

29



City of West Allis

Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2003-0520	Communication	In Committee
Communication from the Acting Manager, Economic Development Division, relative to revision of commitment letter for Hunter 12247, LLC's Economic Development Loan.		
Introduced: 08/05/2003		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

Approval - ~~pass~~

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>8-5-03</u>	<u>✓</u>	<u>26 X</u>	Barczak	<u>✓</u>			
			Czaplewski	<u>✓</u>			
			Kopplin	<u>✓</u>			
	<u>X</u>		Lajsic	<u>✓</u>			
			Narlock				
			Reinke				<u>✓</u>
			Sengstock				
			Trudell				
			Vitale				
			Weigel				
			TOTAL	<u>4</u>			<u>1</u>

SIGNATURE OF COMMITTEE MEMBER (RECORDER)

Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

pass approved

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>8-5-03</u>	<u>✓</u>		Barczak	<u>✓</u>			
			Czaplewski	<u>✓</u>			
			Kopplin	<u>✓</u>			
			Lajsic	<u>✓</u>			
			Narlock	<u>✓</u>			
			Reinke				<u>✓</u>
		<u>✓</u>	Sengstock	<u>✓</u>			
			Trudell				<u>✓</u>
			Vitale	<u>✓</u>			
			Weigel	<u>✓</u>			
			TOTAL	<u>8</u>			



CITY OF WEST ALLIS

WISCONSIN



Department of Development

JOHN F. STIBAL
Director

July 31, 2003

The Honorable Jeannette Bell and
Members of the Common Council
West Allis City Hall
West Allis, Wisconsin

RE: Economic Development Loan – Hunter 12247, LLC

Dear Mayor Bell and Common Council Members:

At the July 1, 2003, Common Council meeting, an Economic Development Loan was approved for Hunter 12247, LLC, in the amount of \$30,000. Resolution R-2003-0206 included a draft commitment letter outlining the terms of the loan.

The applicant has reviewed the commitment letter and has requested several changes. A revised commitment letter is attached for your review. The commitment is consistent with the terms approved by the Resolution. Most of changes were material such as closing dates and language clarifications. Per the advise of the City Attorney, a change under Item 9 - Security, is brought to your attention. The change resulted in further subordination of the City's position under the General Business Security Agreement of the assets of MII Equipment, Inc. Previously, the City held a second position behind Park Bank. Since MII Equipment, Inc., has a purchase and sale obligation with Lift-Rite, Inc., the security interest of the City would be subordinate to Lift-Rite.

Staff recommends the change has not reduced the security of the loan based upon the City holding a second position on the real estate and receiving a Personal Guarantee of payment and performance from Mr. James Hunter, managing member of Hunter 12247, LLC, and President of MII Equipment.

We respectfully submit this communication and recommendation for the Common Council's consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Schloss'.

Patrick Schloss
Acting Economic Development Manger

PS:bjb

h\h-c-r-cl

Attachment



CITY OF WEST ALLIS

WISCONSIN



Department of Development

JOHN F. STIBAL
Director

July 29, 2003

Mr. James H. Hunter
Hunter 12247, LLC
13855 W. Juneau Blvd.
Elm Grove, WI 53122

Dear Mr. Hunter:

Per the modifications you communicated on July 3, 2003, the City of West Allis has revised the original Commitment Letter dated July 2. Since several items have changed, the revised Commitment Letter dated July 29, 2003 will be forward to Common Council for approval on August 5. Please review the letter and forward any comments as soon as possible.

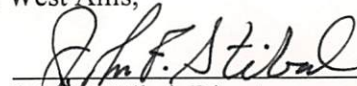
1. Borrower. The Borrower shall be Hunter 12247, LLC, a Wisconsin limited liability corporation, whose business office is at 13855 W. Juneau Blvd., Elm Grove, WI.
2. Guarantor. James H. Hunter, Managing Member of Hunter 12247, LLC.
3. Project. Loan proceeds are to be as a mortgage toward the purchase of the real estate at 12247 W. Fairview Ave.
4. Loan Amount. The loan amount shall not exceed \$30,000. Disbursement of the aggregate principal will be at loan closing. The loan will be evidenced by a note payable by the Borrower to the City.
5. Interest Rate. (To be computed on basis of 360-day year.) The interest rate shall be 5.75 percent per annum. In the event of default, all unpaid principal and interest shall bear interest at the rate of (11.5%) per annum until paid.
6. Term. The term of this loan shall be 60 months.
7. Payments. Payments are due on the first day of each month commencing with calendar month following that in which the initial disbursement of loan proceeds is made.
8. Late Charge. A late charge not to exceed one percent (1%) on each dollar of each payment which is more than ten (10) days in arrears may be collected provided that no such charge shall exceed the maximum amount which may be charged according to law.

