



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2006-0218

Final Action:

SEP - 5 2006

Resolution authorizing the Purchase and Sale Agreement between the Community Development Authority of the City of West Allis and West Allis Development, LLC, for properties within the Six Points/Farmers Market Redevelopment Area, specifically along the north side of W. Greenfield Ave., between S. 63 St. and S. 64 St.

WHEREAS, the Community Development Authority of the City of West Allis (the "Authority") is the owner of certain real property located within the Six Point/Farmers Market Redevelopment Area; and,

WHEREAS, the Authority has duly noticed and a held a Public Hearing on the sale of property on April 11, 2006; and,

WHEREAS, the Authority, by Resolution No. 627, adopted August 8, 2006, approved said Agreement by and between the Community Development Authority of the City of West Allis and Toldt Development, Inc. for the Six Points/Farmers Market Redevelopment Area.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that it hereby approves the Purchase and Sale Agreement by and between the Community Development Authority of the City of West Allis and West Allis Development LLC for the redevelopment of properties located within the Six Points/Farmers Market Redevelopment Area, in compliance with the provisions as outlined in the Purchase and Sale Agreement and Development Agreement, dated September 5, 2006.

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

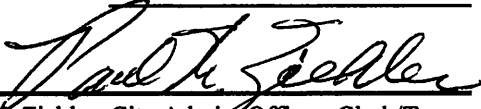
BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper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

cc: Development Department

DEV-R-433\9-5-06\dlm

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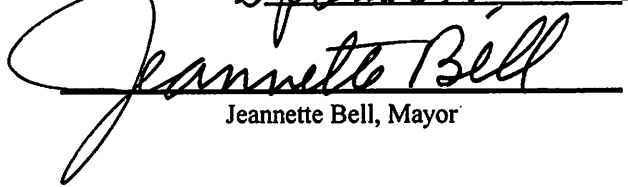
ADOPTED



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

APPROVED

September 8, 2006



Jeannette Bell, Mayor

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE ("Agreement") is made as of the 5 day of September, 2006 between the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS** ("Seller") and **WEST ALLIS DEVELOPMENT, LLC**, a Wisconsin limited liability company, its successors or assigns ("Buyer"), together known as the "Parties."

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

1. **PROPERTY.** Seller hereby Buyer hereby agrees to buy and pay for the tract of land located on the north side of W. Greenfield Ave. between W. Greenfield Ave. and W. Greenfield Ave. in West Allis, Milwaukee County, Wisconsin, consisting of more particularly described and depicted as follows:

- Tax Key No. 439-0274-000
- Tax Key No. 439-0275-000
- Tax Key No. 439-0277-000
- Tax Key No. 439-0278-000
- Tax Key No. 439-0279-000
- Tax Key No. 439-0280-000
- Tax Key No. 439-0281-000
- Tax Key No. 439-0282-000
- Tax Key No. 439-0284-001

Please put this
Original in

R-2006-0218

Thanks A lot!
Barb

13** S. 64 St.

A map of which is attached hereto as EXHIBIT "A" and made a part hereof (the "Property");

TOGETHER with all of Seller's interest in each and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving the Property subject to Sections 2.1 and 7.A. (12 (b)).

2. **PURCHASE PRICE.** The purchase price for the Property shall be One Dollar and No Cents (\$1.00) plus or minus any adjustments provided hereunder (the "Purchase Price"), to be paid as follows:

1 A. The Purchase Price shall be paid as follows: One Dollar and No/100
2 Cents (\$1.00) in cash at Closing.

3 2.1 **CONVEYANCE**. Seller shall at closing and upon payment of the Purchase Price,
4 convey the Property to Buyer by Warranty Deed free and clear of all liens and encumbrances, except
5 municipal and zoning ordinances, recorded utility easements, recorded building and use restrictions
6 and covenants, the Development Agreement described in Section 4.

7 2.2 **SITE PREPARATION**. Seller shall convey the Property as is. Buyer shall be
8 responsible for all costs associated with environmental remediation, foundation removal and all
9 general site preparation.

10 3. **CONDITIONS TO CLOSING**.

11 A. **Buyer's Contingencies**. The obligation of Buyer to consummate the
12 transaction contemplated hereby is subject to the fulfillment of all of the following conditions
13 (which may be waived by Buyer in whole or in part, in its sole discretion):

14 (1) **Compliance with Agreement**. Seller shall have performed and
15 complied with all of its obligations under this Agreement to the extent such
16 obligations are to be performed or complied with by Seller on or before the Closing
17 Date (as defined below).

18 (2) **No Misrepresentation or Breach of Covenants and Warranties**.
19 There shall have been no breach by Seller in the performance of any of its covenants
20 herein, and each of the representations and warranties of Seller outlined or referred to
21 in this Agreement shall be true and correct in all respects on the Closing Date as
22 though made on the Closing Date, except to the extent any deviation therefrom may
23 be created by Buyer.

24 (3) **No Litigation**. There shall be no litigation, threat, investigation, or other

1 proceeding challenging or affecting the legality of the transactions contemplated by this
2 agreement, or seeking the restraint, prohibition, damages or other relief in connection with
3 this agreement or the use intended for the property by Buyer, and none of the same shall
4 have been instituted or threatened by any person, agency, or other entity prior to closing.
5 Such litigation or threat thereof shall include, but not be limited to challenges to Seller's
6 right to take the Property or the rights of tenants or occupants of the Property to remain.

7 (4) **Relocation.** Seller shall, at its sole cost, have obtained the relocation of all
8 occupants currently occupying the Properties. It is currently estimated the Seller's
9 cost will be One Hundred and Fifty Thousand and 00/dollars (\$150,000). Should the
10 Seller's total relocation cost be less than the above estimate the Seller shall deliver to
11 Buyer any cost savings under One Hundred and Fifty Thousand and 00/dollars
12 (\$150,000).

13 (5) **Title Evidence and Documents.**

14 (a) Buyer shall have received within forty-five (45) calendar days
15 after the date of this Agreement a commitment (the "Title Commitment")
16 from Chicago Title Insurance Company (the "Title Company") to issue an
17 owner's policy of title insurance (Form 1992, dated 10-17-92) ("Title Policy")
18 to Buyer in the amount of the Purchase Price of the Property, which Title
19 Commitment shall show Seller's title to be merchantable as of the Closing
20 Date, subject only to such liens as will be paid out of the proceeds of closing
21 and standard title insurance requirements and exceptions, as appropriate.
22 Seller shall also have delivered as part of such Title Commitment a
23 commitment to issue an extended coverage endorsement. The Title
24 Commitment to be provided shall include a gap endorsement insuring title as
25 to the period between the most recent search of the title and the recording of

1 the deed and survey and Zoning 3.1 Endorsement. The parties agree to
2 execute affidavits and such other documents as the Title Company may
3 require to provide such coverage. The Commitment shall contain copies of
4 all recorded instruments affecting the Property and any other documents
5 referenced in the Commitment.

6 (b) Buyer shall have been satisfied, in its sole discretion, with all
7 title and title-related matters affecting the Property. The Buyer, within thirty
8 (30) calendar days after receipt of the later of the Title Commitment or
9 Survey shall submit to Seller in writing a list of matters affecting the Property
10 to which the Buyer objects ("Title Objections"). Seller shall have fifteen (15)
11 calendar days to remove the Objections. In the event that Seller is unable to
12 remove the Objections, Buyer shall have 5 days from receipt of notice
13 thereof, to deliver written notice waiving the Objections. If Buyer does not
14 waive the Objections, then this Agreement shall be null and void and Buyer
15 and Seller shall have no further liabilities under this Agreement.

16 (6) **Seller's Permits, Approvals, Test, and Reports**. Seller shall have
17 furnished to Buyer such documents in Seller's possession or under its control, or
18 which Seller may obtain hereafter, as may be requested by Buyer for purposes of
19 evaluating the Property and its ability to use the Property for the use intended by
20 Buyer. As a condition precedent to Seller's obligations under this provision, Buyer
21 shall furnish to Seller, within forty-five (45) calendar days after the date of this
22 Agreement, a comprehensive list of documents, test results, studies and reports
23 ("Document List") referred to or described above that are already in the possession of
24 Buyer or its agents, and Seller shall not be obligated to provide anything to Buyer

1 which is contained on the Document List.

2 7. **Government Approvals.** Buyer shall have confirmed, within sixty (60)
3 calendar days after signing this document, that Buyer has obtained, or has obtained
4 adequate assurances of the availability of, any governmental permits, licenses, and
5 approvals that are or may be necessary to develop and use the Property in the manner
6 intended by Buyer, including approval that the City of West Allis has approved
7 Planned Development District (PDD) # 6643 by Resolution No. 27273. Said PDD
8 governs the use of the property.

9 8. **Utilities.** Buyer shall have been satisfied, in its sole discretion, with the
10 location, availability and suitability of municipal and other utilities in connection
11 with Buyer's intended use of the Property. Except for the matters disclosed in the
12 Document List (see Subsection 3.A.(6), above) the Seller makes no representations or
13 warranties regarding the location, availability or suitability of utilities. Seller assumes
14 no obligation for the location, availability or suitability of utilities and Buyer assumes
15 all costs therefore.

16 9. **Termination.** If Buyer fails to waive or acknowledge the satisfaction of the
17 conditions in (1) through (8) in writing on or before the stated dates, if any, or by
18 September 30, 2006, then neither party shall have any further liability under this
19 Agreement. Closing on the Property shall be deemed waiver and satisfaction of the
20 said conditions.

