

#4 24



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
R-2004-0344	Resolution	In Committee
Resolution approving the terms and conditions of a Development Agreement by and between the City of West Allis and Edward and Penny Wistl, d/b/a Wistl Management for the property located at 7200-06 W. Greenfield Ave. and 1375 S. 72 St.		
Introduced: 12/7/2004		Controlling Body: Safety & Development Committee

COMMITTEE RECOMMENDATION Adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>12/21/04</u>	☒		Barczak	☒			
			Czaplewski				
			Dobrowski				
			Kopplin				
			Lajsic	☒			
			Narlock				
			Reinke	☒			
			Sengstock				
			Vitale	☒			
		☒	Weigel	☒			
TOTAL				<u>5</u>	<u>0</u>		

SIGNATURE OF COMMITTEE MEMBER

[Signature] _____
Chair Vice-Chair Member

COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>DEC 21 2004</u>	☒		Barczak	☒			
			Czaplewski	☒			
			Dobrowski	☒			
			Kopplin	☒			
			Lajsic	☒			
			Narlock	☒			
		☒	Reinke	☒			
			Sengstock	☒			
			Vitale	☒			
			Weigel	☒			
TOTAL				<u>10</u>	<u>1</u>		

Dev.
P. Schloss

STANDING COMMITTEES OF THE CITY OF WEST ALLIS COMMON COUNCIL 2004

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2004-0344

Final Action:

DEC 21 2004

Resolution approving the terms and conditions of a Development Agreement by and between the City of West Allis and Edward and Penny Wistl, d/b/a Wistl Management for the property located at 7200-06 W. Greenfield Ave. and 1375 S. 72 St.

WHEREAS, the City recognizes that the property located at 7200-07 W. Greenfield Ave. and 1375 S. 72 St. has suffered from years of continual neglect and disrepair; and,

WHEREAS, the property located at 7200-06 W. Greenfield Ave. and 1375 S. 72 St. is within the Downtown West Allis Business Improvement District and according to historical accounts, the building at this address, was built by the first Mayor of West Allis; and,

WHEREAS, the City promotes revitalization of properties within the district, works to foster property tax base growth through the attraction of new businesses, and seeks development of housing units; and,

WHEREAS, the property owner intends to rehabilitate said property by renovating the existing building into a mixed-use commercial development with retail on the first floor and converting the second floor office space into eight affordable housing units; and,

WHEREAS, since the rehabilitation of the property poses economic challenges, the Department of Development has worked with the property owner to develop a financial assistance package that includes Community Development Block Grant funds and HOME funds; and,

WHEREAS, the Department of Development has reviewed a loan request from the property owner and has determined that the project is eligible for funding under Community Development Block Grant and HOME guidelines.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that it hereby approves the terms and conditions of a Development Agreement, outlined in the attached Exhibit A and incorporated herein by reference.

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 non-substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and

supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

Dev-R-373\12-7-04\jmg

ADOPTED December 21, 2004

Paul M. Ziehler

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

APPROVED December 23, 2004

Jeannette Bell

Jeannette Bell, Mayor

DEVELOPMENT AGREEMENT

ORIGINAL

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the 7th day of February, 2005, by and between **EDWARD A. and P** ("Developer"), and the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the CITY OF WEST ALLIS, pursuant to Section 66.1335 of the Wisconsin Statutes (the "Authority").

WITNESSETH:

WHEREAS, the Authority supports the revitalization efforts of the downtown business district (the "District") located along Greenfield Avenue between S. 70 and S. 76 Streets including adjacent side streets; and,

WHEREAS, the Developer owns the property located at 7200-06 W. Greenfield Avenue and 1375 S. 72 St., in the City of West Allis, County of Milwaukee, State of Wisconsin (the "Property") containing approximately 0.12 acres, as more particularly described on attached **Exhibit 1**; and,

WHEREAS, the Property is a blight on the District and has suffered from continued years of neglect, disinvestment, and disrepair; and,

WHEREAS, the Developer intends to renovate the Property for mixed-use purposes that include a 3-story building with eight single bedroom units and 3,200 sq. ft. of commercial space at the ground level (the "Project"); and,

WHEREAS, the Developer has made application, herein attached as **Exhibit 2** for a Two Hundred Ninety-Nine Thousand, Three Hundred Forty-Eight and no/100 Dollars (\$299,348.00) loan (the "Loan") and an Eighty Five Thousand, Twenty-Four and no/100 Dollars (\$85,024.00) Repayable Grant (the "Grant"), both to be used for rehabilitation of said real estate; and,

