

23.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2010-0095 Resolution Introduced

Resolution to approve an amendment to the Bond Agreement by and between the City of West Allis (the "City"), Swordfish, LLC and Milwaukee Plate Glass Company (each and collectively the "Borrower") U.S. Bank National Association (the "Trustee") and M&I Marshall & Ilsley Bank (the "Original Purchaser").

Introduced: 4/6/2010

Controlling Body: Administration & Finance Committee

Sponsor(s): Administration & Finance Committee

COMMITTEE RECOMMENDATION

Adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>APR 06 2010</u>			Barczak				
			Czaplewski				
			Kopplin				✓
		✓	Lajsic	✓			
			Narlock	✓			
		✓	Reinke				✓
			Roadt				
			Sengstock				
			Vitale	✓			
			Weigel				
		TOTAL		<u>3</u>	<u>0</u>		<u>2</u>

SIGNATURE OF COMMITTEE MEMBER

Chair

[Signature]
Vice-Chair

Member

COMMON COUNCIL ACTION

ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>4-6-10</u>			Barczak <i>e</i>				✓
			Czaplewski	✓			
			Kopplin <i>e</i>				✓
		✓	Lajsic	✓			
			Narlock	✓			
			Reinke <i>e</i>				✓
			Roadt	✓			
		✓	Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
		TOTAL		<u>7</u>	<u>1</u>		<u>3</u>



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2010-0095

Final Action:

Sponsor(s): Administration & Finance Committee

APR 06 2010

Resolution to approve an amendment to the Bond Agreement by and between the City of West Allis (the "City"), Swordfish, LLC and Milwaukee Plate Glass Company (each and "Borrower") U.S. Bank National Association (the "Trustee") and M&I Marsh "Original Purchaser").

Sent to
Dev for
Signatures
4-14-10

WHEREAS, in December 1998 the City of West Allis issued \$4.9 million in Development Revenue Bonds to finance the purchase of land and equipment Milwaukee Plate Glass building located on the corner of S. 113 St. and W. G

WHEREAS, the Borrower has requested the City, the Trustee and the Original Purchaser as the sole bond owner, to amend the Bond Agreement to adjust the interest rate on the bonds without any change to security or position; and,

WHEREAS, the amendment agreement is hereby attached and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of City of West Allis, Wisconsin that the amendment to the Bond Agreement by and between the City of West Allis (the "City"), Swordfish, LLC and Milwaukee Plate Glass Company (each and collectively the "Borrower") U.S. Bank National Association (the "Trustee") and M&I Marshall & Ilsley Bank (the "Original Purchaser") be an is hereby approved.

BE IT FURTHER RESOLVED that the Mayor and the City Administrative Officer, Clerk/Treasurer be and are hereby authorized and directed to execute and deliver the attached Bond Agreement Amendment 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 Application and 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.

ADOPTED April 6, 2010

Paul M. Ziehler

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

APPROVED 4/7/2010

Dan Devine

Dan Devine, Mayor

\$4,900,000.00
City of West Allis, Wisconsin
Industrial Development Revenue Bonds, Series 1998A and 1998B
(Swordfish, L.L.C. / Milwaukee Plate Glass Company Project)

FIRST AMENDMENT TO BOND AGREEMENT

This First Amendment to Bond Agreement is made and entered into as of April 1, 2010, by and among the CITY OF WEST ALLIS, WISCONSIN (the "City"), SWORDFISH, L.L.C., a Wisconsin limited liability company and MILWAUKEE PLATE GLASS COMPANY, a Wisconsin corporation, jointly and severally (each and collectively, the "Borrower") and U.S. BANK NATIONAL ASSOCIATION (f/k/a Firststar Bank Milwaukee, National Association (the "Trustee") and M&I MARSHALL & ILSLEY BANK (f/k/a M&I Northern Bank) (the "Original Purchaser"), with respect to the City's \$4,900,000 Industrial Development Revenue Bonds, Series 1998A and 1998B, issued on December 18, 1998 (the "Bonds"), in order to supplement and amend the Bond Agreement (the "Bond Agreement") dated December 1, 1998 and the Bonds issued thereunder.

WHEREAS, on December 18, 1998, the City issued its \$4,900,000 Industrial Development Revenue Bonds, Series 1998A and 1998B (the Bonds") to finance a project consisting of the purchase of land and equipment and construction of an approximately 35,000 square-foot manufacturing facility located on the corner of 113th Street and Greenfield Avenue (the "Project") owned by the Borrower; and

WHEREAS, the Borrower has now requested that the City, the Trustee and the Original Purchaser, as the sole Bondowner, agree to amend the Bond Agreement and the Bonds to adjust the interest rate on the Series 1998A Bonds effective as of April 1, 2010; and

WHEREAS, there are no Series 1998B Bonds outstanding.

NOW, THEREFORE, the parties hereto agree as follows,

1. The definition of the term "Reset Date" contained in Section 1.01 of the Bond Agreement is hereby amended in its entirety to read as follows:

"Reset Date" shall mean April 1, 2010, April 1, 2013, and each three year anniversary of April 1 thereafter.

2. Section 2.02(a) of the Bond Agreement shall be amended in its entirety to read as follows:

"(a) Series 1998A Bonds. The Series 1998A Bonds shall be issued in the aggregate amount of \$2,200,000 and shall mature on December 1, 2018. Repayment of principal for the Series 1998A Bonds shall be made in Two Hundred Twenty-eight (228) equal principal installments of \$9,649.12, payable on the first day of each month commencing January 1, 2000.

but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. All unpaid principal and interest shall be paid on December 1, 2018.