21 B. **Seller's Contingencies.** The obligation of Seller to consummate the
22 transaction contemplated hereby is subject to the fulfillment of all of the following conditions
23 (which may be waived by Seller in whole or in part in its sole discretion):

24 (1) **No Litigation.** There shall be no litigation, threat, investigation, or other

1 proceeding challenging or affecting the legality of the transactions contemplated by this
2 agreement, or seeking the restraint, prohibition, damages or other relief in connection with
3 this agreement or the use intended for the property by Buyer, and none of the same shall
4 have been instituted or threatened by any person, agency, or other entity prior to closing.
5 Such litigation or threat thereof shall include, but not be limited to challenges to Seller's
6 right to take the Property or the rights of tenants or occupants of the Property to remain.

7 (2) **Termination.** In the event the conditions in subparagraph 3(B) above
8 have not been satisfied or waived by Seller, Seller, by written notice to Buyer on or
9 before the closing Date, may terminate this Agreement. In case of such termination,
10 all Earnest Money and interest thereon shall be returned to Buyer and neither party
11 shall have any further liability under this Agreement. Closing on the Property shall
12 be deemed waiver and satisfaction of the said conditions.

13 4. **TAX INCREMENT FINANCING**

14 A. **Tax Incremental District.** Pursuant to the Wisconsin Tax Increment Law,
15 Wis. Stats. §66.1105 *et seq.* the Common Council of the City of West Allis created
16 by resolution Tax Incremental District Number Four, City of West Allis, as of
17 January 1, 1995 (the "District") and approved the project plan (the "Project Plan") for
18 the District. The Property is within the boundaries of the District.

19 B. **Shortfall Agreement.** Buyer guarantees that the minimum assessed values
20 listed below will be reached by the listed dates. The minimum assessed value will be
21 based on the value of the residential condominium excluding the commercial
22 condominium. To the extent that the general property taxes for the property in any
23 calendar year after 2006 are less than the equivalent of the guaranteed assessed value
24 multiplied by that year's mill rate, Buyer shall pay the difference between that year's
25 actual tax payment and the tax payment that would have been generated by the

1 guaranteed valuation. Buyer's obligation to guarantee the payment of any property
2 tax shortfall against the guaranteed valuation shall continue for the life of the district.

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<u>Schedule</u>	<u>Minimum Assessed Value</u>
12/31/2006	\$930,000
12/31/2007	\$2,706,825
12/31/2008	\$8,450,000
12/31/2009	\$9,597,000

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9 *Minimum Assessed Values are equal the building value without the commercial
10 value.
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12 **C. Special Charge.** Buyer agrees that the amount of any property tax
13 shortfall due and owing to the City of West Allis in any given year may be treated
14 as a special charge (as defined in Wis. Stat. 74.01(4)) levied against the Property,
15 without notice or hearing, such notice and hearing being expressly waived by
16 Buyer. The special charge shall be a lien on Buyer's commercial entity (from it's
17 first floor space) and shall be extended upon the tax roll for the year in which it is
18 due and owing against the Property. All proceedings in relation to collection,
19 return and sale of the Property for delinquent real estate taxes shall apply to any
20 such special charge. Buyer shall also provide the Seller with a second mortgage
21 in the amount of Two Million dollars (\$2,000,000) the entire first floor
22 condominium as surety for payment of any property tax shortfall.

23 **5. PERFORMANCE GUARANTEES**

24 **A. Performance Guarantee – Preconstruction.** If Buyer fails to meet any of
25 the preconstruction performance guarantees below Buyer will pay \$50,000 to the
26 Seller within one year of the date that the guarantee is not met.

27 **B. Plan Commission Submittal Guarantee.** Buyer will submit all necessary
28 site, landscaping, and architectural plans as well as a Certified Survey Map

1 site, landscaping, and architectural plans as well as a Certified Survey Map
2 on or before the date referred to in Exhibit E. If this submittal date is missed
3 Buyer will pay \$50,000 to the Seller.

4 C. **Construction Drawing Guarantee.** Buyer will have all necessary
5 construction drawings completed and submitted on or before the date referred
6 to in EXHIBIT E. If this submittal date is missed Buyer will pay \$50,000 to
7 the Seller.

8 D. **Construction Start Guarantee.** Buyer guarantees that all required permits
9 will be issued and construction will begin no later than the date referred to in
10 EXHIBIT E. If required permits have not been issued and construction has
11 not begun by the date referred to in EXHIBIT E, the Seller can exercise an
12 option to purchase the land. That option will remain in place until the
13 construction is complete. If the required permits have not been issued and
14 construction has not begun by the date referred to in EXHIBIT E the Buyer
15 will pay \$50,000 to the seller.

16 E **Post Construction.** The Seller will receive \$10,000 from the Buyer should
17 any unit be sold below the minimum sales price listed below.
18

<u>Units</u>	<u>Minimum Sale Price</u>
<u>6- 2 Br 1.5 Bth</u>	<u>\$159,000</u>
<u>6- 2 Br 2 Bth</u>	<u>\$182,000</u>
<u>6- 1Br/Den 1 Bth</u>	<u>\$199,000</u>
<u>4- 2 Br/Den 2 Bth</u>	<u>\$199,000</u>
<u>4- 2 Br/Den 2 Bth</u>	<u>\$209,000</u>
<u>4- 2 Br 2 Bth</u>	<u>\$219,000</u>
<u>6- 2 Br 2 Bth</u>	<u>\$269,000</u>
<u>Penthouse Level Lofts</u>	
<u>2- 3 Br/Den 3 Bth</u>	<u>\$299,000</u>
<u>2- 3 Br/Den 3 Bth</u>	<u>\$319,000</u>
<u>2- 3 Br/Den 3 Bth</u>	<u>\$329,000</u>
<u>Commercial</u>	<u>\$2,366,000</u>
<u>Totals</u>	<u>\$11,622,000</u>

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6. PERFORMANCE GUARANTEES

A. Buyer will pay the Seller 10% of the profit above the total condominium sale price of \$11,963,000.

B. The Seller will receive 50% share of all cost savings for any Development Cost items as delineated in EXHIBIT D Belmont Center Development Costs. Should the actual cost of any A. Construction Costs or B. Soft Costs be less than the estimate for the item the Seller shall receive 50% of the cost savings. However, in no event shall the Seller receive more than the public cost incurred by the tax increment financing district of One Million Thirty thousand Dollars (\$1,030,000).

1 C. Buyer shall provide access to its books and bank records to Seller until such
2 time as Buyer and Seller have agreed to the disposition of A. and B. above or
3 two years which ever is longer.

4 7. **FILING.** Buyer agrees that prior to the filing of any mortgage,
5 security agreement or other instrument creating a lien on the Property and in any
6 event not later than forty-five (45) calendar days after the execution of this
7 Agreement, a memorandum of this Agreement, with specific reference to this
8 Subsection, shall be recorded in the Office of the Register of Deeds for Milwaukee
9 County, Wisconsin.

10 8. **PAYMENT IN LIEU OF TAXES.** Ownership of the property by
11 any person, partnership, corporation, or entity, which in any manner renders any part
12 of the property exempt from property taxation during the life of the TIF District shall
13 result in a payment in lieu of taxes from the owner to the City of West Allis each year
14 in an amount equal to the amount of taxes that would be due and owing on the
15 property if it was not tax exempt and in no event less than the tax based upon an
16 assessed value as set forth in Section 3.1.B. Such payment shall be due, payable and
17 collected in the same manner as property taxes.

18 9. **DEVELOPMENT AGREEMENT.** Simultaneously with the execution of
19 this Agreement, Buyer and Seller shall execute a development agreement (the
20 "Development Agreement) in the form attached hereto as EXHIBIT "B", a
21 memorandum of the Development Agreement shall be recorded in the office of the
22 Register of Deeds for Milwaukee County, Wisconsin upon the closing of this
23 transaction.

24 10. **ENVIRONMENTAL.** The provisions of this Agreement with regard to

1 environmental matters are set forth on the Addendum, attached hereto and
2 incorporated herein by reference entitled "Environmental Addendum" in the form
3 attached hereto as EXHIBIT "C".

4 11. **CLOSING**. The closing of the sale and purchase of the Property shall be
5 held at the offices of Seller's counsel (or such other place as the Parties may mutually
6 agree), on September 30, 2006, or the date and at a time specified in writing by
7 mutual agreement of the Parties not less than ten (10) calendar days in advance of
8 such date ("Closing Date").

9 12. **REPRESENTATION AND WARRANTIES**.

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

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

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

23 (3) **No Violation or Conflict**. The execution, delivery, and
24 performance of this Agreement by Seller does not and will not conflict with or

1 violate any law, regulation, judgment, deed restriction, order, decree, or any contract
2 or agreement to which Seller is a party or by which it is bound.

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

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

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

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

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

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

1 Property.

2 (10) **No Default, Violation or Litigation.** Regarding the Property,
3 to Seller's knowledge, the Seller is not in violation of any regulation, law,
4 order of any court, federal, state, or municipal, or other governmental
5 department, commission, board, bureau, agency or instrumentality, or
6 restriction or covenant contained in any agreement or document of title
7 (including, without limitation, legislation, regulations and agreements
8 applicable to environmental protection, civil rights, public and occupational
9 health and safety), nor has the Seller received any notice of noncompliance
10 that has not been remedied. To Seller's knowledge, there are no lawsuits,
11 proceedings, claims, governmental investigations, citations or actions of any
12 kind pending or threatened against the Seller or against the Property, nor is
13 there any basis known to the Seller for any such action, and there is no action,
14 suit or proceeding by any governmental agency pending or threatened which
15 questions the legality, validity or propriety of the transactions contemplated
16 hereby nor is there any basis known to the Seller for any such action.

