<u>FIRST AMENDMENT TO</u>
<u>TAX INCREMENTAL DISTRICT DEVELOPMENT AGREEMENT</u>

THIS FIRST AMENDMENT TO TAX INCREMENTAL DISTRICT DEVELOPMENT AGREEMENT ("**First Amendment**") is entered into as of April 20, 2026 (the "**First Amendment Effective Date**"), by and among the CITY OF SHEBOYGAN (the "**City**"), a Wisconsin municipal corporation, and MALIBU APARTMENTS, LLC, a Wisconsin limited liability company ("**Developer**").

RECITALS:

A. The City and Developer previously entered into a Tax Incremental District Development Agreement dated as of February 20, 2024 (the "**Development Agreement**").

B. The parties desire to amend the Development Agreement as specifically set forth herein.

C. Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Development Agreement.

NOW, THEREFORE, the City and Developer, in consideration of the terms and conditions contained in this First Amendment and for other good and valuable consideration, the receipt of which is hereby acknowledged, each hereby agrees as follows:

1. The RECITALS set forth above are true, accurate and incorporated herein by reference.

2. Recital C of the Development Agreement is hereby amended and restated in its entirety with the following:

> "C. Developer, pursuant to the terms and conditions of this Agreement (and all amendments thereto), is obligated to, among other things, construct a development on the Property consisting of one or more buildings that house at least two hundred fifteen (215) residential units with an attached parking structure (collectively, the "**Project**"). The Project will consist of two (2) phases (each a "**Phase**" and, collectively, the "**Phases**") with the first Phase consisting of the construction of a one hundred fifty-seven (157) unit southern building and parking structure on the Property (the "**First Phase**") and the second Phase consisting of the construction of a fifty-eight (58) unit northern building and parking structure on the Property (the "**Second Phase**")."

3. Section 1.1 of the Development Agreement is hereby amended and restated in its entirety with the following:

> "**1.1 <u>Required Information</u>.** Developer shall be deemed to have committed a Default under this Agreement and the City shall have no obligations under this Agreement and shall have the right to terminate this Agreement in accordance with the provisions of Section 1.3 below, if the Required Information (as defined below) and the Commencement Notice (as defined below) for any Phase has not been timely provided by Developer to the City in form and substance reasonably acceptable to the City.

The deadlines for Developer to provide the Required Information and the Commencement Notice for the First Phase is April 1, 2026 and for the Second Phase is November 1, 2028.

For each Phase, Developer shall provide to the City the following required information related to such Phase (collectively, the "**Required Information**") and such other documentation as the City may request, both in form and in substance acceptable to the City:

(a) A schedule for the construction of Developer Improvements (as defined below) and identifying the following for such Phase:

(i) Intended commencement and completion date,

(ii) Reasonably estimated costs associated with the construction, and

(iii) Reasonably estimated value, upon completion, of the intended improvements to be constructed on the Property.

(b) An estimated cost breakdown and construction budget summary listing the intended cost of each improvement and construction expense for such Phase, including, without limitation, all hard costs and soft costs, and the cost breakdown and budget shall be certified in writing by Developer and Developer's general contractor.

(c) Documentation confirming that Developer has complied with all necessary federal, state, county, and municipal laws, ordinances, rules, regulations, directives, orders, and requirements necessary to obtain the governmental approvals relating to such Phase. Developer shall also provide copies of all approvals by all applicable government bodies and agencies (including, without limitation, municipal or state issued building permits for such Phase).

(d) A copy of the final construction plans and complete specifications for the intended construction related to such Phase that are consistent with the provisions of this Agreement (the "**Final Plans**"). The Final Plans for such Phase must be certified as final and complete and be signed by Developer, the consulting engineer, architect and the general contractor (as applicable) and approved by the City in writing.

(e) All documents authorizing the construction and financing of such Phase and directing the appropriate officer of Developer to execute and deliver all agreements, documents and contracts required to be executed by Developer in connection with the transactions which are the subject of this Agreement (including, without limitation, authorizing resolutions of Developer).

On or before the Effective Date, Developer shall provide the City with:

(x) A commitment for an owner's policy of title insurance issued by a title insurance company licensed to do business in Wisconsin identifying Developer as the proposed insured/owner of the Property (the "**Property Commitment**") and containing

copies of all easements, restrictions, encumbrances, leases or other documents of record affecting the Property (collectively, "**Property Exceptions**"). None of the Property Exceptions shall interfere with the proposed development of the Project.

(y) A fully-executed offer to purchase the Property between Developer and the owner of record for the Property in form and substance of the offer attached hereto as Exhibit B which is incorporated herein by reference (the "**Offer**") and all contingencies set forth in the Offer (other than having to do with the effectiveness of this Agreement at the closing for such purchase of the Property) have been waived, satisfied or are no longer applicable by passage of time or otherwise.

(z) All documents authorizing the appropriate officer of Developer to execute and deliver this Agreement (including, without limitation, authorizing resolutions of Developer).

4. Section 1.3 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**1.3 Termination Rights.** If Developer notifies the City in writing of Developer's election not to proceed with any Phase or Developer fails to fully and timely provide the Required Information or the Commencement Notice for any Phase (as determined in the sole discretion of the City), such Developer notification or failure shall be deemed an election by Developer to not proceed (a "**Not to Proceed Election**") with any and all Phases of the Project that have not been commenced at the time of the Not to Proceed Election. Upon the occurrence of a Not to Proceed Election: (a) the City shall have no obligation to perform any act under this Agreement (including, without limitation, issuing the MRO, completing any City Improvements or making any payment on the MRO) with regard to such Phase and any or all successive Phases, and (b) all provisions in this Agreement related to such Phase and any or all successive Phases shall be deemed null and void and removed from this Agreement. For the avoidance of any doubt, a Not to Proceed Election by Developer for a particular Phase shall not be deemed a Default under any of the prior Phases or a general Default under the Agreement.

