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City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2004-0308	Resolution	In Committee
	Resolution approving the Summit Place Business Park Amended and Restated Development Agreement.	
	Introduced: 10/19/2004	Controlling Body: Safety & Development Committee

COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>10/19/04</u>			Barczак				<input checked="" type="checkbox"/>
			Czaplewski				
			Dobrowski				
			Kopplin				
			Lajsic	<input checked="" type="checkbox"/>			
			Narlock				
			Reinke	<input checked="" type="checkbox"/>			
			Sengstock				
	<input checked="" type="checkbox"/>		Vitale	<input checked="" type="checkbox"/>			
		<input checked="" type="checkbox"/>	Weigel	<input checked="" type="checkbox"/>			
			TOTAL	<u>4</u>			<u>1</u>

SIGNATURE OF COMMITTEE MEMBER

Chair Vice-Chair Member

COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>OCT 19 2004</u>			Barczак				
			Czaplewski				
			Dobrowski				
			Kopplin				
			Lajsic				
			Narlock				
			Reinke				
			Sengstock				
			Vitale				
			Weigel				
			TOTAL				

Development

**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-2004-0308

Final Action:

OCT 19 2004

Resolution approving the Summit Place Business Park Amended and Restated Development Agreement.

WHEREAS, the amendments, hereby attached and incorporated within will enhance the financial position of Tax Incremental District Number Seven; and,

WHEREAS, the amendments will assist Whitnall Summit, LLC in applying for New Market Tax Credits allocation; and,

WHEREAS, the City has an opportunity to receive a guaranteed repayment amount from Whitnall Summit, LLC for costs associated with Tax Incremental District Number Seven; and,

WHEREAS, the Department of Development has reviewed and recommends approval of the amendments.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of West Allis approves the Summit Place Business Park Amended and Restated Development Agreement subject to approval by the West Allis Community Development Authority.

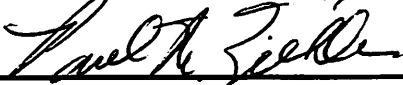
BE IT FURTHER RESOLVED that the Director of Development be and is hereby authorized to execute and deliver the Agreements on behalf of the City of West Allis.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such non-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: Department of Development

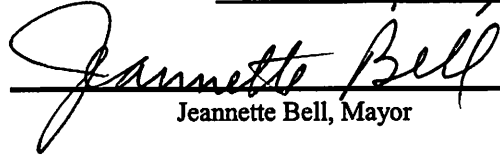
Dev-R-362\bjb\10-19-04

ADOPTED October 19, 2004



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

APPROVED October 22, 2004



Jeannette Bell, Mayor

**SUMMIT PLACE BUSINESS PARK
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of ~~April~~October, 2004, by and between ~~WHITNALL-SUMMIT COMPANY LLC~~ ("~~Developer~~"), a Wisconsin limited liability corporation, ~~and company~~ ("~~Developer~~"), the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS** (the "~~City~~"), a ~~Wisconsin Municipal Corporation~~ (the "CityCDA") and **WHITNALL-SUMMIT DEVELOPMENT CORPORATION**, a Wisconsin corporation (the "Corporation").

WITNESSETH:

WHEREAS, the City of West Allis has created a Tax Incremental District (TID) Number Seven, comprised of land and improvements on a portion of the former Allis-Chalmers Manufacturing Complex, as described in Exhibit 1A; and;

WHEREAS, Developer intends to rehabilitate the property located 6609R-6765 W. Washington St (Tax Key # 439-0001031) by renovating blighted industrial space and converting it into office space in addition to building a commercial office building on the site (the "Project") pursuant to the terms of this Agreement; and;

WHEREAS, CityCDA intends to buy land located at 6600 W. Washington St. (Tax key # 439-0001-015) totaling plus or minus 2.0 acres and land located at 6500 W. Washington St (Tax Key # 439-001-016) totaling plus or minus 0.7 acres, and will dedicate that portion of the Washington Street right-of-way to be vacated by the CityCDA for construction of a public parking lot in support of the parking needs for the Summit Place Business Park and surrounding businesses as set forth in Exhibit 2B; and;

WHEREAS, the Project constitutes a qualified active low-income community business for purposes of the new markets tax credit ("NMTC") allowable under Section 45D of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the CityCDA is willing to facilitate the provision of NMTC equity for the Project in order to make the Project financially viable; and

WHEREAS, the Corporation has been formed to originate and administer the financing for the Project, and shall receive, utilize and account for all CityCDA funds provided for the benefit of the Project in accordance with this Agreement; and

WHEREAS, the Developer and the CityCDA desire to terminate the existing Development Agreement dated April 21, 2004 (the "Prior Development Agreement"); and

WHEREAS, Developer, the Corporation and the CityCDA desire to set forth in writing the terms and conditions under which the Developer, the Corporation and the CityCDA have agreed.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. CITYCDA'S OBLIGATIONS.