17 (11) **Laws.** Except as disclosed in the exhibits and schedules
18 attached to this Agreement relating to environmental condition and any
19 documents listed thereon, there is no government agency or court order
20 requiring repairs, alterations, or corrections of or relating to the Property or
21 any condition which might be cause for any such order, and to Seller's
22 knowledge, the Property complies with all laws. Further, except as disclosed
23 in the exhibits and schedules attached to this Agreement relating to the
24 environmental condition and any documents listed thereon, to the Seller's

1 knowledge, there is no violation of any law or any building, zoning,
2 environmental, or other ordinance, code, rule, or regulation and no notice
3 from any governmental body or other person has been served upon the Seller
4 or upon the Property claiming the violation of any such law, ordinance, code
5 rule, or regulation; there are no legal actions, suits, or administrative
6 proceedings, including condemnation, pending or threatened against the
7 Property.

8 (12) **Access and Utilities.** The Seller makes no warranty or
9 representation with respect to access or the availability or adequacy of public
10 and private utilities required for the operation of the Facility to be constructed
11 on the Property. Buyer acknowledges that it is purchasing the Property on the
12 basis of its own investigation of the availability, access, and adequacy of such
13 utilities.

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

20 (14) **Reliance.** Seller acknowledges that the warranties and
21 representations made here and by Seller are a material inducement to Buyer
22 entering into this Agreement, the Buyer is entitled to rely upon these
23 warranties and representations despite independent investigation undertaken
24 by Buyer and that the warranties and representations made here and by the

1 Seller shall survive the Closing and the execution and delivery of the Deed.

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3 B. **Buyer's Warranties.** Buyer hereby represents and warrants that as of the
4 date hereof and as of the Closing Date:

5 (1) **Organization; Good Standing.** Buyer is a domestic limited liability
6 company duly organized and validly existing under the laws of the State of
7 Wisconsin and authorized to do business in the State of Wisconsin. Buyer has full
8 power and authority to acquire and own real estate and to carry on its business as
9 presently conducted, to enter into this Agreement, and to carry out the transactions
10 contemplated hereby.

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

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

20 (4) **Brokers.** Buyer has not dealt with or engaged any brokers or finders
21 or others to whom a commission might be owing upon closing of this transaction.
22 Buyer agrees to indemnify and hold Seller harmless from any claim for commission
23 made by any agent or broker claiming to have acted on Buyer's behalf other than as
24 disclosed herein.

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

7 (6) **Reliance.** Buyer acknowledges that the warranties and
8 representations made here and by Buyer are a material inducement to Seller entering
9 into this Agreement, the Seller is entitled to rely upon these warranties and
10 representations despite independent investigation undertaken by Seller and that the
11 warranties and representations made here and by the Buyer shall survive the Closing
12 and the execution and delivery of the Deed.

13 C. **Waiver and Release.** Except to matters otherwise specifically set forth
14 herein, if this transaction closes, Buyer agrees that it waives, releases and forever discharges
15 the Seller, the Seller's officers, employees and agents or any other person acting on behalf of
16 Seller, of and from any claims, actions, causes of action, demands, rights, damages, costs,
17 expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or
18 unforeseen, which Buyer now has or which may arise in the future on account of or in any
19 way growing out of or connected with this transaction. This
20 waiver and release does not extend to any matter with respect to which Seller had actual
21 notice or knowledge prior to Closing and failed to disclose to buyer or to any breach of this
22 Agreement.

23 13. **TIME OF THE ESSENCE.** Time is of the essence with respect to all obligations
24 arising hereunder.

1 14. **CLOSING DOCUMENTATION.** The purchase and sale of the Property shall be
2 held at the offices of Seller's counsel (or such other place as agreed to by the Parties), on the date
3 specified in the notice required under Section 6. above (the "Closing").

4 A. At the Closing, Seller shall deliver to Buyer the following:

5 (1) **Possession.** Legal and physical possession of the Property.

6 (2) **Warranty Deed.** A warranty deed to the Property.

7 (3) **Title Policy.** An owner's title insurance policy updated through and
8 including the Closing Date, issued pursuant to and in every respect conforming with
9 the Title Commitment required hereunder.

10 (4) **Closing Statement.** A closing statement setting forth a summary of
11 the Purchase Price and credits to Buyer and Seller.

12 (5) **Transfer Return.** Seller shall provide for execution at the Closing
13 of a properly completed Wisconsin Real Estate Transfer Return.

14 (6) **Payout Letter.** Seller shall deliver a payout letter for any mortgages
15 or other liens being satisfied as of the Closing Date.

16 (7) **Development Agreement.** The Development Agreement required
17 under Section 4, above.

18 B. At the Closing, Buyer shall deliver to Seller the following:

19 (1) **Purchase Price.** The remaining balance of the Purchase Price
20 required under Section 2.B.

21 (2) **Development Agreement.** The Development Agreement required
22 under Section 4, above.

23 15. **CLOSING COSTS.**

24 A. Buyer shall pay the cost to record the Deed and its loan documents;

- 1 B. Seller shall pay all title insurance premiums for the owner's Title Policy;
- 2 C. Seller shall pay any transfer fee, if any, arising by reason of transfer of the
- 3 Property;
- 4 D. Seller shall pay the recording fee for any satisfaction of its existing liens and
- 5 encumbrances and Deed Restrictions and Memoranda of Agreements;
- 6 E. Each Party shall pay its own attorney's fees; and
- 7 G. All other non-specified closing costs shall be paid by Buyer.

8 16. **CONDEMNATION**. If, prior to the Closing Date, an authority other than Seller
9 itself takes the Property or any material portion thereof by power or exercise of eminent domain, or
10 institutes any proceedings to effect such a taking, Seller shall immediately give Buyer notice of such
11 occurrence, and Buyer shall have the option to terminate this Agreement at its option, whereupon
12 neither Party shall have any obligation to the other under this Agreement. If this Agreement is not so
13 terminated, the conveyance that is the subject of this Agreement shall be completed and Buyer shall
14 receive all proceeds of such condemnation. As used herein, a material portion of the Property shall
15 be deemed taken if the same shall unreasonably interfere with the intended use of the Property by
16 Buyer.

17 17. **NOTICES**. All notices permitted or required by this Agreement shall be given in
18 writing and shall be considered given upon receipt if hand delivered to the party or person intended,
19 or one calendar day after deposit with a nationally recognized overnight commercial courier service,
20 airbill prepaid, or two (2) business days hours after deposit in the United States mail, postage
21 prepaid, by certified mail, return receipt requested, addressed by name and address to the party or
22 person intended as follows:

23
24 To Seller: Community Development Authority of the City of West Allis
25 Department of Development
26 7525 West Greenfield Avenue

1 West Allis, WI 53214
2 Attn: Director of Development

3
4 with a copy to: City of West Allis
5 Office of the City Attorney
6 7525 West Greenfield Avenue
7 West Allis, WI 53214
8 Attn: City Attorney
9

10 To Buyer: West Allis Development, LLC
11 788 N. Jefferson, Suite 710
12 Milwaukee, WI 53202
13 Attn: Brian Kliesmet, Member
14

15 with a copy to: Halling & Cayo, S.C.
16 320 E. Buffalo St.
17 Suite 700
18 Milwaukee, WI 53202
19 Atten: Scott N. Burns
20
21

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

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

31 20. **RIGHT OF ENTRY.**

32 A. **To Buyer.** Seller grants to the Buyer, its agents and contractors, the right to
33 enter upon the Property at all reasonable times prior to closing for the purpose of performing
34 the physical and environmental tests, examinations and inspections identified in this
35 Agreement.

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

4 C Indemnification. By the exercise of its right of entry to the Property, the
5 parties hereby undertakes and agrees to hold harmless, indemnify and defend Seller from and
6 against any and all claims, losses, demands, expenses, damages or liabilities whatsoever
7 arising out of the exercise by Buyer of the right and permission herein given and agree each
8 will promptly restore any damage they may cause to the Property, which indemnification,
9 hold harmless and restoration obligations shall survive the termination of this Agreement.

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

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

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

22 23. AS IS, WHERE IS.

23 A. Sale. The sale of the Property to Buyer hereunder shall be AS IS, WHERE
24 IS, with all faults, and without representation or warranty of any kind except as expressly

1 provided in this Agreement (including but not limited to the Environmental Addendum).
2 Any other warranties or representations of any kind made either orally or in writing by any
3 agent or representative of Seller or anyone purporting to be an agent or representative of
4 Seller shall be of no force and effect. Buyer hereby acknowledges that it does not rely upon
5 any representation or warranty made by Seller or by Seller's agents, and that none have been
6 made, except as expressly provided in this Agreement.

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

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

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

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

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

4 27. **ENTIRE AGREEMENT.** This Agreement, including the schedules and Exhibits
5 annexed hereto, constitutes the entire agreement and supersedes all other prior agreements and
6 understandings, both written and oral, by the Parties or any of them, with respect to the subject
7 matter hereof.

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

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

16 30. **SEVERABILITY.** If any provision, clause, or part of this Agreement, or the
17 application thereof under certain circumstances, is held invalid, the remainder of this Agreement or
18 the application of such provision, clause, or part under other circumstances, shall not be affected
19 thereby.

