

53.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2007-0195 Resolution In Committee

Resolution authorizing the Purchase and Sale Agreement between the Community Development Authority of the City of West Allis and MSP Real Estate Inc. for land located between S. 77 St. and S. 80 St. along the south side of W. National Ave. within Tax Incremental District Number Nine - Pioneer Neighborhood Redevelopment Area.

Introduced: 8/7/2007

Controlling Body: Safety & Development Committee

Sponsor(s): Safety & Development Committee

COMMITTEE RECOMMENDATION

ADOPT ~~subject to committee action~~

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>8/7/07</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Barczak				<input checked="" type="checkbox"/>
			Czaplewski				
			Dobrowski				
			Kopplin				
			Lajsic				
			Narlock				
			Reinke				
			Sengstock				
			Vitale				
			Weigel				
			TOTAL	<u>4</u>	<u>0</u>		

SIGNATURE OF COMMITTEE MEMBER

[Signature] Chair Vice-Chair Member

COMMON COUNCIL ACTION adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>8/7/07</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Barczak				<input checked="" type="checkbox"/>
			Czaplewski	<input checked="" type="checkbox"/>			
			Dobrowski	<input checked="" type="checkbox"/>			
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic	<input checked="" type="checkbox"/>			
			Narlock		<input checked="" type="checkbox"/>		
			Reinke	<input checked="" type="checkbox"/>			
			Sengstock	<input checked="" type="checkbox"/>			
			Vitale	<input checked="" type="checkbox"/>			
			Weigel	<input checked="" type="checkbox"/>			
			TOTAL	<u>8</u>	<u>1</u>		<u>1</u>

S+D
Atty: Del

STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL
2004

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2007-0195

Final Action:

Sponsor(s): Safety & Development Committee

AUG - 7 2007

Resolution authorizing the Purchase and Sale Agreement between the Community Development Authority of the City of West Allis and MSP Real Estate Inc. for land located between S. 77 St. and S. 80 St. along the south side of W. National Ave. within Tax Incremental District Number Nine - Pioneer Neighborhood Redevelopment Area.

WHEREAS, the Community Development Authority of the City of West Allis (the "Authority") is the owner of certain real property located within the Pioneer Neighborhood Redevelopment Area; and,

WHEREAS, the Authority has duly noticed and a held a Public Hearing on the sale of property on May 8, 2007; and,

WHEREAS, the Authority, by Resolution No. 683, adopted July 10, 2007, approved said Agreement by and between the Community Development Authority of the City of West Allis and MSP Real Estate Inc. for the Pioneer Neighborhood Redevelopment Area.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that it hereby approves (subject to approval by the Community Development Authority of the City of West Allis) the Purchase and Sale Agreement by and between the Community Development Authority of the City of West Allis and MSP Real Estate Inc. for land located between S. 77 St. and S. 80 St. along the south side of W. National Ave. within Tax Incremental District Number Nine - Pioneer Neighborhood Redevelopment Area.

BE IT FURTHER RESOLVED that the Director of Development be and is hereby authorized to execute and deliver the Agreement on behalf of the City of West Allis.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

cc: Development Department

DEV-R-482-8-7-07

ADOPTED AUG - 7 2007

Paul M. Ziehler
Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED August 9, 2007

Jeannette Bell
Jeannette Bell, Mayor



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

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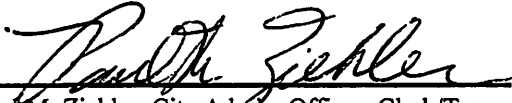
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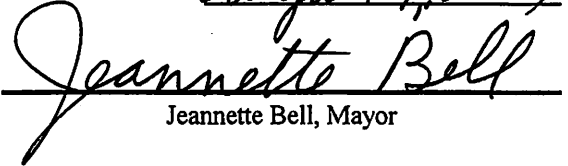
cc: Development Department

DEV-R-482-8-7-07

ADOPTED AUG - 7 2007


Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED August 9, 2007


Jeannette Bell, Mayor

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made as of the 13 day of November, 2007, by and between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS** ("Seller") and the following "Buyers": **WEST ALLIS SENIOR APARTMENTS, LLC** ("Lot 1 Buyer"), **HERITAGE-6, LLC** ("Lot 2 Buyer"), **HERITAGE-7, LLC** ("Lot 3 Buyer") and **HERITAGE-8, LLC** ("Lot 4 Buyer"), each a Wisconsin limited liability company (collectively the Seller and the Buyers are hereinafter referred to as the "Parties").

FOR AND IN CONSIDERATION of the undertakings and mutual covenants of the Parties set forth herein, the right and sufficiency of which are hereby acknowledged, Seller and Buyers hereby covenant and agree as follows:

1. **PROPERTY.** Seller hereby agrees to sell and convey unto Buyers and Buyers hereby agree to buy and pay for that certain tract of real property located along the south side of W. National Ave. between S. 78 and S. 80 St., in the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 5.614 acres of land as more particularly described and depicted as City of West Allis tax key parcels:

Tax Key Nos.
452-0599-001 7725 W. National Avenue
452-0598-001 7741 W. National Avenue
452-0597-003 77** W. National Avenue
452-0597-002 77** W. National Avenue
452-0597-001 77** W. National Avenue
452-9999-007 77** W. National Avenue
452-0596-000 7939, 7943 W. National Avenue and 1810 S. 80 St.

Hereafter, the property to be sold shall be referred to collectively as the "Property," a legal description and map of which is attached hereto as **Exhibit "A"** and made a part hereof (the "Property"). As a part of the Property, the Seller shall convey to Buyers all of Seller's interest in each and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving the Property subject to the terms of this Agreement. The portions of the

Property to be purchased by Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, are as depicted on the proposed certified survey map ("CSM"), a copy of which is attached hereto **Exhibit "B"** and made a part hereof. Specifically, Lot 1 Buyer shall purchase Parcel 1 as depicted on **Exhibit "B"**, Lot 2 Buyer shall purchase Parcel 2 as depicted on **Exhibit "B"**, Lot 3 Buyer shall purchase Parcel 3 as depicted on **Exhibit "B"**, and Lot 4 Buyer shall purchase Parcel 4 as depicted on **Exhibit "B"**.

2. **PURCHASE PRICE.** The aggregate purchase price for the Property shall be Six Hundred and Seventy-Eight Thousand Dollars and No/100 Cents (\$678,000.00) minus the sum of (i) \$27,000.00 for Buyers' environmental remediation expenses as provided in Section 3E below, and (ii) \$35,000 for Buyers' cost for removal of all asphalt and other paving on the Property, for a total of **\$616,000.00**, plus or minus any adjustments provided for hereunder (together, the "Purchase Price"), to be paid as follows:

A. \$10,000 Earnest Money to be paid upon execution of this Agreement by each of Seller and Buyers; plus

B. \$606,000 to be paid at Closing.

C. The Purchase Price shall be allocated among the Buyers as follows:

Lot 1 Buyer/Parcel 1: \$338,000.00

Lot 2 Buyer/Parcel 2: \$199,999.00

Lot 3 Buyer/Parcel 3: \$1.00

Lot 4 Buyer/Parcel 4: \$78,000.00

2.1 **Conveyance.** Upon payment of the Purchase Price and fulfillment or waiver of the other terms and conditions set forth herein, Seller shall convey the Property to each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, by four (4) separate warranty deeds free and clear of all liens and encumbrances, except for general real estate taxes levied in the year after the year of Closing and thereafter, municipal and zoning ordinances, recorded utility and drainage easements, recorded building and use restrictions and covenants, the Development Agreement(s) (as hereinafter defined) (collectively, the "Permitted Encumbrances").

2.2 **HOME Loan.** At the Closing, Seller shall lend \$600,000.00 to Lot 1 Buyer, in accordance with the terms of the forms of Loan Agreement, Mortgage Note, Mortgage and Land Use Restriction Agreement attached as **Exhibit "C"**. The Mortgage and Land Use Restriction Agreement shall be liens on Lot 1 only. All loan documents executed at the Closing shall be subject to the "Open Records" law.

3. **BUYERS' CONTINGENCIES.** The obligation of Buyers to consummate the transactions contemplated hereby is subject to the fulfillment of all of the following conditions (which may be waived by Buyers in whole or in part, in their sole discretion):

A. **Compliance with Agreement.** Seller shall have performed and complied with all of its obligations under this Agreement and the Environmental Addendum which is attached hereto as **Exhibit "D"** and made a part hereof (the "Environmental Addendum") to the extent such obligations are to be performed or complied with by Seller on or before the Closing Date (as defined below).

B. **No Misrepresentation or Breach of Covenants and Warranties.** There shall have been no breach by Seller in the performance of any of its covenants herein, and each of the representations and warranties of Seller outlined or referred to in this Agreement or the Environmental Addendum shall be true and correct in all respects on the Closing Date as though made on the Closing Date, except to the extent any deviation may be created by Buyers.

C. **No Litigation.** There shall be no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this agreement, or seeking the restraint, prohibition, damages or other relief in connection with this agreement or the use intended for the Property by Buyers and none of the same shall have been instituted or threatened by any person, agency, or other entity prior to Closing. Such litigation or threat thereof shall include, but not be limited to, challenges to Seller's right to take the Property or the rights of tenants or occupants of the Property to remain.