WHEREAS, the Project would not be undertaken unless the public funding provided by the Loan and Grant becomes available, as the Developer can maximally raise only a portion of the debt and equity funds required to complete the Project; and,

WHEREAS, the Department of Development of the City of West Allis administers an allocation of H.O.M.E. Funds from the U.S. Department of Housing and Urban Development and the Department of Development has reviewed the Project and finds that the Project meets the federal guidelines for H.O.M.E. funds; and,

WHEREAS, the Authority, under Resolution #519 and the City of West Allis Common Council Resolution # R-2004-0344, both resolutions hereby incorporated by reference, approved making a Loan and a Grant, and the Developer accepts the Loan and Grant, in accordance with the following terms and conditions.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, assurances, covenants and agreements hereinafter set forth, the parties agree as follows:

1. AUTHORITY'S OBLIGATIONS.

The Authority shall be obligated as follows:

- A. Loan.** The Authority shall loan to the Developer from its H.O.M.E. Funds the maximum sum of Two Hundred Ninety-Nine Thousand, Three Hundred Forty Eight and no/100 Dollars (\$299,348.00) pursuant to the terms and conditions of a Mortgage in the form attached hereto as **Exhibit 3**, the terms of which are incorporated herein by reference (the "Note"), a Mortgage on the Project real estate, and a Guaranty of Payment and Performance from Edward A. and Penny A. Wistl (collectively referred to herein with this Agreement as the "Loan Documents").

The Authority will loan \$299,348 at 3 % interest amortized over 25 years with a balloon payment in 10 years. The loan will feature a period of deferred principal and waived interest for the first three years of the term. The period of deferred principal and waived interest may be reduced to the start of the second or third year based upon the Project obtaining stabilized rent at the point of the second or third year. Stabilized rent is defined as both 1) the building being fully rented and 2) it must show a positive cash flow of \$10,000 or more per year. The positive cash flow will be derived under basic accounting practices from the Financial Statement supplied by the Developer to the Authority on an annual basis (see Section 2. G.)

- B. Grant.** The Authority shall grant to the Developer from its H.O.M.E. Funds the maximum sum of Eighty Five Thousand, Twenty-Four and No/100 Dollars (\$85,024.00) pursuant to the terms and conditions of a Mortgage in the form attached hereto as **Exhibit 4**, the terms of which are incorporated herein by reference (the "Note"), a Mortgage on the Project real estate, and a Guaranty of Payment and Performance from Edward A. and Penny A. Wistl (collectively referred to herein with this Agreement as the "Loan Documents").

The Authority will provide an \$85,024.00 grant at no interest and deferred principal. The principal amount of the Grant shall be paid in full in 10 years from the date of this Agreement or at which point the property is sold, whichever comes first.

- C. **Zoning and Planning Approvals.** The Authority shall use its best efforts to expedite the zoning and plan review process to accommodate Developer's development schedule for the renovation of the Property. To the extent not already approved on or prior to the date of this agreement, all such required approvals are subject to the final approval of the West Allis Common Council, Plan Commission and the Authority.

2. **DEVELOPER'S OBLIGATIONS.**

Developer shall be obligated as follows:

- A. As security for the Loan and Grant, the Developer shall deliver to the Authority:
- i. **Loan Security.**
 - a. A second mortgage to the Authority, subordinated to Continental Savings Bank, in the form attached hereto as **Exhibit 3**, encumbering the Project real estate at 7200-06 W. Greenfield Avenue and 1375 S. 72 St., West Allis, Wisconsin. Said Project real estate is owned by Edward A. and Penny A. Wistl.
 - b. A Guaranty of Payment and Performance in the form attached hereto within **Exhibit 3a** from Edward A. and Penny A. Wistl.
 - ii. **Grant Security.**
 - a. A third mortgage to the Authority, subordinated to first position of Continental Savings Bank and subordinated to the second position of the Community Development Authority of the City of West Allis, in the form attached hereto as **Exhibit 4**, encumbering the Project real estate at 7200-06 W. Greenfield Avenue and 1375 S. 72 St., West Allis, Wisconsin. Said Project real estate is owned by Edward A. and Penny A. Wistl.
 - b. A Guaranty of Payment and Performance in the form attached hereto within **Exhibit 4a** from Edward A. and Penny A. Wistl.
- B. **Title Ownership.** At closing of the Loan, Developer shall have good and marketable title to the real estate subject to the mortgages as herein provided. Upon closing of this agreement, the Developer shall provide to the Authority a copy of a registered deed and a copy of a title insurance policy on the Property.