3. Section 2.05 of the Bond Agreement shall be amended in its entirety to read as follows:

“Section 2.05. Optional Prepayment. Upon any prepayment of the Bonds while the Bonds are accruing interest at a fixed rate of interest, a prepayment fee shall be due and payable as hereinafter provided. If any Bond is prepaid in whole or in part, or if any Bond will become due and payable at any time prior to the maturity date hereof by acceleration or otherwise, the Borrower shall pay to Original Purchaser immediately upon demand a fee which is the sum of the discounted monthly differences for each month from the month of prepayment through the month in which the Rate End Date (defined below) occurs, calculated as follows for each such month:

(i) the Original Purchaser shall determine the amount of interest which would have accrued each month on the amount prepaid at the interest rate applicable to such amount had it remained outstanding until the Rate End Date.

(ii) the Original Purchaser shall subtract from the amount determined in (i) above the amount of interest which would have accrued for the same month on the amount prepaid for the remaining term through the Rate End Date at the Treasury Rate for such term in effect on the date of prepayment.

(iii) If the result obtained in (ii) for any month is greater than zero, discount that difference by the Treasury Rate used in (ii) above.

The “Rate End Date” means April 1, 2013, any Reset Date after such date, or the maturity date of this Bond if there is no subsequent Reset Date. The “Treasury Rate” means the yield to maturity at the asked price of the applicable obligation of the United States Treasury, with the applicable obligation determined by Original Purchaser to be the Treasury obligation that will mature on the Rate End Date (or the next day thereafter for which an asked price is readily quoted in the public securities market), with the understanding that such rate serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Original Purchaser may designate.”

4. Except to the extent amended hereto, the restrictions, covenants and agreements contained in the Bond Agreement shall continue to apply to the Project and shall apply to the Bonds to the same extent and for the same duration as set forth in the Bond Agreement. To the extent of any inconsistency between the provisions of the Bond Agreement as amended hereby and the Bonds, the terms of the Bond Agreement as amended hereby shall govern.

The undersigned, M&I MARSHALL & ILSLEY BANK, represents that it is the current Bondowner of 100% of the Bonds, and hereby consents to the above First Amendment to Bond Agreement.

M&I MARSHALL & ILSLEY BANK, as Original Purchaser

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

5. This First Amendment to Bond Agreement is effective as of April 1, 2010. Except to the extent supplemented and modified hereby, the Bond Agreement is hereby confirmed, reaffirmed and ratified in all respects.

6. This First Amendment to Bond Agreement may be executed in two or more counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

[signature page to follow]

Payments of principal in excess of the scheduled installments set forth herein shall be credited against scheduled installments in inverse order and pro rata (based on principal amount) with respect to the Series 1998A Bonds, subject to the provisions of Section 2.05 of the Bond Agreement.

Notwithstanding anything else herein to the contrary, the principal amount of the Series 1998A Bonds outstanding shall never exceed the aggregate amounts transferred from the Original Purchaser to the Trustee for Deposit into the Project Fund pursuant to Sections 3.01 and 4.02, less repayments of principal made by the Borrower, provided, however, that nothing herein shall be construed to obligate the Borrower to acquire the Project Site or to proceed with the Project, and in the event Borrower does not acquire the Project Site or proceed with the Project, Borrower shall have no obligation hereunder, other than the repayment, together with interest for amounts advanced by the Original Purchaser.

From and after April 1, 2010 and until April 1, 2013, the Series 1998A Bonds shall bear interest at a fixed rate equal to 3.68%. On the April 1, 2013 Reset Date and on each Reset Date thereafter, the Borrower shall lock the interest rate applicable to the Series 1998A Bonds until the next Reset Date and the LIBOR/Swap Rate shall be redetermined by the Original Purchaser on the Reset Date (the "Reset Period").

The interest rate on the Series 1998A Bonds shall be reset on April 1, 2013 (the "Next Reset Date") and each Reset Date thereafter, at a fixed rate calculated as the LIBOR/Swap Rate for 3 years plus 3.00%. The Borrower shall lock the interest rate applicable to the Bonds for 3 years and the LIBOR/Swap Rate shall be redetermined by the Original Purchaser on the Reset Date.

In the event the Tax Rate of the Original Purchaser is either greater or less than 35%, the rate set forth above shall be multiplied by a fraction, the numerator of which is the difference between (i) 100% and (ii) the then-applicable Tax Rate of the Original Purchaser and the denominator of which is the difference between (I) 100% and (II) the Tax Rate of the Original Purchaser. The "Tax Rate of the Original Purchaser" is the tax rate at which the Original Purchaser, or any other bank that is the registered Bondowner, would be taxed for federal income tax purposes pursuant to the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), or any future United States internal revenue or similar laws applicable to such bank, if its taxable income were in the highest tax bracket specified by the Code.

Interest shall be computed on a 360-day year, actual days elapsed basis, and shall be payable on the first day of each month. Interest shall accrue only on principal amounts actually deposited and from the date such amounts are actually deposited into the Project Fund pursuant to Sections 3.01 and 4.02 of the Bond Agreement.

Overdue principal and interest on each Bond shall (to the extent legally enforceable) bear interest at the same rate per annum as was borne by such Bond on the due date of the delinquent payment. Any interest on any Bond which is payable,

The undersigned, M&I MARSHALL & ILSLEY BANK, represents that it is the current Bondowner of 100% of the Bonds, and hereby consents to the above First Amendment to Bond Agreement.

M&I MARSHALL & ILSLEY BANK, as Original Purchaser

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____