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City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2006-0137 Resolution In Committee

Resolution amending a Purchase and Sale Agreement and Development Agreement between the Community Development Authority of the City of West Allis and Toldt Development, Inc., for properties within the Six Points/Farmers Market Redevelopment Area.

Introduced: 5/2/2006

Controlling Body: Safety & Development Committee

COMMITTEE RECOMMENDATION

ADOPT

ACTION DATE:

5/2/06

MOVER SECONDER

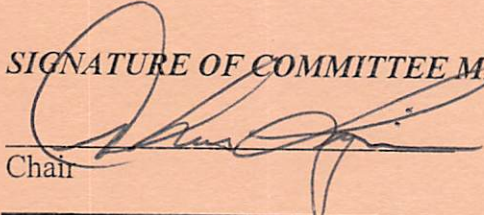
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SIGNATURE OF COMMITTEE MEMBER



Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

ADOPT

ACTION DATE:

MAY 02 2006

MOVER SECONDER

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STANDING COMMITTEES OF THE CITY OF WEST ALLIS COMMON COUNCIL 2004

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2006-0137

Final Action:

MAY 02 2006

Resolution amending a Purchase and Sale Agreement and Development Agreement between the Community Development Authority of the City of West Allis and Toldt Development, Inc., for properties within the Six Points/Farmers Market Redevelopment Area.

WHEREAS, the Common Council of the City of West Allis approved Resolution R-2005-0254 on October 18, 2005, for a Purchase and Sale Agreement and Development Agreement ("Agreement") by and between the Community Development Authority of the City of West Allis and Toldt Development, Inc., 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. 579, adopted October 11, 2005, approved said Agreement by and between the Community Development Authority of the City of West Allis and Toldt Development, Inc. 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.

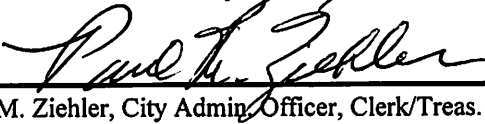
NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of West Allis, that it hereby approves the amended Purchase and Sale Agreement and amended Development Agreement by and between the Community Development Authority of the City of West Allis and Toldt Development, Inc. for the redevelopment of properties located within the Six Points/Farmers Market Redevelopment Area, in compliance with the provisions as outlined in the Purchase and Sale Agreement and Development Agreement, dated October 11, 2005 (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.

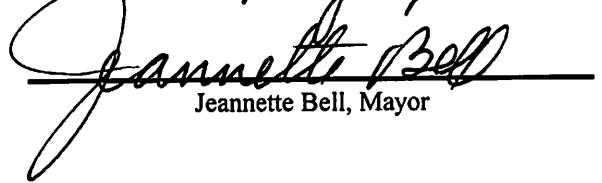
DEV-R-423\5-2-06\jmg

ADOPTED May 2, 2006



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

APPROVED May 5, 2006



Jeannette Bell, Mayor

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made as of the ___ day of March, 2006, by and between **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the **CITY OF WEST ALLIS**, pursuant to Section 66.1335 of the Wisconsin Statutes ("Seller") and **TOLDT DEVELOPMENT INC.** ("Buyer").

FOR AND IN CONSIDERATION of the premises and the mutual covenants and benefits contained herein, and for other good and valuable consideration the right and sufficiency of which are hereby acknowledged, Seller and Buyer hereby covenant and agree as follows:

1. **PROPERTY.** Seller hereby agrees to sell and Buyer hereby agrees to buy the parcel of land located in the Farmers Market area, West Allis, Wisconsin, containing approximately 18 acres, as more particularly and legally described and depicted on attached **Exhibit "A - 1"** (the "Property") and for reference purposes **Exhibit "A - B"**. The Property shall be divided into up to three separate parcels. Each separate parcel is hereinafter referred to as a "Phase."

2. **PURCHASE PRICE.**

Subject to all the terms, covenants and conditions of this Agreement, Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller and pay the amount of One Million Seven Hundred and Seventy Thousand Dollars and no change (\$1,770,000.00) (the Purchase Price"). The Purchase Price shall be paid in up to three Phases as described in **Exhibit "B"** (Purchase Price in Phases) and shall be paid by Buyer to Seller at the Closing of each Phase.

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3. **CLOSING.** The closing of the sale and purchase of each Phase of the Property (each closing referred to herein as the "Closing") shall be held at the offices of the City Attorney of the City of West Allis, City Hall, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 or such other place as the parties may mutually agree on, on the date and at a time specified by Buyer ("Closing Date") not later than the dates set forth on **Exhibit "E"** (Closing Schedule) attached hereto.

3.1 **Prorations.** Buyer and Seller agree to prorate any rents, taxes or expenses related to the applicable Phase of the Property to the date of Closing of the applicable Phase.

A. A portion of the Property is exempt from the imposition of general property taxes for the year of Closing.

B. All such taxes to be levied in subsequent years shall be paid by Buyer; and,

C. There are no special assessments levied against the Property as of the date of this Agreement and will be none as of the Closing Date. Any special assessments levied against a Phase after the Closing Date applicable to the Phase shall be paid by Buyer. If a Special Assessment is levied by a governmental agency between the execution of the Agreement and Closing, the parties shall mutually agree on a method of paying the Special Assessment, or if an agreement cannot be reached this Agreement shall become null and void with all earnest money returned to Buyer.

3.2 **Earnest Money.** An amount equal to five percent (5%) of the purchase price for Total

Purchase Price, as described in **Exhibit "B"**, shall be paid by Buyer to Seller at execution of this Agreement. The Earnest Money shall to be applied proportionally to the purchase price of each Phase at the Closing of each Phase.