20 31. **DEFAULT PROVISIONS AND REMEDIES.**

21 A. Except as provided herein, should Buyer default under this Purchase and Sale
22 Agreement, in addition to all other rights and remedies provided for in this Agreement and
23 the Development Agreement, all Earnest Money, if any, paid hereunder shall be paid to or
24 retained by Seller as liquidated damages or, in the alternative, Seller shall have the following

1 specific rights and remedies:(1) with respect to matters that are capable of being corrected by
2 the Seller, the Seller may at its option enter upon the Property for the purpose of correcting
3 the default and the Seller's reasonable costs in correcting same, plus interest as provided in
4 the Development Agreement, shall be paid by Buyer to the Seller immediately upon demand;
5 (2) injunctive relief; (3) action for specific performance; and (4) action for direct money
6 damages.

7 B. Should Seller default under this Purchase and Sale Agreement, in addition to
8 all other rights and remedies provided for in this Agreement and the Development
9 Agreement, Buyer shall be entitled to a return of its Earnest Money or in the alternative,
10 Buyer shall have the following specific rights and remedies: (1) with respect to matters that
11 are capable of being corrected by Buyer, the Buyer may at its option correct the default and
12 Buyer's reasonable costs in correcting same, plus interest as provided in the Development
13 Agreement, shall be paid by Seller to the Buyer immediately upon demand; (2) injunctive
14 relief; (3) action for specific performance; and (4) action for direct money damages. Neither
15 party shall be liable to the other for consequential, indirect, incidental or exemplary damages,
16 whether based on contract, negligence, strict liability or otherwise.

17 C. The following shall constitute an event of default:

- 18 (1) Developer becomes insolvent or generally not pay or be unable to pay
19 or admit in writing to its inability to pay, its debts as they mature.
- 20 (2) Developer makes an assignment for the benefit of creditors or to an
21 agent authorized to liquidate any substantial amount of assets.
- 22 (3) Developer becomes the subject of an "order for relief" within the
23 meaning of the United States Bankruptcy Code or files a petition in
24 bankruptcy, for reorganization or to affect a plan or other arrangement

1 with creditors.

2 (4) Developer has a petition or application filed against it in bankruptcy
3 or any similar proceeding or have such a proceeding commenced
4 against it, and such petition, application or proceeding shall remain
5 undismissed for a period of ninety (90) days or the Developer shall
6 file an answer to such petition or application, admitting the material
7 allegations thereof.

8 (5) Developer applies to a court for the appointment of a receiver or
9 custodian for any of its assets or properties or has a receiver or
10 custodian appointed for any of its assets or properties, with or without
11 consent, and such receiver shall not be discharged within ninety (90)
12 days after his appointment.

13 (6) Developer adopts a plan of complete liquidation of its assets.
14

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

18 33. **NO RELIANCE.** No third party, except the City of West Allis, is entitled to rely on
19 any of the representations, warranties, or agreements of Buyer or Seller contained in this Agreement.
20 Buyer and Seller assume no liability to any third party because of any reliance on the
21 representations, warranties and agreements of Buyer and Seller contained in this Agreement.

22 34. **SURVIVE THE CLOSING.** The agreements, covenants, warranties and
23 representations contained herein shall survive the closing of the transaction contemplated herein.

24 35. **REPRESENTATIONS AND WARRANTIES.** All statements contained in any

1 certificate, instrument or document delivered by or on behalf of any Party pursuant to this Agreement
2 and the transactions contemplated hereby shall be deemed representations and warranties by the
3 Parties unless otherwise expressly provided.

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

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

8 **AGREED TO BY AND BETWEEN** Buyer and Seller on the date first set forth above.

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

11
12
13 By: John F. Stibal
14 John F. Stibal,
15 Executive Director

16
17 **BUYER: WEST ALLIS DEVELOPMENT, LLC,**
18 **A Wisconsin limited liability company**

19
20 BY West Allis Development LLC

21
22 BY Brian Kliesmet,
23 Member

24
25 BY [Signature]
26
27 Its _____
28
29

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33
34 Approved as to form this 6 day
35 of Sept., 2006.
36

37
38 Scott E. Post
39
40 Scott E. Post, City Attorney
41

LEGAL DESCRIPTION

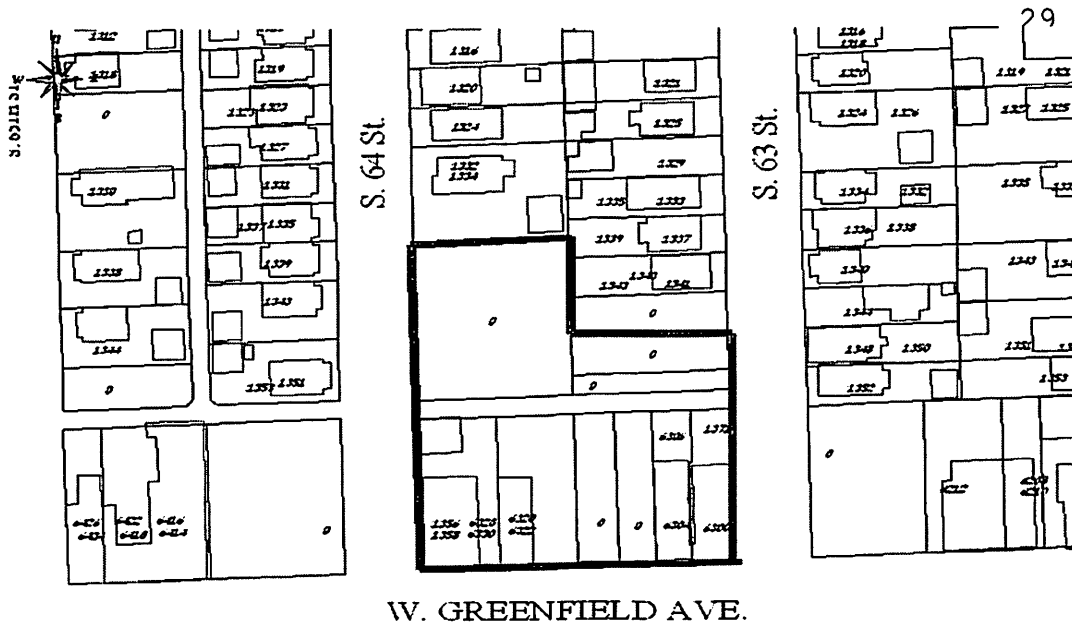
A. Legal Description:

A tract of land being part of the Block 5, Re-subdivision of Soldiers Home Heights Company's Subdivision located in the Southeast ¼ of Section 34, Township 7 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, describes as follows:

Beginning at the southwest corner of Lot 22; thence Northerly, 252.00 feet, along east right-of-way line of South 64th Street; thence Easterly, 120.00 feet; thence Southerly, 75.00 feet; thence Easterly, 120.00 feet, to the west right-of-way line of South 63rd Street; thence Southerly, 177.00 feet, along said west line to the north right-of-way line of West Greenfield Avenue; thence Westerly, 240.00 feet, along said north line, to the Point of Beginning of this description.

Said land contains. 1.18182 Acres, more or less.

B. Map:



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DEVELOPMENT AGREEMENT

To be inserted

ENVIRONMENTAL ADDENDUM

1. NO ENVIRONMENTAL REPRESENTATIONS OR WARRANTIES:

Buyer, for itself and its successors, heirs, and assignees, acknowledges that Buyer has assessed the environmental condition of the Property, and risks associated therewith, on its own or with the assistance of agents and experts of Buyer's choosing. Seller and Buyer thus agree (i) that the Property shall be sold—and that Buyer shall accept possession of the Property on the agreed closing date—**“as is, where is,”** with no right of set-off or reduction in the purchase price, and (ii) that such sale shall be without representation or warranty of any kind, express or implied, as to the Property's environmental condition, or compliance with governing laws and regulations. Accordingly, Buyer acknowledges that, Buyer is relying solely upon its inspection, examination, and consideration of the Property and not on any representation or warranty from any other person whatsoever, including (without limitation) Seller's brokers, Seller's contractors, Seller's engineers, Seller's property managers, Seller's employees, Seller's attorneys, similar individuals or entities, any other agent engaged by Seller related to or involving the Property, or any other representative of Seller who discussed the Property with or provided information to Buyer or Buyer's representatives (collectively, “Seller's Agents”).

2. ENVIRONMENTAL RELEASE AND WAIVER OF CLAIMS. In addition to and not by way of limitation of the sale of the Property on an **“as is, where is”** basis under this agreement, Buyer acknowledges that Buyer has made such studies and investigations and engaged such specialists as Buyer has deemed appropriate to evaluate fairly the Property and its risks from an environmental and Hazardous Materials standpoint. Accordingly, Buyer, for Buyer and Buyer's successors in interest, releases and waives against Seller, Seller's Agents and related municipal entities, any and all claims, known or unknown that Buyer or Buyer's successors may have now or in the future which in any manner arise out of

1 or are related to the environmental condition of the Property, including without limitation: (i) claims
2 arising out of the presence, discovery, or removal of any Hazardous Materials in, at, under, about, or from
3 the Property, or Hazardous Materials which may be on or form part of any structure, equipment or fixture
4 on or about the Property; and (ii) any claims arising out of conditions which may constitute an actual or
5 alleged violation of any applicable law, regulation or code. As between Buyer and Seller, Buyer takes
6 responsibility and liability for all obligations attributable to any Hazardous Materials in, at, under, about,
7 from or forming part of the Property. For purposes of this agreement, "Hazardous Materials" shall mean
8 any hazardous or toxic substance, material, or waste that is or becomes regulated by any governmental
9 authority, including, without limitation, petroleum products, any derivatives thereof, asbestos in any form,
10 mold, PCBs, lead based paint or any other substance or combination of substances which are hazardous
11 substances under Wis. Stat. § 292.01(5). This release and waiver shall survive closing of this transaction.

