

23.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2008-0229 Resolution In Committee

Resolution approving a Planned Development Agreement amendment pursuant to Sec. 12.60 of the Revised Municipal Code by and between the City of West Allis and Chr. Hansen for various building and demolition improvements to the existing Chr. Hansen campus, located at 9015 W. Maple St. (Tax Key No. 451-1006-000)

Introduced: 11/18/2008

Controlling Body: Safety & Development Committee

Sponsor(s): Safety & Development Committee

COMMITTEE RECOMMENDATION

ADOPT AS AMENDED

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>11/18/08</u>			Barczak				
			Czaplewski				
		✓	Kopplin				
			Lajsic				
			Narlock				
			Reinke				
			Roadt				
			Sengstock				
	✓		Vitale				
			Weigel				
			TOTAL	<u>5</u>	<u>0</u>		

SIGNATURE OF COMMITTEE MEMBER

Chair _____ Vice-Chair _____ Member _____

COMMON COUNCIL ACTION

adopt as amended

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>11-18-08</u>			- Barczak	✓			
			Czaplewski	✓			
	✓		Kopplin	✓			
			Lajsic	✓			
		✓	Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	<u>10</u>	<u>-</u>		



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2008-0229

Final Action:

Sponsor(s): Safety & Development Committee

NOV 18 2008

Resolution approving a Planned Development Agreement amendment pursuant to Sec. 12.60 of the Revised Municipal Code by and between the City of West Allis and Chr. Hansen for various building and demolition improvements to the existing Chr. Hansen campus, located at 9015 W. Maple St. (Tax Key No. 451-1006-000)

WHEREAS, a Planned Development Agreement was adopted under Resolution No. R-2008-0131 on May 20, 2008 for a warehouse/loading dock building addition to Chr. Hansen campus located at 9015 W. Maple St.; and,

WHEREAS, CHR. Hansen, Inc., with principal offices at 9015 W. Maple St., West Allis, WI 53214, has submitted an application for various building and demolition improvements to the existing Chr. Hansen campus located at 9015 W. Maple St. requiring an amendment of the existing Planned Development District - Commercial/Industrial PDD-2 Zoning boundaries pursuant to Section 12.61 of the West Allis Revised Municipal Code for certain lands depicted and described as:

Commencing at the Southwest corner of the Northwest $\frac{1}{4}$ of said Section 4; thence North $01^{\circ}05'59''$ West along the West line of said $\frac{1}{4}$ Section 98.47 feet to a point on the North line of the Union Pacific Railroad; thence North $88^{\circ}29'38''$ East along said North line 234.00 feet to the point of beginning of the lands to be described; thence North $01^{\circ}05'59''$ West 303.99 feet to a point; thence South $88^{\circ}14'42''$ West 77.00 feet to a point; thence North $01^{\circ}05'59''$ West 164.37 feet to a point; thence South $88^{\circ}54'01''$ West 126.99 feet to a point on the East line of South 92nd Street; thence North $01^{\circ}05'59''$ West along said East line 103.27 feet to a point on the South line of vacated West Mitchell Street; thence North $21^{\circ}48'27''$ East along the West line of said vacated West Mitchell Street 38.59 feet to a point on the North line of Cornwall Street (now West Mitchell Street) extended as shown on Conrad's West Allis Gardens; thence North $88^{\circ}41'36''$ East along said North line 67.35 feet to a point on the West line of Lot 2, Block 5 in said Conrad's West Allis Gardens; thence Southwesterly 22.84 feet along said West line and arc of a curve, whose center lies to the Southeast, whose radius is 1417.00 feet, and whose chord bears South $54^{\circ}05'20''$ West 22.84 feet to a point on the South line of Conrad's West Allis Gardens; thence North $88^{\circ}15'54''$ East along said South line 190.38 feet to a point, said point being the Northerly extension of the West right of way line of vacated South 91st Street; thence South $01^{\circ}05'59''$ East along said West line 48.45 feet to a point on the South line of West Mitchell Street; thence North $88^{\circ}41'36''$ East along said South line 466.81 feet to a point; thence South $01^{\circ}22'42''$ East 355.00 feet to a point; thence North $88^{\circ}33'15''$ East 30.41 feet to a point on the North line of West Maple Street; thence South $20^{\circ}36'48''$ East 63.52 feet to a point on the South line of West Maple Street; thence North $88^{\circ}33'15''$ East along said South line 137.60 feet to a point marking the centerline of Vacated South 89th Street; thence South $01^{\circ}22'42''$

East along said centerline 129.97 feet to a point on the North line of the Union Pacific Railroad; thence South 88°29'38" West along said North line 708.40 feet to the point of beginning. Containing 351,493 square feet, or 8.0692 acres

Said land being located at: 9015 W. Maple St.