If, for example, a Not to Proceed Election occurs after the commencement of the First Phase, then the City will have no obligation to perform any act under this Agreement with regard to the Second Phase (including, without limitation, payment of any amounts on the MRO related to the portion of the Property impacted by the Second Phase) but this Agreement shall remain in full force and effect with regard to the First Phase and the City shall remain obligated to perform all acts under this Agreement with regard to the First Phase, subject to the terms and conditions set forth herein. Notwithstanding the previous sentence and for the avoidance of any doubt, if a Default occurs with respect to a particular Phase, then the City shall not be obligated to perform **any** act under this Agreement with respect to such Phase related to the Default (including, without limitation, making **any** payment on the MRO with respect to such Phase related to the Default), but if the Default is general in nature and not specific to a given Phase (e.g., making a Tax Increment Shortfall payment), then the City shall not be obligated to perform any act under this Agreement, regardless of the Phase impacted by such Default."

5. Section 2.1 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**2.1 <u>Commencement Notice</u>.** On or before commencement of construction of a given Phase, Developer shall provide a written notice to the City of Developer's intention to commence construction for a given Phase (the "**Commencement Notice**"). A Commencement Notice for the First Phase shall be delivered by Developer to the City on or before April 1, 2026, and a Commencement Notice for the Second Phase shall be delivered by Developer to the City on or before November 1, 2028. To be effective, the Commencement Notice shall be accompanied by, or Developer shall have previously delivered to the City, all of the Required Information for such Phase. If Developer does not timely provide the Commencement Notice and all of the Required Information to the City for the First Phase, Developer will be deemed to not be ready to develop the First Phase or any subsequent Phase and be in Default under this Agreement. If Developer does not cure all outstanding Default(s) within thirty (30) calendar days after the City provides Developer written notice of such Default(s), the City shall have the ability to exercise all remedies available in this Agreement, in equity and at law (including, without limitation, terminating this Agreement as set forth in Section 1.3 above). If Developer does not timely provide the Commencement Notice and all of the Required Information to the City for the Second Phase, Developer will be deemed to not be ready to develop the Second Phase or any subsequent Phase and be in Default under this Agreement with regard to the Second Phase and any and all subsequent Phases. If Developer does not cure all outstanding Second Phase Default(s) within thirty (30) calendar days after the City provides Developer written notice of such Default(s), then the City shall not be obligated to perform **<u>any</u>** act under this Agreement with respect to the Second Phase or any subsequent Phase (including, without limitation, making **<u>any</u>** payment on the MRO with respect to the Second Phase or any subsequent Phase).

6. Subsection 2.2(a) of the Development Agreement is hereby amended and restated in its entirety with the following:

"(a) Developer shall construct and timely complete the Project. Developer shall commence construction of: (i) the First Phase (with commencement being evidenced by installing footings for the southern building on the Property comprised of a 157-unit apartment as depicted in the site plan attached as <u>Exhibit C</u>) on or before May 1, 2026; and (ii) the Second Phase (with commencement being evidenced by installing footings for the northern building on the Property comprised of an at least fifty-eight (58) unit apartment as depicted in the site plan attached as <u>Exhibit C</u>) on or before December 31, 2028. Upon such commencement, Developer shall proceed to the fully-satisfy and complete all of the improvements, obligations and work set forth in this Section **Error! Reference source not found.** with due diligence and without unreasonable delay or interruption (with the exception of force majeure events, if any, as defined in Section **Error! Reference source not found.** below). On or before May 1, 2027 (the "**First Phase Completion Date**"), the First Phase of the Project shall be completed, and on or before December 31, 2029 (the "**Second Phase Completion Date**") the Second Phase of the Project shall be completed and on the Second Phase Completion Date at least two hundred fifteen (215) residential units shall be available for occupancy."

7. Section 3.1 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**3.1 <u>Guarantied Value</u>.** The parties anticipate that:

(a) upon completion of the First Phase, the currently contemplated land and improvements related to the Project will have an equalized value for purposes of real property tax assessment ("**Equalized Value**") of not less than Twenty-Nine Million Two Hundred Thousand Dollars ($29,200,000.00; the "**First Phase Guarantied Value**") by December 31, 2027 (the "**First Phase Guarantied Value Date**"); and

(b) upon completion of the Second Phase, the currently contemplated land and improvements related to the Project will have an Equalized Value of not less than Forty Million Dollars ($40,000,000.00; the "**Final Guarantied Value**") by December 31, 2029 (the "**Final Guarantied Value Date**").

As a condition to entering into this Agreement, the City requires that Developer guaranty a minimum Equalized Value for the land and improvements related to the Project. By executing this Agreement, Developer and Jacob Buswell, Brian Buswell, Matthew Buswell, Todd Page and Richard Beyer (each a "**Guarantor**" and, collectively, the "**Guarantors**") each hereby jointly and severally guaranties that, on and after:

(y) the First Phase Guarantied Value Date, the Equalized Value of the land and improvements on the Property shall at all times during the life of the District prior to the Final Guarantied Value Date be at least the First Phase Guarantied Value; and

(z) the Final Guarantied Value Date, the Equalized Value of the land and improvements on the Property shall at all times during the life of the District be at least the Final Guarantied Value.

If the Equalized Value of the Property is less than the First Phase Guarantied Value any time on or after the First Phase Guarantied Value Date or if the Equalized Value of the Property is less than the Final Guarantied Value any time on or after the Final Guarantied Value Date, the Developer shall be in Default under this Agreement."