12 **3. ENVIRONMENTAL DOCUMENTS**

13 (a) The Parties hereby acknowledge that Seller has provided Buyer with the documents listed
14 below. It is expressly understood and agreed that Seller is making no representation or warranty
15 of any kind with respect to the listed documents and Seller is not representing or warranting the
16 accuracy or completeness of such documents. The fact that Seller has provided the listed
17 documents shall not be construed in any manner to change or alter the "as is, where is" nature
18 of this transaction or limit or restrict the release and waiver set forth above.

19
20 **DOCUMENT LIST:**

- 21
22 **1. Phase I Environmental Site Assessments**
23 **By: The Environmental Management Company LLC (TEMCO)**
24
25 X 304 6328-6330 West Greenfield Avenue, 1356 - 1358 South 64th
26 Street,
27 Dated February 10, 2006
28 Tax Key: 439-0282-000 – Former tavern and apartments, razed
29 after fire in 2004.
30
31 X 305 & 306 6320-6322 West Greenfield Avenue,

1 Dated February 10, 2006
 2 Tax Key: 439-0281-000 – Former retail and apartments
 3
 4 X 307, 308, 309 6300, 6304-6306 West Greenfield Avenue and 1371 South 63rd
 5 Street
 6 Dated February 10, 2006
 7 Tax Key: 439-0277-000 and 439-0278-000 – Former retail &
 8 apartments
 9
 10 X 316 13** South 63rd Street and 13** South 63rd
 11 Street
 12 Dated April 2006
 13 Tax Key: 439-0274-000 and 439-0275-000 -
 14 City owned parking lot
 15

16 **2. Asbestos Inspections**
 17 **By Cardinal Environmental**
 18

19 X 304 1356 - 1358 South 64th Street
 20 Dated December 19, 2005
 21
 22 X 305 6320 West Greenfield Avenue
 23 Dated November 30, 2005
 24
 25 X 308 6304-6306 West Greenfield Avenue
 26 Dated December 15, 2005
 27
 28 X 309 6300 West Greenfield Avenue
 29 Dated December 19, 2005
 30

31
 32 * 1371 South 63rd Street not completed
 33
 34 ** Additional asbestos assessment may be required in
 35 apartments, which were occupied at the time of
 36 inspection
 37
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40 **3. Geotechnical Engineering Exploration and Analysis**
 41 **By: Giles Engineering Associates, Inc.**
 42

43
 44 Proposed Lofts at Six Points
 45 63rd Street & Greenfield Ave.
 46 West Allis, Wisconsin
 47 Dated October 11, 2005
 48
 49
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51 **4. Environmental FirstSearch Report**
 52 **By: FirstSearch Technology Corporation**

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TARGET PROPERTY:
6300 WEST GREENFIELDS AVE
WEST ALLIS WI 53214
Dated 03-02-06

Tax Key No. 439-0279-000	63** W. Greenfield Ave. – Currently vacant
commercial	
Tax Key No. 439-0280-000	63** W. Greenfield Ave. – Currently vacant
commercial, former 6312-14 W Greenfield, office and 1 apartment until 1983 when it was razed	
after fire.	
Tax Key No. 439-0284-001	13** S. 64 St. – Currently City owned
parking lot, previously used as retail and apartments until 1963 when it was razed.	

1. DEVELOPMENT SCHEDULE AND PERFORMANCE GOALS

a. City Land Assembly Actions

Date Required

Status

Plan Commission

Alley Vacation	March 22, 2006	Approved
Land Transfer	March 22, 2006	Approved
Land Sale	March 22, 2006	Approved
Rezone (C-3 and PDD)	March 22, 2006	Approved

Community Development Authority

Land Transfer (Parking Lot)	March 14, 2006	Approved
Purchase and Sale and Dev. Agreemnt.	July 13, 2006	Held

Safety and Development Committee

Land Transfer (Parking Lot)	March 15, 2006	Approved
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Common Council

Land Sale and Purchase/Sale/Dev. Agrmnt.	April 18, 2006	Approved
Rezone (C-3 and PDD)	April 18, 2006	Approved
Vacate Alley	May 2, 2006	Approved

b. Developer Actions

Date Required

Status

Site, Landsc., Architectural	July 26, 2006	Approved
Certified Survey Map	August 22, 2006	Submitted
Construction Drawings (for permit review to the State)	October 15, 2006	Pending
Construction Start	November 15, 2006	Pending
Construction Completion (Occupancy permit for the first condo unit)	March 1, 2008	Pending

c. Performance Guarantee/Shortfall Agreement

Schedule

Minimum Assessed Value

12/31/2006	\$930,000
12/31/2007	\$2,706,825
12/31/2008	\$8,450,000
12/31/2009	\$9,597,000

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into as of the 5 day of September, 2006, by and between **WEST ALLIS DEVELOPMENT, LLC**, ("Buyer"), a Wisconsin limited liability partnership, and the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS** (the "Seller"), a Wisconsin Municipal Corporation.

WHEREAS, on even date herewith, the Seller and Buyer have executed a Purchase and Sale Agreement (the "Purchase and Sale Agreement") for the purchase by Buyer and the sale by the Seller of the Property;

WHEREAS, Buyer intends to develop the Property by constructing upon the Property a mixed use building containing residential condominium units and commercial space (the "Project") by Buyer pursuant to the terms of this Agreement; and

WHEREAS, Buyer and the Seller desire to set forth in writing the terms and conditions under which Developer has agreed to develop and maintain the Project.

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

1 1. **SELLER'S OBLIGATIONS.**

2 The Seller shall be obligated as follows:

3 A. Sale of the Property. Seller shall close the sale of the Property to Buyer in
4 accordance with the Purchase and Sale Agreement.

5 B. Zoning and Planning Approvals. The Seller shall use its best efforts to
6 expedite the zoning and plan review process of the City of West Allis to accommodate
7 Buyer's development schedule for the construction of the Project, with a commencement date
8 for construction not later than the date referred to in **EXHIBIT E.**

9 C. Environmental Reports. The Seller, prior to closing of the sale to Buyer will
10 supply the Buyer with all of the environmental and geotechnical reports concerning the
11 Property that Seller has in its possession.

12 D. Street Lights. – The seller, shall be responsible
13 for replacing all street lights along the north side of W.
14 Greenfield Ave. between S. 63 St and S. 64 St.

15 2. **BUYER'S OBLIGATIONS.**

16 Buyer shall be obligated as follows:

17 A. Purchase of the Property. Buyer shall close the purchase of the Property from
18 the Seller in accordance with the Purchase and Sale Agreement.

1 B. Demolition. Buyer will demolish all existing buildings and prepare the site
2 for development. The Seller will provide the Buyer with all environmental testing
3 information as well as the Geotechnical testing done on the site.

4 C. Environmental Remediation. Buyer shall be responsible for all environmental
5 remediation and geotechnical site preparation.

6
7 D. Construction of Mixed Use Apartment/Commercial Project.

8 (1) The Buyer will construct and landscape the Project in accordance with
9 the preliminary building and site plans and specifications filed and approved by the
10 Seller according to its review and approval procedures as herein referenced. The
11 Project shall contain approximately 42 residential condominium units and
12 approximately 22,000 square feet (gross floor area) of commercial space, together
13 with approximately 88 underground parking spaces and approximately 34 surface
14 parking spaces to remain open to the public. The project shall be approximately
15 (within 10%) an 85,0000 square foot, 5-story building. The aforesaid plans and
16 specifications for the Project are attached hereto as EXHIBIT 1 and made a part
17 hereof.

18 E Schedule. Buyer shall commence construction of the Project no later than
19 the date referred to in EXHIBIT E and shall proceed with due diligence to completion
20 and occupancy no later than the date referred to in EXHIBIT E of the Purchase and

1 Sale Agreement.

2 F. Information Sharing. Buyer has prepared a budget for the preparation,
3 construction and landscaping of the Project and has submitted the same to the Seller for its
4 approval. Buyer shall maintain records such that its actual expenditures for the preparation,
5 construction and landscaping of the Project may be ascertained and reconciled against said
6 budget. From time to time, upon reasonable notice from the Seller, the Seller shall be
7 entitled to examine such records to verify construction costs.

8 G. Availability of Funds for Construction. Prior to the commencement of
9 construction, and from time to time thereafter, upon the request of the City, Buyer shall
10 provide to the Seller evidence satisfactory to the Seller that Buyer has available to it
11 sufficient funds for the completion of the Project upon the schedule set forth herein.

12 H. Conveyance. Buyer shall not sell, transfer or convey the Property to anyone
13 other than an Affiliate until after the Occupancy Permit has been issued. For purposes of this
14 Agreement "Affiliate" shall mean an entity controlling, controlled by or in common
15 controlled with Buyer. Nothing herein shall preclude Buyer from selling a majority
16 membership interest in the Property Owner.

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

20 J. No Subdivision. Without the prior written consent of the Common Council of

1 the City, no owner of the Property may subdivide the Property nor sell, transfer or convey
2 less than the entire Property.

3 **3. CONSTRUCTION QUALITY GUARANTEE.**

4 Buyer shall provide the following:

5 A. Underground Utilities. All existing and proposed public and private utilities
6 are to be placed underground.

7 B. Architecture. The building will consist of less than 15% EIFS overall and
8 the front façade of the building will consist of less than 6% EIFS.