Tax Key Nos.: 451-1006-000

WHEREAS, the Application was forwarded to the Plan Commission on October 22, 2008, for review and recommendation and its recommendation has been received; and,

WHEREAS, the Common Council has duly noticed and held a Public Hearing on November 18, 2008 on the Application; and,

WHEREAS, the Common Council, after due consideration, finds that the proposed development as set forth in the Application, with certain conditions, meets the standards set forth in Sections 12.61 of the West Allis Revised Municipal Code.

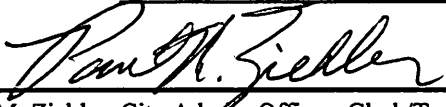
NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis that the amended Agreement for Planned Development District - Commercial/Industrial PDD-2 by and between the City of West Allis and CHR. Hansen, Inc., a copy of which is attached and made a part hereof, be and is hereby approved and that the Mayor and City Administrative Officer-Clerk/Treasurer are hereby authorized and directed to execute and deliver said Agreement on behalf of the City, together with all such other and further instruments and documents, as may be required by said Agreement, for its full and complete implementation.

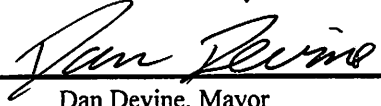
BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the Agreement and other documents, including any and all attachments, exhibits, addendums and amendments, as may 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.

BE IT FURTHER RESOLVED that the Official City Zoning Map has been amended by overlay defining the existing boundaries of the Planned Development District - Commercial/Industrial PDD-2 for Chr. Hansen as adopted under Resolution No. R-2008-0131 and passed under Ordinance No. O-2008-0024.

cc: Dept. of Development
Dept. of Building Inspections and Zoning
Div. of Planning & Zoning

ZON-R-695-11-18-08

ADOPTED NOV 18 2008

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

APPROVED 11/21/08

Dan Devine, Mayor

PLANNED DEVELOPMENT AGREEMENT

This Agreement made and entered into by and between the CITY OF WEST ALLIS, a Municipal Corporation with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (the "City"), and CHR. HANSEN, INC., a Wisconsin Corporation, having an office at 9015 W. Maple St., West Allis, Wisconsin 53214 (the "Developer"), collectively referred to as "Parties."

WHEREAS, the Developer desires to construct a warehouse addition adopted on May 20, 2008 under Resolution No. R-2008-0131 on certain lands in the City of West Allis, Milwaukee County, Wisconsin, (the "Site"); and,

WHEREAS, the developer desires to amend the Planned Development Agreement to building and construct a new parking lot on certain lands in the City of West Allis, Milwaukee County, Wisconsin depicted legally and described in Exhibit "A" attached hereto and made part hereof (the "Site"); and,

WHEREAS, The developer owns, in fee or otherwise retains a legal or equitable interest in separate parcels of the Site; and,

WHEREAS, the Developer has made application to the Common Council of the City (the "Common Council") to amend the existing Planned Development District-Commercial/Industrial PDD-2 (Resolution No. 2008-0131) pursuant to Section 12.61 of the Revised Municipal Code ("Application"), to permit the development of a warehouse addition on the site and modify the existing PDD-2 zoning boundaries project on the Site (the "Project"); and,

WHEREAS, the Application was referred to the West Allis Plan Commission on October 22, 2008 for review and recommendation and its recommendation has been received; and,

WHEREAS, a public hearing on the Application was duly noticed and held by the Common Council on November 18, 2008; and,

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

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

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

1. **Binding Effect.** It is intended and determined that the provisions of this Agreement shall constitute covenants, which shall run with the land for the benefit thereof, and

the provisions hereof shall bind and inure to the benefit of the parties and their respective successors in interests from the effective date of this Agreement.

