

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 Chris Miller d/b/a 92 Street Commons, LLC (the "Developer"), with principal offices at 301 Pawling Avenue, Hartland, WI 53029 (the "Developer"), collectively referred to as "Parties."

WHEREAS, the Developer has submitted an application for a Planned Development District (PDD-1) Residential for the new construction of a residential development project to consist of 38 apartment homes (two 19-unit buildings) within a planned development district and other site improvements on properties located on the west side of S. 92 St. at 1803 and 1807 S. 92 St., containing approximately 2 acres of land which is bounded by W. Mitchell St., S. 92 St. Union Pacific Railroad (RR) right of way and We Energies land pursuant to Sec. 12.60 of the Revised Municipal Code.

The development is depicted and legally described as attached hereto and made a part here of (the "Site"); and,

WHEREAS, the Developer has a valid offer to purchase the described lands (the Site); and,

WHEREAS, the Developer has made application to the Common Council of the City (the "Common Council") to amend the existing zoning by overlay district Planned Development District- Residential PDD-1 pursuant to Section 12.60 of the Revised Municipal Code ("Application"), to permit the development of 38 apartment homes (consisting of two 19-unit buildings) and modify the existing RB-2 Residential zoning with a PDD-1 overlay zoning boundaries project on the Site (the "Project"); and,

WHEREAS, the Application was referred to the West Allis Plan Commission for review and recommendation on May 22, 2013 and its recommendation has been received; and,

WHEREAS, a neighborhood public informational meeting was conducted on the application; and,

WHEREAS, a public hearing on the Application was duly noticed and held by the Common Council on June 4, 2013; and,

WHEREAS, the Common Council is authorized to establish planned development districts for residential uses pursuant to Section 62.23(7)(b) of the Wisconsin Statutes and Section 12.60 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 interests from the effective date of this Agreement.

2. Site Development. Subject to the terms and conditions of this Agreement, the Site shall be developed and conditioned upon the site, landscaping and screening, and architectural plans with conditions approved by the City of West Allis Plan Commission on May 22, 2013, copies of which are attached hereto and made a part hereof as Exhibit "A" (the "Development Plan"). Off-street parking for 60 vehicles is required per code for the entire project. The Developer shall provide off-street parking for at least 60 vehicles. The Common Council has the authority to modify the parking requirements. Under this agreement the Common Council grants of Department of Development staff the authority to approve, without Common Council approval, minor changes in the approved conditions, including but not limited to, up to 5% of the required parking.

3. District Regulations. The permitted 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 Chapter 12 of the Revised Municipal Code.

4. Use, Occupancy and Operation. Permitted 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 razing, construction, use, occupancy and operation of the Project. 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 including the fees for the vacation of the streets. 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 or the granting of a valid building permit shall be issued no later than one (1) year from the date of approval of the Development Plan by the West Allis Common Council. This Agreement shall lapse and be of no effect upon failure to commence construction or be issued a valid building permit 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 among 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.

8. Amendments. The parties agree that no changes in the approved Application and related conditions shall be made unless agreed in writing by all parties and authorized by the Common Council in accordance with the procedures set forth in Section 12.61(14) of the Revised Municipal Code of the City or by City staff as permitted by Section 2 of this Agreement. No amendments will be made in the approved Development Plan or related conditions unless such amendments are agreed to in writing by all parties and 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. Lapse. If no construction has begun or no permanent use has been established in the Planned Development District within one year from the date of this Agreement, then the plan and related conditions shall lapse and be of no further effect and Developer shall forfeit all rights to develop the Site hereunder and the City Clerk/Treasurer shall file a notice of revocation with the Register of Deeds of Milwaukee County. Any special use approved by the Common Council

10. Extension. An extension of these time limitations may be granted without a public hearing by the Common Council by resolution reauthorizing the special use in accordance with the following criteria:

A. The applicant requesting the extension shall complete a planning application available from the Department of Development and shall submit a \$250.00 extension fee.

B. A written explanation for the extension of time shall accompany the planning application along with a timeline/schedule for obtaining necessary permits, zoning, state and municipal approvals and a target date for construction start;

C. The request for extension shall be submitted within sixty (60) days of the expiration of the approval;

D. The extension, if granted, shall be valid for a period of one (1) year.

11. 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 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.

12. 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.

13. **Assignment.** No party shall assign or transfer any of its interests, rights or obligations under this Agreement without the prior written consent of the others which consent shall not unreasonably be withheld or delayed.

14. **Remedies.** Any 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 any party, whether based on contract, negligence, strict liability or otherwise.

15. **No Waiver.** Failure by any 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 any 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 than existing or subsequent breach thereof.

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

17. **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.

18. **Construction.** City and Developer 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.

19. **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.

20. **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.

21. **Recording.** The parties agree that either party may record this Agreement, minus the exhibits in the Office of the Register of Deeds of Milwaukee County, Wisconsin.

22. **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.

23. **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.

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

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this

____ day of _____, 2013.

CITY OF WEST ALLIS

By: _____ Dan Devine, Mayor

Attest:

Paul M. Ziehler, City Administrative Officer, Clerk/Treasurer

State of Wisconsin)

) ss

Milwaukee County)

On this day ____ of _____, 2013, personally came before me Dan Devine and Paul M. Ziehler, to me known to be the Mayor and City 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: _____

By: _____

Chris Miller, 92 Street Commons

State of Wisconsin)

) ss

Milwaukee County)

(SIGNATURES CONTINUED ON NEXT PAGE)

On this _____ day of _____, 2013, personally came before me, Chris Miller, d/b/a 92 Street Commons (the Developer) of the above-named company, to me known to be a member of said company, acknowledged that he executed the foregoing instrument as such officer as the deed of said company, by its authority.

Notary Public, State of Wisconsin

My Commission Expires: _____

This Agreement was approved by the Common Council of the City of West Allis by Resolution No.

R-2013-0142, adopted June 4, 2013, and approved on June _____, 2013.

Legal Description

A tract of land being part of the Lot 5, Block 4 in the Assessor's Plat No. 255, located in the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 5, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, State of Wisconsin, more particularly described as follows:

Commencing at the Southeast corner of said Northeast $\frac{1}{4}$ of Section 5; thence North $01^{\circ}05'59''$ West, 99.50 feet along the East line of said Northeast $\frac{1}{4}$ and centerline of South 92nd Street, to the Point of Beginning; thence South $88^{\circ}13'33''$ West, 834.14 feet, along the North right-of-way line of Union Pacific Railroad Co., to the South right-of-way line of the Wisconsin Electric Power Company, thence Northeasterly along said South right-of-way line and the arc of the curve, 493.84 feet, whose center lies to the Northwest and whose radius is 620.02 feet, central angle $45^{\circ}38'06''$ and chord bears North $65^{\circ}24'30''$ East; thence North $88^{\circ}13'33''$ East, 393.08 feet, to the East line of Northeast $\frac{1}{4}$ and centerline of South 92nd Street; thence South $01^{\circ}05'59''$ East, 186.50 feet, along the said line to the Point of Beginning.

Said area is located at 1803 and 1807 S. 92 St, and contains 2.2670 acres, more or less and includes portions of City right-of-way.

Tax Key Numbers: 451-0282-001 and 451-0283-001