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3.3 **Seller to Provide.**

Seller agrees to furnish to Buyer at the Closing of each Phase of this transaction, the following:

- (1) Possession. Legal and physical possession of the Phase.
- (2) A Special Warranty Deed on State Bar of Wisconsin Form 6-2003 for the Phase;
- (3) A Closing Statement setting forth a summary of the Purchase Price and credits to Buyer and Seller;
- (4) An Affidavit as to Construction Liens and Possession sufficient to permit the Title Company to insure over the standard exceptions for construction liens and rights or claims of parties in possession not shown by the public records;
- (5) An affidavit as to broker lien rights sufficient to permit the Title Company to insure over the standard exceptions for broker lien rights;
- (6) A recording gap indemnity or affidavit sufficient to permit the Title Company to insure over the gap exception;
- (7) Evidence of the general property tax exemption for the year of Closing, evidence that there are no unpaid special assessments against the Phase, nor any other municipal and governmental levies, and evidence that all utility charges and other expenses with regard to the Phase are paid current or prorated through the date of Closing;
- (8) Transfer Return. Seller shall provide for execution at the Closing a properly completed Wisconsin Real Estate Transfer Return.

(9) The Development Agreement required by Section 6.

(10) Certified resolutions of the Seller and the Common Council of the Seller authorizing execution and delivery of this Agreement, the Development Agreement, and the Special Warranty Deed.

(11) Such other documents and instruments as are expressly required by this Agreement or are customarily provided by a Seller in a transaction of this nature.

3.4 **Buyer to Provide.** Buyer agrees to furnish to Seller at the Phase I closing, and each subsequent closing as is required, the following:

(1) The Purchase price for each Phase.

(2) The Development Agreement required by Section 6.

(3) Such other documents and instruments as are expressly required by this Agreement or are customarily provided by a Buyer in a transaction of this nature.

3.5 **Further Assurances.** After Closing each Phase, each of the parties will take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested or otherwise required by the other party in order to perfect and complete the purchase and sale of the Property as set forth herein.

3.6 **Closing Costs.**

A. Seller shall pay the title insurance premium for the owner's Title Policy required under Section 4.2, below (including, without limitation, the premium for a "gap" coverage endorsement and an ALTA Zoning 3.1 endorsement);

B. Each party shall pay its own attorneys' fees;

C. Except as otherwise provided in the Agreement, Buyer shall pay for all reports

or studies ordered by Buyer such as appraisal, surveys, engineering inspection reports or hazardous waste study reports, soil tests and borings and all of its feasibility and inspection reports; and,

D. Buyer shall pay the recording fees for the Special Warranty Deed and Seller shall pay the Transfer Tax Fee and recording fee for any satisfaction of its existing liens and encumbrances, if any, and any memoranda.

4.0 **BUYER'S CONTINGENCIES.** Buyer's obligation to conclude this transaction is conditioned upon the following (which may be waived by Buyer in whole or in part, in its sole discretion):

4.1 **Survey.** As a condition to Buyer's obligations hereunder, Buyer shall have obtained, within fifteen (15) days of the receipt of a written waiver of Seller's contingencies described in Section 5 of this Agreement, a survey of the Property ("Survey") which (a) is sufficient to remove the survey exception(s) from the title policy for the Property without adding any additional exceptions and (b) discloses no items which will adversely affect the construction and use of the Facility to be constructed on the Property as described in the attached **Exhibit "C"** (the Development Agreement) or increase the cost thereof.

4.2 **Title Evidence.** As a condition to Buyer's obligations hereunder, Seller shall cause to be delivered to Buyer within ten (10) days after the date of this Agreement a commitment to issue ("Title Commitment") an ALTA owner's policy of title insurance (ALTA Owner's Policy – Form B 1970 (Rev. 10-17-70 and Rev. 10-17-84)) in the amount of the Purchase Price for each Phase ("Title Policy") issued by Lawyers Title Insurance Corporation ("Title Company"). The final Title Policy issued pursuant to the Title Commitment for each Phase shall show title to the Phase as of the date of Closing subject only to the matters set forth below ("Permitted Encumbrances"):

- A. Municipal and zoning ordinances;
- B. Recorded easements for public utilities and for drainage acceptable to Buyer;
- C. General real estate taxes levied in the year after the year of Closing and thereafter;
- D. The Development Agreement in the form of attached **Exhibit "C"** and described in Section 6, below;
- ~~E. Environmental Addendum in the form of attached Exhibit "D";~~
- E. ~~F.~~ Those matters set forth in the Title Commitment not objected to by Buyer.

The proceeds due Seller at closing may be used to satisfy or otherwise obtain a release of any existing mortgage or other monetary encumbrance, provided such satisfaction or release is delivered to Buyer at closing in recordable form and is sufficient to cause the Title Company to delete the encumbrance from the Title Commitment or, provided that the Title Company agrees to insure over such encumbrance.

Buyer shall have ten (10) days after the receipt of a written waiver of Seller's contingencies described in Section 5 of this Agreement to object in writing to any condition of title not a Permitted Encumbrance under this Agreement, and to object to any existing easement that affects the Property. Buyer's failure to so object shall constitute a waiver of any objections. Matters specifically stated in the Title Commitment and not objected to by Buyer within ten (10) days after the receipt of a written waiver of Seller's contingencies described in Section 5 of this Agreement shall become Permitted Encumbrances. If any objection is made, Seller shall have fifteen (15) days thereafter in which to correct the condition. If the condition of title is not or cannot be corrected within the fifteen (15) day period to Buyer's satisfaction, Buyer shall within ten (10) days thereafter, at its option, either (i)

declare this Agreement null and void and all money paid by Buyer as Earnest Money, if any, shall be returned immediately to Buyer, or (ii) accept such title as Seller is able to convey and proceed to closing without adjustment of the Purchase Price. Seller's inability or failure to correct any such condition of title shall not constitute a default by Seller hereunder, unless such title condition is caused by Seller. If Buyer does not, within ten (10) days after the expiration of the fifteen (15) day period described above, elect either (i) or (ii) above, then it shall be deemed that Buyer has elected (ii) and has accepted such title as Seller is able to convey and shall proceed to closing without adjustment of the Purchase Price.