9. Security. As security for the loan, the Borrower will deliver to the City:
 - A. A second mortgage on the real estate of Hunter 12247, LLC, subordinated only to the security interest of Park Bank.
 - B. A General Business Security Agreement of the assets of MII Equipment, Inc., subordinated only to the security interests of Park Bank and Lift-Rite, Inc.
 - C. A Personal Guarantee of payment and performance from Mr. James H. Hunter.
10. Loan Processing Fee. A non-refundable fee of Two Hundred Fifty Dollars (\$250.00) to be paid upon acceptance and delivery of this Commitment. (Borrower may elect to include this fee in the terms of the note). The fee is compensation to the City for making the loan and shall be fully and completely earned upon acceptance of this Commitment by the Borrower.
11. Maturity Date. This loan shall mature 60 months from the first of the month after closing.
12. Closing Date. The loan shall close on or before September 5, 2003.
13. Prepayment Privilege. The loan may be prepaid, in whole or in part, at any time without penalty or restriction.
14. Job Creation/Retention. Borrower agrees to retain at least 6 FTE employees from the existing Milwaukee location and add five full-time equivalent positions over the next three years. At least fifty-one percent (51%) of these employees shall be low-to moderate income persons.
15. General Conditions. All of the terms and conditions contained in the attached "General Conditions" (Exhibit No. 1) for economic development loans and "Federal Requirements" (Attachment A) are incorporated into this Commitment.
16. Acceptance. Except as provided in the General Conditions, this Commitment shall be deemed binding upon the City if the City receives an unqualified acceptance by the Borrower of the terms and provisions contained herein, evidenced by the Borrower properly executing this document below and delivering it to the office of the undersigned on or before August 11, 2003, along with the non-refundable loan processing fee and the written guarantee of the loan by James H. Hunter. If not so accepted, the City shall have no further obligation hereunder.

Mr. James H. Hunter
Page 3 of 3
July 29, 2003

City of West Allis,

By:


John F. Stibal, Director
Department of Development

Acceptance

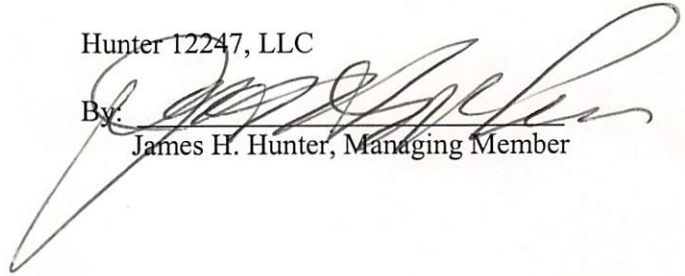
The foregoing Commitment, as well as the terms and conditions referred to therein, are hereby accepted.

Date:

8/25/03

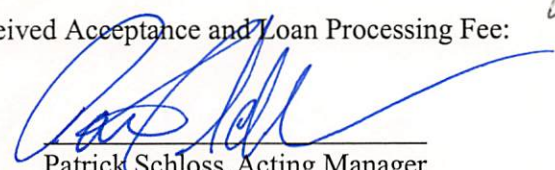
Hunter 12247, LLC

By:


James H. Hunter, Managing Member

Received Acceptance and Loan Processing Fee:

By:


Patrick Schloss, Acting Manager
Economic Development Division

Date:

8-25-03

Attachments

h\h-cl2-r

EXHIBIT NO. 1

CITY OF WEST ALLIS
ECONOMIC DEVELOPMENT LOANS
GENERAL CONDITIONS
(REAL ESTATE)

BORROWER: Hunter 12247, LLC

COMMITMENT: July 29, 2003

LOAN AMOUNT: \$30,000

In addition to the other terms and conditions set forth in the Commitment, the Loan is subject to the following general requirements, terms and conditions and borrower representations:

1. Closing. Closing is defined as the execution and delivery of the Note and other required Loan Documents by and between the City and the Borrower. Time is of the essence with respect to the closing date. There can be no extensions of the closing date unless applied for in writing and granted in writing at least ten (10) days prior to the original closing date.

2. Job Creation. With three years of closing, the Project will create or have created at least the number of permanent, full time jobs for low to moderate income persons indicated in the commitment letter. The Borrower will agree that the jobs created will be held by low to moderate income persons and that it will provide training for any of those jobs requiring special skills or education; and, will give to the City, upon demand, such information as the City may deem necessary to document this requirement. A low to moderate income person is defined as a member of a low to moderate income family within the current applicable income limits for the section 8 Rental Assistance Program administered by the City.

3. Need for Assistance. Borrower represents that the Project would not be undertaken unless the public funding on which it is based becomes available, as the Borrower can maximally raise only a portion of the debt and equity funds necessary to complete the Project.