The CityCDA shall be obligated as follows:

A. Purchase of Property for and Development of Public Parking. CityCDA will acquire the above referenced approximately plus or minus 2.7 acres of land located on Tax Key #s 439-0001-015 and 439-0001-016, and construct Public Parking and Commuter Bike and Pedestrian Trail on such land and that portion of the Washington Street right-of-way to be vacated by the CityCDA in an expeditious manner. If the CityCDA is unsuccessful in acquiring said property by November 15, 2004, this Agreement shall be null and void as to the parties' obligations hereunder concerning the Public Parking and Commuter Bike and Pedestrian Trail, and neither party shall have any further rights or obligations with respect thereto and such failure shall not constitute a default of the remainder of this Agreement.

~~B. TID Funds to the Developer. The TID No. 7 total funds of \$4,425,000.00 shall be divided into three parts and applied to three targeted areas within the district as follows: (1) The City shall retain \$1,225,000.00 to cover the cost of City Legal and Administrative fees for the entire TID No. 7 estimated to be \$75,000.00 and \$1,150,000.00 for the estimated costs of acquisition of the land and completion for a Public Parking and Commuter Bike and Pedestrian Trail (hereinafter Public Parking Trail Funds). If the cost for the acquisition and construction of the Public Parking and Commuter Bike and Pedestrian Trail is less than \$1,150,000 (Public Parking/Trail Surplus), then this Public Parking/Trail Surplus shall be added to the budget for parking improvements North of W. Washington street as set forth below.~~

B. TID Funds to the Corporation. The CityCDA shall provide an aggregate of \$4,725,000 of TID Funds to the Corporation (the "CityCDA Funds"). The Corporation and Developer shall cause such TID Funds to be utilized as provided in this Section 1.B:

(i)(1.)NMTC Financing Structure. All CityCDA Funds provided to the Corporation under this Agreement shall be utilized as follows: (a) the Corporation shall loan all CityCDA Funds to _____, LLC, a Wisconsin limited liability company (the "Investment Fund"), on such terms and conditions as the

Corporation deems appropriate; (b) the Investment Fund shall utilize 100% of the CityCDA Funds to make a qualified equity investment in _____, LLC, a Wisconsin limited liability company (the "Subsidiary CDE"); (c) the Subsidiary CDE shall loan 100% of the CityCDA Funds received from the Investment Fund to Developer on such terms and conditions as shall be agreed upon by the members of the Subsidiary CDE and Developer; and (d) Developer shall utilize 100% of the CityCDA Funds loaned to it by the Subsidiary CDE in the manner set forth in this Agreement.

(ii)(2) Refinancing of CityCDA Funds Previously Advanced. Pursuant to the Prior Development Agreement, the CityCDA has advanced \$ _____ to Developer prior to the date of this Agreement (the "Prior Advance Amount"). Within three (3) business days following execution hereof, the CityCDA shall provide CityCDA Funds to the Corporation in an amount equal to the Prior Advance Amount, and such CityCDA Funds shall be applied as set forth in Section 1.B(i) above; provided that Developer shall immediately apply 100% of the amounts received from the Subsidiary CDE under this Section 1.B(ii) to repay to CityCDA the Prior Advance Amount.

(iii)(3) Advance of Remaining CityCDA Funds. The difference between \$4,725,000 and the Prior Advance Amount (the "Construction Advance Amount") shall be provided by the CityCDA to the Corporation within three (3) business days following execution hereof. Such CityCDA Funds shall be applied as provided in Section 1.B(i) above; provided that such CityCDA Funds shall be held and disbursed by the Subsidiary CDE pursuant to a disbursement agreement between the Subsidiary CDE and Developer in a form reasonably acceptable to CityCDA, pursuant to which:

(a) the Subsidiary CDE will disburse to Developer up to \$1,225,000 as requisitioned by Developer to fund Developer's obligations to the CityCDA under Sections 2.F and 2.G hereof;

(b) the Subsidiary CDE will disburse to Developer the balance of the Construction Advance Amount on a draw request basis for the purposes and subject to the limitations set forth in Section 1.B(iv) below.

(iv)(4) (2) The City shall make available to the Developer the remaining TID funds of \$3,200,000 as a capital loan. Of these funds made available to the Developer, \$1,200,000.00 shall be used Uses of Construction Advance Amount Disbursed Under Section 1.B(iii). As provided in the Prior Development Agreement, the City anticipates that the Developer will utilize up to \$1,200,000 of CityCDACDA Funds solely for the acquisition and construction of surface parking, a parking structure on the parcel north of Washington Street, located at 6642 ~~W. West~~ Washington Street, and a right-of-way from the parking areas to 70th Street, and shall be designated as the "North Side Funds". If the cost of acquisition and construction of surface parking, parking structure and the right of way to 70th Street is less than \$1,200,000, plus any Public Parking/Trail Surplus rolled into this Fund, then the resultant surplus shall be re-designated as the "North Side Surplus". The North Side Surplus, if any remaining at January 1, 2009 shall be used to retire part or all of the remaining balance of the TIF