2. **Site Development.** Subject to the terms and conditions of this Agreement, the Site shall be developed and conditioned upon the site, landscaping and screening, and architectural plans with conditions approved by the City of West Allis Plan Commission on November 28, 2007 and October 27, 2008, copies of which are attached hereto and made a part hereof as Exhibit "B" (the "Development Plan"). Off-street parking for 214 vehicles is required per code for the entire Chr. Hansen campus. The Developer shall provide off-street parking for approximately 200 vehicles. The Common Council has the authority to modify the parking requirements. Under this agreement the Common Council grants of Department of Development staff the authority to approve, without Common Council approval, minor changes in the approved conditions, including but not limited to, up to 5% of the required parking.

3. **District Regulations.** The permitted uses of the Site, the density and intensity of said uses, the maximum height, bulk and size of proposed buildings and structures and their location on the Site shall be as set forth in Chapter 12 of the Revised Municipal Code.

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

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

5B. **Development Schedule.** Construction of the Project shall commence or the granting of a valid building permit shall be issued no later than one (1) year from the date of approval of the Development Plan by the West Allis Common Council. This Agreement shall lapse and be of no effect upon failure to commence construction or be issued a valid building permit as herein provided.

6. **Deliveries.** Because there is a residential use and residentially zoned area adjacent to the site, delivery operations shall not be permitted between 9pm and 6am, except when liquid nitrogen deliveries are needed in an emergency, as permitted by Chr. Hansen. Delivery trucks shall not be parked on or adjacent to the premises during non-delivery hours with motor and/or refrigerators/generators running, unless the truck noise is mitigated so that it does not significantly affect nearby residential properties. Delivery trucks shall not park in public right of way as to create an obstruction to residential properties.

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

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

9. **Amendments.** The parties agree that no changes in the approved Application and related conditions shall be made unless agreed in writing by all parties and authorized by the Common Council in accordance with the procedures set forth in Section 12.61(14) of the Revised Municipal Code of the City. No amendments will be made in the approved Development Plan or related conditions unless such amendments are agreed to in writing by all parties and are shown to be required by changes that have occurred in conditions since the Development Plan and related conditions were approved, or by a change in the development policies of the City.

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

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

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

13. **Remedies.** Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforcement by a specific performance the obligations and rights of the parties hereto. No consequential, indirect, incidental or exemplary

damages of any kind shall be recoverable in any action by any party, whether based on contract, negligence, strict liability or otherwise.

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

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

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

17. **Construction.** City and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

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

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

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

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

22. **Entire Agreement.** This Agreement, including the exhibits and attachments annexed hereto, constitute the entire Agreement and supersedes all other prior agreements and understandings, both written and oral, by the parties or any of them, with respect to the subject matter hereof.

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

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this 25 day of November, 2008.

CITY OF WEST ALLIS

By: *Dan Devine*
Dan Devine, Mayor

Attest:
Paul M. Ziehler
Paul M. Ziehler
City Administrative Officer
City Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

On this 25 day of November 2008, personally came before me Dan Devine and Paul M. Ziehler, to me known to be the Mayor and City Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

Janel Y. Dolmanski
Notary Public, State of Wisconsin
My Commission Expires: 2-6-11

(SIGNATURES CONTINUED ON NEXT PAGE)

By: _____
Chr. Hansen , Inc.
Robert Brill,
Secretary

State of Wisconsin)
) ss
Milwaukee County)

On this ___ day of _____, 2008, personally came before me, Robert Brill, Secretary, of the above-named company, to me known to be a member of said company, acknowledged that he executed the foregoing instrument as such officer as the deed of said company, by its authority.

Notary Public, State of Wisconsin
My Commission Expires: _____

This Agreement was approved by the Common Council of the City of West Allis by Resolution No. _____, adopted _____, 2008, and approved on _____, 2008.