8. Section 3.2 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**3.2 <u>Failure to Construct</u>.** If Developer provides a Commencement Notice as required by Section 2.1 above**Error! Reference source not found.** but does not timely complete construction of the applicable Phase as herein provided, then Developer and each Guarantor shall pay to the City all sums incurred by the City with regard to the preparation and drafting of this Agreement and all other sums not recoverable from Tax Increments (as defined below). All repayments shall be completed within thirty (30) calendar days after Developer's non-performance or Default under this Agreement."

9. Section 3.3 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**3.3 <u>Guaranty Obligations</u>.** If on or any time after:

(a) the First Phase Guarantied Value Date, whether as a result of an Uncured Casualty Loss or otherwise, the Equalized Value of the Property is less than the First Phase Guarantied Value, or

(b) the Final Guarantied Value Date, whether as a result of an Uncured Casualty Loss or otherwise, the Equalized Value of the Property is less than the Final Guarantied Value ((a) and (b) above are each a "**Shortfall Event**"),

then Developer and each Guarantor shall jointly and severally owe the City an amount equal to the difference between:

(y) the Tax Increment the City otherwise would have received on the Property if the Property's Equalized Value equaled the First Phase Guarantied Value (if such Shortfall Event occurs between the First Phase Guarantied Value Date and the Final Guarantied Value Date) or the Final Guarantied Value (if such Shortfall Event occurs on or after the Final Guarantied Value Date), as applicable, and

(z) the Tax Increment received by the City in the year a Shortfall Event occurs (such difference between (y) and (z) being referred to herein as the "**Tax Increment Shortfall**").

If a Tax Increment Shortfall is owed to the City, then unless and until the Equalized Value of the Property increases to at least the First Phase Guarantied Value or Final Guarantied Value, as applicable, for each January 1 following a Shortfall Event, that the Equalized Value of the Property is less than the First Phase Guarantied Value or Final Guarantied Value, as applicable, Developer and each Guarantor, shall pay to the City an amount equal to the Tax Increment Shortfall for such calendar year. If and when the Equalized Value of the Property as of any January 1 is equal to or greater than the First Phase Guarantied Value or the Final Guarantied Value, as applicable: (i) the Default related to non-compliance with the First Phase Guarantied Value or Final Guarantied Value, as applicable, requirement shall be deemed cured, (ii) no further January 1 assessment valuations shall occur or be required, and (iii) no Tax Increment Shortfall payment obligation shall be incurred for such year or any year thereafter, unless a new Shortfall Event occurs. If a Tax Increment Shortfall continues through the closing of the District, no further Equalized Value assessment calculations shall occur and no further Tax Increment Shortfall payment obligations of Developer or any Guarantor shall arise after the District is closed. For the avoidance of any doubt, if Developer provides a Not to Proceed Election for a given Phase, then no Shortfall Event or Tax Increment Shortfall can occur with respect to such Phase related to the Not to Proceed Election.

Developer agrees that Developer shall not, and Developer hereby waives any right to, during the life of the District, challenge the assessed value of the Property below the First Phase Guarantied Value (if such assessment occurs between the First Phase Guarantied Value Date and the Final Guarantied Value Date) or the Final Guarantied Value (if such assessment occurs on or after the Final Guarantied Value Date), as applicable."

10. Section 3.4 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**3.4 <u>Payment of Tax Increment Shortfall</u>.** Any Tax Increment Shortfall payment due to the City shall be deducted from any MRO payment (otherwise due Developer but for the Default) from the City during the year in which the Tax Increment Shortfall payment obligation arises. If the Tax Increment Shortfall payment exceeds the amount of such MRO payment, Developer and each Guarantor shall pay to the City an amount equal to the difference between such MRO payment and the Tax Increment Shortfall. If there is

no MRO payment due Developer for such year, Developer and each Guarantor shall pay to the City the full amount of the Tax Increment Shortfall for such year. Any Tax Increment Shortfall payment due to the City from Developer or any Guarantor pursuant to this **Error! Reference source not found.** shall be made within ten (10) days of written request for payment by the City."

11. Section 5.1 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**5.1 Municipal Revenue Obligation.** Pursuant to the terms of this Agreement, the City agrees to issue to Developer, within ninety (90) calendar days after the City issues a plumbing permit for the First Phase, a non-interest bearing municipal revenue obligation (the "**MRO**"). The amount to be paid under the MRO shall equal ***the lesser of***:

(a) Five Million Eight Hundred Forty Thousand Dollars ($5,840,000.00); and

(b) The sum of all payments made by the City on the MRO during the life of the District but in no event after the Final Payment Date (as defined below).

If Developer completes the Second Phase timely and there is no other Default by Developer under this Agreement, within ninety (90) calendar days after the completion of the Second Phase and Developer's presentment, delivery and surrender of the original MRO to the City, the City shall reissue the MRO. The amount to be paid under the re-issued MRO shall equal ***the lesser of***:

(c) Eight Million Dollars ($8,000,000.00) *less* the amount already paid on the original MRO; and

(d) The aggregate sum of all payments made by the City on any or all MROs issued under this Agreement during the life of the District but in no event after the Final Payment Date.