4.3 **Soil Tests.** Refer to Environmental Addendum Exhibit "D".

4.4 **Governmental Approvals and Permits.** As a condition to Buyer's obligations hereunder, Buyer shall have obtained at Buyer's expense sixty (60) days prior to the Closing Date for each Phase, all governmental approvals and permits necessary in order to construct the applicable Phase of the Facility, a defined term, on the Property as more particularly described in the attached **Exhibit "C"**. Buyer acknowledges that Buyer will have sole responsibility for making applications for and securing all such necessary permits, approvals and licenses and Buyer agrees to act in good faith to attempt to obtain all such necessary permits, approvals and licenses. Seller shall cooperate with Buyer and assist in obtaining all documents necessary for Buyer to obtain the approvals and permits, including, but not limited to, one or more applications for approval by the Milwaukee Metropolitan Sewerage District. Failure to obtain requisite approvals, etc., shall be Phase specific in its effect. For each Phase, failure to meet this contingency shall relieve the Parties of any further obligations under this agreement, except that, for each Phase that has satisfied this contingency, the obligations herein shall continue with full

force and effect.

4.5 **Other Approvals.** Seller shall have furnished to Buyer such other documents in Seller's possession as may be reasonably requested by Buyer for purposes of evaluating the Property.

4.6 **Intentionally Left Blank.**

4.7 **Zoning.** Seller shall provide such evidence as may be reasonably requested by Buyer to satisfy Buyer that the Property, the Facility and all related improvements to be constructed upon the Property conform and comply, without need of a variance, in all respects with applicable zoning laws and regulations. A legal non-conforming use does not satisfy this requirement. Seller shall provide a letter from the Office of the Zoning Administrator for the City, an ALTA 3.1 zoning endorsement from the Title Company and such other evidence as Buyer deems reasonably necessary all in form and substance satisfactory to Buyer in its sole discretion. ~~The~~ To the best of Seller's knowledge will use its best efforts to encourage the City of West Allis has to established a Planned Development District for the entire Project area, to meet the special needs of the Project.

4.8 **Financing.** As a condition to Buyer's obligations hereunder, Buyer shall have obtained, ~~within ninety (90) days prior to each Closing,~~ a written loan commitment from lender(s) selected by Buyer for a loan to finance the purchase of the applicable Phase and construct the applicable Phase of the Facility. The form and content of the loan commitment letter shall be subject to the approval of the director of Development. The financing shall be in an amount of not less than 80 percent of the lender's appraised value, but in no event less than 100 percent of the purchase price for the Phase and the construction costs for the Phase for a term of not less than three years. Interest only at a rate not to exceed 6.5 percent per annum shall be paid monthly during construction. Upon

completion of construction, the unpaid balance of the loan shall be amortized over not less than 29 years in equal monthly installments of principal and interest. The loans may not include a prepayment premium and the lender's loan fees shall not exceed 1 percent of each loan.

4.9 **Intentionally Left Blank**

4.10 **No Litigation.** There shall be no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this agreement, or seeking the restraint, prohibition, damages or other relief in connection with this agreement or the use intended for the property by Buyer, and none of the same shall have been instituted or threatened by any person, agency, or other entity prior to closing. Such litigation or threat thereof shall include, but not be limited to challenges to Seller's right to take the Property or the rights of tenants or occupants of the Property to remain.

4.11 **Termination.** If Buyer fails to waive or acknowledge the satisfaction of the conditions set forth in this Section 4, other than subsections 4.3, and 4.10, in writing on or before the expiration of each contingency, then this Agreement shall automatically terminate except provided for in Section 4.4 and all Earnest Money applicable shall be returned to Buyer and neither party shall have any further liability under this Agreement.

4.12 **Closing Constitutes Waiver.** Closing on each Phase of the Property shall be deemed a waiver and satisfaction of said conditions as to each Phase.

5. **SELLER'S CONTINGENCIES.** Seller's obligation to conclude this transaction is conditioned upon Seller having obtained, on or before thirty (30) days after the date of this Agreement, the following:

- (1) All necessary approvals from Seller's commissioners, the Common Council

and/or Planning Commission of the City of West Allis.

- (2) Any other approvals necessary for the consummation of the transactions contemplated herein and in the Development Agreement. If the contingencies and conditions set forth in this Section 5, other than subsection ~~5.1(3)~~, are not waived or satisfied by written notice thereof to Buyer on or before thirty (30) days after the date of this Agreement, Seller may by written notice to Buyer given within such thirty (30) day period terminate this Agreement, whereupon all Earnest Money, if any, paid hereunder shall forthwith be returned to Buyer and neither party shall have any further liability under this Agreement.
- (3) **No Litigation.** There shall be no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this agreement, or seeking the restraint, prohibition, damages or other relief in connection with this agreement or the use intended for the property by Buyer, and none of the same shall have been instituted or threatened by any person, agency, or other entity prior to closing. Such litigation or threat thereof shall include, but not be limited to challenges to Seller's right to take the Property or the rights of tenants or occupants of the Property to remain.
- (4) **Termination.** If Seller is unable to satisfy the contingencies contained in this Section 5, then this Agreement shall automatically terminate except as provided for in Section 4.4. Upon termination all Earnest Money applicable shall be returned to Buyer and neither party shall have any further liability.
- (5) **Closing Constitutes Waiver.** Closing on each Phase of the Property shall be

deemed a waiver and satisfaction of said conditions as to each Phase.

6. **DEVELOPMENT AGREEMENT.** Simultaneously with the execution of this Agreement, Buyer and Seller shall execute a Development Agreement in the form of attached **Exhibit "C"**, a memorandum of which Development Agreement may be recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin upon the closing of this transaction.