~~bonds. (3) The remaining \$2,000,000.00 of the Developer's capital loan shall be applied to defray the Developer's cost for such rehabilitative items including in the way of illustration and not in limitation, way from the parking area to 70th Street ("Parking Costs"). Developer shall be entitled to disbursements from the Subsidiary CDE under Section 1.B(iii) hereof to pay for any such costs not previously paid from CityCDA Funds refinanced under Section 1.B(ii) hereof. Also, as provided in the Prior Development Agreement, the CityCDA anticipates that Developer will utilize up to \$2,000,000 of CityCDA Funds to pay for rehabilitative items for the Project, including, but not limited to insert floors, ADA escalators and elevators, rest rooms, replacement windows, tenant office space conversion and improvements, infrastructure and/or architectural fees thus accelerating the development of commercial office space for the Summit Place Office Complex, with all of these expenditures to be forrelating to work taking place on the Southsouth side of Washington Street ("South Side Funds"). The deferred payment of the Developer's capital loan shall be amortized over 10 years at the interest rate being incurred by the City of West Allis for the TID funds, as of January 1, 2009, commencing January 1, 2009. No interest shall acerue before January 1, 2009. The Developer's capital loan of \$3,200,000 will be personally guaranteed by Richard G. Carlson as set forth in Exhibit 3. Rehabilitation Costs"). Developer shall be entitled to disbursements from the Subsidiary CDE under Section 1.B(iii) hereof to pay for any such costs not previously paid from CityCDA Funds refinanced under Section 1.B(ii) hereof. The CityCDA acknowledges and agrees that the Developer shall be entitled to use cost savings in either Parking Costs or Rehabilitation Costs to fund cost overruns in the other cost category, and the Subsidiary CDE shall be entitled to advance funds to Developer under Section 1.B(iii) for such purpose.~~

~~C. City Incentive to Developer to Accelerate the Project. As an incentive to accelerate the total development, the City will reduce the total principal value of the Developer's capital loan by \$200,000 on January 1, 2009 provided that the equalized taxable value of the property located at 6609R-6745 W. Washington St exceeds \$22,500,000. An amount of \$200,000 of loan principal will be forgiven for every additional \$1,000,000 the equalized taxable value of the parcel located at 6609R-6745 W. Washington St., that exceeds \$22,500,000 as of January 1, 2009, up to a maximum additional forgiveness of \$2,000,000. At an equalized taxable value of \$32,500,000 on January 1, 2009, after forgiveness, loan balance would be \$1,000,000.~~

~~Further, if the equalized taxable value on January 1, 2009 as defined above is more than \$32.5 million, for each million that the equalized taxable value exceeds \$32.5~~

million, Developer will repay the City \$50,000, up to a maximum equalized taxable value of \$52,500,000. For example, if the equalized taxable value is \$52,500,000 on January 1, 2009, total loan balance due to the City would be \$2,000,000. The total repayment principal established as of January 1, 2009 shall be amortized and repaid over ten years at the same rate of interest that the City of West Allis is then incurring adjusted annually on each anniversary.

~~———— D. Method of Payment by the City to the Developer. Developer shall present to LandAmerica Lawyers Title Insurance Company designated by the City as its Title Agent AIA Documents G702 and G703 in which the Developer's Construction Manager and/or Architect shall certify that the Work covered by the Application for Payment has been completed in accordance with Contract Documents. The certified AIA Documents will include a summary payment schedule, copies of Contractors invoices and associated lien waivers. Upon receipt of the certification by the Title Agent of the Application for Payment by the Developer to the City, the City shall make the draw payment within 7 business days thereafter directly to the Developer or its designated depository. Developer shall be responsible for the administration cost of the City's Title Agent.~~

(v)(5.) Corporation's Obligation to Repay CityCDA. Of the total \$4,725,000 in CityCDA Funds provided by CityCDA to Corporation, the Corporation shall be obligated to repay \$2,000,000. Such \$2,000,000 shall be repaid commencing October 1, 2011, over a 10-year period, and shall not bear interest prior to October 1, 2011. The monthly payment shall be the amount needed to amortize \$2,000,000 over 10 years using the interest rate being paid by the CityCDA on the bonds issued for TID No. 7 as of October 1, 2011. The balance of the CityCDA Funds shall not be subject to repayment by the Corporation assuming full compliance by Developer and Corporation with the terms of this Agreement. The CityCDA acknowledges that the portion of the financial assistance provided to Corporation hereunder which is not required to be repaid to CityCDA is intended to become a permanent part of Corporation's capital structure upon repayment by the Investment Fund. The Corporation acknowledges that it is obligated to cause

Developer to comply with all terms of this Agreement, and that the CityCDA's obligation to provide CityCDA Funds to Corporation hereunder, or to forego repayment thereof, is conditioned upon Developer's performance of its obligations under this Agreement.

C. ——— E. — Zoning and Planning Approvals. The CityCDA shall use its best efforts to expedite the zoning and plan review process to accommodate Developer's development schedule for the construction of parking on the 6642 W. Washington St. property (Tax Key # 439-0001-018 and for rehabilitation of industrial buildings into office space for the property located at 6609R- 6745 W. Washington St., with a commencement date for additional construction not later than July 1, 2004.

D. ——— F. — Establishment of a Commercial Planned Development District (PDD). The City of West Allis will use its best effort to encourage the CDA to establish a Planned Development District for the entire Project area, to meet the special needs of the Project for parking at Summit Place Business Park. If the City of West Allis fails to establish a Planned Development District, the remainder of this Agreement shall continue in full force and effect.

E. ——— G. — Developer's Use of Public Parking. The CityCDA shall provide to Developer the right to use the Public Parking created hereunder as long as the payments set forth in Section 2.F.H are made or until such time as the CityCDA gives Developer notice that it is discontinuing use of the site as Public Parking.