D. Title Matters.

(1) **Receipt of Title Commitments.** As a condition to Buyer's obligations hereunder, Seller shall cause to be delivered to each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer within ten (10) days after the date of this Agreement a commitment to issue ("Title Commitment") an ALTA owner's policy of title insurance (ALTA Owner's Policy (6-17-06) in the amount of the Purchase Price of the Property covered by the Title Commitment ("Title Policy") issued by Stewart Title of Wisconsin, Inc. as agent for Stewart Title Guaranty Company ("Title Company"). Each final Title Policy issued pursuant to each Title Commitment shall show title as of the date of Closing subject only to the "Permitted Encumbrances"):

(2) **Approval of Title Conditions.** Buyers shall have ten (10) days after the receipt of a written waiver of Seller's contingencies (described in Section 4 of this Agreement) to object in writing to any condition of title set forth in any Title Commitment, and to object to any existing easement that affects the Property. Buyers' failure to so object shall constitute a waiver of any objections. Matters specifically stated in any Title Commitment and not objected to by Buyers within ten (10) days after the receipt of a written waiver of Seller's contingencies described in Section 4 of this Agreement shall become Permitted Encumbrances. If any objection is made, Seller shall have fifteen (15) days thereafter in which to correct the condition. If the condition of title is not or cannot be corrected within the fifteen (15) day period to Buyers' satisfaction, Buyers shall within ten (10) days thereafter, at their option, either (a) declare this Agreement null and void and all money paid by Buyers as Earnest Money shall be returned immediately to Buyers, or (b) accept such title as Seller is able to convey and proceed to Closing without adjustment of the Purchase Price. Seller's inability or failure to correct any such condition of title shall not constitute a default by Seller hereunder, unless such title condition is caused by Seller. If

Buyers do not, within ten (10) days after the expiration of the fifteen (15) day period described above, elect either (a) or (b) above, then it shall be deemed that Buyers have elected (b) and have accepted such title as Seller is able to convey and shall proceed to Closing without adjustment of the Purchase Price.

E. Site Inspection and Environmental Contingency. Prior to Closing, Buyers and their agents shall have complete access to the Property for any purposes, including, without limitation, inspecting, testing and exploring the Property for previously undisclosed or undiscovered environmental contamination of the soils or underground water; and to that end, Buyers may, without limitation, cause soil borings to be obtained and tested and may excavate the property, including with backhoes or other mechanical equipment, to obtain soil samples and uncover buried circumstances ("Pre-Closing Site Inspection"). Buyers shall be satisfied, in their sole discretion, that no conditions exist that would cause Buyers to be obligated to clean up contamination Buyers did not cause or that would prevent Buyers from using the Property for its intended use.

Seller agrees to pay \$27,000.00 to Buyers as a credit at Closing only (and not in any other manner) for their Pre-Closing Site Inspection costs. Buyers shall give notice to Seller of all contaminated soils and waters it may discover in accordance with the Environmental Addendum. In the event any contaminated soils or waters are discovered, Buyer shall notify Seller of such contamination and the Parties shall, in good faith, attempt to secure sufficient funding to clean up such contamination and allow Buyers to acquire and develop the Property for Buyers' intended use. If the Parties cannot obtain sufficient funding to remediate such contamination, or reach agreement on sharing costs of the remediation required to clean up such contamination by November 30, 2007, then Buyers or Seller may by written notice to the other Party(ies) on or before November 30, 2007 terminate this Agreement. Upon such termination, all Earnest Money shall be returned to Buyers.

F. Demolition Inspection. Buyers shall have been satisfied, in their sole discretion, that the demolition work conducted at the Property was completed in accordance with the following

reports: 2007 Project No. 7 Razing of Structures (Pioneer Neighborhood Redevelopment Project) dated May 15, 2007, prepared by The Environmental Management Company LLC, and 2007 Project No. 8 Soil Remediation (Pioneer Neighborhood Redevelopment Project) dated May 15, 2007, prepared by The Environmental Management Company LLC.

G. Governmental Approvals and Permits. As a condition to Buyers' obligations hereunder, Buyers shall have obtained at Buyers' expense sixty (60) days prior to the Closing Date for the Property, all governmental approvals and permits necessary in order to construct the contemplated development on the Property. Buyers acknowledge that, except as provided above and in the Environmental Addendum, Buyers will have sole responsibility for making applications for and securing all such necessary permits, approvals and licenses and Buyers agree to act in good faith to attempt to obtain all such necessary permits, approvals and licenses. Seller shall cooperate with Buyers and assist in obtaining all documents necessary for Buyers to obtain the approvals and permits, including, but not limited to, one or more applications for approval by the Milwaukee Metropolitan Sewerage District.

H. Utilities. Buyers shall have been satisfied, in their sole discretion, with the location, availability and suitability of municipal and other utilities in connection with Buyers' intended use of the Property. Except for the matters disclosed by Seller in the documents delivered to Buyers prior to the date hereof, Seller make no representations or warranties regarding, and assumes no obligation for, the location, availability or suitability of utilities. Prior to Closing, Seller shall, at Seller's sole expense, remove all utility poles and guywires on the Property (including, without limitation, the "AT&T" pole located on the Property). All other existing underground utilities shall be removed at Buyers' sole cost and expense.

I. Financing. Lot 1 Buyer and Lot 2 Buyer obtaining firm commitments, without conditions, for the following debt and equity financing needed by Lot 1 Buyer and Lot 2 Buyer to acquire Lots 1 and 2 as shown on Exhibit "B", and to develop and construct the improvements on

those parcels contemplated by Seller and each of Lot 1 Buyer and Lot 2 Buyer, to wit: at least \$15,030,000.00 in fully nonrecourse first mortgage loan permanent financing for Lots 1 and 2, for a term of at least eighteen years, at an interest rate not to exceed 5.76%, and providing for equal monthly installments of principal and interest amortized over at least 35 years; and at least \$2,850,000.00 in equity capital for Lot 1 from investors on commercially reasonable terms and conditions acceptable to Lot 1 Buyer.

J. Survey. Buyers obtaining an ALTA survey of the Property which discloses no conditions that make it commercially unreasonable to develop the Property as contemplated by Buyer(s) or that are unacceptable to Buyers' lenders or investors.

K. Appraisal. Buyers obtaining an appraisal of the Property showing a value acceptable to Buyers' lenders and investors.

L. Intentionally deleted.

M. Termination. If Buyers fail to waive or acknowledge the satisfaction of the conditions in (A) through (L) in writing on or before the stated dates, if any, or by the date of Closing, then the Parties shall have no further liability under this Agreement and except as provided in Section 3(E) above, Seller may retain all of the Earnest Money.

N. Closing Constitutes Waiver. Closing on the Property shall be deemed waiver and satisfaction of the said conditions.

4. SELLER'S CONTINGENCY.

A. No Litigation. Seller's obligation to conclude the transactions described herein is contingent upon there being no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this Agreement, or seeking the restraint, prohibition, damages or other relief in connection with this Agreement or the use intended for the Property by Buyers, and none of the same shall have been instituted or threatened by any person, agency or other entity prior to closing. Such litigation or threat thereof shall include, but not be

limited to challenges to Seller's right to take ownership of the Property or the rights of tenants or occupants of the Property to remain.

C. **Termination.** In the event Seller's contingency in this Section 4 has not been satisfied prior to closing, Seller, by written notice to Buyers, may terminate this Agreement. Upon such termination, all Earnest Money shall be returned to Buyers and, thereafter, none of the Parties shall have any further liability under this Agreement. Closing on the Property shall be deemed waiver and satisfaction of the contingencies set forth in this Section 4.

5. **DEVELOPMENT AGREEMENTS.** Together with the execution of this Agreement, Seller and each of Lot 1 Buyer, Lot 2 Buyer and Lot 3 Buyer shall execute a Development Agreement in substantially the form attached as **Exhibit "E"**, to be recorded in the Office of the Register of Deeds of Milwaukee County (it being acknowledged by the Parties that there shall be a separate Development Agreement for each of Parcels 1, 2 and 3). The Parties further agree that each Development Agreement shall be recorded prior to Buyers attaching any mortgage, lien, or other encumbrance on the Property. Any future development of Parcel 4 shall be subject to Seller's approval. Prior to Lot 4 Buyer's development of Parcel 4, Parcel 4 shall be landscaped in accordance with the site landscaping plan approved by the Plan Commission. Together with the execution of this Agreement, a Memorandum of Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County shall be executed by Seller and Lot 4 Buyer confirming the foregoing requirements with respect to the development and landscaping of Parcel 4. To comply with Section 59.43(5), Wis. Stat., only, each Development Agreement and the Memorandum of Agreement shall state that the instrument was drafted by the Seller. For purposes of interpreting this Agreement and all exhibits hereto, Section 25 of this Agreement shall apply.

6. **DEVELOPMENT SCHEDULE.** Seller and Buyers shall accomplish the tasks described in **Exhibit "F"** within the time deadlines set forth therein, to the extent the deadlines are scheduled on or before the date of Closing.

7. **INSURANCE.**

A. For all work being performed on the Property, whether before or after the sale of the Property, as contemplated by this Agreement, each Party shall cause its environmental consultant and contractors to take out and maintain in connection with the work performed on the Property, by such consultant or contractor, for one or more insurance policies with the following minimum coverage and limits:

- | | | |
|-----|---|--|
| (1) | Worker's Compensation | Statutory |
| (2) | Employer's Liability | \$100,000 per accident
\$500,000 per employee (disease) |
| (3) | Commercial General Liability | \$1,000,000 per occurrence |
| (4) | Bodily Injury and
Property Damage
(including Environmental
Impairment Coverage or
Pollution coverage endorsement) | \$1,000,000 aggregate |
| (5) | Automobile Liability | \$1,000,000 per occurrence |
| (6) | Professional Liability | \$1,000,000 limit |
| (7) | Errors and Omissions
(including Environmental
Impairment Coverage or
Pollution coverage endorsement) | \$1,000,000 limit |

B. Each Party shall provide insurance certificates specifying the types and amounts of coverage in effect pursuant to Section 7(A) above, the expiration dates of such policies and a statement that no insurance under such policies will be canceled or materially changed without thirty (30) calendar days' prior written notice to the other Party. The Seller or Buyers shall, as the case may be, be named as an additional insured under the coverages above.