Except as otherwise provided herein, payments on the MRO will equal the Available Tax Increment in each year to the extent appropriated by the City's Common Council until and including ***the earlier of*** the date this Agreement is terminated, the date the District is terminated, the Final Payment Date and the date the MRO is paid in full. "**Available Tax Increment**" means an amount equal to:

(y) ninety-five percent (95%), during the life of the District for calendar years 2028, 2029, 2030 and 2031, and

(z) seventy-five percent (75%), during the life of the District for each calendar year after 2031 but on or prior to the Final Payment Date,

of the difference between the Tax Increment actually received by the City and appropriated by the City's Common Council in each year **less** the following (collectively, the "**Priority Project Costs**"): (i) all debt service payments incurred or to be incurred by the City in a given year for work performed or to be performed with regard to the Project or the Property; (ii) the amount of the City's administrative expenses, including, but not limited to, reasonable charges for the time spent by City employees in connection with the negotiation and implementation of this Agreement, (iii) professional service costs,

including, but not limited to, those costs incurred by the City for outside architectural, planning, engineering, inspections, financial consulting and legal advice (including, without limitation, attorneys' costs and fees) and services related to the negotiation and implementation of this Agreement, and (iv) other eligible project costs previously incurred by the City in preparation for this Project or to be incurred by the City under the Project Plan, including, without limitation, site preparation and costs and expenses related to the Property or the Project provided such eligible project costs are not financed by the debt service referenced in (i) above. Any Priority Project Cost not paid due to insufficient Tax Increment shall be carried forward and paid from Tax Increment in the next year, or if necessary, following years until fully paid. "**Tax Increment**" shall have the meaning given under Wis. Stat. § 66.1105(2)(i) but shall be limited to the Tax Increment attributable to the Project, the land and improvements on the Property.

Provided that Developer is not in Default under this Agreement, the City shall, subject to annual appropriation of such payment by the City's Common Council, pay the Available Tax Increment, if any, to the holder of the MRO in one annual payment, on or before October 31st of each year commencing on October 31, 2028, and continuing to (and including) the earlier of the date the MRO is paid in full or October 31, 2051 (each, a "**Payment Date**"). Notwithstanding the previous sentence, in the event that Developer is in Default on a Payment Date, payment by the City may be suspended until all outstanding Defaults are cured. If a Developer Default is limited to a given Phase, then such suspension of payment under the MRO by the City will be limited to the amount due with respect to the Phase connected to such Default.

To the extent that on any Payment Date the City is unable to make all or part of a payment of principal due on the MRO from such Available Tax Increment due to an absence of adequate Available Tax Increment, non-appropriation by the City's Common Council or otherwise, such failure shall not constitute a default by the City under the MRO. The amount of any such deficiency shall be deferred without interest. The deferred principal shall be due on the next Payment Date on which the City has the ability to payout Available Tax Increment. The term of the MRO and the City's obligation to make payments hereunder shall not extend beyond the earlier of October 31, 2051 (the "**Final Payment Date**") or the date the MRO is paid in full. If the MRO has not been paid in full by the Final Payment Date, then the City shall have no obligation to make further payments on the MRO. Upon the earlier of the date the MRO is paid in full and the Final Payment Date, the MRO shall terminate and the City's obligation to make any payments under the MRO shall be fully discharged, and the City shall have no obligation and incur no liability to make any payments hereunder or under the MRO, after such date.

The MRO shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability thereon or be deemed to have obligated itself to pay thereon from any funds except the Available Tax Increment which has been appropriated for that purpose, and then only to the extent and in the manner herein specified. The MRO is a special, limited revenue obligation of the City and shall not constitute a general obligation of the City. The City will use good faith efforts to annually appropriate the Available Tax Increment for the MRO, until the earlier of the Final Payment Date, the termination of this Agreement or the MRO, or the payment in full of the MRO as provided herein. If Available Tax Increment is received by the City earlier than the first Payment Date, the applicable portion of such increment shall be retained by the City and applied to the first payment subject to appropriation by the City Common Council.

Developer shall not have the right to assign the MRO except as set forth therein. Interests in the MRO may not be split, divided or apportioned."

12. Section 5.3 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**5.3 <u>Issuance of MRO and Payment Limitation</u>**. Provided that Developer is not in Default under this Agreement beyond the applicable cure period (if any), the City will deliver the MRO to Developer within ninety (90) calendar days after the City issues a plumbing permit for the First Phase or within ninety (90) calendar days after the completion of the Second Phase and Developer's presentment, delivery and surrender of the original MRO to the City, as applicable. Notwithstanding the previous sentence, in the event that Developer is in Default prior to the City's issuance (or re-issuance) of the MRO, the City shall not be required to deliver the MRO to Developer until a reasonable time after, but in no event less than thirty (30) calendar days after, all such Defaults are cured and conditions are met, provided each Default is cured within the applicable cure period for such Default. If the City does not timely provide the MRO to Developer, the Developer shall make a written request to the City to deliver the executed MRO within thirty (30) calendar days after the date of such written request by the Developer. The total amount of principal to be paid under the MRO shall in no event exceed ***<u>the lesser of</u>***:

(a) Five Million Eight Hundred Forty Thousand Dollars ($5,840,000.00); and

(b) The sum of all payments made by the City on the MRO during the life of the District but in no event after the Final Payment Date.

If Developer completes the Second Phase timely and there is no other Default by Developer under this Agreement, within ninety (90) calendar days after the completion of the Second Phase and Developer's presentment, delivery and surrender of the original MRO to the City, the City shall reissue the MRO. The amount to be paid under the re-issued MRO shall equal ***<u>the lesser of</u>***:

(y) Eight Million Dollars ($8,000,000.00) *<u>less</u>* the amount already paid on the original MRO; and

(z) The aggregate sum of all payments made by the City on any or all MROs issued under this Agreement during the life of the District but in no event after the Final Payment Date.