9 C. Fireplaces. At least 6 units will include fireplaces. All 42 units shall have
10 the capability (setup) to include a fireplace.

11 D. Soundproofing. Studs will be staggered and soundboard and batten will
12 be put in place for soundproofing.

13 E. Balconies. Balconies will be provided for all units at a minimum of 6' x
14 6'.

15 F. WIFI. WIFI will be provided to all units.

16 G. Rooftop Garden - An individual space will be designated for rooftop gardens for
17 all of the "Loft Units", per the plans approved by the Plan Commission.

18 **4. INTENTIONALLY LEFT BLANK.**

19 **5. BUYER'S CONTINGENCIES.**

20 The obligations of Buyer hereunder are contingent upon the satisfaction or waiver of its

1 contingencies set forth in the Purchase and Sale Agreement within the time periods provided therein.
2 If said contingencies are not waived or satisfied within the time periods provided therein, this
3 Agreement shall be null and void, Buyer's earnest money shall be returned, and neither party shall
4 have any further rights or obligations with respect thereto and such failure shall not constitute a
5 default hereunder.

6 6. **NO ASSIGNMENT.**

7 The Buyer may not assign its rights in this Agreement without the prior written
8 consent of the Seller, except that Buyer may assign this Agreement to an affiliate without the Seller's
9 consent

10 7. **BUILDING STANDARDS AND UTILITIES.**

11 All buildings and other site improvements (collectively "Improvements") to be
12 constructed under this Agreement shall comply with the following minimum standards:

13 A. Improvements shall be designed by an architect or engineer. No side,
14 elevation or facade of the building is exempt from public view; consequently, all sides,
15 elevations or facades of the building shall be visually pleasing and architecturally and
16 aesthetically compatible with the surrounding environment. Building Improvements are
17 subject to architectural review and approval by the Plan Commission of the City as provided
18 herein.

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

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

- 6 (1) All finished grade levels;
- 7 (2) Location of all building and other structures (to include a schedule
8 showing: lot area and total square feet in building (each floor);
- 9 (3) Sidewalks and driveways (including types of materials);
- 10 (4) Parking and access drive dimensions and locations, stall numbers and
11 dimensions, curbs, tire stops, loading docks, and snow storage areas;
- 12 (5) Loading areas (including types of materials);
- 13 (6) Utility and storage areas (including types of materials);
- 14 (7) Lawns and landscaped areas (including types of materials);
- 15 (8) Water impoundments;
- 16 (9) Fences (including types of materials);
- 17 (10) Lights (including types);
- 18 (11) Areas of fill or cuts;
- 19 (12) Storm water drainage plans and facilities;
- 20 (13) On-site sewer, water and other utility locations, sizes and easement

- 1 locations;
- 2 (14) Location, screening and type of refuse collection facilities; and
- 3 (15) All exterior signs and all other signs visible from the exterior of the
- 4 building and other structures.
- 5 (16) Dimensions of all front, side, and rear yards, drives, etc.
- 6 (17) Other paved areas and uses, fencing and walls, outdoor lighting
- 7 (location and direction of beams).
- 8 (18) A landscaping and screening plan showing the location, common and
- 9 botanical names, planting size, root condition and quantity of all plant
- 10 material. The plan shall also show all ground cover and mulch areas and
- 11 landscape construction materials.
- 12 (19) Locations and dimensions of all easements.
- 13 (20) Surface details of all outside areas, such as paving.
- 14 (21) Signs: design, size, location, and illumination.
- 15 (22) Designation of future expansion areas.
- 16 (23) Locations of all hydrants within the Site.
- 17 (24) Grading Plan.
- 18 a. Existing and proposed grades and contours.
- 19 b. Surface water drainage and detention and/or retention.
- 20 c. Finished grade at building.

1 d. Catch basins and storm sewer locations.

2 e. Connection to existing utilities.

3 8. **PARKING**

4 A. Buyer will provide a minimum of 88 underground parking spaces.

5
6 B. Buyer will provide a minimum of 34 at **public** parking spaces with the
7 following restrictions to be kept in place.

8
9 (1) A minimum of 34 parking stalls shall remain public parking and
10 thus shall not be designated or assigned nor shall any leases be given out
11 within the public parking lot to any tenants or non-tenants of the building.
12 Tenants are prohibited from parking their vehicles in the public parking
13 lot overnight unless approval is obtained from Seller.

14
15 (2) Public parking signs to be approved by the West Allis Department of
16 Development will be placed at the entrance to the parking lot on both
17 the 63rd and 64th St. entrances.

18
19 (3) The buyer will maintain the parking lot in accordance with the final
20 plans approved by the Plan Commission. Approved plans will run

1 with the land and will remain in effect regardless of changes in
2 ownership of the subject property.

3 (4) If the developer so chooses the public parking spaces referenced above
4 can be placed underground. If they are placed underground the spaced
5 shall be easily accessible for the public from both S. 63 St and S. 64 St
6 and shall be clearly marked as public parking. Relocation of the public
7 parking will be subject to prior approval by the Seller.
8

9 9. **REFUSE.**

10 All trash containers, including dumpsters, must be enclosed by a solid wall or fence
11 that matches the building facade and provide a suitable visual screen. Such wall shall be of
12 sufficient height to cover the material stored and shall be maintained so as to present a good
13 appearance at all times. All trash enclosures to be permitted in side and rear yards only.
14

15 10. **UTILITIES AND SITE LIGHTING.**

16 All utility lines within the Site shall be installed underground in easements provided
17 therefore. No overhead electric power, telephone or cable service will be permitted. Parking and
18 roadway lighting (fixture, height, type and intensity) where provided shall be approved by the City. .
19 Area lighting shall not be mounted on the building.

20 11. **OTHER SITE IMPROVEMENTS.**

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

5 B. Landscaping. Landscaping improvements shall be required as an integral part
6 of the Property. All areas on the Property not used for building, storage, parking, walks, and
7 access roads, shall be suitably graded and drained, seeded or sodded, and maintained in grass
8 and landscaped areas as provided in Sec. 12.13 of the Revised Municipal Code. Landscaped
9 areas shall contain trees, shrubs, grass and/or other suitable groundcover in accordance with a
10 landscape plan for the Property approved in writing by the Plan Commission. All required
11 landscaping shall be completed within one year of the completion of construction of the
12 principal building on the Property and shall, thereafter, be maintained in a manner acceptable
13 to the City. Landscape materials shall be suitable to the climate, soil conditions and intended
14 use of the Property and shall be of sufficient size and density (trees must be at least 2 1/2"
15 caliper, unless otherwise specifically approved by the Plan Commission) to create an
16 "immediate environment." "Immediate environment" shall mean the use of mature shrubs
17 and plants and the use of trees sufficiently developed to impart a mature or well developed
18 landscape as opposed to one made up of immature planting and saplings.

19 12. **BUILDING LOCATION.**

20 The Project and other building Improvements shall be located on the Property as

1 indicated on the Site Plan to be approved by the Plan Commission of the City pursuant to
2 Subsection 5.C., above, subject to minor adjustments due to soil, grading and engineering
3 conditions.

4 13. **BUILDING DESIGN AND MATERIALS.**

5 Building plans and specifications, including architectural elevations, for the Project, to include
6 construction materials, are subject to review and final approval by the City's Plan Commission
7 pursuant to the provisions of this Agreement. The basic design and exterior construction materials
8 of the Project shall be in conformity with EXHIBIT 1, which is attached and made a part hereof.
9 Facade treatments must be compatible with site standards and aesthetically appropriate.
10 . Specifically, the following materials shall be used as the standard for the Project. Final colors are
11 subject to review and final approval by the City's Plan Commission. Developer shall provide
12 material and color samples for review and approval pursuant to the provisions of this Agreement:

13 (1) The building will consist of less than 15% EIFS overall and the front
14 façade of the building will consist of less than 6% EIFS. At a minimum the
15 architectural portion of the Plan Commission submittal will consist of the
16 plans attached in EXHIBIT 2.

17 (2) All windows in areas where brick is the primary building material
18 shall have pre-cast or stone lintels.

19 (3) Copper, architectural metal panels, ceramic and glass tile may be used
20 as an architectural accent material where deemed compatible with the overall

1 building design and aesthetically appropriate.

2 (4) Non-tinted glazing shall be used for commercial storefronts.

3 (5) Signage shall be set at the outside edge of an architectural canopy and
4 shall consist of three dimensional channel lettering.

5 (6) Building lighting shall be designed so as to create a dramatic effect at
6 night while minimizing disturbance to the building's residential tenants.

7 (7) Interior finishes to be constructed to quality standards described in
8 EXHIBIT 3 and made part of herewith.

9 (8) Rooftop mechanical units, such as ventilating and air conditioning
10 equipment shall be appropriately screened so as to be sensitive/compatible
11 with the design of the building. Through wall air conditioning units shall be
12 screened with architectural louvers so as to minimize their visual impact.

13
14 **14. PROPERTY IMPROVEMENTS.**

15 A. Plan Review. No building or other Improvements shall be erected, placed or
16 altered on the Property until the building plans and specifications for such improvements,
17 including the Site Plan, and grading plan have been submitted to and approved by the Plan
18 Commission of the City. The Plan Commission shall review and approve, approve
19 conditionally, or disapprove the building plans and specifications with respect to their
20 conformity with this Agreement and applicable enactments of the City, and with respect to

1 the harmony of design and land use as it affects other property adjacent to the Property.