C. Each Party shall require its consultant to require each of its subcontractors to comply with the provisions of this Agreement applicable to consultant, including, but not limited to, the insurance requirements described in Sections A and B of this Section 7.

8. **CLOSING.** The Closing of the sale and purchase of the Property ("Closing") is subject to the fulfillment or waiver of the contingencies set forth in this Agreement. The Closing shall be held at the Milwaukee office of Lot 1 Buyer's first mortgage lender. The Closing shall occur on or before December 31, 2007, or such later date as may be agreed upon in writing by Seller and Buyers (the "Closing Date").

9. **REPRESENTATION AND WARRANTIES.**

A. **Seller's Warranties.** Seller hereby represents and warrants that as of the date hereof and as of the Closing Date:

(1) **Organization; Good Standing.** Seller is a Community Development Authority duly organized and validly existing under Sec. 66.1335 of the laws of the State of Wisconsin. Seller has full power and authority to sell, own, or hold under lease its properties and assets and to carry on its business as presently conducted, to enter into this Agreement, and to carry out the transactions contemplated hereby.

(2) **Authorization.** The execution and delivery of this Agreement and the consummation by Seller of the transaction contemplated hereby are within the power and authority of Seller and have been duly authorized by all necessary actions on the part of Seller and the persons executing this Agreement on behalf of Seller have been duly authorized.

(3) **No Violation or Conflict.** The execution, delivery, and performance of this Agreement by Seller does not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, or any contract or agreement to which Seller is a party or by which it is bound.

(4) **Floodplain.** No part of the Property is located in a floodplain, flood hazard area, shoreland, wetland, or similarly restricted area.

(5) **Liens.** All work performed or materials furnished for lienable work on the Property contracted for by Seller or at Seller's expense shall have been fully paid for by Closing, and at Closing Seller shall provide Buyers with appropriate lien waivers or releases from any and all contractors, laborers, or material men furnishing labor or material for lienable work on the Property during the six (6) months preceding the Closing Date.

(6) **Brokers.** Seller has not dealt with or engaged any brokers or finders or others to whom a commission might be owing upon Closing of this transaction. Seller agrees to indemnify and hold Buyer harmless from any claim for commission made by any agent or broker claiming to have acted on Seller's behalf.

(7) **Assessments.** As of the date hereof and as of the Closing Date, there are no special assessments or charges outstanding or announced for public improvements, which remain unpaid have been made or will have been made against the Property. Buyer shall pay all taxes, special assessments, and charges for work commenced or that are announced after the Closing Date.

(8) **Leases.** There are no written or oral leases affecting the Property.

(9) **Service Agreements.** There are no existing service, maintenance, management or any other agreements with regard to the Property.

(10) **No Default, Violation or Litigation.** Regarding the Property, to Seller's knowledge, the Seller is not in violation of any regulation, law, order of any court, federal, state, or municipal, or other governmental department, commission, board, bureau, agency or instrumentality, or restriction or covenant contained in any agreement or document of title (including, without limitation, legislation, regulations and agreements applicable to environmental protection, civil rights, public and occupational health and safety), nor has the Seller received any notice of noncompliance that has not been remedied. To Seller's knowledge, there are no lawsuits, proceedings, claims, governmental investigations,

citations or actions of any kind pending or threatened against the Seller or against the Property, nor is there any basis known to the Seller for any such action, and there is no action, suit or proceeding by any governmental agency pending or threatened which questions the legality, validity or propriety of the transactions contemplated hereby nor is there any basis known to the Seller for any such action.

(11) **Seller's Tests and Reports.** Seller has furnished to Buyers all such reports and other documents in Seller's possession or under its control relating to the soil, groundwater or other environmental conditions that may affect the Property or Buyers' ability to use the Property for Buyers' intended use (the "Environmental Reports"). A complete list of Environmental Reports is included as Attachment 1 to the Environmental Addendum. Buyers shall have the right to review and comment on drafts of all reports and submittals prepared by or for the CDA in conjunction with remedial action described in the Environmental Addendum. Buyers' reasonable comments shall be incorporated. Buyers shall have the right to participate in any meetings with the WDNR concerning the Property, remedial actions or case closure. Seller shall, prior to Closing and within three days of receipt, provide Buyers with any new Environmental Reports. Seller hereby confirms that Buyers are authorized to contact Seller's environmental consultants to discuss the environmental condition of the Property and any matters related thereto.

(12) **Laws.** Except as disclosed in the Environmental Reports previously delivered by Seller to Buyers, there is no government agency or court order requiring repairs, alterations, or corrections of or relating to the Property or any condition which might be cause for any such order, and to Seller's knowledge, the Property complies with all laws. Further, except as disclosed in the Environmental Reports, to the Seller's knowledge, there is no violation of any law or any building, zoning, environmental, or other ordinance, code, rule, or regulation and no notice from any governmental body or other person has been

served upon the Seller or upon the Property claiming the violation of any such law, ordinance, code rule, or regulation; there are no legal actions, suits, or administrative proceedings, including condemnation, pending or threatened against the Property.

(13) **Access for Utilities.** Seller makes no warranty or representation with respect to access or the availability or adequacy of public and private utilities required for the improvements to be constructed on the Property. Buyers acknowledge that they are purchasing the Property on the basis of their own investigation of the availability, access, and adequacy of such utilities.

(14) **Zoning.** Seller shall provide to Buyers, evidence from the Office of the Department of Development of the City of West Allis that the Property and all improvements to be constructed thereon by Buyers pursuant to each Development Agreement conform and comply in all respects without need of a variance or similar approval with the zoning of the Property as contemplated in each Development Agreement.

(15) **Reliance.** Seller acknowledges that the warranties and representations made here and by Seller are a material inducement to Buyers entering into this Agreement, the Buyers are entitled to rely upon these warranties and representations despite independent investigation undertaken by Buyers and that the warranties and representations made here and by the Seller shall survive the Closing and the execution and delivery of the warranty deeds conveying the Property to Buyers.

B. Buyers' Warranties. Buyers hereby represent and warrant that as of the date hereof and as of the Closing Date:

(1) **Organization; Good Standing.** Each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin. Each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, has full power and authority to acquire and own real estate

and to carry on its business as presently conducted, to enter in this Agreement, and to carry out the transactions contemplated hereby.

(2) **Authorization.** The execution and delivery of this Agreement and the consummation by each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer of the transactions contemplated hereby are within the power and authority of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, and have been duly authorized by all necessary actions on the part of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, and the persons executing this Agreement on behalf of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer have been duly authorized.

(3) **No Violation or Conflict.** The execution, delivery, and performance of this Agreement by Buyers do not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, or any contract or agreement to which any Buyer is a party or by which it is bound.

(4) **Brokers.** Buyers have not dealt with or engaged any brokers or finders or others to whom a commission might be owing upon Closing of this transaction. Buyers agree to indemnify and hold Seller harmless from any claim for commission made by any agent or broker claiming to have acted on Buyers' behalf.

(5) **Litigation.** To Buyers' knowledge, there are no lawsuits, proceedings, claims, governmental investigations, citation or action of any kind related to the Property pending or threatened against the Buyers, nor is there any basis known to the Buyers for any such action, and there is no action, suit or proceeding by any governmental agency pending or threatened which questions the legality, validity or propriety of the transactions contemplated hereby nor is there any basis known to Buyers for any such action.

(6) **Reliance.** Buyers acknowledge that the warranties and representations made here and by Buyers are a material inducement to Seller entering into this Agreement, the

Seller is entitled to rely upon these warranties and representations despite independent investigation undertaken by Seller and that the warranties and representations made here and by the Buyers shall survive the Closing and the execution and delivery of the Deed.

10. **CLOSING DOCUMENTATION.**

A. At the Closing, Seller shall deliver to each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer, respectively, the following:

- (1) **Possession.** Legal and physical possession of the Property.
- (2) **Warranty Deed.** A warranty deed to the Property in the form attached hereto as **Exhibit "G"**.
- (3) **Title Policy.** An owner's title insurance policy updated through and including the Closing Date, issued pursuant to and in every respect conforming with the Title Commitment required hereunder.
- (4) **Closing Statement.** A closing statement setting forth a summary of the Purchase Price and credits to such Buyer and Seller.
- (5) **Transfer Return.** Seller shall provide for execution at the Closing a properly completed Wisconsin Real Estate Transfer Return.
- (6) **Payout Letter.** Seller shall deliver a payout letter for any mortgages or other liens being satisfied as of the Closing Date.

B. At the Closing, each of Lot 1 Buyer, Lot 2 Buyer, Lot 3 Buyer and Lot 4 Buyer shall deliver to Seller the following:

- (1) **Purchase Price.** The remaining balance of the Purchase Price required under Section 2.
- (2) **Loan Documents.** With respect to Lot 1 Buyer, an executed Loan Agreement, Note, and Mortgage required under Section 2.2 above.

11. CLOSING COSTS.

A. Seller shall pay the following:

(1) All title insurance premiums for the owners' Title Policies and one-half of any fees charged by the title company to conduct the Closing.

(2) The recording fee for any satisfaction of its existing liens and encumbrances.

