

EXHIBIT 1 - AMENDED AGREEMENT

THIS Amended AGREEMENT made as this ___ day of August, 2012 by and between the Community Development Authority of the City of West Allis ("Seller") and Toldt Development, Inc. ("Buyer")

Recitals

WHEREAS, on or about May 19, 2006 the Seller and Buyer entered into a Purchase and Sale Agreement and a Development Agreement ("Agreement") pertaining to the 3 phased project legally described and referenced within Exhibits 1-A and 1-B of the existing Agreement and hereinafter referenced as a "Phase" (The parcel described within Exhibit 1-A of Agreement as "Area 1" is Phase 2, "Area 2" is Phase 1 and "Area 3" is Parcel 3), including the purchase, sale and development into a number of mixed use buildings consisting of commercial space and residential units.

WHEREAS, subsequently the Buyer has completed Phase 1 of the project and because of the change in lending practices from financial institutions since the initial Agreement the Buyer has asked to amend the agreement in order to foster development of Phase 2 of project, the parties have resolved the priority issues set forth in this agreement;

Amended 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:

The proposed amendment pertains to the Development Agreement/Purchase and Sale Agreement signed on May 19, 2006 and only amends the conditions outlined below while the terms and conditions of the existing Development Agreement and Purchase and Sale Agreement will remain intact and enforced.

1. Phase 2. Buyer intends to convey the 5.8 acres of land that the parties commonly refer to as Phase 2 to a limited liability company that will be created in accordance with Section 13 of the Agreement and called Six Points LLC. The Buyer will then assign all of its rights, interests, and obligations under the Development Agreement and Purchase and Sale Agreement with respect to Phase 2 to the LLC.
 - a. Project. The Buyer plans to construct a multi-phase development consisting of four multi-unit residential apartment buildings, starting with a \$10-million, 112-unit multi-story apartment building on the 5.8 acres of land recognized as Phase

2. The property is bordered by W. National Avenue to the North, a railroad spur to the West, S. 66 St. to the east, and stretches to W. Mitchell St. to the South.
 - b. The Project is part of a multi-phase development as outlined in **Exhibit A – Proposed Site Plan**. The Project is depicted on the Proposed Site Plan as Buildings Q and R.
 - c. The entire development of Phase 2 will increase the total number of units to be developed from 225 units as contemplated by the Agreement to 245 units. All units will be residential apartment units. There will be no condominiums or commercial space.
2. Economic Investment. In effort to support the development, the City has agreed to provide the following:
- a. Purchase of Land.
 - i. Purchase the property from Toldt Development Inc. at 65** W. Lapham Street, Tax # 454-0269-000, as outlined in **Exhibit B- Site Area**
 - ii. Purchase price of the property will be for \$150,000.
 - iii. The City of West Allis will purchase the property “as is.”
 - iv. The closing shall occur on or before ~~August 31~~, 2012. *Sept. 19*
 - v. Any and all transfer and recording costs shall be paid by Toldt Development Inc.
3. Development Grant. The City of West Allis is a recipient of a U.S. Environmental Protection Agency Brownfield Clean-up Grant in the amount of \$240,000 (includes a required a 20% match). The funds must be obligated and incurred by September 20, 2012 for the 5.8 acres of Phase 2 within the Six Points Farmers Market Redevelopment Area. The funds are to be spent on clean-up activities. As recipient of the grant, the City of West Allis will responsible for the activities covered by the grant.
- i. The grant totals \$200,000 to the project.
 - ii. Within 45 days of project completion the Buyer will reimburse the Seller for eligible match expenses. Any costs over and above the stated amount for the grant and match will be the responsibility of the Buyer. The Buyer shall have the authority to approve or deny any change orders related to this grant.
 - iii. The conditions of the grant require City of West Allis ownership of the land during the project.
 1. Upon notification to the Buyer by the Seller that the project is completed to the City’s satisfaction, the Seller will

transfer the properties (with the exception of the property set forth in Exhibit B which seller shall retain) back to the Buyer via Quit Claim Deed, by a mutually agreeable date to be no later than October 31, 2012, "as is".

- iv. Funds must be used for environmental clean-up costs such as soil capping or an engineered barrier.
 - v. Work performed under the grant must be completed under a separate construction contract or the entire development is subject to Federal Labor Provision and prevailing wage requirements associated with the grant funds.
 - vi. The Buyer will provide the design, plan, and specification that will be included in bid package for the work of soil capping and the construction engineered barrier that is consistent with the Material Handling Plan and Cap Maintenance Plan submitted to the Wisconsin Department of Natural Resources.
4. Development Loan. The Seller will provide a loan to the Buyer in the amount up to \$500,000 as financing of the Project.