C. **Insurance.** The Developer shall provide the following:

- i. Upon closing, the Developer shall provide proof of fire insurance coverage on the Property in an amount equal to the estimated construction value and liability insurance coverage of at least \$300,000 per occurrence. The policy(s) should list the Community Development Authority of the City of West Allis as a loss payee and mortgage holder.
- ii. Upon closing, the Developer shall provide for the period of construction, proof of property and liability insurance coverage listing the City of West as a loss payee and mortgage holder. The policy is commonly referred to as a builders risk policy.
- iii. At the point the Project is completed, the Developer shall provide proof of fire and liability insurance coverage on Property listing the City of West as a loss payee and mortgage holder.

D. **Renovation of an Existing Building for Mixed-Use Residential and Commercial Use Property.** Prior to the date of this Agreement, the Developer submitted to the Plan Commission of the City of West Allis its plans and specifications sufficient for zoning and plan review purposes (but not for building permit review) for renovation of Property, which shall be approximately 14,800 square feet (gross floor area), together with required surface parking, which plans and specifications have been approved by Plan Commission on December 8, 2004 and the Authority (see Section 3, below) according to their normal review and approval procedures. A copy of the approved plans and specifications are attached hereto as **Exhibit 5**. The Developer shall renovate the Property in accordance with the approved plans and specifications making special note that the façade must be of brick construction reflecting the historic importance of the Property. The Developer anticipates that the total development costs of the Property will be approximately \$952,000. Before commencement of the renovation of the property, the Developer shall prepare its development budget for the Property. The Developer shall maintain records such that its actual expenditures may be ascertained and reconciled against said budget. From time to time, upon reasonable notice from the Authority, authorized representatives of the Authority or representatives from the U.S. Department of Housing and Urban Development shall be entitled to examine such records to verify total development costs of the Property.

- E. **Financing.** Prior to closing of this transaction, the Developer will provide to the Authority evidence satisfactory to the Authority that the Developer has available to it sufficient funds for the completion of the Project upon the schedule set forth herein included but not limited to a commitment letter or closing statement from a financial institution for the required amount of funds to borrowed from a private financial institution as outlined in **Exhibit 2.**
- F. **Affordability Requirement.** Because the project is funded with HOME funds which require a period of affordability, a low to moderate income person is defined as a member of a low to moderate income family within the applicable income limits for Section 8 Rental Assistance Programs which are set forth in **Exhibit 6.**
- G. **Financial Statements and Leases.** The Developer shall execute and deliver to the City such financing statements and other documents as may be required to create, perfect, preserve and maintain any security interest now or in the future granted to the Authority by the Developer. The Developer will provide the Authority with true and correct copies of leases and financial statements and a narrative statement of the state of the performance of the Property, including lease rates and trends and projections and disclosure of any material cost or liability not contained on the financial statement. All financial statements are to be prepared in accordance with generally accepted principles of auditing and accounting applied on a basis consistent with the Developer's accounting practices for the prior year.
- H. **No Subdivision.** No owner of any portion of the Property may further subdivide the Property or any portion thereof nor sell, transfer or convey fee simple title to less than the entire interest of the Property without the prior written consent of the authority.
- I. **Payment in Lieu of Taxes.** Ownership of the property by any person or in any manner which, for a period of twenty (20) years from the execution of this agreement, would render any part of the property exempt from property taxation shall result in a payment in lieu of taxes (PILOT) from the Developer, or its heirs, successors, and assigns, to the City of West Allis each year in amount equal to the City's portion of the net general property taxes that would have been due and owing on the property if it was not tax exempt. The PILOT shall be due and payable in the same manner as property taxes.

Failure to make the PILOT or a challenge to the ability of the City of West Allis to collect the PILOT by the Developer, its heirs, successors, or

assigns shall result in payment to the City by Developer, its heirs, successors, or assigns, the sum that represents the fair market value of the property, less improvements, at the time of such failure to pay or challenge.

Developer and Authority specifically agree that funding under this Agreement and the PILOT are intrinsically tied together and are material inducements to this agreement.