(3) Any transfer fee, if any, arising by reason of transfer of the Property.

B. Buyers shall pay the following:

(1) One-half of any fees charged by the title company to conduct the Closing.

(2) The cost to record the Deeds, the HOME loan recordable documents and the Development Agreements.

(3) All other non-specified closing costs.

C. Each Party shall pay its own attorney's fees.

12. CONDEMNATION. If, prior to the Closing Date, an authority other than Seller itself takes the Property or any material portion thereof by power or exercise of eminent domain, or institutes any proceedings to effect such a taking, Seller shall immediately give Buyers notice of such occurrence, and Buyers shall have the option to terminate this Agreement at its option, whereupon no Party shall have any obligation to the other under this Agreement except Seller shall immediately return the Earnest Money to Buyers. If this Agreement is not so terminated, the conveyance that is the subject of this Agreement shall be completed and Buyers shall receive all proceeds of such condemnation. As used herein, a material portion of the Property shall be deemed taken if it unreasonably interferes with the intended use of the Property by Buyers.

13. NOTICES. All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one business day after deposit with a nationally recognized overnight commercial courier service, airbill

prepaid, or two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To Seller: Community Development Authority of the City of West Allis
Department of Development
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Executive Director

with a copy to: City of West Allis
Office of the City Attorney
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Attorney

To Buyers: West Allis Senior Housing, LLC,
Heritage-6, LLC, Heritage-7, LLC, Heritage-8, LLC
c/o MSP Real Estate, Inc.
7201 Walker Street, Suite #20
St. Louis Park, MN 55426
Attn: Milo S. Pinkerton

with a copy to: Foley & Lardner LLP
150 East Gilman Street (53703)
Post Office Box 1497 (53701-1497)
Madison, Wisconsin
Attn: Timothy J. Radelet

14. **FURTHER ASSURANCES.** Following the Closing Date, each of the Parties will take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by any other Party in order to perfect and complete the purchase and sale of the Property as set forth herein as well as any other transactions specifically contemplated herein.

15. **WAIVER OF TERMS.** Any of the terms or conditions of this Agreement may be waived at any time by the Party or Parties entitled to benefit thereof, but only as provided specifically herein or by a written notice signed by the Party or Parties waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

16. **RIGHT OF ENTRY.**

A. **To Buyers.** Seller grants to the Buyers, their agents and contractors, the right to enter upon the Property at all reasonable times prior to Closing for the purpose of performing physical and environmental tests, examinations and inspections.

B. **Cooperation.** The Parties shall cooperate with each other and their respective agents and contractors to facilitate the timely and accurate completion of the aforesaid tests, examinations, and inspections.

C. **Indemnification.** By the exercise of its right of entry to the Property, the Buyers hereby undertake and agree to hold harmless, indemnify and defend Seller from and against any and all claims, losses, demands, expenses, damages or liabilities whatsoever arising out of the exercise by Buyers of the right and permission herein given and agrees it will promptly restore any damage it may cause to the Property, which indemnification, hold harmless and restoration obligations shall survive the termination of this Agreement.

D. **License.** The Parties acknowledge that this right of entry is a license only and does not constitute a lease of or grant of any easement or other interests in real property; and each agree that in the exercise of such right they shall comply with all valid laws, ordinances, rules, orders or regulations of the United States, the State of Wisconsin, the County of Milwaukee, the City of West Allis or any agencies, departments, districts or commissions thereof.

17. **AMENDMENT OF AGREEMENT.** This Agreement may be amended, supplemented, or modified at any time, but only by a written instrument duly executed by Seller and Buyers.

18. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Any action concerning this Agreement shall be initiated and maintained in Milwaukee County, Wisconsin.

19. **AS IS, WHERE IS.**

A. **Sale.** The sale of the Property to Buyers hereunder shall be "AS IS, WHERE IS", with all faults, and without representation or warranty of any kind except as expressly provided in this Agreement and the Environmental Addendum. Any other warranties or representations of any kind made either orally or in writing by any agent or representative of Seller or anyone purporting to be an agent or representative of Seller shall be of no force and effect. Buyers hereby acknowledge that they shall rely only on the written representations and warrants of Seller which are contained in this Agreement and the Environmental Addendum.

B. **Buyer Investigation.** Prior to Closing, Buyers will have investigated and will have knowledge of operative or proposed governmental laws and regulations (including, but not limited to, zoning, environmental and land use laws and regulations) to which the Property is or may be subject and shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations, except as expressly provided in this Agreement.

C. **Warranties.** The Buyers further acknowledge that the Seller, its agents and employees and other persons acting on behalf of Seller have made no representation or warranty of any kind in connection with any matter relating to the condition, value, fitness, use or zoning of the Property upon which the Buyers have relied directly or indirectly for any purpose other than as may be expressly provided in this Agreement and the Environmental Addendum.

20. **SUCCESSORS AND ASSIGNS.** This Agreement and all rights and obligations therein, including but not limited to the indemnification provisions thereunder, may not be assigned or otherwise transferred by any party hereto without the other parties' prior written consent. Such consent may not unreasonably be withheld or delayed.

21. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original Agreement, but all of which together shall constitute one and the same instrument.

22. **TITLES AND HEADINGS.** Titles and headings to sections or subsections are for purposes of references only and shall in no way limit, define, or otherwise affect the provisions herein.

23. **ENTIRE AGREEMENT.** This Agreement, including any schedules and Exhibits annexed hereto, constitutes the entire agreement between the parties and supersedes all other prior agreements and understandings, both written and oral, by the Parties or any of them, with respect to the subject matter hereof. All prior statements, letters of intent, representations, and offers, if any, are hereby terminated.

24. **INTERPRETATION.** Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and include all genders.

25. **CONSTRUCTION.** Seller and Buyers acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

26. **DEFAULT PROVISIONS AND REMEDIES.** Except as otherwise provided in this Agreement, the following remedies shall apply upon the default of the Parties hereunder.

A. **Buyers' Default.** Should Buyers default under this Agreement, in addition to all other rights and remedies provided for in this Agreement or available to Seller at law or in equity, Seller may retain the Earnest Money and, in addition, Seller shall have the following specific rights and remedies: (1) with respect to matters that are capable of being corrected by Seller, the Seller may at its option correct the default and Seller's reasonable costs in correcting same, plus five percent (5%) interest, shall be paid by Buyer to the Seller immediately upon demand; (2) action for specific performance; and (3) action for direct money damages.

B. Seller's Default. Should Seller default under this Agreement, in addition to all other rights and remedies provided for in this Agreement or available to Buyers at law or in equity, Buyers shall be entitled to a return of its Earnest Money and, in addition, Buyers shall have the following specific rights and remedies: (1) with respect to matters that are capable of being corrected by Buyers, the Buyers may at their option correct the default and Buyers' reasonable costs in correcting same, plus five percent (5%) interest, shall be paid by Seller to the Buyers immediately upon demand; (2) action for specific performance; and (3) action for direct money damages.

C. General Default Provisions. Any Party will be considered to be in default if any of the following occurs: (1) it assigns this Agreement without consent of the other party contrary to Section 20; (2) it fails to perform any material obligation under this Agreement; (3) it makes an assignment for the benefit of its creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of its assets; (4) it files for relief under state or federal bankruptcy or receiver laws; (5) it is the subject of an involuntary petition to have it declared bankrupt or declared insolvent under Wis. Stat. Chapter 128, or similar laws of another state.

27. DAMAGES. In the event of a default, neither Buyers nor Seller shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise.

28. NO RELIANCE. No third party, except the City of West Allis, is entitled to rely on any of the representations, warranties, or agreements of Buyers or Seller contained in this Agreement. Buyers and Seller assume no liability to any third party other than the City of West Allis because of any reliance on the representations, warranties and agreements of Buyers and Seller contained in this Agreement.

29. SURVIVE THE CLOSING. The agreements, covenants, warranties and representations contained herein shall survive the Closing of the transaction contemplated herein.

30. **REPRESENTATIONS AND WARRANTIES.** All statements contained in any certificate, instrument or document delivered by or on behalf of any Party pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the Parties unless otherwise expressly provided.

31. **BINDING EFFECT.** The terms and conditions of this Agreement shall be binding upon and benefit the parties and their respective successors and assigns.

32. **GOOD FAITH.** The Parties covenant and agree to act in good faith in the performance and enforcement of the provisions of this Agreement.

33. **TIME.** Time is of the essence with regard to the Closing Date and all other dates and time periods in this Agreement.

34. **COURT COST AND ATTORNEY FEES.** In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to court costs and out-of-pocket litigation expenses only. Attorney fees shall not be awarded to the prevailing party.

35. **MEDIATION.** The parties shall endeavor to resolve their disputes by mediation. A request for mediation shall proceed in advance of legal or equitable proceedings for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The mediator shall be mutually agreed to by the parties or appointed by the court.

36. **CITY ATTORNEY.** The West Allis City Attorney is acting as the Seller's attorney pursuant to the provisions of Section 66.1333(16), Wis. Stat. The West Allis City Attorney's participation in the preparation of this Agreement does not, in any manner, indicate or imply that the City of West Allis is a party to this Agreement other than as a third party beneficiary as set forth in Section 28.

37. **NO PERSONAL LIABILITY.** Under no circumstances shall any officer, official, director, member, or employee of the Seller or Buyers have any personal liability arising out of this Agreement, and neither Buyers nor Seller shall seek or claim any such personal liability unless a separate personal guarantee is signed by an individual as part of this transaction.

38. **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, unusual adverse weather conditions, legally required environmental remedial actions, shortage of materials, or by any other cause not within the control of the Party whose performance was interfered with, and which by the 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.