The loan will come from the City of West Allis U.S. EPA Revolving loan funds.

- i. Terms and Conditions. The loan will have a five-year term and will be amortized over 30 years with no principal or interest payments for two years with a final balloon payment at the end of 5 years. For more detailed terms and conditions please reference **Exhibit C - EPA Loan Terms and Conditions**. Funds for the loan will be made available through U.S. EPA Revolving Loan Funds
 - 1. If Project costs are related to environmental clean-up activities and financed through US EPA RLF funds, the work must be performed under separate contracts and adhere to federal procurement policies
 - ii. The Buyer shall submit a letter with an expression of interest and willingness to pursue financing subject to the Seller's approval.
 - iii. This loan shall be null and void if the Buyer fails to secure development and construction financing.
5. Environmental Cleanup. Exhibit D Environmental Addendum of the Agreement Section I.A. General Rights and Responsibilities of Seller (Applicable for All Three Phases):

subsection (1) is amended redefining "Remediation Project Completion" as receiving written approval from The Wisconsin Department of Natural Resources (WDNR) of a Development at a Historic Fill Site Exemption (Historic Fill Exemption) and WDNR written approval of a Remedial Action Designed/Partial Site Remediation Report. The Buyer will be required to follow the requirements of each approval letter. Upon completion of the redevelopment construction, the Buyer is eligible and will be responsible for submitting the Site Closure Package to the WDNR for approval.

6. Buyer's Obligations. To the extent that they would be applicable, the Seller agrees to waive Section 2F of Exhibit C of the Agreement and replace it with the following:

a. <u>Schedule – Part 1 Buildings</u>	<u>Brief Land Description</u>	<u>Guaranteed Direct Project Cost</u>
1/1/2014	Q & R Lot 3 of CSM# 8231	8,064,000

- i. Buyer guarantees that the Guaranteed Direct Project Cost listed above will be reached by January 1, 2014. To the extent that the Actual Direct Project Cost (Total Development Cost minus the land cost and the development fees) for the property is less than the Guaranteed Direct Project Cost listed above the Buyer will pay the City the difference between the actual cost and guaranteed cost multiplied by that year's mill rate until such time that the actual cost meets the guaranteed cost. The Buyer shall allow the City access to all applicable financial statements regarding this guarantee.
- ii. Buyer agrees that the amount of any shortfall as referenced above, in Section 6(i) of this Amended Agreement, due and owing to the City of West Allis in any given year may be treated as a special charge (as defined in Wis. Stat. 74.01(4) levied against the property. The special charge shall be a lien on Buyer's commercial entity and shall be extended upon the tax roll for the year in which it is due and owing against the Property.
- iii. In the event that the Buyer does not commence construction (footings and foundation inspection approval by the City of West Allis Building Inspection Dept.) within six months of the development schedule listed within Section 6(a)(i) of this Amended Agreement the Seller may at its sole discretion repurchase from the Buyer all or any portion the unimproved land within the Phase 2 land area, within six months of the Seller's notice. The purchase price shall be 75% of the fair market value of the land purchased as set forth in the appraisal report obtained by the Buyer's development and construction financing lender.

b. <u>Schedule – Part 2</u>	<u>Building</u>	<u>Brief Land Description</u>
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- i. 1/1/2015 P Lot 2 of CSM# 8231
- 1/1/2016 S Lot 4 of CSM# 8231
- 1/1/2017 N Lot 1 of CSM# 8231

ii. In the event that the Buyer does not commence construction (footings and foundation inspection approval by the City of West Allis Building Inspection Dept.) within Section 6(b)(i) of this Amended Agreement the Seller may at its sole discretion repurchase from the Buyer all or any portion the land within the area within six months of the Seller's notice. The purchase price shall be 75% of the fair market value of the land purchased as set forth in the appraisal report obtained by the Buyer's development and construction financing lender.

c. To the extent that they would be applicable, the Seller releases the Buyer from any previous and future obligations owed under Section 2F of Exhibit B of the Agreement and replaces them with the following.

- i. Buyer shall place \$222,300 into an escrow account with Buyer's development and construction financing lender, at the time of closing. If the buyer is unable to complete development and construction financing for Phase 2 with its lender by June 20, 2013 this clause shall be null and void and all of the previous and future obligations owed under Section 2F of Exhibit B of the Agreement shall apply.