The City's obligation to make payments on the MRO is conditioned on the requirement that Developer is not in Default under this Agreement. For the avoidance of any doubt, upon the occurrence of a Default, the City may suspend all payments until the Default is cured and, upon the expiration of all applicable cure periods for such Default, the City may exercise any and all available remedies. Notwithstanding the previous sentence, if a Developer Default is limited to a given Phase, then such suspension of payment under the MRO by the City will be limited to the amount due with respect to the Phase connected to such Default. For the avoidance of any doubt, upon the occurrence of a Not to Proceed Election for the First Phase, the City shall not be obligated to make any payments on the MRO, and upon the occurrence of a Not to Proceed Election for the Second Phase, the City shall not be obligated to make any payments on the MRO related to the Second Phase but

shall continue to make payments on the MRO with regard to the First Phase, provided that Developer is not otherwise in Default under this Agreement."

13. Section 6.2 of the Development Agreement is hereby amended and restated in its entirety with the following:

"**6.2 Tax Status/Restrictive Covenant.** Without the prior written consent of the City (which may be withheld for any reason), Developer shall not use or permit the use of any of the Property in any manner which would render such Property exempt from property taxation during the life of the District. Further, Developer will not challenge or contest any assessment on the Property by the City, including, but not limited to, filing any objection under Wis. Stat. Section 70.47, Wis. Stat. Section 74.37, or any Department of Revenue related assessment proceeding with regard to an assessed value of the Property for a given Phase in an amount less than the First Phase Guarantied Value or the Final Guarantied Value (as applicable and a set forth in Section 3.1 above). Developer agrees to record a deed restriction or restrictive covenant against the portions of the Property prior to any sale or leasing of any of the Property to make any subsequent purchasers or users of any portion of the Property subject to this provision. The foregoing deed restrictions or restrictive covenants shall permit, but shall not obligate, the City to enforce such deed restriction or restrictive covenant and shall be in form and in substance acceptable to the City. This provision and the deed restrictions or restrictive covenants shall continue to be applicable until the termination of the District. However, Developer shall not have a continuing obligation for compliance with this provision as to any portion of the Property in which Developer no longer maintains an interest (whether as owner, tenant, occupant or otherwise) provided that Developer has timely recorded the deed restrictions or restrictive covenants as approved by the City.

14. Section 7.1 of the Development Agreement is hereby amended by restating the last paragraph in Section 7.1 with the following:

"Notwithstanding any provision herein to the contrary, this Agreement and the MRO may be collaterally assigned to a mortgage lender financing the development and completion of each Phase of the Project (each a "**Phase Lender**").

In the event a Phase Lender forecloses (or accepts a deed in lieu of foreclosure) on a given Phase or Phases or otherwise exercises any of Phase Lender's rights under any collateral assignment related to such Phase(s) prior to substantial completion of all the Developer Improvements related to the applicable Phase(s), Phase Lender or a Qualified Developer (as defined below) shall execute all documents required by the City to confirm that such assignee is bound by the terms of this Agreement and agrees to perform all of Developer's obligations set forth in this Agreement. For the avoidance of any doubt, Developer shall remain jointly and severally liable for all obligations of Developer (whether to be completed by itself or its assign) under this Agreement.

In the event a Phase Lender forecloses (or accepts a deed in lieu of foreclosure) on a given Phase or Phases or otherwise exercises any of Phase Lender's rights under any collateral assignment related to such Phase(s) after substantial completion of all the Developer Improvements related to the applicable Phase(s), other than the maintenance, operation and management of the applicable portion of the Project, such Phase Lender shall not be required to assume the obligations of Developer under the Development Agreement; provided, however, for Lender (or Lender's nominee, successor or assign) to be able to

receive any payments on the MRO or any other benefits under this Development Agreement, all of the following conditions must be satisfied:

(a) The maintenance, operation and management of the applicable portion of the Project must be taken over by a Qualified Developer to avoid any disruption or delay in services provided to the residents in such portion of the Project.

(b) The Qualified Developer has agreed in writing to assume the Developer obligations under the Development Agreement (including, without limitation, Tax Increment Shortfall payments), but nothing contained herein shall be deemed to release Developer, any Qualified Developer or Guarantor from their respective obligations under the Development Agreement.

For the purposes of this Development Agreement, a "**Qualified Developer**" shall mean a real estate development company, as determined by the City in the City's sole discretion, that has:

(t) A demonstrated track record of successfully developing ground-up construction projects in the Midwest, which are similar in size, character, use, class, scope and value to the Project;

(u) Then current development capabilities, reputation and financial resources to undertake, complete and properly manage the Project;

(v) Not in the past defaulted on any project with the City;

(w) Not been the subject of any felony criminal charges or proceedings;

(x) Not been the subject of a voluntary or involuntary petition for relief under the bankruptcy code;

(y) Not brought a claim, lawsuit or otherwise against the City at any time prior to the date of any proposed assignment; and

(z) Been approved by the City to replace Developer.

15. Exhibit C of the Development Agreement is hereby amended and restated in its entirety with the Exhibit C attached to this First Amendment.

16. Exhibit D of the Development Agreement is hereby amended and restated in its entirety with the Exhibit D attached to this First Amendment.

17. Exhibit F of the Development Agreement is hereby amended and restated in its entirety with the Exhibit F attached to this First Amendment.

18. This First Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective, permitted successors and assigns.

19. Except as expressly amended herein, the Development Agreement shall remain in full force and effect. In the event of any conflict between the terms and conditions of the Development Agreement and this First Amendment, this First Amendment shall control.

20. The counterparts provisions in Section 16.12 of the Development Agreement are incorporated herein by reference and shall apply to the execution and delivery of this First Amendment.