7. **CONVEYANCE.** Seller shall at each Phase closing and upon payment of the Purchase Price, convey the applicable Phase to Buyer by Special Warranty Deed subject only to the Permitted Encumbrances.

8. **POSSESSION AND OCCUPANCY.** Legal and physical possession of each Phase shall be delivered to Buyer on the Closing Date of the applicable Phase

9. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller hereby represents and warrants that as of the date hereof and as of each Closing Date:

9.1 **Organization; Good Standing.** Seller is a Community Development Authority duly organized and validly existing under the laws of the State of Wisconsin. Seller has full power and authority to sell, own or hold under lease its properties and assets and to carry on its business as presently conducted, to enter into this Agreement and to carry out the transaction contemplated hereby. Seller shall furnish certified copies of such certificates, motions, resolutions and other documents as Buyer may reasonably require regarding the matters set forth herein prior to closing of the transaction contemplated herein.

9.2 **Authorization.** The execution and delivery of this Agreement and the consummation

by Seller of the transaction contemplated hereby are within the power and authority of Seller and have been duly authorized by all necessary actions on the part of Seller. The individuals executing and delivering this Agreement have been duly authorized and empowered to so act on behalf of the Seller.

9.3 **No Violation or Conflict.** The execution, delivery and performance of this Agreement by Seller does not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, declaration or any contract or agreement to which Seller is a party or by which it is bound.

9.4 **No Litigation.** To Seller's knowledge, there are no lawsuits, proceedings, claims, governmental investigations, citations or actions of any kind pending or threatened against Seller or against the Property, nor is there any basis known to Seller for any such action, and there is no action, suit, or proceeding by any governmental agency pending or threatened which questions the legality, validity, or propriety of the transactions contemplated hereby, nor is there any basis known to Seller for any such action.

9.5 **Assessments.** As of the Closing, no assessments for public improvements, which remain unpaid, have been made against the Property.

9.6 **Intentionally left blank.**

9.7 **Floodplain.** No part of the Property is located in a floodplain, wetland, or similarly restricted area.

9.8 **Utilities.** Sanitary sewer main, storm sewer main. and water main are installed in portions of W. Greenfield Ave. National Ave., and portions of S. 66th & 65th Streets and all such public utilities are available to the Property with the proper and required permits and fees; however,

the Seller makes no warranty or representation with respect to the adequacy of said public utilities for Buyer's intended use. [HT1] Buyer acknowledges that it is purchasing the Property on the basis of its own review and investigation of the adequacy of such public utilities for its intended use.

9.9 **Liens.** All work performed or materials furnished for the improvement of the Property contracted for by Seller shall have been fully paid for and Seller shall provide Buyer with appropriate lien waivers from any and all contractors, laborers, or material men furnishing labor or material during the six (6) months preceding the Closing Date.

9.10 **Intentionally left blank**

9.11 **Seller's Documents.** Seller shall, within thirty (30) days of the date of this Agreement, deliver to Buyer true, correct and complete copies of all surveys, environmental reports and filings, test results, soil or geotechnical tests, documentation relating to public infrastructure, services or utilities to the Property in the possession of Seller or the ~~Seller~~ City of West Allis to the extent Seller has not previously delivered such materials to Buyer. Seller shall provide Buyer with any additional or supplemental documents or information within ten (10) business days of such documents or information becoming available to Seller or the City of West Allis.

9.12 **Brokers.** Buyer and Seller have not dealt with or engaged any brokers or finders or others to whom a commission might be owing upon closing of this transaction. Buyer and Seller agree to indemnify and hold each other harmless from any claim for commission made by any agent or broker claiming to have acted on Buyer's and/or Seller's behalf.

10. **REPRESENTATION AND WARRANTIES OF BUYER.** Buyer hereby represents and warrants that as of the date hereof and as of the Closing Date:

10.1 **Legal Capacity.** Buyer is a Wisconsin Corporation, validity existing and in good

standing under the laws of the State of Wisconsin and has good right and authority to purchase the Property under the terms hereof, the individuals executing and delivering this Agreement have been duly authorized and empowered to so act on behalf of the Buyer and this Agreement is a valid and binding obligation of Buyer, enforceable in accordance with its terms. Buyer shall furnish certified copies of such certificates, motions, resolutions and other documents as Seller may reasonably require regarding the matters set forth herein prior to closing of the transaction contemplated herein.

10.2 **No Violation or Conflict.** The execution, delivery, and performance of this Agreement by Buyer does not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, or any contract or agreement to which Buyer is a party or by which it is bound.

10.3 **Litigation.** To Buyer's knowledge, there are no lawsuits, proceedings, claims, governmental investigations, citations or actions of any kind pending or threatened against Buyer, nor is there any basis known to the Buyer for any such action, and there is no action, suit, or proceeding by any governmental agency pending or threatened which questions the legality, validity, or propriety of the transactions contemplated hereby, nor is there any basis known to Buyer for any such action.

11. **Reliance Upon Warrantee.** Buyer and Seller acknowledges that the warranties and representations made here and by Buyer and Seller are a material inducement to Buyer and Seller entering into this Agreement, the Buyer and Seller are entitled to rely upon these warranties and representations despite independent investigation undertaken by Buyer and Seller and that the warranties and representations made here and by the Buyer and Seller shall survive the closing and the execution and delivery of the Deed.

12. **DEFAULT PROVISIONS.** Except as provided herein, should Buyer default under this Purchase and Sale Agreement, all Earnest Money, if any, paid hereunder shall be paid to or retained by Seller as liquidated damages or, ~~in the alternative, such other rights and remedies available at law or equity, including, without limitation,~~ specific performance. Should Seller default under this Purchase and Sale Agreement, Buyer shall be entitled to a return of its Earnest Money or ~~such other rights and remedies available at law or equity, including, without limitation,~~ specific performance. ~~However, n~~Neither party shall be liable to the other for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, strict liability or otherwise.