7. Phase 3 Construction; Area 3: The Seller and the Buyer hereby release each other from Section 2A of Exhibit B of the Agreement and shall be released of any and all obligations set forth in the Agreement with respect to Phase 3 Construction; Area 3, including, but not limited to, any obligation to purchase Area 3.

8. 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.

9. 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.

10. Interpretation. Notwithstanding any other provision contained in the Amended Agreement, this Amended Agreement shall constitute a development agreement between the Parties within the meaning of Wisconsin law so that in the interpretation of this

Amended Agreement, if there is a discrepancy between the Amended Agreement, the Development Plan or any prior plan presented or submitted by the Buyer, this Amended agreement shall be deemed to control.


Signatures on the Next Page

Community Development Authority
of the City of West Allis

Toldt Development, Inc.



John F. Stibal
Executive Director



Helmut Toldt
President

Approval as to form this 19 day of
Sept., 2012.



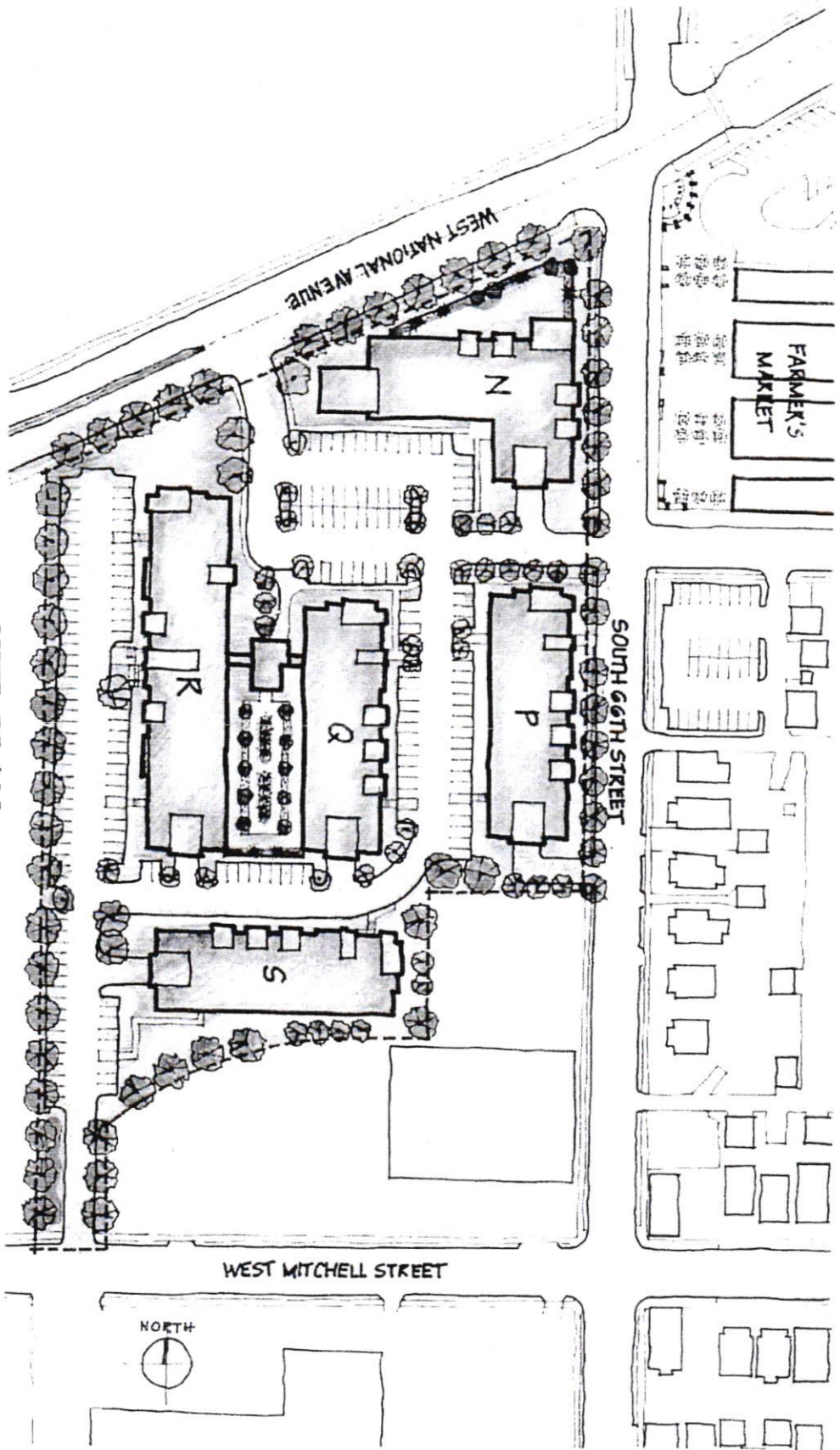
Scott Post, City Attorney

COMPTROLLER'S CERTIFICATE

Countersigned this 19 day of Sept., 2012 and I certify
that the necessary funds have been provided to pay
the liability that may be incurred by the City of West
Allis under this Contract.