2. ——— 2. — DEVELOPER'S OBLIGATIONS.

Developer shall be obligated as follows:

A. ——— A. — Construction of Commercial Office and Public Parking and Trail.

~~(i)(1)~~ (1) — Developer, at its sole cost, shall provide the CityCDA with all necessary engineering and construction plans and specifications for the Development of the ~~approximate 3~~ approximately three acres of Public Parking and Trail. All engineering and construction plans and specifications shall be subject to City of West Allis review and approval prior to the commencement of any work on the project. Developer shall be responsible for all maintenance, repairs and re-construction of the Public Parking and Commuter Bike and Pedestrian Trail henceforth after completion. The Developer's obligation for maintenance and replacement shall be recorded in a form acceptable to CityCDA's counsel burdening the Developer's land and/or adjacent landowners.

~~(ii)~~ (2) — (2) Developer agrees to indemnify and hold the CityCDA harmless for any defect in the design of the Public Parking and for any lack of maintenance or repair thereto, as long as Developer uses the Public Parking under Section 1.G.E and makes the payments set forth in Section 2.F.H.

~~(iii)(3)~~ (3) — The Developer will construct and landscape the Project, including all parking areas, in accordance with building and site plans and specifications

filed with the City of West Allis from time to time, and approved by the City of West Allis according to its review and approval procedures as herein referenced. The Project shall consist of the completion of construction of the four-story Class A+ office building consisting of approximately 40,000 square feet (now under construction), rehabilitation of up to 650,000 square feet of industrial space into commercial office space and indoor parking, and construction of surface parking, right of way development to 70th Street, and/or a parking structure on the parcel north of Washington Street, located at 6642 W. Washington Street.

~~(iv)(4.)~~(4) — Developer has commenced construction of the Project, but shall commence construction of the surface parking area located at 6642 W. Washington St. within 60 days but no later than one hundred twenty (120) days of the completion of the purchase of the approximate 10.7 acres less the PCB acre from the City and shall proceed with due diligence to complete the rehabilitation of Project by January 1, 2009. Said purchase of approximately 10.7 acres is ~~contingent on the parties entering into a~~ subject to the contingencies described in the Purchase and Sale Agreement therefore dated _____, 2004.

~~(v)(5.)~~(5) — (a) — Developer guarantees that Developer's contemplated rehabilitation of the Property shall generate a minimum assessed value of Twenty-Two Million Five Hundred Thousand Dollars (\$22,500,000) as of January 1, 2009. To the extent the general property taxes for the Property in any calendar year after 2009 are less than the equivalent of the guaranteed assessed value multiplied by that year's mill rate, Developer shall pay the difference between that year's actual tax payment and the tax payment that would have been generated by the guaranteed valuation. Developer's obligation to guarantee the payment of any property tax shortfall against the guaranteed valuation shall continue for fifteen years.

~~(vi)(6.)~~ — (b) — Developer hereby agrees that the amount of any property tax shortfall due and owing to the City of West Allis in any given year may be treated as a special charge (as defined in Wis. Stat. §74.01(4)) levied against the Property, without notice or hearing, such notice and hearing being expressly waived by the Developer. The special charge shall be a lien on the Property and shall be extended upon the tax roll for the year in which it is due and owing against the Property. All proceedings in relation to collection, return and sale of the Property for delinquent real estate taxes shall apply to any such special charge.

B. — ~~B.~~ — Conveyance. Developer shall not sell, transfer or convey the Property to anyone prior to January 1, ~~2009~~2009, without the written consent of ~~City~~CDA, which shall not be unreasonably withheld.

C. — ~~C.~~ — Nondiscrimination. No owner or occupant of the Property shall restrict the use or enjoyment of the Property or the Facility upon the basis of a protected status in the sale, use or occupancy thereof.

~~D.~~ ~~————~~ ~~D.~~ ~~————~~ No Subdivision. Without the prior written consent of the ~~Common Council of the City of West Allis~~, no owner of the Property may subdivide the Property nor sell, transfer or convey less than the entire Property.

~~E.~~ ~~————~~ ~~E.~~ ~~————~~ Payment in Lieu of Taxes. Ownership of the Property by any person or in any manner which would render any part of the Property exempt from property taxation during the 15 year period set forth in Section 2.B.(3) shall result in a payment in lieu of taxes from the owner to the City of West Allis each year in an amount equal to the amount of taxes that would be due and owing on the property if it was not tax exempt and in no event less than the tax based upon an assessed value as set forth in Paragraph 2.B.(3). Such payment shall be due, payable and collected in the same manner as property taxes.

E. Payment of Administrative Costs. Developer agrees to pay up to \$75,000 to CityCDA upon written request by the City of West Allis for ~~to reimburse City for~~ reimbursement of certain legal and administrative fees incurred in connection with TID No. 7.

G. Public Parking and Commuter Bike and Pedestrian Trail. Developer agrees to pay up to \$1,150,000 to the CityCDA for the cost of acquiring and completing the Public Parking and a Commuter Bike and Pedestrian Trail described in Section 1.A, and the CityCDA agrees that such payments by Developer shall constitute ongoing compliance by Developer with all City of West Allis parking ordinances or other parking requirements related to the Project. If the CityCDA's costs incurred under Section 1.A are less than \$1,150,000, Developer shall be entitled to apply the cost savings to pay Developer's excess Parking Costs or Rehabilitation Costs under this Agreement.