EXHIBIT A

Commencing at the Southwest corner of the Northwest $\frac{1}{4}$ of said Section 4; thence North $01^{\circ}05'59''$ West along the West line of said $\frac{1}{4}$ Section 98.47 feet to a point on the North line of the Union Pacific Railroad; thence North $88^{\circ}29'38''$ East along said North line 234.00 feet to the point of beginning of the lands to be described; thence North $01^{\circ}05'59''$ West 303.99 feet to a point; thence South $88^{\circ}14'42''$ West 77.00 feet to a point; thence North $01^{\circ}05'59''$ West 164.37 feet to a point; thence South $88^{\circ}54'01''$ West 126.99 feet to a point on the East line of South 92nd Street; thence North $01^{\circ}05'59''$ West along said East line 103.27 feet to a point on the South line of vacated West Mitchell Street; thence North $21^{\circ}48'27''$ East along the West line of said vacated West Mitchell Street 38.59 feet to a point on the North line of Cornwall Street (now West Mitchell Street) extended as shown on Conrad's West Allis Gardens; thence North $88^{\circ}41'36''$ East along said North line 67.35 feet to a point on the West line of Lot 2, Block 5 in said Conrad's West Allis Gardens; thence Southwesterly 22.84 feet along said West line and arc of a curve, whose center lies to the Southeast, whose radius is 1417.00 feet, and whose chord bears South $54^{\circ}05'20''$ West 22.84 feet to a point on the South line of Conrad's West Allis Gardens; thence North $88^{\circ}15'54''$ East along said South line 190.38 feet to a point, said point being the Northerly extension of the West right of way line of vacated South 91st Street; thence South $01^{\circ}05'59''$ East along said West line 48.45 feet to a point on the South line of West Mitchell Street; thence North $88^{\circ}41'36''$ East along said South line 466.81 feet to a point; thence South $01^{\circ}22'42''$ East 355.00 feet to a point; thence North $88^{\circ}33'15''$ East 30.41 feet to a point on the North line of West Maple Street; thence South $20^{\circ}36'48''$ East 63.52 feet to a point on the South line of West Maple Street; thence North $88^{\circ}33'15''$ East along said South line 137.60 feet to a point marking the centerline of Vacated South 89th Street; thence South $01^{\circ}22'42''$ East along said centerline 129.97 feet to a point on the North line of the Union Pacific Railroad; thence South $88^{\circ}29'38''$ West along said North line 708.40 feet to the point of beginning. Containing 351,493 square feet, or 8.0692 acres

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WHEREAS, the Developer desires to construct a warehouse addition adopted on May 20, 2008 under Resolution No. R-2008-0131 on certain lands in the City of West Allis, Milwaukee County, Wisconsin, (the "Site"); and,

WHEREAS, the developer desires to amend the Planned Development Agreement to building and construct a new parking lot on certain lands in the City of West Allis, Milwaukee County, Wisconsin depicted legally and described in Exhibit "A" attached hereto and made part hereof (the "Site"); and,

WHEREAS, The developer owns, in fee or otherwise retains a legal or equitable interest in separate parcels of the Site; and,

WHEREAS, the Developer has made application to the Common Council of the City (the "Common Council") to amend the existing Planned Development District-Commercial/Industrial PDD-2 (Resolution No. 2008-0131) pursuant to Section 12.61 of the Revised Municipal Code ("Application"), to permit the development of a warehouse addition on the site and modify the existing PDD-2 zoning boundaries project on the Site (the "Project"); and,

WHEREAS, the Application was referred to the West Allis Plan Commission on October 22, 2008 for review and recommendation and its recommendation has been received; and,

WHEREAS, a public hearing on the Application was duly noticed and held by the Common Council on November 18, 2008; and,

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

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the provisions hereof shall bind and inure to the benefit of the parties and their respective successors in interests from the effective date of this Agreement.

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3. **District Regulations.** The permitted uses of the Site, the density and intensity of said uses, the maximum height, bulk and size of proposed buildings and structures and their location on the Site shall be as set forth in Chapter 12 of the Revised Municipal Code.

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

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

5B. **Development Schedule.** Construction of the Project shall commence or the granting of a valid building permit shall be issued no later than one (1) year from the date of approval of the Development Plan by the West Allis Common Council. This Agreement shall lapse and be of no effect upon failure to commence construction or be issued a valid building permit as herein provided.

6. **Deliveries.** Because there is a residential use and residentially zoned area adjacent to the site, delivery operations shall not be permitted between 9pm and 6am, except when liquid nitrogen deliveries are needed in an emergency, as permitted by Chr. Hansen. Delivery trucks shall not be parked on or adjacent to the premises during non-delivery hours with motor and/or refrigerators/generators running, unless the truck noise is mitigated so that it does not significantly affect nearby residential properties. Delivery trucks shall not park in public right of way as to create an obstruction to residential properties.