- J. Taxes.** The Developer will file when due or obtain valid extensions for all federal and state income and other tax returns which are required to be filed and will pay all taxes shown on said returns and on all assessments received by them to the extent that such taxes shall have become due. The Developer has no knowledge of any liabilities, which may be asserted against them upon, audit of their federal or state tax returns.
- K. Legal Status.** Except as disclosed by the Developer to the Authority in writing prior to the date hereof, there is no action, suit, proceeding or investigation before any court, public board or body pending or threatened against the Developer or any of its property which, if adversely determined, would have a material adverse effect upon the business, properties or financial condition of the Developer.
- L. Property Maintenance.** The Developer shall preserve and maintain the Property as presently conducted or contemplated, and all of its rights, privileges and franchises necessary or desirable in the normal conduct of said Property business, and conduct its Property in an orderly, efficient and regular manner, keep its property useful or necessary to the operation of business in good working order and condition, and from time to time make all needed repairs, renewals and replacements thereto, so that the efficiency of the Developer's property shall be usefully preserved, and will comply with all applicable laws and regulations governing the conduct of the Developer's business and the terms of any indenture, contract or other instrument to which the Developer may be a party or under which it or its property may be bound, if noncompliance will have a material adverse effect upon its financial condition, except where contested in good faith and by proper proceedings.
- M. Fees.** The Developer shall pay to the Authority, upon demand, all reasonable charges and expenses of every kind or description, including, but not limited to, attorney's fees and expenses of litigation and any and all expenses incurred by the Authority in seeking relief from the automatic stay or any other bankruptcy proceedings, and other expenses (of the type customarily charged by the City) incurred or expended by the City in

connection with or in any way related to the City's relationship with the Developer, with respect to the transactions contemplated by this Agreement or any other Loan Document, whether hereunder or otherwise.

- N. **Notice.** The Developer shall immediately notify the Authority in writing of the occurrence of any failure by them to observe or perform any covenant or agreement contained in any Loan Document or any other default hereunder or under any other Loan Document.

3. **BUILDING, SITE, AND ARCHITECTURAL APPROVALS.** The Plan Commission of the City of West Allis building, site, landscaping and architectural plan approvals required for the Project under this Agreement are attached hereto as **Exhibit 5** and made a part hereof. Said plans have also been reviewed and approved by the Authority and the Common Council of West Allis.

4. **DISBURSEMENT OF FUNDS.** At closing, no funds shall be paid to the Developer. The funds shall be held by the Authority. The Developer shall submit invoices to the Housing Division for work on the Project. The Housing Division shall inspect the Project and the Developer hereby grants permission to employees of the Authority to conduct such inspections. Failure to allow said inspections shall constitute grounds for non-payment of the invoice. Within 10 days of presentation of an invoice, the parties shall arrange an inspection. Upon completion of the inspection, the Authority shall, within 10 days, either pay the invoice in full or notify the Developer in writing, the grounds for non-payment or partial payment. Disputes as to payment shall be handled as set forth in Section 13.

5. **VALIDITY OF AGREEMENT.** This Development Agreement, the Notes, Mortgages, and other Loan and Grant Documents are legal, valid, binding upon and enforceable against the Developer in accordance with their terms, except as such terms may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except as may be limited by general principles of equity.

6. **NO ASSIGNMENT.** Prior to completion of construction of the Project the Developer may not assign its rights and obligations in and to this Agreement without prior written consent of the Authority. Upon completion of construction, Developer may assign rights and obligations in and to this Agreement without the Authority's consent in the event of a sale or transfer of all of Developer's interest in and to the Property.

7. **OTHER SITE IMPROVEMENTS.** The location and design compatibility of all lanes, drives, parking arrangements and ingress and egress plans for the Property, including the impact on traffic circulation, are part of the site plan previously approved by the Plan Commission and the Authority. However, certain businesses or uses of the commercial space of the Property will require a Special Use Permit and additional review

by the Plan Commission. Landscaping improvements are an integral part of the Property and shall be installed and maintained in accordance with the landscape plan for the Property previously approved by Plan Commission and the Authority. All required landscaping shall comply with Section 12.13 of the Revised Municipal Code of the City of West Allis, shall be completed within one year of the completion of construction of the principal buildings and shall, thereafter, be maintained in a manner acceptable to the Plan Commission. Landscape materials shall be suitable to the climate, soil conditions, and intended use of the Property and shall be of sufficient size and density to create an immediate landscaped environment consisting but not limited to window boxes, planters, 2 ½ inch caliper trees, and various plants.