39. **JOINT AND SEVERAL OBLIGATIONS.** The obligations of Buyers hereunder to purchase the Property are joint and several. Seller shall have no obligation to convey any portion of the Property to any Buyer unless the entire Property is to be conveyed as contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth

above.

Approved as to form this 13 day
of Nov., 2007.

Scott E. Post
Scott E. Post, City Attorney

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

By: John F. Stibal
John F. Stibal,
Executive Director

BUYERS:

WEST ALLIS SENIOR APARTMENTS, LLC (Lot 1 Buyer)

By: MSP West Allis, LLC, its Manager

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

HERITAGE-6 LLC (Lot 2 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

HERITAGE-7 LLC (Lot 3 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

HERITAGE-8 LLC (Lot 4 Buyer)

By: Milo S. Pinkerton
Milo S. Pinkerton, Manager

LEGAL DESCRIPTION AND MAP OF THE PROPERTY

Lots 1, 2, 3 and 4 of Certified Survey Map 7986, recorded in the office of the Milwaukee County, Wisconsin Register of Deeds on October 29, 2007 as Document Number 09515893.

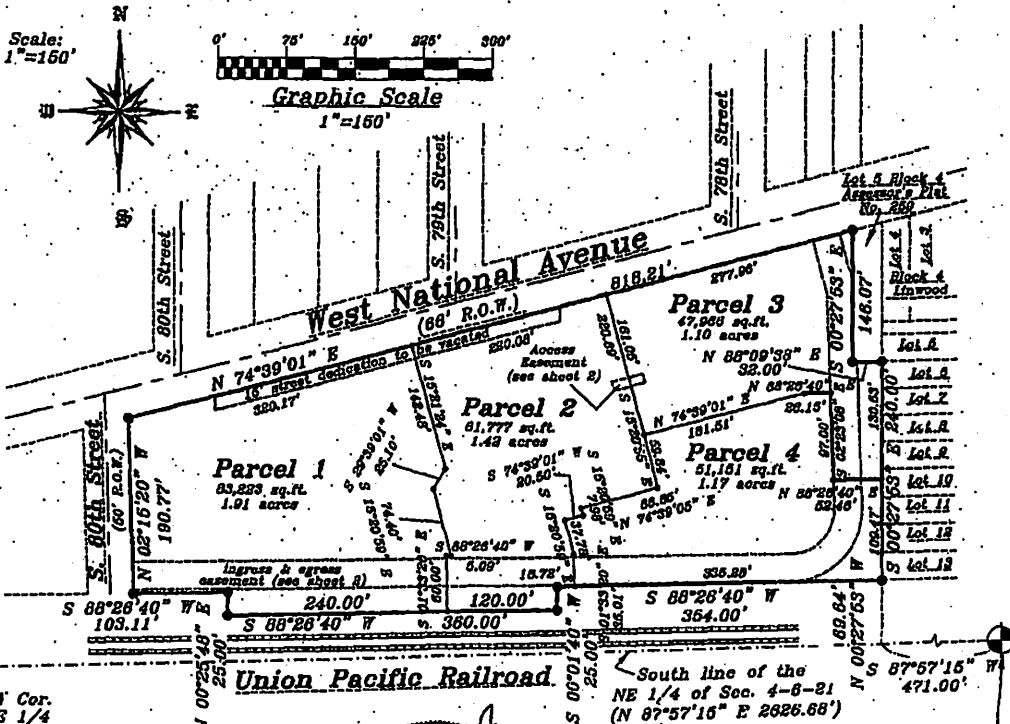
Said land contains **5.614** Acres, more or less.

MAP DEPICTING FUTURE LOTS 1, 2, 3 AND 4



CERTIFIED SURVEY MAP 7986

Being a re-division of Parcels 1, 2 and 3 in Certified Survey Map No. 2389, and Lots 1, 3 and 4, in Block 4, in Assessor's Plat No. 259, and lands, all being a part of the Southeast 1/4 of the Northeast 1/4 of Section 4, Town 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin.



Scale: 1"=160'



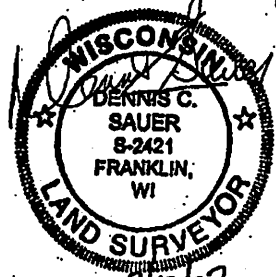
SW Cor.
NE 1/4
Sec. 4-8-21
(conc. mon.
w/brass cap)
N= 374,405.92
E= 2,530,336.86

Prepared by:
Metropolitan Survey Service, Inc.
5200 W. Loomis Rd.
Greendale, WI 53129

Prepared for:
City of West Allis
7626 W. Greenfield Ave
West Allis, WI 53214
Phone (414) 302-8200

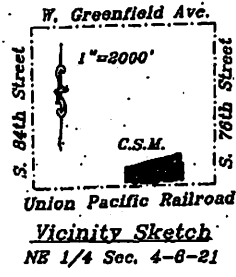
Notes:
• - Denotes 1"x24" iron pipe, 1.13 lbs per lin. ft., set unless otherwise noted.
This C.S.M. is served by municipal sanitary sewer and water.

Map bearings refer to Grid North of the Wisconsin State Plane Co-ordinate System, South Zone, with the South line of the NE 1/4 of Section 4, T6N, R21E having an assumed bearing of N 87°57'15" E.



8/13/07
9/11/07
9/27/07

SE Cor.
NE 1/4
Sec. 4-8-21
(conc. mon.
w/brass cap)
N= 374,499.68
E= 2,532,961.66



HOME LOAN DOCUMENTS

Mortgage Note
Real Estate Mortgage
Loan Agreement
Land Use Restriction Agreement

EXHIBIT "D"

ENVIRONMENTAL ADDENDUM

THIS ENVIRONMENTAL ADDENDUM is made as of the ___ day of _____ 2007, by and between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS ("CDA")** and the following "Buyers": **WEST ALLIS SENIOR APARTMENTS, LLC (Lot 1), HERITAGE-6, LLC (Lot 2), HERITAGE-7, LLC (Lot 3) and HERITAGE-8, LLC (Lot 4)**, each a Wisconsin limited liability company (collectively the Seller and the Buyers are hereinafter referred to as the "Parties").

WHEREAS, BUYERS and the CDA have entered into an agreement ("Purchase Agreement") on a date even herewith, for the sale of certain property located with in the City of West Allis, Wisconsin as more particularly described in the Purchase Agreement (the "Property");

WHEREAS, the Property is divided into four lots as described in the Purchase Agreement ("Lots"); and

WHEREAS, BUYERS and CDA desire to enter into this Environmental Addendum to govern environmental responsibilities with respect to the Property;

NOW, THEREFORE, for and in consideration of the Purchase Agreement for the Property, the terms and conditions stated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyers and CDA agree as follows:

1. **Contingent On Sale Of Property.** This Environmental Addendum and the obligations of CDA and Buyers hereunder are contingent upon the closing of the sale of the Property in accordance with the Purchase Agreement. To the extent the Property is not sold and conveyed by CDA to Buyers, this Environmental Addendum shall be void and of no force or effect. To the extent the Property is sold and conveyed by CDA to Buyers, the terms of this Environmental Addendum shall govern in the event of any inconsistency between this Environmental Addendum and the Purchase Agreement.

2. **Environmental Assessments.** Buyers acknowledge receipt of the environmental reports for the Property listed in the attached Attachment 1 ("Environmental Reports"). The Property is formerly known as the Laidlaw Bus Company property (Parcel Nos. 452-4599-001, 452-0599-001, 452-0597-003, 452-0597-002, 452-0597-001, 452-9999-007) and the Advertoprint, Inc. property (Parcel No. 452-0596-000). Additionally, Buyers acknowledges a site investigation, soil and groundwater remediation, and case closure associated with former petroleum UST were completed on the former Laidlaw Bus Company site in the 1990's, as described in the Environmental Reports.

3. **Pre-Closing Demolition Work.** The CDA has demolished and removed from the Property all on-site buildings and related structures and debris ("Demolition"). Buyers agree to remove the remaining asphalt surface pavement on the Property, for which the CDA gave to Buyers a credit against the purchase price as specified in the Purchase Agreement.

a. The CDA and Buyers also agree that all existing pavement will remain in place on Property as long as possible to protect shallow site soil and fill from weather and human contact and to facilitate Property drainage. Individual sections of the existing pavement will be removed as necessary to allow construction of individual elements of the development, i.e. individual buildings, parking areas, driveways, walkways, etc.

b. On-site excavations produced by building demolition have not been backfilled, and the CDA will leave in place the existing chain link security fencing erected around the on-site excavations.

4. CDA's Remedial Obligation. The CDA shall, at its cost, complete such investigation and remediation work ("Remedial Action") as is necessary to obtain final case closure pursuant to Ch. NR 726.03(1) Wis. Adm. Code ("Case Closure") for the Environmental Repair Program ("ERP") Case #02-41-001015 applicable to the release(s) originating in proximity to the former garage located on the Laidlaw Bus Company property. Case Closure shall include the proper abandonment of all groundwater monitoring wells, removal and proper disposal of all investigation wastes and groundwater collection drums, payment of all DNR fees and completion of any required GIS submittals or registrations. Until such time as Case Closure, the CDA agrees that it or its consultants shall be the waste generator identified in any waste manifests for soils that are disposed off-site.