2 **B. Plan Requirements.** Plans drawn to scale shall be submitted to the Plan
3 Commission for review. Six (6) sets of all site plans and two (6) sets of all building plans
4 shall be submitted as follows:

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

11 **C. Determination.** The City of West Allis has approved Planned Development
12 District (PDD) # 6643. Said PDD governs the use of the property.

13 **D. Enforcement.** In the event the Buyer proceeds to make improvements
14 without first having received the approval, as provided above; or, in the event the Buyer
15 proceeds in a manner which does not comply with the plans and specifications as approved
16 by the Plan Commission, the Seller may take action to stop construction of the
17 improvements. Action by the Seller shall consist of a notice to the Buyer who is proceeding
18 in violation of, or without approval from Plan Commission, which notice shall be in writing.
19 The Notice shall advise the Buyer of the nature of the violation and shall order immediate
20 cessation of work on the improvements or part thereof. The Buyer shall upon receipt of the

1 Notice, immediately cease work on the improvements and desist from working on the
2 improvements until the matter is resolved as set forth below. The Buyer may request a
3 meeting with the Seller, which shall be granted within fifteen (15) days of the request. If the
4 Buyer can demonstrate compliance with approved plans and specifications to the satisfaction
5 of the Plan Commission or if the parties agree to a modification, in writing, of the plans and
6 specifications, the Seller shall rescind its order stopping construction.

7 **15. ACCESSORY STRUCTURES.**

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

14 **16. FENCING.**

15 Fenced areas are permitted under the following terms and conditions:

16 A. Placement. Not permitted in front yard or easement areas, with the
17 exception of fencing required by code.

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

20 C. Height. Fences shall not exceed four (4) feet in height with solid side facing

1 outward from property. Additional height may be approved by the Plan Commission.

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

4 17. SIGNAGE.

5 A. Review. The Plan Commission reserves the right to review all exterior signs
6 and to approve only those, which are environmentally and aesthetically suitable. Buyer shall
7 submit a plan to the Department of Development indicating, in sufficient detail for review
8 and approval, the type, size, shape and location of its proposed signs. Plan Commission or
9 Sellers approval shall be required prior to the fabrication or installation of a sign or the filing
10 of a formal application for a permit with the Department of Building Inspection and Zoning.
11 Off-premise and rooftop signs are expressly prohibited.

12 B. Standards.

13 (1) No signs other than one Project identification sign and directional
14 signs shall be permitted on the Site. No off-premise, roof-mounted or
15 wall-mounted billboards or signs will be permitted.

16 (2) The Project identification sign must include a landscaped setting of
17 ornamental shrubs, flowers, ground cover or a combination of the
18 three in an area equal to two times the area of the sign. All lettering
19 and logos on the identification sign shall be individually cut or
20 fabricated letters. No panel signs are permitted.

- 1 (3) Sign lighting, if desired, must be ground-mounted hidden from view
- 2 from the street. Individual letters may be internally illuminated.
- 3 (4) Directional SIGNAGE shall be a post and panel system and shall be
- 4 limited in size to four (4) square feet and not posted more than six (6)
- 5 feet above the grade. Not more than one sign shall be provided at
- 6 each access drive.

7 18. **SATELLITE DISH ANTENNAS**

8 All satellite dish placements will require a special permit from the Plan Commission.

9 Approvals will be subject to the following criteria:

10 A. Antennas shall be erected or maintained in the rear yard of buildings and not

11 on the street side of buildings. The Plan Commission shall have the authority to authorize

12 other locations based on demonstrated site constraints.

13 B. Height restriction: 35 feet

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

15 D. The antenna shall be located and designed so as to minimize the visual impact

16 on surrounding properties and its visibility from the public street. Antennas should be

17 screened through the addition of harmonious architectural features and/or landscaping in

18 keeping with the elements and characteristics of the property.

19 E. No obstruction shall protrude into the airspace defined by the forward

20 extension of a plane from the outer edge of the antenna dish to infinity and at the same

1 horizontal and vertical angle as the central axis of the antenna dish.

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

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

6 19. **MAINTENANCE RESPONSIBILITIES**

7 A. The Buyer shall keep the Property, all contiguous street right-of-way to edge
8 of pavement, and easement areas in a well maintained, safe, clean, and attractive condition at
9 all times. Such maintenance includes, but is not limited to, the following:

- 10 (1) Any Urban Art placed on the site or building shall be maintained
11 appropriately. If materials age into poor condition the Plan
12 Commission shall have the discretion to request that they be replaced.
13 The Plan Commission prior to being put in place shall first approve
14 any change to the Urban Art.
- 15 (2) The removal of all litter, trash, refuse, and wastes.
- 16 (3) The mowing of all lawn areas to a height of less than five (5) inches
17 unless otherwise approved in writing by the Plan Commission. Those
18 designated and approve unused lot areas shall be cut a minimum of
19 three (3) times per year.
- 20 (4) The maintenance of lawn and landscape areas in a weed-free, healthy

1 and attractive condition.

2 (5) The care and pruning of trees and shrubbery outside of easements
3 within property boundaries.

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

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

8 (8) The striping and sealing of parking and driveway areas.

9 (9) The removal of unlicensed or inoperable vehicles.

10 (10) Snow and ice removal.

11 B. During construction, it shall be the responsibility of the owner to insure that
12 construction sites are kept free of unsightly accumulations of rubbish and scrap materials;
13 and that construction materials, trailers, and the like are kept in a neat and orderly manner.
14 Burning of excess or scrap construction material is prohibited. Construction site erosion
15 control practices shall be implemented to prevent erosion, sedimentation and pollution of air
16 or water during construction. Erosion control plan to be submitted and approved by the
17 Building Inspection Department.

18 20. **CONSTRUCTION REMEDIES.**

19 A. In the event Buyer does not commence and/or complete construction of the
20 Project as hereinabove set forth, because of the public interest involved the Seller

1 shall have the right to specific performance of the covenants and obligations of Buyer
2 to be performed hereunder by it, in addition to all other remedies the Seller may have
3 under this Agreement or at law or in equity.

4 B. In addition to all other remedies the Seller may have under this Agreement or
5 at law or in equity, and as an alternative thereto, in the event Buyer does not
6 commence and/or complete construction of the Project as hereinabove set forth, the
7 Seller may, but shall not be required to, purchase the Property for the price paid to the
8 Seller by Buyer, if another price is not willingly agreed to in writing by the Seller and
9 Buyer, by giving written notice to Buyer of its intention to repurchase. If
10 development of the Project has begun, the repurchase price shall be the fair market
11 value of the Property. If the Seller and Buyer are not able to reach agreement as to
12 the fair market value, such fair market value shall be determined by appraisal as
13 follows. Either Party may by notice to the other, appoint a disinterested MAI
14 appraiser as one of the appraisers. Within ten (10) days thereafter the other Party
15 shall, by written notice to the Party appointing the first appraiser, appoint another
16 disinterested MAI appraiser as a second appraiser. The appraisers thus appointed
17 shall appoint a third disinterested MAI appraiser, and such three appraisers shall as
18 promptly as possible determine such value, provided however that:

- 19 (1) if the second appraiser shall not have been appointed as aforesaid, the
20 first appraiser shall proceed to determine such value; and

1 (2) if, within five (5) days after the appointment of the second appraiser,
2 the two appraisers appointed by the Parties shall be unable to agree
3 upon the appointment of a third appraiser, they shall give written
4 notice of such failure to agree to the Parties, and, if the Parties fail to
5 agree upon the selection of such third appraiser within five (5) days
6 after the appraisers appointed by the Parties gave notice as aforesaid,
7 then within five (5) days thereafter either of the parties upon written
8 notice to the other Party hereto may apply for such appointment to the
9 Circuit Court of Milwaukee County.

10 The Parties shall each be entitled to present evidence and argument to the
11 appraisers. The determination of the sole appraiser or an average of the three
12 appraisers if agreement cannot be reached, as the case may be, shall be conclusive
13 upon the Parties and judgment upon the same may be entered in any court having
14 jurisdiction thereof. The appraisers shall give written notice to the Parties stating
15 their determination, and shall furnish to each Party a copy of such determination
16 signed by them. The expense of such appraisal(s) shall be borne equally by the
17 Parties. In the event of the failure, refusal or inability of any appraiser to act, a new
18 appraiser shall be appointed in his stead, which appointment shall be made in the
19 same manner as provided above for the appointment of the appraiser so failing,
20 refusing or unable to act.

1 The notice of intention to exercise the repurchase right can be given at any
2 time after failure of Buyer to comply with this section. Title to the Property shall be
3 conveyed to the Seller in the same condition as conveyed by the Seller to Buyer and a
4 title insurance policy shall be provided at the expense of Buyer in the amount of the
5 repurchase price and insuring the Seller's title is in the aforementioned condition.
6 This section shall terminate upon receipt of a Conditional Occupancy Permit. In
7 addition to all other remedies the Seller may have under this Agreement, in the event
8 Buyer does not continuously and actively proceed with the construction of the Project
9 and complete such construction in accordance with the provisions of this Agreement,
10 Buyer shall pay to the Seller, as liquidated damages, the sum of \$500.00 per working
11 day for each working day that Buyer is in default of said time limitations. The
12 determination and acceptance of the Seller of the liquidated damages for delay shall
13 be without prejudice to any other rights and remedies set forth in this Agreement. In
14 the event that the Seller has submitted an offer to purchase the Property pursuant to
15 Subsection 19. B. (2) above the period of time for calculating a default under this
16 Section shall be tolled until such time as the appraisal process as described herein has
17 been completed.

