

DEVELOPMENT AGREEMENT

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

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

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

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

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

1 1. SELLER'S OBLIGATIONS.

2 The Seller shall be obligated as follows:

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

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

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

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

15 2. BUYER'S OBLIGATIONS.

16 Buyer shall be obligated as follows:

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

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

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

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

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

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

1 Sale Agreement.

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

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

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

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

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

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

3 3. **CONSTRUCTION QUALITY GUARANTEE.**

4 Buyer shall provide the following:

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

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

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

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

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

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

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

18 4. **INTENTIONALLY LEFT BLANK.**

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

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

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

6 6. **NO ASSIGNMENT.**

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

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

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

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

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

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

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

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

1 d. Catch basins and storm sewer locations.

2 e. Connection to existing utilities.

3 8. PARKING

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

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

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

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

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

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

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

8
9 9. **REFUSE.**

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

14
15 10. **UTILITIES AND SITE LIGHTING.**

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

20 11. **OTHER SITE IMPROVEMENTS.**

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

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

19 12. **BUILDING LOCATION.**

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

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

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

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

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

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

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

1 building design and aesthetically appropriate.

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

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

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

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

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

13
14 14. **PROPERTY IMPROVEMENTS.**

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

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

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

5 (1) Floor plans of typical floors.

6 (2) Entrances, exits, loading docks, and building service areas.

7 (3) Storage areas and buildings.

8 (4) Architectural treatment of building exteriors including building
9 materials, and colors.

10 (5) Samples of construction materials.

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

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

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

7 15. ACCESSORY STRUCTURES.

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

14 16. FENCING.

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

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

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

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

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

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

4 17. SIGNAGE.

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

12 B. Standards.

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

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

1 (3) Sign lighting, if desired, must be ground-mounted hidden from view
2 from the street. Individual letters may be internally illuminated.

3 (4) Directional SIGNAGE shall be a post and panel system and shall be
4 limited in size to four (4) square feet and not posted more than six (6)
5 feet above the grade. Not more than one sign shall be provided at
6 each access drive.

7 18. **SATELLITE DISH ANTENNAS**

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

9 Approvals will be subject to the following criteria:

10 A. Antennas shall be erected or maintained in the rear yard of buildings and not
11 on the street side of buildings. The Plan Commission shall have the authority to authorize
12 other locations based on demonstrated site constraints.

13 B. Height restriction: 35 feet

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

15 D. The antenna shall be located and designed so as to minimize the visual impact
16 on surrounding properties and its visibility from the public street. Antennas should be
17 screened through the addition of harmonious architectural features and/or landscaping in
18 keeping with the elements and characteristics of the property.

19 E. No obstruction shall protrude into the airspace defined by the forward
20 extension of a plane from the outer edge of the antenna dish to infinity and at the same

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

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

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

6 19. **MAINTENANCE RESPONSIBILITIES**

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

10 (1) Any Urban Art placed on the site or building shall be maintained
11 appropriately. If materials age into poor condition the Plan
12 Commission shall have the discretion to request that they be replaced.
13 The Plan Commission prior to being put in place shall first approve
14 any change to the Urban Art.

15 (2) The removal of all litter, trash, refuse, and wastes.

16 (3) The mowing of all lawn areas to a height of less than five (5) inches
17 unless otherwise approved in writing by the Plan Commission. Those
18 designated and approve unused lot areas shall be cut a minimum of
19 three (3) times per year.

20 (4) The maintenance of lawn and landscape areas in a weed-free, healthy

1 and attractive condition.

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

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

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

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

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

10 (10) Snow and ice removal.

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

18 20. **CONSTRUCTION REMEDIES.**

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

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

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

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

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

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

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

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

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

4 21. **DEFAULT PROVISIONS.**

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

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

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

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

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

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

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

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

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

1 23. **FORCE MAJEURE.**

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

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

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

16 25. **TIME.**

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

18 26. **INDUCEMENTS AND RELIANCE.**

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

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

5 27. NOTICES.

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

12 To the City: Executive Director
13 Community Development Authority of the City of West Allis
14 7525 West Greenfield Avenue
15 West Allis, WI 53214
16 Attn: John F. Stibal
17

18 with a copy to:

19 City Attorney
20 City of West Allis
21 7525 West Greenfield Avenue
22 West Allis, WI 53214
23 Attn: Scott E. Post, City Attorney
24

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

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

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

14 28. **ENTIRE AGREEMENT.**

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

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

23 30. **CAPTIONS.**

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

1 31. **COUNTERPARTS.**

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

4 32. **SEVERABILITY.**

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

12 33. **CONTINUITY**

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

18 34. **MEMORANDUM OF AGREEMENT.**

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

1 35. CONSTRUCTION

2 Seller and Buyer acknowledge that each party and its counsel have received and
3 reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities
4 are to be resolved against the drafting party shall not be employed in the interpretation of this
5 Agreement or any amendments or exhibits hereto.