Kris Moen, Acting Finance Manager



SITE PLAN

1" = 80'-0"

SIX-POINTS NEIGHBORHOOD - PHASE II
WEST ALLIS, WISCONSIN

WYDEVIN ARCHITECTS LLC
P.O. BOX 800378
MILWAUKEE, WISCONSIN 53210
Phone: 414.447.7444 | wydevinarch.com
Web: wydevinarch.com

DATE: 03/04/12
SHEET: A-1



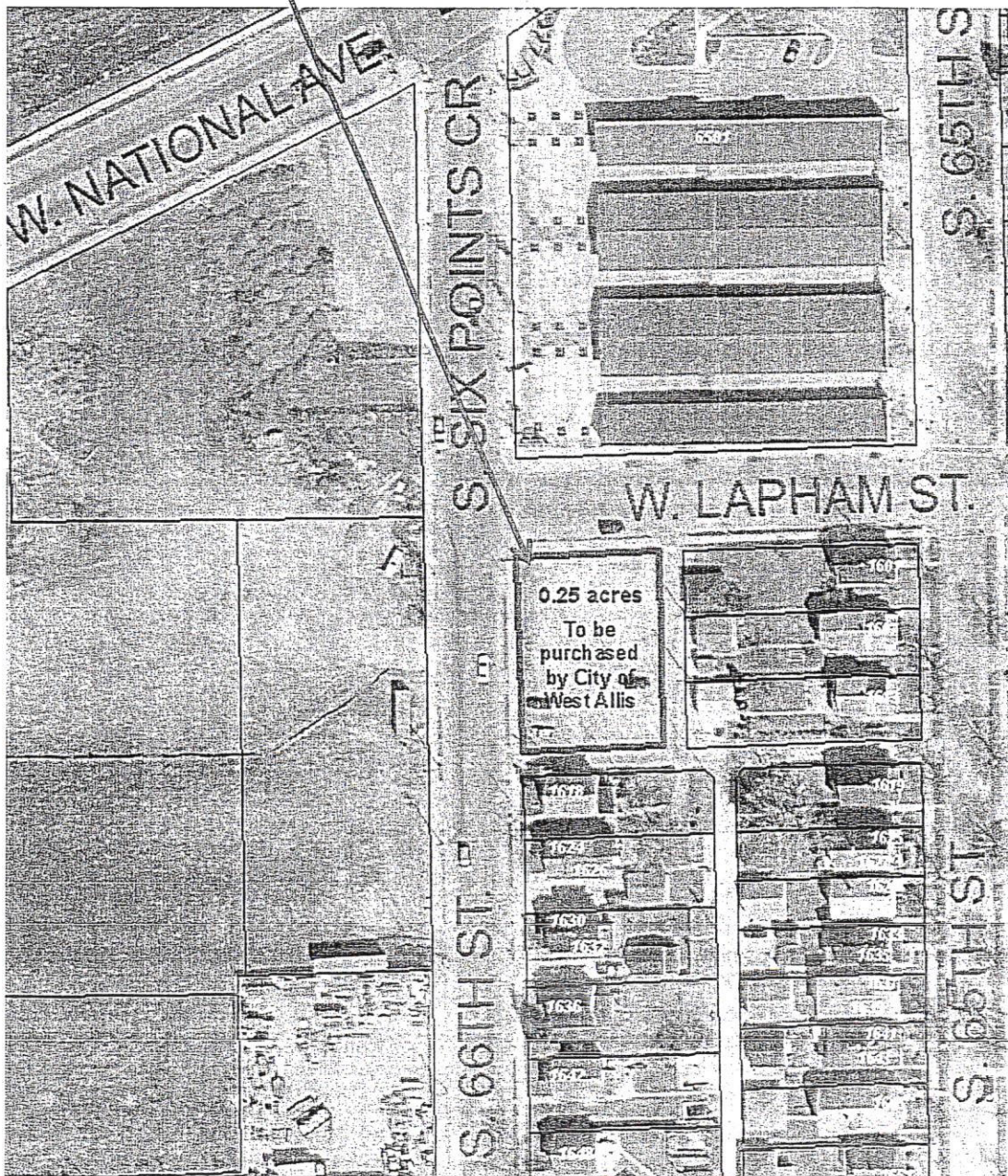
EXHIBIT B

Description and map of 0.25-acre area to be purchased by the City of West Allis from Toldt Development Inc.