8. **SIGNAGE.** The Plan Commission shall review all exterior signs and approve only those that are environmentally and aesthetically suitable. Developer shall submit a plan to the Plan Commission indicating, in sufficient detail for review and approval, the type, size, shape and location of its proposed signs. Any buildings intended predominantly for rental should be designed with a sign frieze to assure uniformity and continuity of style. Plan Commission approval shall be required prior to the fabrication or installation of a sign or the filing of a formal application for a permit with the Department of Building Inspection and Zoning of the City of West Allis. Off-premise and rooftop signs are expressly prohibited.

9. **PARKING SPACES.** Automobile parking and loading spaces are required by the City of West Allis Codes and shall be provided for the Property. Parking requirements were reviewed and approved by Plan Commission on December 8, 2004. However, certain businesses or uses of the commercial space of the Property will require a Special Use Permit and additional parking review by the Plan Commission. This agreement does not constitute an agreement, lease, or contract for use of Municipal parking spaces. Since the Property is located within the District, street and off-street parking is available. Tenant parking for the Property is available by permit throughout the District.

10. **PREPAYMENT.** There shall be no prepayment penalty on either the Loan or Grant.

11. **CONSTRUCTION TIMETABLE FOR BUILDING IMPROVEMENTS.**

- A. **Construction Timetable.** Developer shall commence construction of the Property within (30) days after closing of the Loan and Grant and shall proceed with due diligence to completion and occupancy no later than eighteen (18) months after said Closing, subject to force majeure. The Facility shall be constructed in accordance with the approved final plans.
- B. **Failure to Perform.** In the event the Developer is unable to complete the Project, the Authority, upon written notice to the Developer, will terminate

this agreement and demand immediate payments of all borrowed funds disbursed to date. Developer shall repay such disbursed funds, plus interest, within 30 days of notice.

12. DEFAULT.

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

- (1) With respect to matters that are capable of being corrected by the Authority, the Authority may at its option enter upon the Property for the purpose of correcting the default and the Authority's reasonable costs in correcting same, plus interest as provided in Subsection E., below, shall be paid by Developer to the Authority immediately upon demand;
- (2) Injunctive relief;
- (3) Action for specific performance; and
- (4) Action for money damages.

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

C. Remedies of Developer. In the event of Authority's default hereunder, and in addition to other rights and remedies provided for in this Agreement, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:

- (1) With respect to matters that are capable of being corrected by Developer, Developer may at its option correct the default and Developer's reasonable costs in correcting same, plus interest as

provided in Subsection E., below, shall be paid by the Authority to Developer immediately upon demand;

- (2) Injunctive relief;
- (3) Action for specific performance; and
- (4) Action for money damages.

D. Reimbursement to Developer. Any amounts expended by Developer in enforcing this Agreement, and any amounts expended by Developer in curing a default on behalf of the Authority, together with interest at the rate provided in Subsection E., below, shall be paid to Developer.

E. Interest. Interest shall accrue on all amounts required to be reimbursed above at the rate of the Prime Rate as established from time to time by M&I Marshall & Ilsley Bank, or its successors, plus two percent (2%) per annum from the date of payment until the date reimbursed in full with accrued interest.

F. No Consequential Damages. Neither party shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise.

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

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

13. DISPUTE RESOLUTION. In the event a dispute arises under this Agreement, which is not resolvable through informal means, the parties agree to mediation as a dispute mechanism prior to pursuing other available legal remedies. Upon receipt of a written request by either party to utilize mediation as a means of solving a dispute, each party shall have five working days to notify the other in writing as to the name and address of a person designated to represent that party in the dispute process. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person (mediator) to hear the dispute and to agree on a time and location to mediate the dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. The determination of the mediator shall not be binding on the parties.

14. NO PERSONAL LIABILITY.

- A. Under no circumstances shall any officer, official, director, member, partner or employee of the Authority have any personal liability arising out of this Agreement, and neither party shall seek or claim any such personal liability.

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

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

17. INDUCEMENTS AND RELIANCE. Developer acknowledges that the warranties and representations made here by the Developer are a material inducement to the Authority entering into the Agreement for the Property and this Agreement, and that Authority is entitled to rely upon these warranties and representations despite independent investigation undertaken by Authority and that the warranties and representations made here and by the Developer shall survive the Closing.