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

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

9. **Amendments.** The parties agree that no changes in the approved Application and related conditions shall be made unless agreed in writing by all parties and authorized by the Common Council in accordance with the procedures set forth in Section 12.61(14) of the Revised Municipal Code of the City. No amendments will be made in the approved Development Plan or related conditions unless such amendments are agreed to in writing by all parties and are shown to be required by changes that have occurred in conditions since the Development Plan and related conditions were approved, or by a change in the development policies of the City.

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

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

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

13. **Remedies.** Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforcement by a specific performance the obligations and rights of the parties hereto. No consequential, indirect, incidental or exemplary

damages of any kind shall be recoverable in any action by any party, whether based on contract, negligence, strict liability or otherwise.

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

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

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

17. **Construction.** City and Developer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

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

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

22. **Entire Agreement.** This Agreement, including the exhibits and attachments annexed hereto, constitute the entire Agreement and supersedes all other prior agreements and understandings, both written and oral, by the parties or any of them, with respect to the subject matter hereof.

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

IN WITNESS WHEREOF, the parties here onto set forth their hands and seals this 25 day of November, 2008.

CITY OF WEST ALLIS

By: *Dan Devine*
Dan Devine, Mayor

Attest:
Paul M. Ziehler
Paul M. Ziehler
City Administrative Officer
City Clerk/Treasurer

State of Wisconsin)
) ss
Milwaukee County)

On this 25 day of November, 2008, personally came before me Dan Devine and Paul M. Ziehler, to me known to be the Mayor and City Clerk/Treasurer, respectively, of the City of West Allis and the persons who executed the foregoing instrument and acknowledged the same.

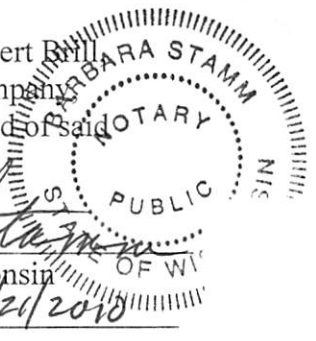
Janel M. Romanek
Notary Public, State of Wisconsin
My Commission Expires: 2-6-11

(SIGNATURES CONTINUED ON NEXT PAGE)

By: Robert Brill
Chr. Hansen, Inc.
Robert Brill,
Secretary

State of Wisconsin)
) ss
Milwaukee County)

On this 3rd day of December, 2008, personally came before me, Robert Brill, Secretary, of the above-named company, to me known to be a member of said company, acknowledged that he executed the foregoing instrument as such officer as the deed of said company, by its authority.


Barbara Stamm
Notary Public, State of Wisconsin
My Commission Expires: 3/21/2010

This Agreement was approved by the Common Council of the City of West Allis by Resolution No. R-2008-0229, adopted November 18, 2008, and approved on November 21, 2008.

EXHIBIT A

Commencing at the Southwest corner of the Northwest $\frac{1}{4}$ of said Section 4; thence North $01^{\circ}05'59''$ West along the West line of said $\frac{1}{4}$ Section 98.47 feet to a point on the North line of the Union Pacific Railroad; thence North $88^{\circ}29'38''$ East along said North line 234.00 feet to the point of beginning of the lands to be described; thence North $01^{\circ}05'59''$ West 303.99 feet to a point; thence South $88^{\circ}14'42''$ West 77.00 feet to a point; thence North $01^{\circ}05'59''$ West 164.37 feet to a point; thence South $88^{\circ}54'01''$ West 126.99 feet to a point on the East line of South 92nd Street; thence North $01^{\circ}05'59''$ West along said East line 103.27 feet to a point on the South line of vacated West Mitchell Street; thence North $21^{\circ}48'27''$ East along the West line of said vacated West Mitchell Street 38.59 feet to a point on the North line of Cornwall Street (now West Mitchell Street) extended as shown on Conrad's West Allis Gardens; thence North $88^{\circ}41'36''$ East along said North line 67.35 feet to a point on the West line of Lot 2, Block 5 in said Conrad's West Allis Gardens; thence Southwesterly 22.84 feet along said West line and arc of a curve, whose center lies to the Southeast, whose radius is 1417.00 feet, and whose chord bears South $54^{\circ}05'20''$ West 22.84 feet to a point on the South line of Conrad's West Allis Gardens; thence North $88^{\circ}15'54''$ East along said South line 190.38 feet to a point, said point being the Northerly extension of the West right of way line of vacated South 91st Street; thence South $01^{\circ}05'59''$ East along said West line 48.45 feet to a point on the South line of West Mitchell Street; thence North $88^{\circ}41'36''$ East along said South line 466.81 feet to a point; thence South $01^{\circ}22'42''$ East 355.00 feet to a point; thence North $88^{\circ}33'15''$ East 30.41 feet to a point on the North line of West Maple Street; thence South $20^{\circ}36'48''$ East 63.52 feet to a point on the South line of West Maple Street; thence North $88^{\circ}33'15''$ East along said South line 137.60 feet to a point marking the centerline of Vacated South 89th Street; thence South $01^{\circ}22'42''$ East along said centerline 129.97 feet to a point on the North line of the Union Pacific Railroad; thence South $88^{\circ}29'38''$ West along said North line 708.40 feet to the point of beginning. Containing 351,493 square feet, or 8.0692 acres

