



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2010-0030

Final Action:

FEB 02 2010

Sponsor(s): Safety & Development Committee

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

WHEREAS, the Common Council of the City of West Allis approved Resolution R-2006-0218 on September 5, 2006, and amended on October 30, 2006 a Purchase and Sale Agreement and Development Agreement ("Agreement") by and between the Community Development Authority of the City of West Allis and West Allis Development, LLC, for properties within the Six Points/Farmers Market Redevelopment Area; and,

WHEREAS, the Community Development Authority of the City of West Allis, by Resolution No. 627, adopted August 8, 2006 and amended January 12, 2010, approved said Agreement by and between the Community Development Authority of the City of West Allis and West Allis Development, LLC for the Six Points/Farmers Market Redevelopment Area; and,

WHEREAS, the principals, under the direction of the City Attorney, have deemed that an Amendment to the Agreement, hereby attached and incorporated within, is necessary.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that it hereby approves the amended Purchase and Sale Agreement and amended Development Agreement by and between the Community Development Authority of the City of West Allis and West Allis Development, LLC for the redevelopment of properties located within the Six Points/Farmers Market Redevelopment Area, specifically along the north side of W. Greenfield Ave. between S. 63 St. and S. 64 St., in compliance with the provisions as outlined in the Purchase and Sale Agreement and Development Agreement, dated September 5, 2006 (copies of amended documents hereby attached to and made a part of this resolution.)


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


BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to make such substantive changes, modifications, additions and deletions to and from the various provisions of the amended Agreements, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare

and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

Cc: Department of Development

DEV-R-583-2-2-10

ADOPTED FEB 02 2010

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

APPROVED 2/5/10

Dan Devine, Mayor

AGREEMENT

THIS AGREEMENT made as this 3 day of ^{Feb.} ~~January~~, 2010 by and between the Community Development Authority of City of West Allis ("CDA") and Six Points East LLC ("Six Points East"), a Wisconsin limited liability company.

Recitals

A. On or about September 5, 2006 the CDA and West Allis Development LLC ("WAD") entered into a Purchase and Sale Agreement which was subsequently amended on October 30, 2006 (collectively the "PSA") and also a Development Agreement ("DA"; the PSA and DA collectively referred to as the "PSA/DA") pertaining to the purchase, sale and development into condominium units of certain property located along the north side of West Greenfield Avenue between 63rd and 64th Streets, West Allis, Wisconsin (herein the "Property");

B. With respect to the PSA/DA, the City recorded a Memorandum of Agreements with the Milwaukee County Register of Deeds on June 28, 2007 as Document No. 09455364 which gave public notice of the existence of the PSA/DA;

C. Subsequently Equitable Bank S.S.B. (the "Bank") made a construction loan to WAD evidenced by a Note and secured by a Mortgage in the amount of \$6,050,000 which was recorded with the Milwaukee County Register of Deeds on July 13, 2007 as Document No. 09462855 (the "Equitable Mortgage");

D. WAD defaulted with respect to the Equitable Mortgage and the Bank commenced a foreclosure action ("Foreclosure Action") which is pending in the Milwaukee County Circuit Court as Case No. 09-CV-002904, in which Foreclosure Action the CDA asserted that it has

rights under the PSA/DA which are senior and prior to the rights of the owner of the Equitable Mortgage.

E. The Bank subsequently sold the Equitable Mortgage to Six Points East which succeeded to the interests of the Bank as plaintiff in the Foreclosure Action. Six Points East thereafter obtained a Judgment of Foreclosure against the Property, which Judgment reserved for subsequent resolution the priority issue between Six Points East (as successor to the Bank) and the CDA.

F. To avoid the expense and uncertainty of further litigation and to facilitate the scheduled Sheriff's sale in the foreclosure action, the parties have resolved the priority issue as set forth in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration receipt of which is hereby acknowledged, it is agreed as follows:

1. The rights of CDA under the PSA are superior to the rights of Plaintiff as assignee of the Equitable Mortgage.
2. To induce Six Points East to purchase the Property at the Sheriff's Sale, acquire title to the Property and proceed promptly to complete the construction and leasing of the first floor commercial space and the marketing and sale of the residential units, all of which will accrue to the benefit of the surrounding area and the maximizing of the Property's tax base, and the CDA being satisfied that Six Points East has the experience and expertise to make the project a success, the CDA and Six Points East agree to the following provisions which will be effective upon Six Points East acquiring title to the Property:

- A. To the extent they would otherwise be applicable, the CDA waives the Performance Guarantees under sections 5 and 6 of the PSA and agrees that such provisions will not be enforced against Six Points East.
- B. To the extent it would otherwise be applicable, the CDA waives Section 20 of the DA and agrees that such provisions of such section will not be enforced against Six Points East.
- C. Section 4A of the PSA is clarified to provide that the "District" is Tax Incremental District Number 5 (not Number 4)
- D. The Schedule of Minimum Assessed values in Section 4B of the PSA is amended to substitute therefor the following schedule, which minimum assessed values are for the entire Property, including the residential units and the commercial space:

January 1	Minimum Assessed Value
2010	\$6,371,000
2011	\$7,500,000
2012	\$8,871,000
2013	\$10,691,000
Remaining life of District	\$10,691,000

The "Remaining Life of District" shall not extend beyond the year 2027.

3. To facilitate the eventual sale and/or mortgaging of the Building's commercial space, at such time as the assessed value of the Building equals or exceeds \$10,691,000, neither the CDA nor the City of West Allis shall have any further right for the then current year

or for any future year to levy a special charge against the commercial space under section 4C of the PSA.

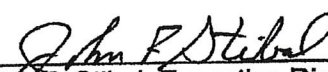
4. In consideration of the amended minimum assessed values set forth in section 3D, in the event Six Points East acquires title to the Property Six Points East shall pay to the CDA, for application to the revenues of the District, the sum of \$90,000, payable in three (3) annual installments with the first installment due on or before December 31, 2010.

5. This Agreement is made exclusively for the benefit of the parties hereto, their heirs, successors and assigns, and is not intended for the benefit of any person or entity not a party to the Agreement.

6. Each of the undersigned executing this Agreement on behalf of an entity warrants and represents that said signator has the full authority to execute the Agreement and that any necessary resolutions or approvals in that regard have been obtained.


7. The parties hereto shall cause their respective counsel to file a Stipulation with the Court, in form and substance reasonably acceptable to counsel, to provide that the Property shall be sold at the Sheriff's sale subject to the rights of the CDA under the DA and under Sections 4 and 8 of the PSA.

**Community Development Authority
of the City of West Allis**

By: 
John F. Stibal, Executive Director

Date: 2-3-10

Six Points East LLC

By: 
Michael H. Dilworth, Sole Member

Date: 2/3/10