~~H.~~ ~~————~~ ~~F.~~ ~~————~~ Payment in Lieu of Taxes and Stormwater Fees for Public Parking. Developer agrees to make a payment in lieu of taxes to the City of West Allis each year in an amount equal to the amount of taxes and ~~stormwater~~storm water fees that would be due and owing on the Public Parking if it was not tax exempt. Failure to make the payment in lieu of taxes shall result in loss of Developer's right to use the Public Parking set forth in Section 1.~~GE.~~

I. Service Fee to CityCDA. As consideration for the services rendered by the CityCDA for the benefit of Developer in and around TIF No. 7, Developer hereby promises to pay the CityCDA a development fee of \$600,000 on or about October 1, 2011.

3. ~~3.~~ ~~————~~ **PROPERTY TAX IMPACT.**

The CityCDA has undertaken this project to enhance the property tax base of the City of West Allis. During the period set forth in Section 2.B.(3) the restrictions upon sale, transfer, conveyance, and subdivision herein set forth, shall be applicable notwithstanding any shorter time periods which may be specified herein.

4. ~~4.~~ ~~————~~ **CITYCDA'S CONTINGENCIES.**

Developer acknowledges that the City of West Allis is a body politic, its governing body is elected and the membership of the governing body may change. In addition, various specific undertakings of the City described herein may require public hearings and other legal procedures, as conditions precedent thereto. The CityCDA's agreements hereunder are

conditioned upon the obtaining of all such required approvals in the manner required by law. The CityCDA cannot assure that all of such approvals will be obtained; however, it agrees to use reasonable efforts to obtain them on a timely basis. If the CityCDA has not provided written notice to Developer on or before December 31, 2004, that it has obtained all approvals necessary for the undertakings described herein, this Agreement shall be restructured at that time to properly reflect approvals that have been obtained. The CityCDA's inability to grant or obtain the necessary approvals described herein shall not constitute a default hereunder.

5. ~~5.~~ — **DEVELOPER'S CONTINGENCIES.**

The obligations of Developer hereunder for improvements North of West Washington St. are contingent upon the procurement by the CityCDA of the 10.7 acre parcel which has VPLE classification, less the PCB acre commonly known as 6642 W. Washington St. with Tax key # 439-0001-018 and re-sale to the Developer for a price not to exceed \$40,000. Developer shall close on the purchase of the Property no later than November 15, ~~2004~~2004, unless the time for Closing is extended by mutual agreement of the parties. If said contingency is not waived or satisfied within the time period provided herein, this Agreement shall be null and void as to the Developer's Obligations hereunder concerning improvements to the North Side of West Washington St., and neither party shall have any further rights or obligations with respect thereto and such failure shall not constitute a default of the remainder of this Agreement.

6. ~~6.~~ — **NO ASSIGNMENT.**

Neither ~~the Corporation, Developer~~ nor the CityCDA may assign its rights in this Agreement without the prior written consent of the other. Such consent shall not be unreasonably withheld.

7. ~~7.~~ — **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. ~~A.~~ — Improvements shall be designed by an architect or engineer. All sides, elevations or facades of the Project's buildings visible from and all public areas 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. ~~B.~~ — All trash disposal areas shall be screened in such a manner as to be harmonious with the building exterior and design.

C. ~~C.~~ — No additional 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) has 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. ———(1)——All finished grade levels;
2. ———(2)——Location of all buildings and other structures (to include a schedule showing: lot area and total square feet in building (each floor);
3. ———(3)——Sidewalks and driveways (including types of materials);
4. ———(4)——Parking and access drive dimensions and locations, stall numbers and dimensions, curbs, tire stops, loading docks, and snow storage areas;
5. ———(5)——Loading areas (including types of materials);
6. ———(6)——Elevators and Escalators;
7. ———(7)——Utility and storage areas (including types of materials);
8. ———(8)——Lawns and landscaped areas (including types of materials);
9. ———(9)——Water impoundments;
10. ———(10)——Fences (including types of materials);
11. ———(11)——Lights (including types);
12. ———(12)——Areas of fill or cuts;
13. ———(13)——Storm water drainage plans and facilities;
14. ———(14)——On-site sewer, water and other utility locations, sizes and easement locations;
15. ———(15)——Location, screening and type of refuse collection facilities; and
16. ———(16)——All exterior signs and all other signs visible from the exterior of the building and other structures.
17. —————(17)——Dimensions of all front, side, and rear yards, drives, etc.
18. ———(18)——Other paved areas and uses, fencing and walls, outdoor lighting (location and direction of beams).
19. ———(19)——A landscaping and screening plan showing the location, common and botanical names, planting size, root condition and

quantity of all plant material. The plan shall also show all ground cover and mulch areas and landscape construction materials.

20. _____ (20) — Locations and dimensions of all easements.

21. _____ (21) — Surface details of all outside areas, such as paving.

22. _____ (22) — Signs: design, size, location, and illumination.

23. _____ (23) — Designation of future expansion areas.

24. _____ (24) — Locations of all hydrants within the Site.