The Parties hereby acknowledge and agree that the CDA may utilize any Remedial Action alternative allowed under applicable Wisconsin Department of Natural Resources ("WDNR") rules, including active measures (e.g. excavation or capping), passive measures (e.g. natural attenuation), or a combination thereof in obtaining Case Closure. In addition, it is understood and agreed that the Remedial Action may rely on and utilize institutional controls (such as recordation in a GIS registry, deed notices or restrictions), provided that such controls do not preclude the use of the Property for purposes intended by Buyers.

Buyers shall have the right to review and comment on all reports and submittals while in draft form, prepared by or for the CDA in conjunction with the Remedial Action. Buyers' reasonable comments shall be incorporated. Buyers shall have the right to participate in any meetings with the WDNR concerning the Property, Remedial Actions or Case Closure. Buyers shall cooperate fully and in good faith with the CDA in obtaining Case Closure, including the execution of such documents that are usual and customary and reasonably necessary for the CDA to obtain Case Closure. Buyers shall provide access to the Property for the CDA, its agents and contractors to perform the Remedial Action required hereunder.

The CDA's obligation under this paragraph shall terminate and be of no further force or effect upon WDNR's issuance of final Case Closure.

5. Soils Management. Except for any soils which may be removed in connection with the CDA's Remedial Action pursuant to paragraph 4 above (which shall be the responsibility of the CDA), Buyers shall be responsible for all contaminated soils which may be present on the Property.

6. **Soil Disposal.**

a. Except for any soils, which may be removed in connection with the CDA's Remedial Action (which shall be the responsibility of the CDA), Buyers shall be responsible, if necessary, for the loading, transport and off-site disposal of all clean soils and all contaminated soils. Buyers may dispose of soils at any site of their choosing and at their own cost. However, the CDA will make available CDA owned sites (the Lime pit located at 1960 S. 67th Place or, if WDNR permission is granted, the Soccer Complex located at 113th and Lincoln), for the disposal of the contaminated soils. Clean soil shall not be deposited at CDA sites. Disposal at the CDA sites shall only be allowed if such disposal is in full compliance with all applicable WDNR approvals. For the Lime Pit, the approval is set forth in the WDNR letter dated August 24th, 2007.

b. If Buyer elects to dispose of soils at a CDA owned site, it shall do so at the site or sites as directed by the CDA and upon the terms and conditions set forth herein.

c. All such soils that Buyers elect to deposit on the CDA's sites shall be transported by the Buyers using licensed trucking contractors. Soils shall be then placed by the Buyers on the CDA's sites in accordance with soil reconsolidation plans and specifications to be provided by the CDA. The CDA shall be responsible for all property management activities at the Lime Pit and/or Soccer Complex sites, such as grading, compaction, cover or temporary seeding. Buyers shall comply with the direction of CDA's agent concerning any temporary soil stockpiles created at the Lime Pit/Soccer Complex, any erosion and storm water controls, as well as limiting the stockpiles to a maximum of 2,500 cubic yards at any one time.

d. Buyers agree to pay to the CDA the lesser of i) \$5.22 per cubic yard or ii) the unit cost per cubic yard that Buyers would pay for the transportation and placement of non-contaminated material elsewhere less the unit cost per cubic yard that Buyers would pay for the transportation and placement of the permitted contaminated material at the Soccer Complex or the Lime Pit. The CDA will accept reasonable documentation from Buyer, including vendor bids or comparable vendor contracts, that establishes the disposal costs above. Buyer will make payment to CDA within ten (10) business days of receipt of Seller's invoice. "Transportation" shall not mean moving from one Lot on the Property (as defined in the Purchase and Sale Agreement) to another Lot on the Property.

e. To the extent reasonably possible, Buyers shall use the identified contaminated soil on the Property and shall first remove all clean soil associated with site preparation including but not limited to excavation for footings and foundation and utilities prior to the removal of the identified contaminated soil.

7. **Buyers' Release and Waiver of Claims.** Buyers acknowledge that Buyers have had the opportunity to undertake such studies and investigations, conduct

such tests and surveys, and engage such specialists as Buyers deem appropriate to evaluate the Property and its risks from an environmental standpoint. Accordingly, except as set forth in this Environmental Addendum or the Purchase Agreement, Buyers are acquiring the Property "as is, where is," without representation or warranty of any kind, express or implied, as to the environmental condition of the Property. In addition to and not by way of limitation of the sale of the Property on an "as is, where is," basis, and except for a claim to enforce the CDA's obligation under paragraph 3 above, Buyers, on their own behalf and on behalf of any successors, heirs or assigns, hereby release the CDA, the City of West Allis, their elected officials, agents and contractors (collectively "Released Parties") from, and waive all claims and liability against the Released Parties arising out of or related to the environmental condition of the Property, the presence of contamination thereon or migration there from, including, but not limited to, claims for Remedial Action except to the extent that the Released Parties i) caused or contributed to the contamination, ii) were negligent in completing or performing Remedial Action or iii) breached a material representation or warranty in the Purchase Agreement. The waiver and release shall apply to all claims and causes of action of any type whatsoever, known or unknown, arising in contract, common law, or under applicable statutory law.

8. **No Admission of Liability.** Nothing in the CDA's completion of the demolition work in paragraph 2 or agreement to undertake the Remedial Action in paragraph 3 shall be construed as an admission or acknowledgment of any kind that the CDA is liable or responsible for any contamination on the Property, such liability and responsibility is expressly denied. The CDA binds itself to the commitments in this Environmental Addendum to facilitate the redevelopment of the Property.

9. **Buyers's Remedial Obligation.**

Buyers will, to the extent required by WDNR, be responsible for constructing any reasonable and necessary engineered barriers at the Property and adhering to the terms of any WDNR approved engineered barrier maintenance plan for the Property.

Buyers agrees to take all practicable and cost effective actions necessary to design and redevelop the Property in a manner that will maximize on-site reuse of contaminated soil, consistent with any conditions of reuse established by the WDNR.

10. **Survival of Rights and Obligations.** The Parties respective rights and obligations under this Environmental Addendum shall survive the closing.

11. **Severability.** If any provision, clause or part of this Environmental Addendum is held invalid, the remainder of this Environmental Addendum and the application of such provision, clause, or part shall not be affected.

12. **Amendment.** This Environmental Addendum may only be amended, modified or supplemented by a writing signed by both Parties.

13. **Binding Effect.** This Environmental Addendum shall bind and inure to the benefit of the Parties hereto and to their respective legal representatives, successors, assigns.

14. **Assignment.** This Environmental Addendum is not to be assigned by either party without the prior written consent of the other, in accordance with the Purchase Agreement. Upon assignment, the obligations of the respective Buyer of a Lot shall have no further obligation under this Environmental Agreement and the CDA shall look solely to the assignee associated with the applicable Lot for enforcement of its rights and remedies hereunder. Provided, however, the Release and Waiver of claims provided in paragraph 5 shall continue to be binding on the Buyers notwithstanding any such assignment. Provided further, Buyers shall notify any purchaser or assignee of any Lot of the Release and Waiver in paragraph 5 and shall require as a condition of sale or assignment that the purchaser or assignee agree to be bound by the Release and Waiver in paragraph 5.

15. **Relationship of the Parties.** Nothing in this Environmental Addendum shall be construed as creating, between the CDA and Buyers, a partnership, joint venture or relationship other than as described herein. The CDA and Buyers each acknowledges that it is not an agent for the other party hereto and may not bind or enter into agreements for such other party.

16. **Governing Law.** This Environmental Addendum and the legal relations between the Parties hereto shall be governed by and construed in accordance with the laws of the State of Wisconsin.

17. **Construction.** The Parties acknowledge that they and their counsel have reviewed and approved this Environmental Addendum, and they accordingly agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Environmental Addendum or any amendments thereto.

18. **Facsimile Signatures.** The Parties agree that signatures on documents delivered by facsimile transmission shall be binding on all Parties hereto.

19. **Counterparts.** This Environmental Addendum may be executed simultaneously in one or more counterparts, each of which shall be deemed an original Environmental Addendum, but all of which together shall constitute one and the same instrument.

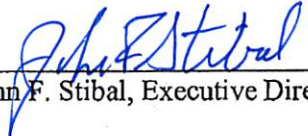
IN WITNESS WHEREOF, the Parties have executed this Environmental Addendum on the date first set forth above.

Approved as to form this 13 day
of NOV., 2007.



Scott E. Post, City Attorney

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

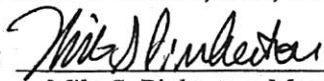
By: 

John F. Stibal, Executive Director

BUYERS:

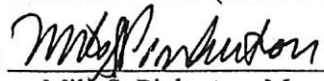
WEST ALLIS SENIOR APARTMENTS, LLC (Lot 1 Buyer)

By: MSP West Allis, LLC, its Manager

By: 

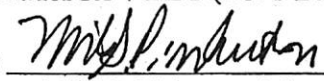
Milo S. Pinkerton, Manager

HERITAGE-6 LLC (Lot 2 Buyer)

By: 

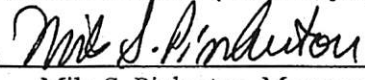
Milo S. Pinkerton, Manager

HERITAGE-7 LLC (Lot 3 Buyer)

By: 

Milo S. Pinkerton, Manager

HERITAGE-8 LLC (Lot 4 Buyer)

By: 

Milo S. Pinkerton, Manager

L/Scott/Clean-Exh D-Environ Adden

ENVIRONMENT DOCUMENTS

Phase II Environmental Site Assessment Property Located at 7725 and 7741 West National Avenue West Allis, Wisconsin; January 2007 by The Environmental Management Company LLC

Phase I Environmental Site Assessment "Pioneer Neighborhood"/ Former Advertoprint Inc. Property 7939 - 43, 8001 and 80** West National Avenue West Allis, Wisconsin 53214; October 26, 2006 by Symbiont

Phase II Environmental Site Assessment and Remedial Action Plan "Pioneer Neighborhood"/ Former Advertoprint Inc. Property 7939 - 43, 8001 and 80** West National Avenue West Allis, Wisconsin 53214 WDNR FID No. 341122650 WDNR BRRTS Site I No. 15347400, October 26, 2006 by Symbiont

Pre-Demo Asbestos Inspection @ 7943 W. National Ave., West Allis, WI, Good Armstrong Project #1856, October 2, 2006 by Good Armstrong Training and Consulting, Inc.