18. CONSTRUCTION. The Authority and Developer and/or counsel acknowledge that each party and its counsel have reviewed and revised this agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

19. ENTIRE AGREEMENT. This writing constitutes the entire Agreement between the parties hereto, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement may be modified or amended only by written instrument signed by the Authority and Developer.

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

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

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

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

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

25. **RELIANCE AND SURVIVAL OF AGREEMENTS**. All statements contained in any certificate, instrument or document delivered by or on behalf of any of the parties pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the respective parties hereunder unless otherwise expressly provided herein. The representations, assurances and covenants contained in this Agreement shall survive the closing and continue in full force and effect for the duration of the Loan. No examination or investigation by or on behalf of the Authority shall have the effect of estopping the Authority from asserting breach or failure of any such representation or warranty or constitute or operate as a waiver of any such representation or assurance in whole or in part.

26. **CLOSING**. The Loan shall be closed at the West Allis City Hall, office of the City Attorney, at a mutually agreeable time within thirty (30) days of the date of execution of this Agreement. The Authority's obligation to fund the Loan is conditioned upon the Developer providing the Authority, prior to the date of closing:

- A. Any and all valid termination statements, releases or subordination agreements the Authority may require to guaranty that the security for the Loan has the priority positions called for by this Agreement.
- B. All Loan Documents which the Authority shall deem necessary or required relative to the completion of the Loan, including the Note, mortgage, personal guaranties, security agreements and such other financial statements as are required for the perfection thereof.

- C. Such policies or other evidence of coverage acceptable to the Authority of all insurance required under the Loan Documents.
- D. Confidential financial statements from the Developer in the form attached hereto as **Exhibit 7**.

In the event the Developer is unable to satisfy the conditions of this section, the Authority's obligation to fund the Loan shall terminate and be of no further force or effect.

27. NONPAYMENT. Upon occupancy, completion of the Project, and the terms and conditions of this Agreement, if in the event of a nonpayment by Developer of any sum of money at the time or times when the payment shall become due; or the failure to observe or perform any of the covenants or agreements by the Developer to be kept and performed under the Loan Documents; or the breach of any representation, warranty or assurance made in the Loan Documents by Developer or in any document furnished under the terms of any Loan Document; then, in such case, the whole amount of principal due on the Note shall, at the option of the Authority, become immediately due and payable without any notice whatever, which is hereby waived, and the same, together with all sums of money which may be or have been paid by the Authority in connection therewith, plus interest thereon at the rate aforesaid, shall thereupon be collectible in a suit of law, in the same manner as if the whole of said principal sum had been made payable at the time when any such default shall occur; and, the Developer covenants and agrees that it will pay to the Authority all expenses incurred therein, and in addition to the taxable costs in such suit, a reasonable sum of money as attorneys' fees, to be included with the expenses above mentioned in the judgment or decree.

28. NOTICE AND COMMUNICATION. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given (i) upon receipt if hand-delivered to the party or person intended, or (ii) one business day after deposit if deposited with a nationally recognized overnight commercial courier service, airbill prepaid, or (iii) two (2) business days after deposit if deposited in the United States mail postage prepaid, by certified mail, return receipt requested. Any party may, by written notice to the other party, designate a change of party, person or address for the purposes aforesaid. Notices and communications shall be addressed as follows:

If to the Developer:	Edward A. and Penny A. Wistl W262 N4403 Ryan St. Pewaukee, WI 53072
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If to the Authority:	Community Development Authority 7525 West Greenfield Avenue West Allis, Wisconsin 53214 Attn: Executive Director
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29. **BINDING AGREEMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs and permitted assigns.

30. **GOVERNING LAW.** This Agreement and the performance of transactions contemplated hereby shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin and venue for any action shall be Milwaukee County, State of Wisconsin.

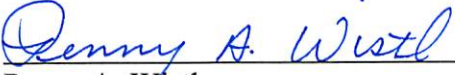
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date, month and year first above written.

COMMUNITY DEVELOPMENT AUTHORITY ("Authority")

By: 
John F. Stibal
Executive Director

EDWARD A. AND PENNY A. WISTL

By: 
Edward A. Wistl

By: 
Penny A. Wistl

Approved as to form this 7 day
of Feb., 2005.