[The remainder of this page is intentionally left blank with a signature pages to follow.]

#43025851v8

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the First Amendment Effective Date.

CITY: CITY OF SHEBOYGAN

By: ____
Name: Ryan Sorenson, City Mayor

Attest: ______________________________________
Name: Meredith DeBruin, City Clerk

STATE OF WISCONSIN)
) I
SHEBOYGAN COUNTY)

Personally came before me this _____ day of _________, 2026, the above named Ryan Sorenson and Meredith DeBruin, the City Mayor and the City Clerk of the City of Sheboygan, respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

____
Notary Public, Wisconsin
My commission _______________________

DEVELOPER: MALIBU APARTMENTS, LLC

By: ____
Name: Jacob Buswell, Partner

STATE OF WISCONSIN)
) I
_______________ COUNTY)

Personally came before me this _____ day of _________, 2026, the above named Jacob Buswell, a Partner of Malibu Apartments, LLC to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
Notary Public, Wisconsin
My commission ________________________

THIS FIRST AMENDMENT IS ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE III OF THE DEVELOPMENT AGREEMENT (AS AMENDED BY THIS FIRST AMENDMENT). I HAVE REVIEWED OR HAD AN OPPORTUNITY TO REVIEW THE DEVELOPMENT AGREEMENT AND THIS FIRST AMENDMENT AND HAVE CONSULTED OR HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE OBLIGATIONS CREATED ON ME PERSONALLY IN SUCH DOCUMENTS. I AGREE THAT SUCH GUARANTY IS ENTERED INTO IN THE INTEREST OF MY MARRIAGE AND FAMILY.

GUARANTOR:

____
Jacob Buswell

MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:

My spouse, Jacob Buswell, has agreed to personally guarantee obligations under the Development Agreement (as amended by this First Amendment) to the City. I consent to this act by my spouse and acknowledge that such act was entered into in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

____
Mary Elizabeth Buswell, Spouse of Jacob Buswell

THIS FIRST AMENDMENT IS ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE III OF THE DEVELOPMENT AGREEMENT (AS AMENDED BY THIS FIRST AMENDMENT). I HAVE REVIEWED OR HAD AN OPPORTUNITY TO REVIEW THE DEVELOPMENT AGREEMENT AND THIS FIRST AMENDMENT AND HAVE CONSULTED OR HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE OBLIGATIONS CREATED ON ME PERSONALLY IN SUCH DOCUMENTS. I AGREE THAT SUCH GUARANTY IS ENTERED INTO IN THE INTEREST OF MY MARRIAGE AND FAMILY.

GUARANTOR:

____
Brian Buswell

MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:

My spouse, Brian Buswell, has agreed to personally guarantee obligations under the Development Agreement (as amended by this First Amendment) to the City. I consent to this act by my spouse and acknowledge that such act was entered into in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

____
Debra Buswell, Spouse of Brian Buswell

THIS FIRST AMENDMENT IS ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE III OF THE DEVELOPMENT AGREEMENT (AS AMENDED BY THIS FIRST AMENDMENT). I HAVE REVIEWED OR HAD AN OPPORTUNITY TO REVIEW THE DEVELOPMENT AGREEMENT AND THIS FIRST AMENDMENT AND HAVE CONSULTED OR HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE OBLIGATIONS CREATED ON ME PERSONALLY IN SUCH DOCUMENTS. I AGREE THAT SUCH GUARANTY IS ENTERED INTO IN THE INTEREST OF MY MARRIAGE AND FAMILY.

GUARANTOR:

____
Matthew Buswell

MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:

My spouse, Matthew Buswell, has agreed to personally guarantee obligations under the Development Agreement (as amended by this First Amendment) to the City. I consent to this act by my spouse and acknowledge that such act was entered into in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

____
Jessye Buswell, Spouse of Matthew Buswell

THIS FIRST AMENDMENT IS ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE III OF THE DEVELOPMENT AGREEMENT (AS AMENDED BY THIS FIRST AMENDMENT). I HAVE REVIEWED OR HAD AN OPPORTUNITY TO REVIEW THE DEVELOPMENT AGREEMENT AND THIS FIRST AMENDMENT AND HAVE CONSULTED OR HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE OBLIGATIONS CREATED ON ME PERSONALLY IN SUCH DOCUMENTS. I AGREE THAT SUCH GUARANTY IS ENTERED INTO IN THE INTEREST OF MY MARRIAGE AND FAMILY.

GUARANTOR:

____
Todd Page

MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:

My spouse, Todd Page, has agreed to personally guarantee obligations under the Development Agreement (as amended by this First Amendment) to the City. I consent to this act by my spouse and acknowledge that such act was entered into in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

____
Debbie Page, Spouse of Todd Page

THIS FIRST AMENDMENT IS ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE III OF THE DEVELOPMENT AGREEMENT (AS AMENDED BY THIS FIRST AMENDMENT). I HAVE REVIEWED OR HAD AN OPPORTUNITY TO REVIEW THE DEVELOPMENT AGREEMENT AND THIS FIRST AMENDMENT AND HAVE CONSULTED OR HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THE OBLIGATIONS CREATED ON ME PERSONALLY IN SUCH DOCUMENTS. I AGREE THAT SUCH GUARANTY IS ENTERED INTO IN THE INTEREST OF MY MARRIAGE AND FAMILY.