6 35. GOOD FAITH.

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

9

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

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(TEXT CONTINUED ON NEXT PAGE)

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West Allis Development, LLC

By: [Signature] Member

Brian Klesmet, Member

By: [Signature]

Steven Stewart, Member as witness

STATE OF WI)

Milwaukee COUNTY) SS.

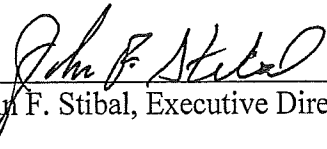
Personally came before me this 1 day of September, 2006, the above named Brian Klesmet and Steven Stewart, the President and Secretary, of XXXXXXXXXXXX, Inc., to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of said corporation.

[Signature] [SEAL]
Print Name: Diana L. Malinger
Notary Public, Milwaukee County
State of Wisconsin
My Commission: 4-11-10

(TEXT CONTINUED ON NEXT PAGE)

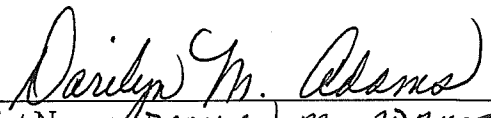
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COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS

By: 
John F. Stibal, Executive Director

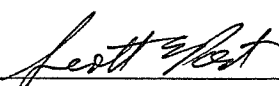
STATE OF _____)
) SS.
_____ COUNTY)

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

 [SEAL]
Print Name: DARLYN M. ADAMS
Notary Public, MILWAUKEE County
State of WISCONSIN

My Commission: Expires 12/10/06

Approved as to form this 6 day
of Sept., 2006.


Scott E. Post, City Attorney

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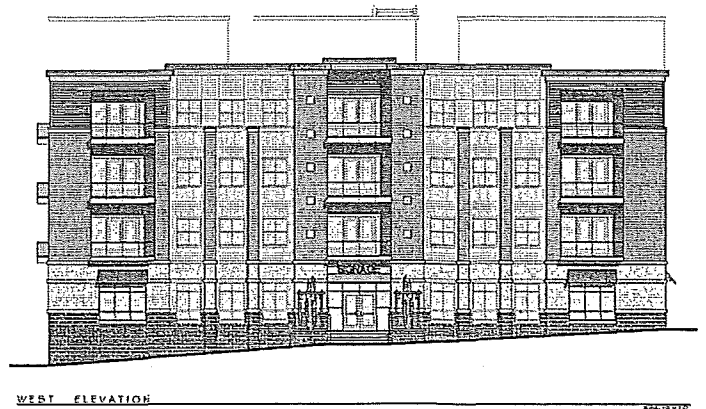
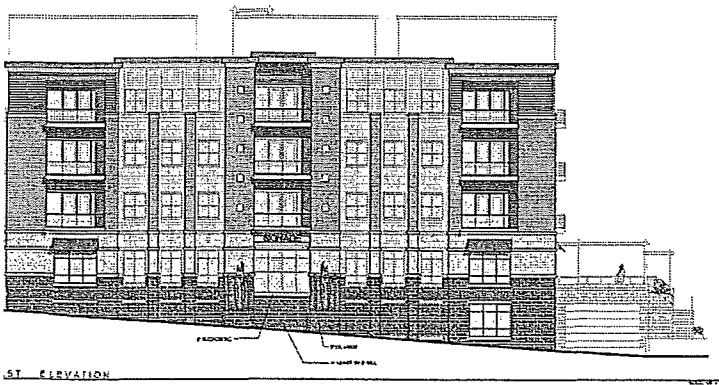
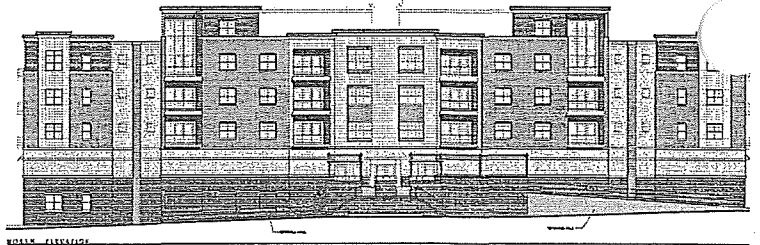
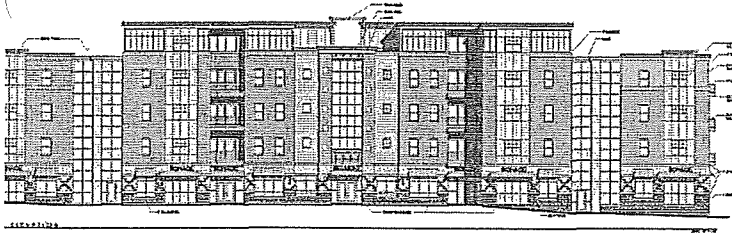
PLANS & SPECIFICATIONS