Scott Post, City Attorney

Exhibit "1"

Legal Description

LOT 24, IN BLOCK 7, IN OTJEN, PULLEN AND SHENNERS SUBDIVISION
OF A PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 34, IN TOWNSHIP 7
NORTH, RANGE 21 EAST, IN THE CITY OF WEST ALLIS, COUNTY OF
MILWAUKEE, STATE OF WISCONSIN.

Exhibit "2"

Application

A. Project – \$952,000.00

The property owner will renovate the property at 7200 W. Greenfield Avenue and construct 8 single bedroom units. The building will be brick and include a window feature on the southeast corner of 72nd Street and Greenfield Avenue that is reflective of the historical photo. These conditions are as the Plan Commission approved on December 8, 2004. The property was acquired in September of 2003 for \$145,000.00. Construction costs are estimated at \$787,000.00. There are carrying costs of \$20,000.00. Total project costs will be \$952,000.00

B. Owner Equity Required - \$153,693.00

The property owner is not refinancing the up-front costs of the property acquisition and incurred soft costs such as architectural, engineering, masonry work, etc. The owner is contributing \$128,693.00 as equity.

In addition, the owner will contribute \$25,000.00 cash.

C. Bank Financing - \$349,000.00

The property owner/borrower must obtain financing from a financial institution. The loan is amortized over 25 years at 6% and has a balloon payment in 10 years.

D. HOME Funds

The City will lend \$299,307.00 from HOME Funds at an interest rate of 3% with a balloon payment in 10 years and amortized over 25 years. In addition, the City will defer principal and waive the interest in the first 3 years. However, if the building has realized a stabilized rent at the start of the second or third year, it will require complete principal and interest payment.

Stabilized rent is described as A, the building fully rented and B, it must show a positive cash flow of \$10,000.00 or more per year.

Positive cash flow is described as total income minus total expenses. Expenses include all items shown on APOD and principal in interest payments shown on an annual basis. No depreciating or tax consideration that would apply to property shall be considered.

E. HOME Funds Grant

The City shall contribute \$25,000.00 as an incentive towards the project and \$60,000.00 to have the building reconstructed entirely with brick.

The \$25,000.00 plus the \$60,000.00 shall be secured by a junior mortgage at no interest payments. The principal payment shall be paid in 10 years or upon the sale or transfer of the property, whichever occurs first.

Both the second mortgage and the junior mortgage will have the personal guarantee of Ed and Penny Wistl.

It is our strong belief in order to make the project feasible for the City of West Allis and the Wistl's, our basic outline is the requirement. We are down on our costs to the bare bones.

F. Establish the Entire Financing of Project

Obtain first mortgage from Continental	\$349,000.00
Second mortgage from City of West Allis	\$299,307.00
Junior mortgage from City of West Allis	\$85,000.00
Grant from City of West Allis	\$50,000.00
Grant from BID district	\$15,000.00
Sellers Equity	\$153,693.00
TOTAL	\$952,000.00

First mortgage for a period of 10 years amortized over a period of 25 years. Interest rate at 6%. Principal and interest payment of \$2,248.61

Second mortgage for a period of 10 years at 3% interest, amortized over a period of 25 years at principal and interest payments (once applicable) \$1,419.35

No payments on the junior mortgage.

Note:

Exhibits 3 through 7 can be found in the Department of Development's Loan Document File located in the Community Development Manager's office.

2/17/05 - bjb

To: John F. Stibal

From: Ed Wistl

Date: 12/20/04

Re: 7200 W. Greenfield Ave.

As per City of West Allis "Deal Points", the following is a list of what I would like to see happen. Most of the items have been previously agreed to, and then changed.

A. Project - \$952,000

The property owner will renovate the property at 7200 W. Greenfield Avenue and construct 8-single bedroom units. The building will be brick and include a window feature on the SE corner of 72nd and Greenfield that is reflective of the historical photo. These conditions are as the Plan Commission approved on Dec. 8, 2004. The property was acquired in Sept. of 2003 for \$145,000. Construction costs are estimated at \$787,000. There are carrying costs of \$20,000. Total project will be \$952,000.

B. Owner Equity Required - \$153,693

The property owner is not refinancing the upfront costs of the property acquisition and incurred soft costs such as architectural, engineering, masonry work, etc. The owner is contributing \$128,693 as equity.

In addition, the owner will contribute \$25,000 cash.