18 For purposes of this Agreement, the term "commencement of construction" shall
19 mean site preparation, such as earth grading and scraping, excavating and other like physical
20 activities on the Property; the term "completion of construction" shall mean substantial

1 completion of the Project (excluding landscaping) in accordance with the final approved
2 plans and specifications sufficient to entitle Buyer to obtain an occupancy permit for any
3 portion of the Project.

4 21. **DEFAULT PROVISIONS.**

5 A. Remedies of Seller. In the event of Buyer's default hereunder and in addition
6 to any other rights or remedies provided for in the Agreement, Seller shall have the
7 following specific rights and remedies:

- 8 (1) With respect to matters that are capable of being corrected by the
9 Seller, the Seller may at its option enter upon the Property for the
10 purpose of correcting the default and the Seller's reasonable costs in
11 correcting same, plus interest as provided in the subsection below,
12 shall be paid by Buyer to the Seller immediately upon demand;
- 13 (2) Injunctive relief;
- 14 (3) Action for specific performance; and
- 15 (4) Action for direct money damages.

16 B. Should Seller default under this Purchase and Sale Agreement, in addition to
17 all other rights and remedies provided for in this Agreement and the Development
18 Agreement, Buyer shall be entitled to a return of its Earnest Money or in the
19 alternative, Buyer shall have the following specific rights and remedies: (1) with
20 respect to matters that are capable of being corrected by Buyer, the Buyer may at its

1 option correct the default and Buyer's reasonable costs in correcting same, plus
2 interest as provided in the Development Agreement, shall be paid by Seller to the
3 Buyer immediately upon demand; (2) injunctive relief; (3) action for specific
4 performance; and (4) action for direct money damages. Neither party shall be liable
5 to the other for consequential, indirect, incidental or exemplary damages, whether
6 based on contract, negligence, strict liability or otherwise.

7 C. The following shall constitute an event of default:

8 (1) Developer becomes insolvent or generally not pay or be unable to pay
9 or admit in writing to its inability to pay, its debts as they mature.

10 (2) Developer makes an assignment for the benefit of creditors or to an
11 agent authorized to liquidate any substantial amount of assets.

12 (3) Developer becomes the subject of an "order for relief" within the
13 meaning of the United States Bankruptcy Code or files a petition in
14 bankruptcy, for reorganization or to affect a plan or other arrangement
15 with creditors.

16 (4) Developer has a petition or application filed against it in bankruptcy
17 or any similar proceeding or have such a proceeding commenced
18 against it, and such petition, application or proceeding shall remain
19 undismissed for a period of ninety (90) days or the Developer shall
20 file an answer to such petition or application, admitting the material

1 23. **FORCE MAJEURE.**

2 No Party shall be responsible to any other Party for any resulting losses and it shall not be a
3 default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by
4 revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual
5 adverse weather conditions, legally required environmental remedial actions, shortage of materials,
6 or by any other cause not within the control of the Party whose performance was interfered with, and
7 which by the exercise of reasonable diligence such Party is unable to prevent, whether of the class of
8 causes hereinabove enumerated or not, and the time for performance shall be extended by the period
9 of delay occasioned by any such cause.

10 24. **PARTIES AND INTERESTS; SURVIVAL OF AGREEMENTS.**

11 Except as otherwise expressly provided herein, this Agreement is made solely for the
12 benefit of the Parties hereto and the City of West Allis and no other person, partnership, association
13 or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and
14 agreements in this Agreement shall remain operative and in full force and effect until fulfilled and
15 shall survive the closing.

16 25. **TIME.**

17 Time is of the essence with regard to all dates and time periods set forth herein.

18 26. **INDUCEMENTS AND RELIANCE.**

19 Buyer acknowledges that the warranties and representations made here by the Buyer
20 are a material inducement to the Seller entering into the Purchase and Sale Agreement and

1 Development Agreement for the Property, and that Seller is entitled to rely upon these warranties and
2 representations despite independent investigation undertaken by the Seller and that the warranties
3 and representations made here and by the Buyer shall survive the Closing and the execution and
4 delivery of the Deed for the Property.

5 27. **NOTICES.**

6 All notices, demands, certificates or other communications under this Agreement
7 shall be given in writing and shall be considered given (i) upon receipt if hand-delivered to the party
8 or person intended, or (ii) one business day after deposit if deposited with a nationally recognized
9 overnight commercial courier service, airbill prepaid, or (iii) two (2) business days after deposit if
10 deposited in the United States mail postage prepaid, by certified mail, return receipt requested,
11 addressed by name and address to the party or person intended as follows:

12 To the City: Executive Director
13 Community Development Authority of the City of West Allis
14 7525 West Greenfield Avenue
15 West Allis, WI 53214
16 Attn: John F. Stibal

17
18 with a copy to:
19 City Attorney
20 City of West Allis
21 7525 West Greenfield Avenue
22 West Allis, WI 53214
23 Attn: Scott E. Post, City Attorney

24
25
26 To Developer: West Allis Development, LLC
27 788 N. Jefferson
28 Milwaukee, WI 53202
29 Attn: Brian Kliemet, Member

1
2
3
4 with a copy to: Halling & Cayo, S.C.
5 320 E. Buffalo St.
6 Suite 700
7 Milwaukee, WI 53202
8 Atten: Scott N. Burns
9

10
11 Any Party may, by written notice to the other Party, designate a change of address for the purposes
12 aforesaid.
13

14 28. **ENTIRE AGREEMENT.**

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

19 29. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and
20 construed in accordance with the laws of the State of Wisconsin. Any action concerning this
21 Agreement shall be initiated and maintained in Milwaukee County, Wisconsin.
22

23 30. **CAPTIONS.**

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

1 31. **COUNTERPARTS.**

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

4 32. **SEVERABILITY.**

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

12 33. **CONTINUITY**

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

18 34. **MEMORANDUM OF AGREEMENT.**

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

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35. **CONSTRUCTION**

Seller and Buyer acknowledge that each party and its counsel have received and reviewed 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.

35. **GOOD FAITH.**

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

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

(TEXT CONTINUED ON NEXT PAGE)

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West Allis Development, LLC
By: [Signature] Member

Brian Kliesmet, Member

By: [Signature]

Steven Stewart, Member as witness

STATE OF WI)
Milwaukee COUNTY) SS.

Personally came before me this 1 day of September, 2006, the above named Brian Kliesmet and Steven Stewart, the President and Secretary, of XXXXXXXXXXXX, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

[Signature] [SEAL]
Print Name: Doreen Maling
Notary Public, Milwaukee County
State of Wisconsin
My Commission: 4-1410

(TEXT CONTINUED ON NEXT PAGE)

1
2 **COMMUNITY DEVELOPMENT AUTHORITY**
3 **OF THE CITY OF WEST ALLIS**

4
5
6 By: *John F. Stibal*
7 John F. Stibal, Executive Director
8
9

10
11 STATE OF _____)
12) SS.
13 _____ COUNTY)
14

15
16 Personally came before me this 6th day of September, 2006, the above named
17 John F. Stibal, the Executive Director, of the COMMUNITY DEVELOPMENT AUTHORITY OF
18 THE CITY OF WEST ALLIS, to me known to be the persons who executed the foregoing
19 instrument and acknowledged the same on behalf of said corporation.
20

21
22 *Darlyn M. Adams* [SEAL]
23 Print Name: DARLYN M. ADAMS
24 Notary Public, MILWAUKEE County
25 State of WISCONSIN

26 My Commission: *Expired 12/10/06*
27

28
29
30 Approved as to form this 6 day
31 of Sept., 2006.
32

33
34 *Scott E. Post*
35 Scott E. Post, City Attorney
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PLANS & SPECIFICATIONS

EXHIBIT 1

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EXHIBIT 2

ARCHITECTURAL ELEVATIONS

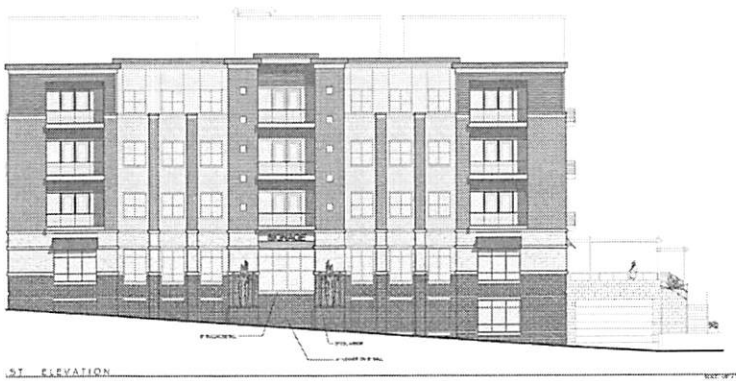
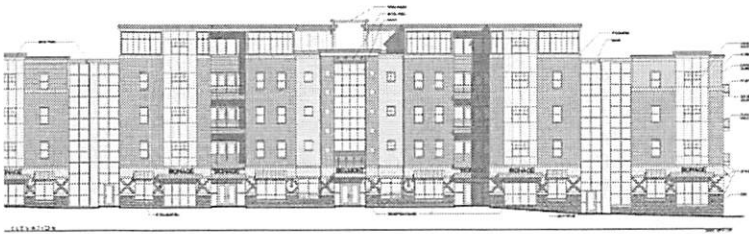


EXHIBIT B Development Agree. 8.21.06

INTERIOR FINISHES

1
2
3