25. _____ (25) — Grading Plan.

a. _____ a. — Existing and proposed grades and contours.

b. _____ b. — Surface water drainage and detention and/or retention.

c. _____ c. — Finished grade at building.

d. _____ d. — Catch basins and storm sewer locations.

e. _____ e. — Connection to existing utilities.

8. ~~8.~~ — **REFUSE.**

All trash containers, including dumpsters, must be enclosed by a solid wall or fence that matches the building facade and provide a suitable visual screen. 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.

9. ~~9.~~ — **UTILITIES AND SITE LIGHTING.**

All utility lines within the Site shall be installed underground in easements provided therefore. No overhead electric power, telephone or cable service will be permitted. Building lighting may be wall mounted. Building, parking and roadway lighting (fixture, height, type and intensity) where provided shall be approved by the City Subject to approval by the Plan Commission.

10. ~~10.~~ — **OTHER SITE IMPROVEMENTS.**

~~A.~~ ~~————A.——~~ Traffic Circulation. The location and design compatibility of all lanes, drives, parking arrangements and ingress and egress plans for the Property, including the impact on traffic circulation, shall be part of the site plan review conducted by the Plan Commission under Sub-section 7.C., above.

~~B.~~ ~~————B.——~~ 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 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 a manner acceptable to the City. Landscape materials shall be suitable to the climate, soil conditions and intended use of the Property and shall be of sufficient size and density (trees must be at least 2 1/2" caliper, unless otherwise specifically approved by the Plan Commission) to create an "immediate environment."

11. ~~11.——~~ **BUILDING LOCATION.**

The Project Building Improvements shall be located on the Property as indicated on the Site Plan.

12. ~~12.——~~ **BUILDING DESIGN AND MATERIALS.**

Building plans and specifications, including architectural elevations, for the Project, to include construction materials, are subject to review and final approval by the City's Building Inspection Department pursuant to the provisions of this Agreement. Facade treatments must be compatible with site standards and aesthetically appropriate.

Rooftop mechanical units, such as ventilating and air conditioning equipment shall be appropriately screened with building material sensitive/compatible with the rest of the architecture.

13. ~~13.——~~ **PROPERTY IMPROVEMENTS.**

~~A.~~ ~~————A.——~~ Plan Review. No additional buildings or other 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.

~~B.~~ ~~————B.——~~ Plan Submittal. Within sixty (60) days of the purchase of the property at 6642 W. Washington St., Developer shall submit to the City's Plan Commission its building plans and specifications for parking and possible parking structure north of

Washington St. sufficient for review purposes (but not for building permit review) pursuant to this Section.

C. ——— ~~C.~~ Plan Requirements. Plans drawn to scale shall be submitted to the Plan Commission for review. Ten (10) sets of all site plans and two (2) sets of all building plans shall be submitted as follows:

1. ——— (1) ——— Floor plans of typical floors.
2. ——— (2) ——— Entrances, exits, loading docks, and building service areas.
3. ——— (3) ——— Storage areas and buildings.
4. ——— (4) ——— Architectural treatment of building exteriors including building materials, and colors.
5. ——— (5) ——— Samples of construction materials.

D. ——— ~~D.~~ Determination. After review, the Plan Commission shall make a reasonable effort to approve or disapprove the building and parking plans and specifications within forty-five (45) days of submittal. If the Plan Commission denies a request, written evidence shall be provided as to why the request was denied. Subsequent changes to approved building plans and specifications shall also be subject to review and approval by the Plan Commission in accordance with the procedures set forth herein.

E. ——— ~~E.~~ Enforcement. In the event the Developer proceeds to make improvements and/or construction without first having received the approval, as provided above; or, in the event the Developer proceeds in a manner, which does not comply with the plans and specifications as approved by the Plan Commission, the City may take action to stop construction of the improvements. Action by the City shall consist of a notice to the Developer who is proceeding in violation of, or without approval from Plan Commission, which notice shall be in writing, pursuant to Section 26. The Notice shall advise the Developer of the nature of the violation and shall order immediate cessation of work on the improvements. The Developer may request a meeting with the City, which shall be granted within fifteen (15) days of the request. If the Developer can demonstrate compliance with approved plans and specifications to the satisfaction of the Plan Commission, the City shall rescind its order stopping construction. If the Developer is still in violation, the City may take all legal and equitable action it deems necessary to ensure compliance.

14. 14. — ACCESSORY STRUCTURES.

Approval of location, size and design compatibility of all permitted accessory structures in the Project, such as garages, maintenance buildings, etc., shall be 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. ~~15.~~ FENCING.

Fenced areas are permitted under the following terms and conditions:

A. ~~A.~~ Placement. Not permitted in front yard or easement areas, with the exception of fencing required by code or by specific approval from the Plan Commission.

B. ~~B.~~ Type. The type and style of fencing material used is subject to approval by the Plan Commission.

C. ~~C.~~ Height. Fences shall not exceed four (4) feet in height with solid side facing outward from property. Additional height may be approved by the Plan Commission.

D. ~~D.~~ Maintenance. All fences shall be maintained in good condition including painting as required.

16. ~~16.~~ SIGNAGE.