13. **ASSIGNMENT.** Neither Buyer nor Seller may assign its interest under this Agreement without the other's prior written consent, which consent shall not be unreasonably withheld or delayed.

14. **EXPRESS WARRANTIES.** The sale of the Property to Buyer hereunder shall be "AS IS WHERE IS" without representation or warranty of any kind except as expressly provided in this Agreement or in any other document specifically incorporated in this Agreement or required in this Agreement to be provided by Seller or the City to Buyer. Any other warranties or representations of any kind made either orally or in writing by any agent or representative of Seller or anyone purporting to be an agent or representative of Seller shall be of no force and effect unless specifically incorporated or required in this Agreement. Buyer hereby acknowledges that it does not rely upon any representation or warranty made by Seller or by Seller's agents, and that none have been made, except as specifically set forth in writing in this Agreement or in any other document specifically incorporated or required in this Agreement to be provided by Seller or the City to Buyer.

15. **CONDEMNATION.** If, prior to the Closing Date, an authority other than Seller

itself takes the Property or any portion thereof by power or exercise of eminent domain, or institutes any proceedings to effect such a taking, Seller shall immediately give Buyer notice of such occurrence, and Buyer and Seller shall have the option to terminate this Agreement at their respective options, whereupon all Earnest Money, if any, shall be returned to Buyer and neither party shall have any obligation to the other under this Agreement. If this Agreement is not so terminated, the conveyance that is the subject of this Agreement shall be completed and Buyer shall receive all proceeds of such condemnation.

16. **WAIVER AND RELEASE.** Except to matters otherwise specifically set forth herein, for each Phase, if this transaction closes, Buyer agrees that it waives, releases and forever discharges Seller, the Seller's Officers, employees and agents or any other person acting on Seller's behalf, of and from any claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on account of or in any way growing out of or connected with this transaction. This waiver and release does not extend to any matter with respect to which Seller had actual notice or knowledge prior to closing or any post Closing obligations or other matter that survive Closing.

17. **INDEMNIFICATION.** Except to matters otherwise specifically set forth herein, for each Phase, if this transaction closes, the parties agree that they will indemnify, hold harmless, and defend each other, their officers, employees and agents, or any other person acting on behalf of them, from and against any claim, actions, causes of action, demands, penalties, forfeitures, rights, damages, suits, costs, expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which now exist or may arise in the future, on account of or in any way

growing out of or connected with this transaction. This indemnification does not extend to any matter with respect to which the parties had actual notice or knowledge prior to closing.

18. **SUCCESSORS AND ASSIGNS.** This agreement and all rights and obligations therein, including but not limited to the indemnification provisions, may not be assigned or otherwise transferred by either party hereto without the other's prior written consent. Such consent may not be unreasonably withheld.

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

20. **Intentionally left blank DAMAGES.** ~~In the event of a default, neither Buyer nor Seller shall be liable to the other for consequential, indirect, incidental, or exemplary (punitive) damages, whether based on contract, negligence, strict liability, or otherwise.~~

21. **TIME.** Time is of the essence with regard to the Closing Date and all other dates and time periods in this Agreement.

22. **NOTICES.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one business day after transmitted by facsimile copy or deposit with a nationally recognized overnight commercial courier service, airbill prepaid, or two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To Buyer:	Helmut Toldt 4040 North Calhoun Road Brookfield, WI 53005
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Facsimile Number: (262) 781-2151
Email: helmuttoldt@sbcglobal.net

With a copy to:

Richard R. Kobriger, Esq.
Cramer, Multhauf & Hammes, LLP
1601 East Racine Avenue, Suite 200
Waukesha, WI 53186
Facsimile Number: (262) 542-4270
Email: rrk@cmhlaw.com

To Seller:

Community Development Authority of the
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: John F. Stibal
Facsimile Number: (414) 302-8401
Email: jstibal@ci.west-Allis.wi.us

with a copy to:

Scott Post, City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Facsimile Number: (414) 302-8444
Email: spost@ci.west-allis.wi.us

Any party may, by written notice to the other party, designate a change of address for the purposes aforesaid.

23. **ACCESS FOR BUYER.** Seller agrees to grant access to the Property to Buyer, its architects, engineers, contractors and agents at all reasonable times prior to closing for inspection, examination, testing and planning. Buyer hereby agrees to indemnify and hold Seller harmless from and against any losses, cost or expenses of any kind to the extent caused by Buyer's negligence or

willful misconduct in performing such inspections, examinations, testing and planning, which indemnification and hold harmless obligations shall survive the termination of this Agreement.

24. **GOVERNING LAW.** This Agreement concerns real property located in the State of

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Wisconsin and shall be interpreted and construed according to the laws of the State of Wisconsin. Any action concerning this Agreement shall be initiated and maintained in Milwaukee County, Wisconsin.

25. **SEVERABILITY OF PROVISIONS.** If any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law.

26. **CAPTIONS.** The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions hereof.

27. **COURT COST AND OUT-OF-POCKET EXPENSES.** In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to court costs and out-of-pocket litigation expenses only.

28. **WAIVER OF TERMS.** Any of the terms or conditions of this Agreement may be waived at any time by the party or parties entitled to benefit thereof, but only by a written notice signed by the party or parties waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

29. **INTERPRETATION.** Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and

include all genders.

30. **NO RELIANCE**. No third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement. Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties and agreements of Buyer and Seller contained in this Agreement.

31. **SURVIVE THE CLOSING**. The agreements, covenants, warranties and representations contained herein shall survive the closing of the transaction contemplated herein.

32. **WARRANTIES**. All statements contained in any certificate, instrument or document delivered by or on behalf of any party pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the parties unless otherwise expressly provided.