4. Federal Regulations. Throughout the term of the Loan, the Borrower will comply with all applicable federal regulations set forth on Attachment A, Federal Regulations.

5. Loan Documentation. Borrower shall execute and deliver to the City an Economic Development Loan Agreement, and all other Loan documents which the City shall deem necessary or require relative to the completion of the Loan. Such documents shall be in form, substance and content satisfactory to the City. All documents and data pertaining to the legal aspects of the transaction are subject to the approval of the City Attorney. Borrower shall provide such other documentation and/or assurances as the City or its Attorney may reasonably require.

6. Other Documentation. Prior to closing, to the extent required by the City, the Borrower shall furnish to the City in form and content acceptable to the City:

(a) Title Insurance. A title insurance policy on an A.L.T.A. form in the amount of the Loan issued by a title company and through a title agency approved by the City, naming the City as insured mortgagee, and insuring that the title to the Project Real Estate is vested in fee simple in the Borrower and

that the City has a second lien on the Project Real Estate with no exceptions or exclusions other than as may be approved by or acceptable to the City. The title commitment shall also provide such affirmative coverage over items such as access, construction liens and zoning as may be required by the City.

(b) Survey. A current survey of the Project Real Estate showing the legal description of the Real Estate, the boundaries of the land, the location of improvements (either as made or as proposed) and any other features affecting the Real Estate, including, without limitation, all streets, easements, rights of way, utility lines, bodies of water, encroachments both onto the Real Estate and from the Real Estate onto adjacent real estate, and set back and other building lines, as the City may require. The surveyor shall be a registered land surveyor in the State of Wisconsin. The surveyor shall certify the accuracy of the survey to the City.

(c) Authority. All appropriate documents evidencing the existence and good standing of the Borrower and any guarantors and resolutions authorizing the Project and the Loan and directing the appropriate officers or partners of the Borrower, as the case may be, to execute and deliver the Loan documents.

(d) Compliance. Evidence from the appropriate governmental authorities and such other evidence, certificates or opinions as the City may require showing or stating that the intended use of the Project Real Estate will comply with all applicable zoning, building, health, environmental, safety and other laws, rules and regulation applicable to the Project Real Estate.

(e) Insurance. Fire and extended coverage insurance for the Project Real Estate and such other insurance issued by companies and in amount satisfactory to the City with a loss payable clause in the City's favor.

(f) Leases. If the Project Real Estate is or will be subject to leases, the Borrower shall furnish to the City prior to closing:

(1) A correct and complete copy of each lease for each existing tenant whose term shall coincide with at least the term of this Loan and a pro forma lease to be used for unoccupied space in the Project Real Estate; and

(2) An estoppels letter from each existing lessee in form and content acceptable to the City stating, no default has occurred under the Lease, the lessee is subordinate to the mortgage and that lessee consents to and acknowledges an assignment of the lease to the City.

(g) Licenses. A certified copy of each license, permit and franchise agreement necessary or required to conduct the Borrower's business operation.

7. Legal Matters. The Borrower's counsel or financial institution representative shall furnish opinions satisfactory to the City that the Borrower is legally existing and is in good standing in all jurisdictions where it transacts business; that the Loan Documents are legal, binding and enforceable in accordance with their terms; that the Loan Documents, and the Borrower's obligations thereunder, do not contravene the terms and conditions of any agreement to which the Borrower is a party or by which the Borrower is bound; and that there are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting the Borrower or the Project. The Borrower shall cause counsel for the guarantors to deliver to the City legal opinions covering the same matter for the Guarantors. Such opinions shall be dated as of closing.

8. Costs. All costs and expenses incidental to the making, administration and enforcement of the Loan, including fees and expenses of the City's counsel, if any, shall be paid by the Borrower, whether or not the Loan closes.

9. Adverse Change. As of the closing date, there shall be no material adverse change in the value of the Project Real Estate or in the business or financial condition of the Borrower or of any guarantor, the Project Real Estate shall not have suffered any significant damage by fire or other casualty and no condemnation or adverse zoning or other ordinances, restrictions or similar matters shall have been enacted, adopted or proposed by any federal, state or local government or any board, authority, commission, agency or department asserting jurisdiction over the Project Real Estate which, in the City's judgment, would have a material and adverse affect on the Project Real Estate.

10. Bankruptcy. The City shall not be obligated to close the Loan if prior to closing the Borrower or any guarantor or any party who has a financial or business interest in or relationship with the Borrower becomes insolvent or the subject of state insolvency proceedings or a receiver, trustee or custodian or other similar official is appointed for, or takes possession of any part of the property of such party or any such party takes any action to become, or is named, the subject of proceedings under the federal bankruptcy code or state receivership statutes.