General Legal Description: CENTRAL IMPROVEMENT COMPANY SUBDIVISION NUMBER 7 LOTS 1, 2, & 3 BLOCK 9, CITY OF WEST ALLIS, MILWAUKEE COUNTY, WI

Address: 65** W. Lapham St.

Tax Key No.: 454-0269-000





DEPARTMENT OF DEVELOPMENT
John F. Stibal

414/302-8460
414/302-8401 (Fax)

City Hall
7525 West Greenfield Avenue
West Allis, Wisconsin 53214

www.westalliswi.gov
jstibal@westalliswi.gov

September 14, 2012

EXHIBIT C

Helmut Toldt
Toldt Development, Inc.
4040 N. Calhoun Road
Brookfield, WI 53005

Dear Mr. Toldt:

Pursuant to your application and information provided by you, the Common Council of the City of West Allis ("City") hereby agrees to make a West Allis Brownfield Revolving Loan Fund loan to Toldt Development, Inc., in accordance with the federal U.S. Environmental Protection Agency regulations and the following specific terms and conditions:

1. Borrower. The Borrower shall be Toldt Development, Inc., have offices at the property located at 4040 N. Calhoun Road, Brookfield, WI.
2. Guarantor. Helmut, Barbara, Reinhardt and Debora Toldt of Toldt Development, Inc.
3. Project. Loan proceeds are to be used for environmental work associated with site capping, grading and soil management.
4. Loan Amount. The loan amount shall not exceed five hundred thousand dollars (\$500,000.00). Disbursement of the aggregate principal will be at draw request & work performance. 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 two and one quarter of a percent (2.25%) per annum. In the event of default, all unpaid principal and interest shall bear interest at the rate of eighteen percent (18 %) per annum until paid.
6. Term. The term of this loan shall be five years (60 months) with a 30-year amortization. A balloon payment will be required upon the last payment.
7. Payments. The loan will not have principal and interest payments for a period of two years following closing. The loan will not accrue interest for years 1 and 2 of the loan. The semi-annual payments shall be due the thirty-first month of the term.

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 subordinated mortgage on the 5.8 acres of real estate located within CSM #8231, City of West Allis, Milwaukee County, WI.
 - B. Unlimited Personal Guaranty from Helmut, Barbara, Reinhardt and Debora Toldt.
 - C. Unlimited Guaranty from Toldt Development, Inc.
 - D. Collateral Assignments of life insurance on the life of Helmut Toldt in the amount of \$300,000.

10. Loan Processing Fee. A non-refundable 0.5% fee of two thousand five hundred dollars (\$2500.00) 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 on October 1, 2017.

12. Closing Date. The loan shall close on or before September 30, 2012.

13. Prepayment Privilege. The loan may be prepaid, in whole or in part, at any time without penalty or restriction.

14. Duns Number/Federal ID Number. Borrower must provide a Duns/Federal ID Number as proof of application by closing and provide a federal identification number to the City.

15. Match. The Borrower is required to provide a 20% match of the total loan calculated at one hundred thousand dollars (\$100,000.00). The Match must come from payment of West Allis Brownfield Revolving Loan Funds eligible activities.

16. General Conditions. All of the terms and conditions contained in the attached "Federal Requirements" (Attachment A) are incorporated into this Commitment and as provided in the draft attached. City of West Allis Brownfield Revolving Loan Agreement (Attachment B)

17. Contract. The work associated with these funds must follow the attached Federal Contract documents attached as Attachment C.

18. 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 September 28, 2012, along with the non-refundable loan processing fee and the written guarantee by Helmut & Barbara Toldt. If not so accepted, the City shall have no further obligation hereunder.

SIGNATURES CONTINUED ON NEXT PAGE

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.

BORROWERS

Date: _____

By: _____
Helmut Toldt, President
Toldt Development, Inc.

Date: _____

By: _____
Barbara Toldt, Vice President
Toldt Development, Inc.

Date: _____

By: _____
Reinhardt Toldt, Treasurer
Toldt Development, Inc.

Date: _____

By: _____
Debora Toldt