33. **BINDING EFFECT**. The terms and conditions of this Agreement shall be binding upon and benefit the parties and their respective successors and assigns.

34. **AMENDMENT OF AGREEMENT**. This Agreement may be amended, supplemented or modified at any time, but only by a written instrument duly executed by Seller and Buyer.

35. **ENTIRE AGREEMENT**. This writing constitutes the entire agreement between the parties hereto, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement may be modified or amended only by written instrument signed by Buyer and Seller.

36. **COUNTERPARTS AND FACSIMILE USE**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original. Documents and signatures

transmitted by facsimile shall be considered original for purposes of creating a valid and binding contract, amending this Agreement and providing notices.

37. **GOOD FAITH.** The parties covenant and agree to act in good faith in the performance and enforcement of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**SELLER:
COMMUNITY DEVELOPMENT AUTHORITY OF
THE CITY OF WEST ALLIS**

By: _____
Gerald Matter, Chairman

Attest: _____
John F. Stibal, Secretary/Executive Director

BUYER:

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

Approved as to form this ____ day
of _____, 2006.

Scott Post, City Attorney

LEGAL DESCRIPTION

AREA 1: W. National Ave. to a portion of W. Mitchell St., S. 66th St. to the RR spur and the small parcel on W. Lapham St. and S. 66th St.

Lots 1 through 11 in Block 1, Lots 1 and 2 in Block 2, and Vacated West Lapham Street in Central Improvement Co. Subdivision No. 3 and Lots 5, 6 and part of Lots 7 and 8 in Block 2 of Assessor's Plat No. 269, and Lots 1, 2 and 3 in Block 9 of Central Improvement Co. Subdivision No. 7, all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 3, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4;
Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 445.51 feet;
Thence S 01°53'33"E, a distance of 33.00 feet to the North right-of-way line of West Greenfield Avenue and the east right-of-way line of a railroad spur track;
Thence S 53°05'12"W along said East right-of-way line, a distance of 15.85 feet to the arc of a curve; Thence southwesterly along said East right-of-way line, a distance of 294.70 feet along the arc of a curve whose center is S 36°54'48"E a radial distance of 313.27 feet and whose chord bears S 26°08'13"W, 283.95 feet;
Thence S 00°48'46"E along said East right-of-way line, a distance of 583.91 feet to the north right-of-way of West National Avenue;
Thence S 00°13'36"E, a distance of 97.31 feet to the south right-of-way line of West National Avenue and the POINT OF BEGINNING;
Thence N 64°30'07"E along said south right-of-way line, a distance of 491.67 feet to the west right-of-way line of South 66th Street;
Thence S 00°59'09"E along said west right-of-way line, a distance of 290.08 feet;
Thence N 88°07'11"E along the south right-of-way line of West Lapham Street and it's extension thereof, a distance of 60.01 feet to the intersection of said south right-of-way line and the east right-of-way of South 66th Street;
Thence N 88°07'11"E along said south right-of-way line, a distance of 90.01 feet;
Thence S 00°59'09"E, a distance of 120.00 feet;
Thence S 88°07'11"W, a distance of 90.01 feet to the east right-of-way line of South 66th Street;
Thence N 00°59'09"W along said east right-of-way line, a distance of 120.00 feet to the intersection of said east right-of-way line and the south right-of-way line of West Lapham Street;
Thence S 88°07'11"W along the south right-of-way line of West Lapham Street and it's extension thereof, a distance of 60.01 feet to the west right-of-way line of South 66th Street;
Thence S 00°59'09"E along said west right-of-way line, a distance of 250.50 feet;
Thence S 88°07'11"W, a distance of 127.00 feet;
Thence S 00°59'09"E, a distance of 120.46 feet;
Thence S 88°07'11"W, a distance of 59.21 feet to the arc of a curve;
Thence westerly, 220.68 feet along the arc of a curve whose center is S01°52'49"E a radial distance of 333.13 feet and whose chord bears S69°08'31"W, 216.67 feet;
Thence S 00°59'09"E, a distance of 105.03 feet to the north right-of-way line of West Mitchell Street; Thence S 89°00'51"W along said north right-or-way line, a distance of 58.53 feet to east right-of-way line of a railroad spur track;
Thence N 00°53'05"W along said east right-of-way, a distance of 638.64 feet to the POINT OF BEGINNING.

Containing 262,117 square feet or 6.0174 acres, more or less.

AREA 2: W. National Ave. to W. Greenfield Ave.; S. 65th to S. 66th Streets.

Lots 1 through 19 inclusive and Lots 28 through 35 inclusive and parts of Lots 20 through 27 in Block 2 of C. A. Maynard & Agnew's Subdivision No. 3, all in the Northwest 1/4 of the Northeast 1/4, of Section 3 Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4:

Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 819.03 feet;

Thence S 01°53'33"E, a distance of 33.00 feet to the South right-of-way of West Greenfield Avenue and the POINT OF BEGINNING;

Thence N 88°05'31"E along said south right-of-way line, a distance of 246.00 feet to the west right-of-way line of South 65th Street;

Thence S 01°53'33"E along said west right-of-way line, a distance of 455.85 feet;

Thence S 57°20'37"W, a distance of 286.29 feet to the east right-of-way line of South 66th Street;

Thence N 01°53'33"W along said east right-of-way line, a distance of 602.22 feet to the south right-of-way line of West Greenfield Avenue and the POINT OF BEGINNING;

Containing 130,142 square feet or 2.9876 acres, more or less.

AREA 3: W. National Ave. to W. Greenfield Ave., S. 66th to the RR spur.