11. Transfer Restriction. Except as otherwise provided in the Commitment, the Loan documents shall provide that, during the term of the Loan, or any extension thereof, no sale, conveyance, mortgage, transfer or grant of any interest in encumbered real estate, if any, or any part thereof, nor any sale, assignment, pledge, transfer or grant of any interest or right in any shares of stock or partnership interest in the Borrower shall be made without the prior written consent of the City. The Borrower will continuously maintain its existence and right to do business in the state and the City of West Allis.

12. Other Liens and Fixtures. Except as otherwise provided in the Commitment, the Loan documents shall provide that the Borrower shall not create, nor permit to exist, any liens on, or security interest in, any Project equipment, except the lien of the City, or other personal property or fixtures owned by the Borrower or any guarantors and used or usable in connection with the operation of the Borrower's business and shall not lease any such equipment, property or fixtures without the prior written consent of the City.

13. Insurance and Condemnation Proceeds. Except as otherwise provided in the Commitment, the Loan documents shall provide that all insurance and condemnation proceeds shall be applied to the Note, whether or not then due and payable.

14. Environmental Matters. Borrower represents and warrants to the City that to the best of Borrower's knowledge and belief, and after reasonable inquiry, the past, present or contemplated use of the Project Real Estate has not violated and does not violate any environmental laws, regulations, ordinances, orders or similar governmental restrictions; the Project Real Estate is not within a government identified area of contamination; and the subject property and any site in the vicinity of the same are not nor have been the site of any oil, hazardous waste or other toxic substance or storage.

15. Use of Funds. The Borrower will use the proceeds of the Loan in the manner set forth in the Commitment Letter.

16. Construction Loans.

(a) Plans and Specifications. Prior to closing, the Borrower shall submit to the lender for its approval final and complete architectural and mechanical plans and specifications for the Project Real

Estate. Prior to closing, the Borrower shall furnish evidence that all applicable governmental bodies have approved the plans and specifications.

(b) Construction Costs and Contracts Prior to Closing. The Borrower shall deliver to the City a complete construction cost breakdown, including all soft costs. All construction, architect and engineering contracts for the Project are to be submitted to the City for its review and approval.

(c) Project Completion. The Borrower shall start and complete the Project by the dates indicated in this commitment.

17. Prohibition Against the Borrower's Assignment. The Commitment is not assignable or transferable by the Borrower.

18. Not Joint Venture. The City shall not be deemed to be a partner or joint venturer with the Borrower and Borrower shall indemnify and hold the City harmless from any and all damages resulting from such a construction or alleged construction of the relationship of the parties.

19. Entire Agreement. The Commitment shall supersede all prior written or oral understandings with respect thereto; provided, however, that all written and oral representations of the Borrower, any principal of the Borrower or any guarantor to the City shall be deemed to have been made to induce the City to make the Loan. No modification or waiver of any provision of the Commitment shall be effective unless it is in writing signed by the City.

20. Compliance with Laws. The Borrower shall comply fully with all applicable local, state and federal laws, ordinances, rules and regulations relating to the operation and management of its business, including, without limitation, all such legal matters relating to zoning, subdivision, safety of construction, building codes, land use, environmental protection and conservation. The Borrower shall immediately notify the lender in writing of any notice received from any governmental entity indicating that the Borrower is, or may be in violation of such laws, ordinances, rules or regulations.

21. Complete Performance and Waiver. If the Borrower or guarantor fail to comply fully with the provisions of this Commitment, the City shall be under no obligation to close the Loan. The waiver by the City of any of the conditions contained herein shall be in writing.

22. Duration of Commitment. If timely accepted, the Commitment shall remain in full force and effect until the closing date as originally scheduled in the Commitment. If the closing does not occur by the closing date or is not extended in accordance with the terms of the Commitment, the City shall have no further obligation under the Commitment.

23. Wisconsin Law. The subject Loan is to be governed by and shall be construed according to the laws of the State of Wisconsin.

24. Financial and Other Data. Prior to closing, the Borrower and each guarantor shall furnish to the City:

(a) Organizational Documents. If a corporation, its articles of incorporation, by-laws, certificate of good standing and a list of current officers and directors; if a partnership, its partnership agreement and certificate of limited partnership (if a limited partnership) and a list of current partners; and

(b) Financial Statements. Current statements of financial condition and earnings.

25. Annual Financial Statements. During the life of the Loan, the Borrower and the guarantors, if any, shall furnish the City with annual financial statements as the City shall reasonably require. The City shall have the right to inspect any related books of account.

26. Representation. The Borrower represents to the City that all information provided to the City to induce the City to issue the Commitment is true and correct.