourth, LLC, a Wisconsin limited liability company hereinafter referred to as the “Owner” is the owner of the referred to Property situated in the City of La Crosse, County of La Crosse, State of Wisconsin described in the attached Exhibit.

WHEREAS, said Owner received financial incentives, including a loan and agreement by the City of La Crosse, hereinafter known as the City, to sell the Property to the Owner.

WHEREAS, said Owner desires to place certain restrictions on the above-described real estate, to bind the Owner and all those who may acquire title hereafter.

NOW, THEREFORE, in consideration of the benefits passing to and from the Owner and those who may hereafter purchase said land and the parties named as beneficiaries of these restrictions, the following restrictions are hereby imposed:

Recording Area

Name and Return Address
 Economic Development Department
 City of La Crosse
 400 La Crosse Street
 La Crosse, WI 5601

Parcel Identification Number (PIN)

1. For a period of twenty (20) years following substantial completion of the development of the property in accordance with and pursuant to the Development Agreement dated _____ between the Owner, Cinnaire Solutions Corporation, and the City, the property and its use shall remain affordable, meaning that 52 units of the Property will be and remain rented to households at or below 60% of Area Median Income.
2. The 52 affordable units shall be “rent-restricted” within the meaning of Section 42(g)(2) of the Internal Revenue Code of 1986, as amended (the “Code”), and shall satisfy the requirements of Section 42(i)(3) of the Code.
3. Rent may not exceed the limit on a tax year basis or a monthly basis. The owner may not charge impermissible fees.
4. These restrictions shall constitute covenants running with the land and shall be binding on the owner hereof, its successors, heirs and assigns.
5. These restrictions provided for herein shall be enforceable by at law or equity against any party who has or acquires any interest in the Property subject to these restrictions by the following who are named as grantees, promisees, and beneficiaries with enforcement rights: (a) the grantor hereof and his heirs and assigns, and (b) the City of La Crosse.

OWNER: COLLECTIVE ON FOURTH, LLC

Dated: _____

**By:
Its:**

AUTHENTICATION

ACKNOWLEDGMENT

Signature of _____
 authenticated on _____,

STATE OF _____)
) ss
 COUNTY)

TITLE: MEMBER STATE BAR OF WISCONSIN
 (If not,
 authorized by Wis. Stat. §706.06)

Personally came before me on _____,
 the above-named
 to me known to be the person who executed the foregoing
 instrument and acknowledged the same

THIS INSTRUMENT DRAFTED BY:
 Atty. Ryan R. Seib

*
 Notary Public, State of Wisconsin
 My commission (is permanent) (expires: _____)

EXHIBIT TO LAND USE RESTRICTION – LEGAL DESCRIPTION