Part of Lot 5 in Block 1 of Assessor's Plat 269 and Lots 1 through 18 inclusive and part of Lots 19 through 22 in Block 3 of C. A. Maynard & Agnew's Subdivision No. 3, all a part of the Northwest 1/4 of the Northeast 1/4 of Section 3, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4:

Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 445.51 feet;

Thence S 01°53'33"E, a distance of 33.00 feet to the south right-of-way of West Greenfield Avenue and the POINT OF BEGINNING;

Thence N 88°05'31"E along said south right-of-way line, a distance of 313.52 feet to the west right-of-way line of South 66th Street;

Thence S 01°53'33"E along said west right-of-way line, a distance of 637.83 feet;

Thence S 64°30'07"W, a distance of 513.94 feet to the east right-of-way line of a railroad spur track;

Thence N 00°48'46"W along said east right-of-way line, a distance of 583.91 feet to the arc of a curve;

Thence northerly along said east right-of-way line, 294.70 feet along the arc of a curve whose center is N 89°11'14"E a radial distance of 313.27 feet and whose chord bears N 26°08'13"E, 283.95 feet;

Thence N 53°05'12"E along said east right-of-way line, a distance of 15.85 feet to the south right-of-way line of West Greenfield Avenue and the POINT OF BEGINNING.

Containing 331,261 square feet or 7.6047 acres.

EXHIBIT 1 - B

For Reference Purposes

THE PROPERTY BY AREAS

AREA 1

Parcels	Parcel #	Tax Key #	Address	Acreage
1	701	454-0253-000	67** W. National Avenue	
2	702	454-0246-000	6615-17 W. National Avenue	
3	703	454-0247-000	6601-03 W. National Avenue	
4	704	454-0248-000	1573 S. 66 St.	
5	705	454-0245-001	6633-39 W. National Avenue	
6	802	454-0269-000	65** W. Lapham	
7	709	454-0249-000	6709 W. National Ave.	
Total				6.0174

AREA 2

Parcels	Parcel #	Tax Key #	Address	Acreage
1	102	454-0218-001	1452 S. 66 St.	
2	103	454-0217-000	1436-38 S. 66 St.	
3	104	454-0216-000	14** S. 66 St.	
4	105	454-0215-000	14** S. 66 St.	
5	106	454-0214-000	1416 S. 66 St.	
6	107	454-0213-000	6533 W. Greenfield Av	
7	108	454-0212-000	6527 W. Greenfield Av	
8	109	454-0211-000	65** W. Greenfield Av	
9	110	454-0210-001	6513-19 W. Greenfield Av	
10	111	454-0208-000	6509-11 W. Greenfield Av	
11	112	454-0207-000	6501-05 W. Greenfield Av	
12	113	454-0228-001	1441 S. 65 St.	
13	114	454-0225-000	6506 W. National Av	
14	115	454-0226-000	6500 W. National Av	
Total				2.9876

AREA 3

Parcels	Parcel #	Tax Key #	Address	Acreage
1	101	454-0231-000	1445 S. 66 St.	
Total				7.6047

PURCHASE PRICE

The Property consists of 16.6 +/- acres

Area 1 - Containing 262,117 square feet or 6.0174 acres, more or less - Purchase Price of \$641,300.

Area 2 - ~~Containing 130,142 square feet or 2.9876 acres, more or less. Containing 215,264 square feet or 4.9418 acres, more or less~~ - Purchase Price of ~~\$526,600~~318,600.

Area 3 - ~~Containing 331,261 square feet or 7.6047 acres. Containing 246,138 square feet or 5.6506 acres~~ ~~\$602,100~~810,100.

Total Acreage : 16.6097

Total Purchase Price: \$1,770,000.

DEVELOPMENT AGREEMENT

To be inserted

ENVIRONMENTAL ADDENDUM

Remediation Roles and Responsibilities

January 27, 2006: Revision 3

This exhibit defines the remediation roles and responsibilities for the Seller and Buyer (Toldt) for the Pressed Steel Tank Property that is part of the Six Points Farmers Market redevelopment Area (the "Site"). The Pressed Steel Tank Site includes the "Parking Lot" and "Operating Facility".

A. Responsibilities of Seller:

- (1) The Seller shall perform or cause to be performed all investigation, remediation and regulatory activities necessary to achieve Remediation Project Completion for all soil and groundwater contamination present at the Pressed Steel Tank Site as of the date of the property transaction between the Seller and Toldt. "Remediation Project Completion" is defined as receiving a written case closure letter from the Wisconsin Department of Natural Resources (WDNR) in accordance with the requirements of s. NR 726, Wis. Adm. Code. The Seller shall negotiate the regulatory approach with the WDNR. The regulatory approach will include a combination of active remediation, natural attenuation, performance standards, establishing applicable engineering controls and/or establishing applicable institutional controls, all in accordance with the remedy selection, implementation, and case closure requirements stipulated in s. NR 700, Wis. Adm. Code. Acceptable engineering and institutional controls shall include: 1) paved surface parking lots, driveways, building floor slabs, and final soil covers to be installed and maintained by Toldt in conjunction with Site redevelopment, which will serve as final engineered barriers for preventing exposure to, and rainwater infiltration through, residual soil contamination (hereafter "Site Cap"); 2) vapor control membranes and/or passive vapor collection systems to be designed, installed and maintained by Toldt in accordance with WDNR guidelines for any new buildings positioned over any residual soil contamination; 3) compliance with a Materials Handling and Site Cap Maintenance Plan, to be prepared by the Seller, or their agent, and approved by the WDNR; 4) compliance with any deed restrictions that will identify areas of residual contamination and specify the requirements for

the handling, on-site reconsolidation or off-site disposal by Toldt of residual soil and groundwater contamination encountered during redevelopment construction activities at the Site that would not otherwise need to be remediated by the Seller to achieve Remediation Project Completion; 5) placement of the Site on WDNR's Geographic Information System (GIS) registry of closed sites that have residual contamination; and, 6) or other controls required by the WDNR as a condition of Remediation Project Completion and which do not prevent or materially interfere with the use of the Pressed Steel Site for residential and/or commercial purposes.