EXHIBIT B

October 28, 2008

Mr. Gary Mandli
Chr. Hansen, Inc.
9015 W. Maple St.
West Allis, WI 53214

RE: Site, Landscaping and Architectural Plans for proposed demolition of the existing R&D building and for improvements to various buildings on the Chr. Hansen campus located at 9015 W. Maple St. (Tax Key No. 451-1006-000)

Dear Mr. Mandli:

This letter is to inform you that the Plan Commission, at its meeting of October 22, 2008, approved the above-referenced plan subject to the following conditions:

(Items 1 through 6 are required to be satisfied prior to the issuance of building permits associated with the proposed work reviewed by Plan Commission. Contractors applying for permits should be advised accordingly.)

1. Revised Site, Landscaping, Screening and Architectural Plans being submitted to and approved by the Department of Development to show the following: (1) an updated site plan and parking schedule for entire Chr. Hansen campus, including ADA stalls; (2) ADA/pedestrian walkway within the new parking lot being extended to the main entrance of the existing office building; (3) an additional tree being included within the new landscape area along the west property line and ground cover type being indicated on plan; (4) on the southeast part of the Chr. Hansen property, pavement being replaced with grass within the (Chr. Hansen) portion of vacated S. 89 St.; and, (5) all refuse enclosure locations being properly screened within a four-sided enclosure with secondary personnel door or opening. Contact Steve Schaer at 414-302-8466 with further questions.
2. An estimated cost of landscaping and screening being submitted to the Department of Development for approval.
3. A surety bond or other form of security as required under Sec. 12.13(14) of the Revised Municipal Code in the amount of 125% of the estimated cost of landscaping and screening shall be executed by the applicant prior to the issuing of a building permit. The attached security form shall be submitted to and approved by the Building Inspections and Zoning Department, relative to the cost estimate as determined in Condition #2.
4. Documentation and approval showing compliance with the City of West Allis Stormwater Management Ordinance, to be submitted to the Engineering Department by a registered Civil Engineer. A stormwater permit must be obtained from the City Engineering Department.

Mr. Gary Mandli
October 28, 2008
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5. Common Council approval of the Planned Development Agreement.

(Remaining condition of approval to be satisfied within one year of Plan Commission approval;)

6. Street vacation of the right of way to Chr. Hansen in the areas defined by the Engineering Department.

Accompanying this letter you will find a performance bond form and a letter of credit for your reference.

Any modification to the approved plan shall be submitted to the Department of Development for review.

Please contact the Building Inspection and Neighborhood Services Department at 414-302-8400 for additional requirements for permit application information, to include, but not limited to, plan submittal, plat of survey submittal, etc.

Please contact Martin King, Assistant Fire Chief, Fire Department at 414-302-8904 for fire code requirements.

