

## **PLANNED DEVELOPMENT AGREEMENT**

This Agreement made and entered into by and between the City of West Allis, a Municipal Corporation with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (the "City") and Shecterle Commercial Properties 2, LLC, (Culver's and other commercial development) with principal offices at 19280 Haydon Court, P.O. Box 1205, Brookfield, WI 53008-1205 (the "Developer").

### **WITNESSETH:**

**WHEREAS**, the Developer desires to improve and develop for commercial use certain lands in the City of West Allis, Milwaukee County, Wisconsin, depicted and legally described in Exhibit "A", attached hereto and made a part hereof (the "Site"); and,

**WHEREAS**, the Developer owns in fee or otherwise retains a legal or equitable interest in the Site; and,

**WHEREAS**, the Developer has made application to the Common Council of the City (the "Common Council") to establish a Planned Development District-Commercial and for a special use permit pursuant to Section 12.61 and Section 12.16 of the Revised Municipal Code of the City (the "Application", City Clerk File No. \_\_\_\_\_, dated \_\_\_\_\_, 2005) to permit the development of a commercial project on the Site (the "Project"); and,

**WHEREAS**, the Application was referred to the Planning Commission for review and recommendation and its recommendation has been received; and,

**WHEREAS**, a public hearing on the Application was duly noticed and held by the Common Council on June 7, 2005; and,

**WHEREAS**, the Common Council is authorized to establish planned development districts for commercial uses pursuant to Section 62.23(7)(b) of the Wisconsin Statutes and Section 12.61 of the Revised Municipal Code of the City; and,

**WHEREAS**, the Common Council has approved the Application, subject to the terms and conditions set forth herein.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual covenants hereinafter set forth, the parties agree:

**1. Binding Effect.** It is intended and determined that the provisions of this Agreement shall constitute covenants, which shall run with the land for the benefit thereof, and the provisions hereof shall bind and inure to the benefit of the parties and their respective successors in interest from the effective date of this Agreement.

**2. Site Development.** Subject to the terms and conditions of this Agreement, the Site shall be developed in accordance with the site and architectural plans approved by the Plan Commission pursuant to Section 12.13 of the Revised Municipal Code, copies of which are attached hereto and made a part hereof as Exhibit B (the “Development Plan”).

**3. District Regulations.** Unless otherwise enumerated in Exhibit C Special Conditions, which is attached hereto and made a part hereof, the permitted and special uses of the site, the density and intensity of said uses, the maximum height, bulk and size of proposed buildings and structures and their location on the Site shall be as set forth in the underlying zoning district.

**4. Use, Occupancy and Operation.** Permitted and special uses shall be used, occupied, operated and maintained in accordance with all applicable federal, state and local laws, statutes, ordinances and regulations, the Application and this Agreement.

**5A. Licenses, Permits and Approvals.** In addition to the approval of its Application, the Developer will secure all permits, licenses and approvals from the City, State and other governmental authorities which are required for the construction, use, occupancy and operation of the Project, including any license necessary for the sale of packaged fermented malt beverages and intoxicating liquor. The Developer agrees that it has sole responsibility for making application for the permits, licenses and other approvals for the Project and will prepare all plans and/or specifications and pay all fees required in connection therewith. The City, its officers or agents, as the case may be, may, in the exercise of their reasonable discretion, decide in good faith not to issue any required permit, license or approval to permit the construction, use, occupancy and operation of the Site as contemplated by this Agreement because of the Developer’s failure to comply with applicable laws, ordinances or regulations, or for any other valid reason under law.

**5B. Development Schedule.** Construction of the Project shall commence no later than one (1) year from the date of approval of the Development Plan by the Plan Commission as provided in Section 12.13(7)(c) of the Revised Municipal Code. This Agreement and its exhibits shall lapse and be of no effect upon failure to commence construction as herein provided.

**6. Not a Joint Venture.** The Developer and the City hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

**7. Cooperation.** Each party shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder, except as set forth in Paragraph 5A.

**8. Amendments.** The parties agree that no changes in the approved Application and related conditions shall be made unless authorized by the Common Council in accordance with

the procedures set forth in Section 12.61(14) and Section 12.16 of the Revised Municipal Code of the City. No amendments will be made in the approved Development Plan or related conditions unless such amendments are shown to be required by changes that have occurred in conditions since the Development Plan and related conditions were approved, or by a change in the development policies of the City.

**9. Subsequent Actions.** This Agreement shall not prevent the Common Council in subsequent actions applicable to the Site from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the Site as set forth herein; and which do not materially alter any obligations of the Developer. Nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development applications for the Site on the basis of such existing or new rules, regulations and policies.

**10. Conveyance.** Until the City certifies that all building construction and other physical improvements specified in the Development Plan have been completed, the Developer shall have no power to convey or otherwise transfer the Site, or any part thereof, without the consent of the City (which consent shall not unreasonably be withheld or delayed) and no such consent shall be given unless the grantee of the Developer is obligated, by written instrument, to the City to carry out the Development Plan in accordance with the Development Schedule and also that the grantee and the successors and assigns of the grantee, shall have no right or power to convey or otherwise transfer the Site, or any part thereof, or erect or use any building or structure erected thereon free from obligation and requirement to conform to the approved Development Plan and any amendments thereof, as stated in the Development Agreement language.

**11. Assignment.** Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

**12. Remedies.** Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforcement by a specific performance the obligations and rights of the parties hereto. No consequential, indirect, incidental or exemplary damages of any kind shall be recoverable in any action by either party, whether based on contract, negligence, strict liability or otherwise.

**13. No Waiver.** Failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition in this Agreement and breach thereof may be waived, altered or modified except by written instrument executed by the party to be bound. The waiver of any breach by either party shall not affect or otherwise alter this Agreement, but each and every covenant, agreement, term or condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

**14. Severability.** If any provision of this Agreement, the Development Plan and/or related conditions are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions thereof shall continue in full force and effect.

**15. Governing Law.** This Agreement shall be construed under and enforced in accordance with Wisconsin Law and any action concerning this Agreement shall be filed in Milwaukee County, WI.

**16. No Personal Liability.** Under no circumstances shall any alderperson, officer, official or employee of the City have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.

**17. Third Parties.** This Agreement is made solely for the benefit of the parties, their respective successors and assigns in interest, and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof.

**18. Memorandum.** The parties agree that they will execute a Memorandum of this Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County, Wisconsin.

**19. Time is of the Essence.** Time is of the essence with regard to all dates and time periods set forth herein and the attached exhibits.

**20. Entire Agreement.** This Agreement, including the exhibits and attachments annexed hereto, constitute the entire Agreement 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.

**21. Common Council Approval.** This Agreement shall be effective only after approval by the Common Council, and the execution and delivery thereof by the parties.

**22. Construction.** The parties 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.

(SIGNATURES ON NEXT PAGE)

\_\_\_\_\_ day of \_\_\_\_\_, 2005.

# CITY OF WEST ALLIS

By: \_\_\_\_\_  
Jeannette Bell, Mayor

Attest:

Paul M. Ziehler,  
City Administrative Officer  
Clerk/Treasurer

State of Wisconsin )  
 ) ss  
 Milwaukee County)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, personally came before me Jeannette Bell and Paul M. Ziehler, to me known to be the Mayor and City Administrative Officer- Clerk/ Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

(SIGNATURES CONTINUED ON NEXT PAGE)