EXHIBIT 1

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EXHIBIT 2

ARCHITECTURAL ELEVATIONS



INTERIOR FINISHES

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ENVIRONMENTAL ADDENDUM

1. NO ENVIRONMENTAL REPRESENTATIONS OR WARRANTIES:

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

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



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

12 **3. ENVIRONMENTAL DOCUMENTS**

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

19 **DOCUMENT LIST:**

- 20
21
22 **1. Phase I Environmental Site Assessments**
23 **By: The Environmental Management Company LLC (TEMCO)**
24
25 X 304 6328-6330 West Greenfield Avenue, 1356 - 1358 South 64th
26 Street,
27 Dated February 10, 2006
28 Tax Key: 439-0282-000 – Former tavern and apartments, razed
29 after fire in 2004.
30
31 X 305 & 306 6320-6322 West Greenfield Avenue,

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

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

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

31
 32 * 1371 South 63rd Street not completed
 33

34 ** Additional asbestos assessment may be required in
 35 apartments, which were occupied at the time of
 36 inspection
 37
 38
 39

40 **3. Geotechnical Engineering Exploration and Analysis**
 41 **By: Giles Engineering Associates, Inc.**
 42
 43

44 Proposed Lofts at Six Points
 45 63rd Street & Greenfield Ave.
 46 West Allis, Wisconsin
 47 Dated October 11, 2005
 48
 49
 50

51 **4. Environmental FirstSearch Report**
 52 **By: FirstSearch Technology Corporation**

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

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

BELMONT CENTER
DEVELOPMENT COST

A. CONSTRUCTION COST ITEMS:

1. Construction Cost	7,600,000
2. Tenant Improvements	550,000
3. Rooftop Gardens	120,000
4. Site grading, stone, storm water mngmt	60,000
5. Sewer and Water	50,000
6. Landscaping and Urban Design	145,000
7. Parking lot and Sidewalks	145,000
TOTAL CONSTRUCTION COST ITEMS	\$ 8,670,000

B. SOFT COSTS ITEMS:

1. Permit and DILHR approval	70,000
2. Building Architect/Engineer	190,000
3. Soil Borings	2,500
4. Appraisal	5,000
5. Plotting & Printing	8,000
6. Bond Cost	0
7. Surveys/Environmental	8,000
8. Development Fee	390,000
9. Developer Fee Paid to City	50,000
10. Marketing/Ad/Promo	40,000
11. Legal/Accounting	45,000
12. Loan Fees	55,000
13. Closing Costs	40,000
14. Interest Expense-Bank (8.25%-9.5%)	1,257,212
15. Insurance	45,000
16. 2006 Real Estate Taxes	23,250
17. Real Estate Taxes	115,600
18. General & Administrative	15,000
19. Soft Cost Contingency	175,000

TOTAL SOFT COST ITEMS **\$ 2,534,562**

TOTAL CONSTRUCTION AND SOFT COST ITEMS **\$11,204,562**

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4 **1. DEVELOPMENT SCHEDULE AND PERFORMANCE GOALS**

5
6 a. **City Land Assembly Actions** **Date Required** **Status**
7
8 **Plan Commission**
9 Alley Vacation March 22, 2006 Approved
10 Land Transfer March 22, 2006 Approved
11 Land Sale March 22, 2006 Approved
12 Rezone (C-3 and PDD) March 22, 2006 Approved
13

14
15 **Community Development Authority**
16 Land Transfer (Parking Lot) March 14, 2006 Approved
17 Purchase and Sale and Dev. Agrmmt. July 13, 2006 Held
18

19
20 **Safety and Development Committee**
21 Land Transfer (Parking Lot) March 15, 2006 Approved
22

23 **Common Council**
24 Land Sale and Purchase/Sale/Dev. Agrmnt. April 18, 2006 Approved
25 Rezone (C-3 and PDD) April 18, 2006 Approved
26 Vacate Alley May 2, 2006 Approved
27
28

29 b. **Developer Actions** **Date Required** **Status**
30 Site, Landsc., Architectural July 26, 2006 Approved
31 Certified Survey Map August 22, 2006 Submitted
32 Construction Drawings (for permit review to the State) October 15, 2006 Pending
33 Construction Start November 15, 2006 Pending
34 Construction Completion March 1, 2008 Pending
35 (Occupancy permit for the first condo unit)

36 c. **Performance Guarantee/Shortfall Agreement**
37 **Schedule** **Minimum Assessed Value**
38 12/31/2006 \$930,000
39 12/31/2007 \$2,706,825
40 12/31/2008 \$8,450,000
41 12/31/2009 \$9,597,000
42