GUARANTOR:

____
Richard Beyer

MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:

My spouse, Richard Beyer, has agreed to personally guarantee obligations under the Development Agreement (as amended by this First Amendment) to the City. I consent to this act by my spouse and acknowledge that such act was entered into in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

____
Michelle Jensen-Beyer, Spouse of Richard Beyer

EXHIBIT C

SITE PLAN

GEORGIA AVENUE

SOUTH 7TH STREET

CLARA AVENUE

N

0 30' 60'

SHEET KEY NOTES

1. CONNECT TO EXISTING PUBLIC WATER MAIN; WET TAP; FIELD VERIFY SIZE, MATERIAL, LOCATION AND DEPTH; SEE DETAIL A SHEET C701
2. WATER SUPPLY GATE VALVE - 8"; SEE DETAIL B SHEET C701
3. WATER CONNECTION TO BUILDING; VERIFY LOCATION, SIZE, METER, AND SHUT-OFF VALVING WITH PLUMBING PLANS
4. SANITARY LATERAL; CORE EXISTING MANHOLE AND SEAL CONNECTION; CONNECT AT FLOWLINE (REFORM FLOWLINE IF NOT PRESENT)
5. SANITARY CLEANOUT; SEE DETAIL C SHEET C701
6. SANITARY CONNECTION TO BUILDING; VERIFY LOCATION WITH PLUMBING CONTRACTOR AND PLUMBING PLANS
7. SANITARY LATERAL & WATER PIPE BURIAL; SEE UTILITY NOTES THIS SHEET; SEE DETAIL D SHEET C701
8. ELECTRIC SUPPLY (MAIN, UNDERGROUND) WITH TRANSFORMER; REFER TO ELECTRIC PLANS; VERIFY WITH SERVICE PROVIDER; LOCATION SHOWN FOR LAYOUT PURPOSES ONLY
9. ELECTRIC GENERATOR; REFER TO ELECTRIC PLANS; VERIFY WITH SERVICE PROVIDER; LOCATION SHOWN FOR LAYOUT PURPOSES ONLY
10. GAS SUPPLY LINE (UNDERGOUND); REFER TO MECHANICAL PLANS; VERIFY WITH UTILITY PROVIDER; LOCATION SHOWN FOR LAYOUT PURPOSES ONLY
11. GAS AND ELECTRIC UTILITY CONNECTIONS TO BUILDING; REFER TO PLUMBING, ELECTRIC, AND ARCHITECTURAL PLANS
12. RE-INSTALL PREVIOUSLY REMOVED FIRE HYDRANT ON SOUTH SIDE OF CLARA AVENUE; COORDINATE WITH CITY OF SHEBOYGAN FOR EXACT LOCATION
13. ADJUST EXISTING MANHOLE RIM TO MATCH PROPOSED GRADED

UTILITY NOTES

- CONTAMINATED SOILS PRESENT THROUGHOUT THE SITE. REFER TO THE MATERIALS MANAGEMENT PLAN PRIOR TO ANY UTILITY CONSTRUCTION.
- ALL MATERIALS AND CONSTRUCTION FOR STORM SEWERS, SANITARY SEWERS, AND WATER SUPPLY SHALL BE IN ACCORDANCE WITH THE "STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN," LATEST EDITION, WITH ALL CURRENT SUPPLEMENTAL SPECIFICATIONS AND ADDENDA
- SANITARY SEWER SHALL BE CONSTRUCTED OF MATERIALS LISTED IN TABLE SPS 384.30-2
- SANITARY BUILDING SEWER BURIAL DEPTH = 5.0' MINIMUM TO TOP OF PIPE (ZONE B, SANDY LOAM) PER SPS 382.30
- WATER SUPPLY SYSTEMS SHALL BE CONSTRUCTED OF MATERIALS LISTED IN TABLE SPS 384.30-7
- WATER SUPPLY BURIAL DEPTH = 5.0' MINIMUM TO TOP OF PIPE (5.0' MINIMUM TO TOP OF PIPE (ZONE B, SANDY LOAM) PER SPS 382.30

UTILITY CONTACT

- CONTACT CITY OF SHEBOYGAN ENGINEERING DIVISION 3 WORKING DAYS PRIOR TO ANY WORK NEAR PUBLIC UTILITY MAINS
- CITY ENGINEER = KEVIN JUMP; 920-495-3367

Stantec

UTILITY PLAN

BUSWELL SHEBOYGAN DEVELOPMENT
KITEBEACH APARTMENTS
1403-1435 S. 7TH STREET, SHEBOYGAN, WI 53081

DATE OF ISSUANCE
2025.03.07

NO	REVISION	DATE

C300

EXHIBIT D

MRO

UNITED STATES OF AMERICA
STATE OF WISCONSIN
COUNTY OF SHEBOYGAN
CITY OF SHEBOYGAN

TAXABLE TAX INCREMENT PROJECT MUNICIPAL REVENUE OBLIGATION ("**MRO**")

Number	Date of Original Issuance	Amount
[____]	[_________________]	Up to $[_______________]

FOR VALUE RECEIVED, the City of Sheboygan, Sheboygan County, Wisconsin (the "**City**"), promises to pay to Malibu Apartments, LLC (the "**Developer**"), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the Revenues described below, without interest.

This MRO shall be payable in installments of principal due on October 31 (the "**Payment Dates**") in each of the years and in the amounts set forth on the debt service schedule attached hereto as Schedule 1.

This MRO has been issued to finance projects within the City's Tax Incremental District No. 21, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621, Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the "Special Redemption Fund" provided for under the resolution adopted on April 20, 2026, by the Common Council of the City (the "**Resolution**"). This MRO is issued pursuant to the Resolution and pursuant to the terms and conditions of the Tax Incremental District Development Agreement dated as of February 20, 2024 by and between the City and Developer and as subsequently amended by a First Amendment to Tax Incremental District Development Agreement dated as of April 20, 2026 (collectively, the "**Development Agreement**"). All capitalized but undefined terms herein shall take on the meaning given to such terms in the Development Agreement.