NESHAP Asbestos Inspection - Laidlaw Bus Company Garage Building, 7725 West National Avenue in West Allis, September 5, 2006 by AP Environmental, Inc.

NESHAP Asbestos Inspection - Laidlaw Bus Company Office Building, 7741 West National Avenue in West Allis, September 5, 2006 by AP Environmental, Inc.

LBJ Partnership Final Closure Letter from Linda Michalets at Wisconsin Department of Commerce, January 4, 2002

LBJ Partnership Conditional Case Closure Letter from Linda Michalets at Wisconsin Department of Commerce, February 27, 2001

LBJ Partnership Closure Request to WDNR, November 19, 1999 by RMT, Inc.

Letter Regarding Remediation Documentation Report from James Morse of RMT to Michael Orgeman Lichtsinn & Haensel, April 21, 1999

Subsurface Investigation and Remedial Action Plan for 7741 West National Avenue in West Allis Wisconsin, March 1997 by RMT, Inc.

Phase I & II Environmental Site Assessment of Properties Located at 7741 W. National Avenue and 7725 W. National Avenue; November 1993 by RMT, Inc.

FORM OF DEVELOPMENT AGREEMENT

[Please note this is a form. Once finalized, we will create 3 separate Development Agreements]

Document Number	DEVELOPMENT AGREEMENT Title
	<p>THIS DEVELOPMENT AGREEMENT (this “Agreement”), made and entered into as of the ____ day of November, 2007, by and between the COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes (“Seller”), and the following “Buyers”: WEST ALLIS SENIOR APARTMENTS, LLC (“Lot 1 Owner”), HERITAGE-6, LLC (“Lot 2 Owner”), HERITAGE-7, LLC (“Lot 3 Owner”), and HERITAGE-8, LLC (“Lot 4 Owner”), each a Wisconsin limited liability company, (collectively the Seller and the Buyers are hereafter referred to as the “Parties”).</p>

Name and Return Address:
Community Development Authority of
the City of West Allis
Attention: Executive Director
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

452-0599-001; 452-0598-001;
452-0597-003; 452-0597-002;
452-0597-001; 452-9999-007;
452-0596-000

Parcel Identification Numbers

WHEREAS, pursuant to a Purchase and Sale Agreement of even date herewith, by and among Seller and Buyers (the “Purchase and Sale Agreement”), the Seller will convey to each of the Buyers a portion of the real property legally described on the attached **Exhibit “A”** (“Property”), with Lots 1, 2, 3 and 4 of Certified Survey Map 7986 being conveyed to Lot 1 Owner, Lot 2 Owner, Lot 3 Owner and Lot 4 Owner, respectively; and,

WHEREAS, Buyers intend to develop the Property (other than Lot 4, which will be held for future development) by constructing on Lot 1, at least 120-units of senior independent living; on Lot 2, at least 40-units of assisted living; and on Lot 3, at least 32 memory care units (together, the “Project”) pursuant to the terms of this Agreement; and,

WHEREAS, the sale of the Property is conditioned upon Buyers constructing the Project on the Property; and

WHEREAS, Buyers and the Seller desire to set forth in writing the terms and conditions under which Buyers have agreed to develop and maintain the Project;

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

1. **CONTINGENT ON SALE OF PROPERTY.** This Agreement and the obligations of Seller and Buyers hereunder are contingent upon the closing of the sale of the Property in accordance with the Purchase and Sale Agreement. To the extent the Property is not sold and conveyed by Seller to Buyers, this Agreement shall be void and of no force or effect. To the extent the Property is sold and conveyed by Seller to Buyers, the terms of this Agreement shall govern in the event of any inconsistency between this Agreement and the Purchase and Sale Agreement.

2. **SELLER'S OBLIGATIONS.** The Seller shall be obligated as follows:

A. **Zoning and Planning Approvals.** Seller shall use its best efforts to expedite the zoning and plan review process of the City of West Allis ("City") to accommodate Buyers' development schedule for the construction of the Project. To the extent not already approved on or prior to the date of this Agreement, all such required approvals are subject to final approval of the Common Council of the City and the City Plan Commission, as well as Seller. Assuming all such approvals are timely issued as provided in the attached **Exhibit "B"**, the commencement date for construction shall be no later than the date referred to in the attached **Exhibit "B"** and failure of Buyers to

commence construction as set forth in **Exhibit "B"** shall constitute a breach of this Agreement.

B. Environmental Addendum. Seller shall timely complete all of the work it is responsible for under the terms of the Purchase and Sale Agreement and the Environmental Addendum which is attached to and made a part of the Purchase and Sale Agreement (the "Environmental Addendum").

3. **BUYERS' OBLIGATIONS.** Buyers shall be obligated as follows:

A. Environmental Remediation. Each Buyer shall be responsible for any additional environmental remediation and geotechnical site preparation on the portion of the Property it owns beyond what Seller is responsible for under the Purchase and Sale Agreement and the Environmental Addendum.

C. Construction of Project. Each Buyer will construct and landscape the portion of the Property it owns in accordance with site, landscaping, architectural, and building plans and specifications filed and approved by the City according to its review and approval procedures as herein referenced. Elevations of the proposed Project are identified on the attached **Exhibit "C"**.

D. Schedule. Subject to Section 2A, each Buyer shall commence construction of the portion of the Project to be located on the portion of the Property it owns no later than the date referred to in **Exhibit "B"** and shall proceed with due diligence to completion and occupancy no later than the date referred to in **Exhibit "B"**.

E. Availability of Funds. Prior to the execution of this Agreement, and from time to time thereafter, upon the request of the Seller, Buyers shall provide to Seller

evidence satisfactory to Seller that Buyers have available to them necessary corporation approvals and sufficient funds for the completion of the Project.

F. **Conveyance.** No Buyer shall sell, transfer or convey any of the Property to anyone other than an Affiliate until the Occupancy Permits have been issued for the Project. For purposes of this Agreement "Affiliate" shall mean an entity controlling, controlled by or in common control with Buyers. Nothing herein shall preclude any Buyer from transferring member interests in such Buyer.

G. **Nondiscrimination.** No owner or occupant of the Property shall restrict the use or enjoyment of the Property or the Project upon the basis of sex, race, creed, color, or national origin in the sale, use or occupancy thereof.

H. **No Subdivision.** The Parties acknowledge that in connection with the sale of the Property, the Property has been subdivided by virtue of the recordation of a certified survey map. Without the prior written consent of the Seller, no Buyer of Lot 1, Lot 2, Lot 3 or Lot 4 of the Property may further subdivide the portion of the Property owned by such Buyer.

4. **CONSTRUCTION QUALITY GUARANTEE.** The Buyers identified below shall provide the following (and any material changes to the following which are likely to affect the minimum assessed value of the Property shall be subject to Seller's approval):

One-story memory care/Lot 3 Owner:

Facing and abutting W. National Ave., the 150-foot long building will be constructed exclusively of brick with a precast concrete sill depicting a base and top, and three gables will be constructed out of hardi-plank siding to depict a residential look to

the memory care facility. Large windows with top and bottom sills span throughout the street elevation. The roof will be constructed of designer asphalt shingles.

Two-story assisted living/Lot 2 Owner:

The assisted living portion starts with 60 lineal feet abutting W. National Ave., which will be constructed of a split-face, grey speckled block with smooth-face cream-colored banning base, a brick middle, and hardi-plank siding top. In the center of the 60 lineal feet is an 8-foot wide architecturally creative bump out, which houses a four-season enclosed porch constructed of large glass windows and has a curved roof feature. The rest of the two-story assisted living building is set back approximately 170 feet from W. National Ave., as it is the main entrance to the building and has a 26-stall parking area and water fountain in front of it. This 160-foot wide section of the building includes a pick-up/drop-off canopy in front of the entrance/lobby area. The section of building surrounding the front door will be constructed entirely of glass and brick, and the portions to the left and right of the entryway will be constructed of a split-face block base (with smooth-face block bands) and a hardi-plank siding top. A two-storied gabled section is situated on both sides of the main entrance. Again, the roof will be constructed of designer asphalt shingles.

Four-story independent living/Lot 1 Owner:

Starting on the east side of this 300-foot long span of four-story building, stands a five-story tall tower feature, constructed of four stories of brick and windows, and a fifth story peak, constructed of hardi-plank and capped with a uniquely shaped asphalt shingled roof. Continuing west, the building will have four 20-22 feet wide bump-outs (each protrude out about 5 feet), which are gabled on the fourth story. The gabled roofs

alternate between a bungalow-style gable, and a standard pitched gable. Eight-foot wide balconies are located on both sides of the projections, and will include masonry support columns up to the fourth floor (split-face block base and brick up the remaining height) and metal fencing.

The four building projections along W. National Ave. and S. 80 St. will be constructed as follows: a split-face, grey speckled block with smooth-face cream-colored banning base (12 feet high to the bottom of the second-floor windows), a brick middle (16 feet high to the top of the third-floor windows), and an alternation between 4 and 6-inch wide horizontal hardi-plank siding top and vertical hardi-plank siding top (14 feet high to the roof).