C. Bank Financing - \$349,000

The property owner/borrower must obtain financing from a financial institution. The loan is amortized over 25 years at 6% and has a balloon payment in 10 years.

D. HOME Funds

The City will lend \$299,307 from HOME Funds at an interest rate of 3% with a balloon payment in 10 years and amortized over 25 years. In addition the City will defer principal and waive the interest in first 3 years. However, if the building has realized a stabilized rent at the start of the second or third year, it will require complete principal and interest payment.

Stabilized rent is described as A, the building fully rented. B, it must show a positive cash flow of \$10,000 or more per year.

Positive cash flow is described as total income minus total expenses. Expenses include all items shown on APOD and principal and interest payments shown on an annual basis. No depreciating or tax consideration that would apply to property shall be considered.

E: HOME Funds Grant

The City shall contribute \$25,000 as an incentive towards the project and \$60,000 to have the building reconstructed entirely with brick.

The \$25,000 plus the \$60,000 shall be secured by a junior mortgage at no interest payments. The principal payment shall be paid in 10 years or if property is sold sooner, which one comes first.

Both the second mortgage and the junior mortgage will have the personal guarantee of Ed and Penny Wistl.

It is our strong believe in order to make the project feasible for the City of West Allis and the Wistl's our basic outline is the requirement. We are down on our costs to the bare bones.

F. Establish the Entire Financing of Project

Obtain first mortgage from Continental	\$349,000
Second mortgage from City of West Allis	299,307
Junior mortgage from City of West Allis	85,000
Grant from City of West Allis	50,000
Grant from BID district	15,000
Sellers Equity	153,693
TOTAL	\$952,000

First mortgage for a period of 10 years amortized over a period of 25 years. Interest rate at 6%. Principal and interest payment of \$2,248.61

Second mortgage for a period of 10 years at 3% interest, amortized over a period of 25 years at principal and interest payments (once applicable) \$1,419.35

No payments on the junior mortgage.

Sincerely,



Ed Wistl

Annual Property Operating Data

Date DECEMBER 19 2004Price : 952,000 OF ENTIRE PROJECT
Loans : 733,307 (BRANT) 250,000 + 100K
Equity : 158,693Purpose ESTABLISH FEASIBILITYName ED + PENNY WISTLLocation 72.00 - 7206 W. CRAWFIELD AVEType of Property COMMERCIAL + APARTMENTS

Assessed/Appraised Values

Land \$ _____ %

Improvement \$ _____ %

Personal Property \$ _____ %

Total \$ _____ 100 %

Adjusted Basis as of _____ \$ _____

FINANCING

Existing	Balance	Payment	Term/Yr	Interest	Term
1st	\$349,000	\$2,248.61	MTLY	6 %	10
2nd	\$299,307	\$1,419.35	MTLY	3 %	10
3rd	\$25,000	—	—	— %	10
Potential					
1st					
2nd					

		%	2	3	Comments
1	SCHEDULED RENTAL INCOME			84,192	8-1 Bedroom
2	Less: Vacancy and Credit Losses	3		2,525	UNITS AT \$577.-
3	EFFECTIVE RENTAL INCOME			81,667	
4	Plus: Other Income				3200 sq. feet
5	GROSS OPERATING INCOME			81,667	COM. AT \$8.00
6	Less: Operating Expenses				Per sq. ft.
7	Accounting and Legal				
8	Advertising, Licenses and Permits				MTLY. REUT
9	Property Insurance		2,500		APRS \$4616
10	Property Management BY OWNER				COM. \$2400
11	Payroll-Resident Management				TOTAL \$7016
12	Other				
13	Taxes-Worker's Compensation				
14	Personal Property Taxes				
15	Real Estate Taxes ESTIMATED		15,000		
16	Repairs and Maintenance	3	2,525		
17	Services-Elevator		1,000		
18	Janitorial				
19	Lawn				
20	Pool				
21	Rubbish		1,200		
22	Other				
23	Supplies				
24	Utilities-Electricity ESTIMATED		300		
25	Gas and Oil				
26	Sewer and Water ESTIMATED		4,800		
27	Telephone				
28	Other				
29	Miscellaneous		1,500		
30					
31	TOTAL OPERATING EXPENSES			29,325	EXP RATE
32	NET OPERATING INCOME			52,342	5.493 %
33	Less: Annual Debt Service			49,014	
34	CASH FLOW BEFORE TAXES			3,328	