A. ~~A.~~ Review. The Plan Commission reserves the right to review all exterior signs and to approve only those which comply with the City's signage regulations, and which are environmentally and aesthetically suitable. Developer shall submit a plan to the Plan Commission indicating, in sufficient detail for review and approval, the type, size, shape and location of its proposed signs. Planning Commission approval shall be required prior to the fabrication or installation of a sign or the filing of a formal application for a permit with the Department of Building Inspection and Zoning.

B. ~~B.~~ Standards.

(i) ~~(1)~~ No surface mounted signs other than two Facility identification signs and directional signs shall be permitted on the Site south of Washington St., exclusive of signs mounted on the exterior building, which must be in compliance with City's signage regulations. No off-premise, roof-mounted or wall-mounted billboards or signs will be permitted. Any signs affixed to the exterior of the buildings must comply with City regulations for signage and must be approved by the Plan Commission.

(ii) ~~(2)~~ The Facility identification sign located at the curb must include a landscaped setting of ornamental shrubs, flowers, ground cover or a combination of the three in an area equal to two times the area of the sign.

(iii) ~~(3)~~ Sign lighting, if desired, must be ground-mounted hidden from view from the street. Individual letters may be internally illuminated.

(iv) ~~(4)~~ Directional Signage shall be a post and panel system and shall be limited in size to four (4) square feet and not posted more than six (6) feet above the grade. Not more than one sign shall be provided at each access drive.

17. ~~17.~~ **SATELLITE DISH ANTENNAS**

All satellite dish placements will require a special permit from the Plan Commission, unless such satellite dish placements when installed are not visible from public roads or sidewalks. Approvals will be subject to the following criteria:

A. ~~A.~~ Antennas shall be erected or maintained in the rear yard of buildings and not on the street side of buildings. The Plan Commission shall have the authority to authorize other locations based on demonstrated site constraints.

B. ~~B.~~ Height restriction: 35 feet

C. ~~C.~~ Antennas shall not be located in any required setback or easement area.

D. ~~D.~~ The antenna shall be located and designed so as to minimize the visual impact on surrounding properties and its visibility from the public street. Antennas should be screened through the addition of harmonious architectural features and/or landscaping in keeping with the elements and characteristics of the property.

E. ~~E.~~ No obstruction shall protrude into the airspace defined by the forward extension of a plane from the outer edge of the antenna dish to infinity and at the same horizontal and vertical angle as the central axis of the antenna dish.

F. ~~F.~~ Materials used in constructing the antenna shall not be unnecessarily bright, shiny, garish, or reflective.

G. ~~G.~~ Advertising placed on the dish face or any other antenna component is prohibited except for the corporate name and/or identification logo.

18. ~~18.~~ **MAINTENANCE RESPONSIBILITIES**

A. ~~A.~~ The Developer shall keep the Property, 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:

(i) ~~(1)~~ The removal of all litter, trash, refuse, and wastes.

(ii) ~~(2)~~ 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 approve unused lot areas shall be cut a minimum of three (3) times per year.

(iii) ~~(3)~~ The maintenance of lawn and landscape areas in a weed-free, healthy and attractive condition.

(iv) ~~(4)~~ The care and pruning of trees and shrubbery outside of easements within property boundaries.

(v) ———(5)———The maintenance of exterior lighting, signs, and mechanical facilities in working order.

(vi) ———(6)———The keeping of all exterior building surfaces in a clean, well maintained condition.

(vii) ———(7)———The striping and sealing of parking and driveway areas.

(viii) ———(8)———The removal of unlicensed or inoperable vehicles.

(ix) ———(9)———Snow and ice removal.

B. ———B.———During construction, it shall be the responsibility of the Developer 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, sedimentation and pollution of air or water during construction. Erosion control plan to be submitted and approved by the Building Inspection Department.

19. ———19.———CONSTRUCTION TIMETABLE FOR BUILDING IMPROVEMENTS.

A. ———A.———Construction Timetable. Developer has commenced construction of the Project as hereinabove stated (Paragraph 2.B.(2)) and shall proceed with due diligence to completion no later than January 1, 2009. The Project shall be constructed in accordance with the approved final plans.

B. ———B.———Construction Remedies.

(i) ———(1)———In the event Developer does not complete construction of the Project as hereinabove set forth, because of the public interest involved the City shall have the right to specific performance of the covenants and obligations of Developer to be performed hereunder by it, in addition to all other remedies the CityCDA may have under this Agreement or at law or in equity.

(ii) ———(2)———In addition to all other remedies the CityCDA may have under this Agreement or at law or in equity, and as an alternative thereto, in the event the Developer does not complete construction of parking north of Washington Street as herein above set forth, the CityCDA may, but shall not be required, to purchase the 6642 W. Washington St. parcel for the price paid to the CityCDA by the Developer.

The notice of intention to exercise the repurchase right can be given at any time after failure of Developer to comply with this section. Title to the Property shall be conveyed to the CityCDA in the same condition as conveyed by the CityCDA to Developer and a title insurance policy shall be provided at the expense of Developer in the amount of the repurchase price and insuring the CityCDA's title is in the aforementioned

condition. This section shall terminate upon final completion of construction of the parking, parking structure and/or building and related improvements on the Property pursuant to plans approved in accordance with the terms hereof.