Sincerely,

Steven J. Schaer, AICP
Manager, Planning and Zoning Division

SJS:d1m

enc.

cc: John F. Stibal, Director, Department of Development
Ted Atkinson, Director, Department of Building Inspections and Zoning
Michael Lewis, City Engineer
Terry Tauschmann, Zoning Inspector
Ms. Christa Hamann-Paul, TWP Architecture

Mr. Gary Mandli
October 28, 2008
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13100 Watertown Plank Rd.
Elm Grove, WI 53122

December 10, 2007

Mr. Gary Mandli
CHR. Hansen
9015 W. Maple St.
West Allis, WI 53214

RE: Site, Landscaping and Architectural Plans for proposed warehousing/loading dock building addition to the existing CHR. Hansen campus, located at 9015 W. Maple St. (Tax Key Nos. 451-0393-005, 451-0395-000, 451-0257-000, 451-1001-000, 451-0272-000, 451-0274-000, 451-0271-000, 451-0270-000, 451-0269-000, 451-0268-000, 451-0267-000, 451-0266-000, 451-0273-000, 451-0401-002, 451-0400-001, 451-0396-001, 451-0403-002, 451-0403-005, 451-0403-003, 451-0404-001, 451-0407-001, 451-0406-000, 451-0405-000, 451-0453-001, 451-0454-000, 451-0264-001)

Dear Mr. Mandli:

This letter is to inform you that the Plan Commission, at its meeting of November 28, 2007, approved the above-referenced plan subject to the following conditions:

(Items 1 through 7 are required to be satisfied prior to the issuance of building permits associated with the proposed work reviewed by Plan Commission. Contractors applying for permits should be advised accordingly.)

1. Revised Site, Landscaping, Screening and Architectural Plans being submitted to and approved by the Department of Development to show the following: (1) the metal paneling above the Kalwall on the west elevation being painted a color to match the split face block; (2) color details of split face block; (3) removal of three windows from north elevation; (4) poured concrete walls being only 11 feet in height; (5) parking schedule for entire CHR. Hansen campus, including ADA stalls; (6) ADA stalls being located near the addition and a handicap accessible route from the parking to the building entry; (7) all refuse enclosure locations and being properly screened within a four-sided enclosure with personnel door or opening; (8) delineation that the W. Mitchell St. parking lot gate is being removed; and, (9) landscape key showing species and quantities of new landscaping, and additional landscaping and/or landscaping changes at the recommendation of the City Forester. Contact Kristi Johnson at 414-302-8463 with further questions.
2. An estimated cost of landscaping and screening being submitted to the Department of Development for approval. Contact Steven Schaer, City Planner at 414-302-8466.
3. A surety bond or other form of security as required under Sec. 12.13(14) of the Revised Municipal Code in the amount of 125% of the estimated cost of landscaping and screening shall be executed by the applicant prior to the issuing of a building permit. The attached security form shall be submitted to and approved by the Building Inspections and Zoning Department,

Mr. Gary Mandli
December 10, 2007
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relative to the cost estimate as determined in Condition #2. Contact Terry Tauschmann, Zoning Inspector at 414-302-8409.

4. Documentation and approval showing compliance with the City of West Allis Stormwater Management Ordinance, to be submitted to the Engineering Department by a registered Civil Engineer. A stormwater permit must be obtained from the City Engineering Department. Contact Joseph Burtch, Assistant City Engineer, at 414-302-8379.
5. Common Council approval of the Planned Development Agreement.
6. A Certified Survey Map being submitted to the Department of Development for Plan Commission and Common Council review and approval.
7. A plat of survey being provided to the Department of Building Inspections and Zoning for review and approval.

(Remaining conditions of approval to be satisfied within one year of Plan Commission approval;)

8. Street vacation of the right of way to CHR. Hansen in the areas defined by the Engineering Department. Contact Pete Daniels, Assistant City Engineer, at 414-302-8374.

Accompanying this letter you will find a performance bond form and a letter of credit for your reference.

Any modification to the approved plan shall be submitted to the Department of Development for review.

Please contact the Building Inspections and Zoning Department at 414-302-8400 for additional requirements for permit application information, to include, but not limited to, plan submittal, plat of survey submittal, etc.

Please contact Martin King, Assistant Fire Chief, Fire Department at 414-302-8904 for fire code requirements.

Sincerely,

Steven J. Schaer, AICP
Manager, Planning and Zoning Division

SJS:dlm

enc.

cc: John F. Stibal, Director, Department of Development
Ted Atkinson, Director, Department of Building Inspections and Zoning
Michael Lewis, City Engineer
Terry Tauschmann, Zoning Inspector
Ms. Christa Hamann-Paul, Torke Wirth Pujara Architecture

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13100 Watertown Plank Rd.
Elm Grove, WI 53122