This MRO does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This MRO shall be payable solely from Available Tax Increment generated by the Property and appropriated by the City's Common Council to the payment of this MRO (the "**Revenues**"). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this MRO is payable and the general covenants and provisions pursuant to which this MRO has been issued. The Resolution and Development Agreement are incorporated herein by this reference.

If on any Payment Date there shall be insufficient Revenues appropriated to pay the principal due on this MRO, the amount due but not paid shall be deferred. The deferred principal shall be payable on the next Payment Date until ***the earlier of***: (a) the date this MRO is paid in full, and (b) the Final Payment Date (as defined below). The City shall have no

obligation to pay any amount of this MRO which remains unpaid after the Final Payment Date. The owners of this MRO shall have no right to receive payment of any deferred amounts, unless there are available Revenues which are appropriated by the City's Common Council to payment of this MRO. The "**Final Payment Date**" is October 31, 2051.

At the option of the City, this MRO is subject to prepayment in whole or in part at any time.

The City makes no representation or covenant (express or implied) that the Available Tax Increment or other Revenues will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder are subject to appropriation, by the City's Common Council, of Tax Increments or other amounts to make payments due on this MRO. In addition, as provided in Section **Error! Reference source not found.** of the Development Agreement, the total amount of principal to be paid shall in no event exceed ***the lesser of***:

(a) [__________________] Dollars ($[________________]), and

(b) The sum of all payments made by the City on this MRO or any other MRO (whether re-issued or otherwise) during the life of the District but in no event after the Final Payment Date.

For the avoidance of any doubt, the Available Tax Increment for MRO payments made during the life of the District in 2027, 2028, 2029, 2030 and 2031, if made, shall equal ninety-five percent (95%) of the difference between the Tax Increment actually received by the City in such year and allocated for payment on the MRO **less** the Priority Project Costs, and the Available Tax Increment for MRO payments made during the life of the District for every year after 2031 but prior to or on the Final Payment Date, if made, shall equal seventy-five percent (75%) of the difference between the Tax Increment actually received by the City in such year and allocated for payment on the MRO **less** the Priority Project Costs.

When such amount of Revenues has been appropriated and applied to payment of this MRO, the MRO shall be deemed to be paid in full and discharged, and the City shall have no further obligation with respect hereto. Further, as provided in Sections **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.** of the Development Agreement or otherwise, the City's obligations to make payments on this MRO may be suspended or terminated in the event Developer is in Default under any of the terms and conditions of the Development Agreement, provided payments may be resumed when any such Default is timely cured and any payments missed due to an uncured Default also shall be paid from Available Tax Increment upon timely cure of such Default.

THIS MRO IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF THE CITY AND IS PAYABLE BY THE CITY ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS MRO IS NOT A GENERAL OBLIGATION OF THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR INTEREST OF THIS MRO. FURTHER, NO PROPERTY OR OTHER ASSET OF THE

CITY, EXCEPT THE ABOVE-REFERENCED REVENUES, IS OR SHALL BE A SOURCE OF PAYMENT OF THE CITY'S OBLIGATIONS HEREUNDER.

This MRO is issued by the City pursuant to, and in full conformity with, the Constitution and laws of the State of Wisconsin.

Except as otherwise expressly provided for in the Development Agreement, this MRO may be transferred or assigned, in whole or in part, only upon prior written consent of the City which may be withheld, conditioned or delayed for any reason. Interests in this MRO may not be split, divided or apportioned, except as set forth herein. In order to transfer or assign the MRO, if permitted by the City, the transferee or assignee shall surrender the same to the City either in exchange for a new, fully-registered municipal revenue obligation or for transfer of this MRO on the registration records for the MRO maintained by the City. Each permitted transferee or assignee shall take this MRO subject to the foregoing conditions and subject to all provisions stated or referenced herein.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this MRO have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of Sheboygan has caused this MRO to be signed on behalf of the City by its duly qualified and acting City Administrator and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

CITY OF SHEBOYGAN

EXHIBIT

By: ______________________________
Name: ________________, City Administrator

(SEAL)

EXHIBIT

Attest: ______________________________
Name: ______________, City Clerk

Schedule 1

Payment Schedule

Subject to the City's actual receipt of Available Tax Increment and the terms and conditions of the Development Agreement (including, without limitation, the City's right to modify this payment schedule based upon market conditions and the actual and projected Available Tax Increment generated from the Project), the City shall make the following payments on the MRO to Developer:

Payment Date		**Payment Amount**
October 31, 2027		$____________________
October 31, 2028		$____________________
October 31, 2029		$____________________
October 31, 2030		$____________________
October 31, 2031		$____________________
October 31, 2032		$____________________
October 31, 2033		$____________________
October 31, 2034		$____________________
October 31, 2035		$____________________
October 31, 2036		$____________________
October 31, 2037		$____________________
October 31, 2038		$____________________
October 31, 2039		$____________________
October 31, 2040		$____________________
[October 31, 20__		$____________________]
		====================
	Total	Up to $[________________]

REGISTRATION PROVISIONS

This MRO shall be registered in registration records kept by the Clerk of the City of Sheboygan, Sheboygan County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this MRO may thereafter be transferred only upon presentation of this MRO together with a written instrument of transfer in form and substance acceptable to the City and duly executed by the registered owner or his/her/its attorney, such transfer to be made on such records and endorsed hereon.

Date of Registration	Name of Registered Owner	Signature of [City Clerk]

EXHIBIT F

STREET PARKING WORK AREA

The Street Parking Work shall be performed in the area highlighted below.