20. ~~20.~~ — **DEFAULT.**

A. ~~A.~~ — **Remedies of the CityCDA.** In the event of a default by Developer's default or Corporation hereunder, and in addition to other rights and remedies provided for in this Agreement, the CityCDA shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the CityCDA shall have the following specific rights and remedies:

(i) ~~(1)~~ — With respect to matters that are capable of being corrected by the CityCDA, the CityCDA may at its option enter upon the Property for the purpose of correcting the default and the CityCDA's reasonable costs in correcting same shall be paid by Developer to the CityCDA immediately upon demand.

B. ~~B.~~ — **Reimbursement to the CityCDA.** Any amounts expended by the CityCDA in enforcing this Agreement, and any amounts expended by the CityCDA in curing a default on behalf of Developer, together with interest at the rate provided in Subsection E., below, shall be paid to the CityCDA and shall constitute a lien against the Property until such amounts are reimbursed or paid to the CityCDA, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

C. ~~C.~~ — **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

D. ~~D.~~ — **Failure to Enforce Not a Waiver.** Failure of a Party to enforce any provision contained herein shall not be deemed a waiver of its rights to enforce such provision or any other provision in the event of a subsequent default.

E. ~~E.~~ — **No Indirect Damages.** In the event of a default, neither Developer nor CityCDA shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise.

21. ~~21.~~ — **NO PERSONAL LIABILITY.**

Under no circumstances shall any alderman, officer, official, director, member, partner or employee of the City or CDA, or any officer, member or shareholder of Developer or Corporation have any personal liability arising out of this Agreement, and neither Developer nor the CityCDA shall seek or claim any such personal liability.

22. ~~22.~~ — **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,

6737 W. Washington St., Ste 2220
West Allis WI 53214
Attn: Richard G. Carlson

with a copy to: Anthony G. Henika, S.C.
9114 W. Puetz Road
Franklin WI 53132
Attn: Anthony Henika

To the CityCDA: City of West Allis Community Development Authority
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: John Stibal, Director of Development

with a copy to: Scott E. Post, City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214

To Developer: Whitnall Summit Company, LLC
6737 W. Washington St., Ste 2220
West Allis WI 53214
Attn: Richard G. Carlson

with a copy to: Anthony G. Henika, S.C.
9114 W. Puetz Road
Franklin WI 53132
Attn: Anthony Henika

Any Party may, by written notice to the other Party, designate a change of address or addressee for notice purposes.

27. ~~27.~~ **ENTIRE AGREEMENT.**

Except for the Purchase and Sale Agreement, this writing constitutes the entire Agreement between the Parties hereto, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement may be modified or amended only by written instrument signed by the CityCDA and Developer.

28. ~~28.~~ **CONSTRUCTION.**

The CityCDA and the Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules 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.

29. ~~29.~~ **GOVERNING LAW.**

The laws of the State of Wisconsin shall govern this Agreement and all actions concerning this Agreement shall be commenced in Milwaukee County, State of Wisconsin.

30. ~~30.~~ — **CAPTIONS.**

The captions or headings in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

31. ~~31.~~ — **COUNTERPARTS.**

This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

32. ~~32.~~ — **SEVERABILITY.**

If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

33. ~~33.~~ — **CONTINUITY**

The property shall be conveyed subject to the restrictions, covenants, agreements and conditions contained herein, all of which are to run with the land and shall be binding on all parties and all persons claiming the Property in perpetuity, unless a resolution adopted by the City and the property owners has been recorded, agreeing to change, modify, or amend the Agreement in whole or in part.

34. ~~34.~~ — **MEMORANDUM OF AGREEMENT.**

The Parties agree that at the request of the City CDA they will execute a memorandum of this Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County.

35. ~~35.~~ — **GOOD FAITH.**

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement the date first above written.

~~WHITNALL SUMMIT COMPANY LLC~~

By: _____
_____ Richard G. Carlson, President

By: _____
_____ Anthony G. Henika, Legal Counsel as Witness

_____ ~~COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS~~

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

Click Here and Type

WHITNALL-SUMMIT COMPANY LLC

By: _____

Richard G. Carlson,

President

By: _____

Anthony G. Henika,

Legal Counsel as Witness

WEST ALLIS COMMUNITY
DEVELOPMENT AUTHORITY OF
THE CITY OF WEST ALLIS

By: _____

John F. Stibal,

Executive Director

WHITNALL-SUMMIT
DEVELOPMENT CORPORATION

By: _____

Richard G. Carlson

President

Countersigned at West Allis, Wisconsin this ___ day of April, 2004, and I hereby certify that provision has been made to pay the liability that will accrue under this Agreement by the City of West Allis.

Gary Schmid, Comptroller

Approved as to form this
___ day of April, 2004.

Scott E. Post, City Attorney
H:\Scott\CDA\Summit Place Business Park-Dev Agrmnt

Exhibit 1: TID Plot Plan

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Exhibit 2: Public Parking Plot Plan

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|

Exhibit 3: Continuing Guaranty (Limited)

Click Here and Type

Gary Schmid, Comptroller

Approved as to form this
day of April, 2004.

Scott E. Post, City Attorney
H/Scott/CDA/Summit Place Business Park-
Dev Agrmnt

**EXHIBIT A
TID PLOT PLAN**