The recessed portions along W. National Ave. and S. 80 St. will be constructed as follows: a split-face, grey speckled block with smooth-face cream-colored banning base (8 feet high to the top of the first-floor windows), a brick middle (17 feet high to the middle of the third-floor windows), and a hardi-plank top portion (7 feet of 6-inch wide horizontal siding, capped with 5 feet of 4-inch wide horizontal siding).

At the corner of W. National Ave. and S. 80 St. (the western most side of the four-story building), the projected bump-out corner feature will be constructed of brick to the top of the third floor (27 feet high) and vertical hardi-plank siding above (12 feet high to the roof).

A precast concrete sill will be located between each material transition and between the 4-inch and 6-inch hardi-plank siding transition, and all windows will feature a top and bottom sill.

Rear elevations for independent living/Lot 1 Owner:

The projected and recessed aspects of the building continue throughout the rear of the building. The split-faced and smooth-faced bandings are carried around the base to the top of the first-floor windows, brick is carried up to the top of the second-story windows, 6-inch hardi-plank siding is carried up to the bottom of the fourth-story windows, and 4-inch hardi-plank siding is carried up to the roof. The window sizing and design, the sills, the corbel details, the patios and masonry support columns, and the gabled roofs of the projected portions are also carried throughout the back of the building.

The Plan Commission recommended approval of the concept and Common Council approval of the Special Use Permit for proposed construction of Project submitted by MSP Real Estate, Inc

5. **NO ASSIGNMENT.** The Buyers may not assign their rights in this Agreement without the prior written consent of the Seller, except that Buyers may assign this Agreement to an Affiliate without the Seller's consent. Subject to Section 22 hereof, upon conveyance of the portion of the Property owned by any Buyer, that Buyer shall automatically be released from its obligations hereunder.

6. **BUILDING STANDARDS AND UTILITIES.** All buildings and other site improvements (collectively "Improvements") to be constructed under this Agreement shall comply with the following minimum standards:

A. Improvements shall be designed by an architect or engineer. No side, elevation or facade of the proposed Project buildings shall be covered from public view; consequently, all sides, elevations or facades of Project buildings shall be visually

pleasing and architecturally and aesthetically compatible with the surrounding environment. Building Improvements are subject to architectural review and approval by the Plan Commission of the City as provided herein.

B. All trash disposal areas shall be screened in such a manner as to be harmonious with the building exterior and design.

C. No building Improvements or structures shall be constructed on the Property until a site plan therefore (showing location, land coverage, building intensity, landscaping and off-street parking) have been submitted to and approved by the Planning Commission of the City (the "Site Plan"). Improvements shown and determined on the Site Plan shall include, but not be limited to:

- (1) All finished grade levels;
- (2) Location of all building and other structures (to include a schedule showing lot area and total square feet in building (each floor);
- (3) Sidewalks and driveways (including types of materials);
- (4) Parking and access drive dimensions and locations, stall numbers and dimensions, curbs, loading docks, and snow storage areas;
- (5) Loading areas (including types of materials);
- (6) Utility and storage areas (including types of materials);
- (7) Lawns and landscaped areas (including types of materials);
- (8) Water impoundments;
- (9) Fences (including types of materials);
- (10) Lights (including types);
- (11) Areas of fill or cuts;

- (12) Storm water drainage plans and facilities;
- (13) On-site sewer, water and other utility locations, sizes and easement locations;
- (14) Location, screening and type of refuse collection facilities;
- (15) All exterior signs and all other signs visible from the exterior of the building and other structures;
- (16) Dimensions of all front, side, and rear yards, drives, etc.;
- (17) Other paved areas and uses, fencing and walls, outdoor lighting (location and direction of beams);
- (18) A landscaping and screening plan showing the location, common and botanical names, planting size, root condition and quantity of all plant material; together with all ground cover and mulch areas and landscape construction materials;
- (19) Locations and dimensions of all easements;
- (20) Surface details of all outside areas, such as paving;
- (21) Signs: design, size, location, and illumination;
- (22) Designation of future expansion areas;
- (23) Locations of all hydrants within the Property; and
- (24) Grading Plan:
 - (a) Existing and proposed grades and contours;
 - (b) Surface water drainage and detention and/or retention;
 - (c) Finished grade at building;
 - (d) Catch basins and storm sewer locations; and
 - (e) Connection to existing utilities.

7. **PARKING.** Buyers will construct 67 surface stalls and 90 underground stall for a total of 157. Approved plans will run with the land and will remain in effect regardless of changes in ownership of the Property.

8. **REFUSE.** All trash containers, including dumpsters, must be enclosed in accordance with final plans and specifications approved by the Plan Commission. Such wall shall be of sufficient height to cover the material stored and shall be maintained so as to present a good appearance at all times. All trash enclosures to be permitted in side and rear yards only.

9. **UTILITIES AND SITE LIGHTING.** All proposed utility lines within the Property shall be installed underground in easements provided therefore. No overhead electric power, telephone or cable service will be permitted. Parking and roadway lighting (fixture, height, type and intensity) where provided shall be approved by the City. Area lighting shall not be mounted on the building. Full cut off fixtures shall be utilized to prevent light splay onto surrounding properties.

10. **LANDSCAPING.** Landscaping improvements shall be required as an integral part of the Property. All areas on the Property not used for building, storage, parking, walks, and access roads, shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas as provided in Sec. 12.13 of the Revised Municipal Code. Landscaped areas, once developed, shall contain trees, shrubs, grass and/or other suitable groundcover in accordance with a landscape plan for the Property approved in writing by the Plan Commission. All required landscaping shall be completed within one year of the completion of construction of the principal building on the Property and shall, thereafter, be maintained in compliance with applicable law. In addition, upon completion of the Project, any portion of the Property which is not improved or otherwise developed shall be landscaped in accordance with the site landscape

plan approved by the City's Plan Commission on August 22, 2007. Buyer will maintain the site landscaping in accordance with the final plans approved by the Plan Commission. Approved plans will run with the land and will remain in effect regardless of changes in ownership of the Property.

11. **ARCHITECTURAL DESIGN AND URBAN FORM.** The Project should create a high-density development to fit the context and vitality of the surrounding neighborhood while utilizing innovative "new urbanism" design standards. The Project should substantially increase the tax base and enhance the neighborhood. The Project shall be constructed in accordance with the architecture, site and landscape plan approved by the City's Plan Commission on August 22, 2007 and September 26, 2007.

12. **PEDESTRIAN AND VEHICULAR ACCESS.**

A. All curb cuts and service drives shall be designed to minimize disruption of pedestrian activity and movements and subject to the approval of the Common Council Board of Public Works;

B. Pedestrian and vehicle linkages and crossing access is encouraged between existing neighborhoods and the proposed development area in an effort to promote walkability, traffic safety, and reduction of the number of new driveways on major street arterials; and,

C. Loading docks and refuse areas shall be screened and concealed from street view.

13. **PROPERTY IMPROVEMENTS.** None of the original Improvements shall be erected, placed or altered on the Property until the building plans and specifications for such improvements, including the Site Plan, and grading plan have been submitted to and approved by

the Plan Commission of the City. The Plan Commission shall review and approve, approve conditionally, or disapprove the building plans and specifications with respect to their conformity with this Agreement and applicable enactments of the City, and with respect to the harmony of design and land use as it affects other property adjacent to the Property.

14. **ACCESSORY STRUCTURES.** The location, size and design compatibility of all permitted accessory structures in the Project, such as garages, maintenance buildings, etc., shall be approved in writing by the Plan Commission pursuant this Agreement, before construction. The term "accessory structure" includes, but is not limited to, the following (if such structures are to be located within the required setbacks): ground-mounted telephone and electrical transformers, gas meters, ground-mounted air conditioners, exhaust ducts and similar structures.

15. **OTHER BUILDING AND PROPERTY SPECIFICATIONS.** All other terms and conditions for the erection of buildings or structures and the use of the Property shall be governed by the ordinances of the City of West Allis.

16. **MAINTENANCE RESPONSIBILITIES.**

A. Each Buyer and any subsequent owner of the Property shall keep the portion of the Property it owns, all contiguous street right-of-way to edge of pavement, and easement areas in a well maintained, safe, clean, and attractive condition at all times.

Such maintenance includes, but is not limited to, the following:

- (1) Any Urban Art placed on the Property or buildings shall be maintained appropriately. If materials age into poor condition the Plan Commission shall have the discretion to request that they be

replaced. Plan Commission approval is required prior to the installation or change to the Urban Art.

- (2) The removal of all litter, trash, refuse, and wastes.
- (3) The mowing of all lawn areas to a height of less than five (5) inches unless otherwise approved in writing by the Plan Commission. Those designated and approved unused lot areas shall be cut a minimum of three (3) times per year.
- (4) The maintenance of lawn and landscape areas in a weed-free, healthy and attractive condition.
- (5) The care and pruning of trees and shrubbery outside of easements within property boundaries.
- (6) The maintenance of exterior lighting, signs, and mechanical facilities in working order.
- (7) The keeping of all exterior building surfaces in a clean, well maintained condition.
- (8) The striping and sealing of parking and driveway areas.
- (9) The removal of unlicensed or inoperable vehicles.
- (10) Snow and ice removal.

B. During construction, it shall be the responsibility of the owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials; and that construction materials, trailers, and the like are kept in a neat and orderly manner. Burning of excess or scrap construction material is prohibited. Construction site erosion control practices shall be implemented to prevent erosion,