- (2) Demolition services to provide a clear Site, prior to the start of redevelopment activities, free of buildings, concrete slabs, overhead utilities, and subsurface structures (e.g., pits, trenches, and foundations) to a depth of two feet below existing grade. All existing buried utilities will be abandoned and capped at the property boundary in accordance with applicable regulations.
- (3) Periodic Site inspection and testing services during Toldt's Site redevelopment construction activities to assess conditions of soils that will be excavated and reconsolidated on Site and to assist Toldt in complying with the requirements of the Materials Handling and Site Cap Maintenance Plan. The Seller will negotiate with the Wisconsin Department of Natural Resources in an attempt to allow reconsolidation of excess soils from the Site on other properties that are part of the Six Point Farmer's Market Redevelopment. Without regard to the outcome of these negotiations, excess soils (except for Highly Impacted Soils) will be required to be reconsolidated onsite.
- (4) Highly Impacted Soils encountered during Toldt's Site Construction activities will be sent for off-site disposal. Highly Impacted Soils are defined as saturated soils with free flowing product or soils that are determined to be characteristically hazardous as defined by Chapters s. NR 600 series, Wisc. Admin. Code. Transportation and off-site disposal fees for Highly Impacted Soils will be paid for by the Seller.
- (5) Remediation and long-term groundwater monitoring activities that are required after Toldt begins Site Redevelopment activities will be scheduled and completed in coordination with Toldt so as to minimize potential interference with Site activities.
- (6) The Seller will be listed as the owner and generator of all wastes that are transported for off-site disposal.
- (7) Upon receipt of case closure approval from the WDNR, the Seller, or

their agent, will properly abandon all existing groundwater monitoring wells that exist at the Site.

B. Responsibilities of Buyer:

- (1) Provide reasonable Site access to the Seller, and their agents, for all services necessary through Remediation Project Completion.
- (2) Design and implement a Site grading plan that allows for the on-site reconsolidation of all soils that are excavated to construct new Site buildings and utility corridors, with the exception of any soils that will qualify as Highly Impacted Soils. All reconsolidated soils will need to be placed underneath a Site Cap, as defined above. This will necessitate raising the Site grade to accommodate the reconsolidated soil. If Toldt decides to remove any excess soil from the Site which does not qualify as Highly Impacted Soil, then Toldt will be fully responsible for all transportation and off-site disposal costs for the excess soil. In addition, Toldt will have to first obtain approval for the proposed off-site disposal facility from the Seller.
- (3) Full compliance with the Materials Handling and Site Cap Maintenance Plan. This will include managing all soils during Site construction activities in accordance with the Material Handling Plan and maintenance of all Site Cap elements, in perpetuity, in accordance with the Cap Maintenance Plan.
- (4) Removal of all existing foundations and utilities that are deeper than 2 feet below existing grade and which will interfere with Site redevelopment construction activities will be undertaken as described in Exhibit D-1.
- (5) Allow for the installation of groundwater monitoring wells, injection wells, vapor extraction wells, or equivalent that are necessary as a component of the Site remedy.
- (6) Maintenance of all erosion and storm water management controls (including but not limited to paved surface parking lots, driveways, building floor slabs, and final soil cover) required following completion of onsite demolition.
- (7) Payment for the repair of any wells or equipment installed or owned by the Seller which have been damaged by Toldt or their contractors, provided that the wells or equipment were properly marked and identified.
- (8) Installation and maintenance of vapor control members and/or passive vapor collection systems for any new buildings positioned over any residual soil or ground water contaminations

Deep Foundation and Utility Removal Pressed Steel Tank Company Site Operating Facility

This Purchase Agreement Exhibit describes the obligations and responsibilities between the Community Development Authority of the Seller (Seller) and Buyer (Buyer) for deep foundation and utility removal at the Pressed Steel Tank (PST) Company – Operating facility (PST Facility), which is a portion of the Six Points Farmers Market Redevelopment Area. The PST Facility consists of a manufacturing facility and offices west of South 66th Street between West Greenfield Avenue, West National Avenue, and to the east of an inactive Chicago & Northwest Railroad right-of-way.

A. Responsibilities of Seller:

The Seller shall complete the following deep foundation and utility removal activities within 10 feet of the proposed building footprints, or at the Seller's discretion, shall reimburse the Buyer for the costs of said activities that are performed by the Buyer. The locations of the proposed buildings and lateral extent of deep foundation and utility removal is presented on Figure 1. Table 1 and Figure 2 present the dimensions and locations of known deep pits and trenches. The Seller shall complete the following within 10 feet of the building footprints present on Figure 1, or reimburse the Buyer for the costs of said activities:

- (1) Provide, erect, and maintain temporary barriers and security devices during demolition.
- (2) Demolish and remove all deep foundations, trenches, pipes and other structures located to depths of 2 feet below the proposed top of slab grade for the basement floor within the areas of proposed new site buildings. Also, demolish and remove all deep foundations, trenches, pits, and other structures to a depth of 6 feet below the existing grade in areas of utility corridors denoted on Figure 1. The dimensions and locations of known pits and trenches are presented in Table 1 and on Figure 2, respectively. The known foundations, trenches, pipes and other structures present at a depth greater than 2 feet within the areas of proposed new site buildings are illustrated on Figure 2. Perform excavation only as necessary to break apart and remove subsurface structures. Excavated soil will be staged in accordance with the Materials Handling Plan Exhibit D-2.
- (3) Break up concrete in any remaining basements, pits, and sumps greater than a depth of 2 feet below the proposed top of slab grade for the basement to permit natural moisture drainage.
- (4) Removal and salvaging or disposal of piping, equipment, vessels, fixtures, or structural

features.

- (5) Disconnect, remove and/or cap and identify existing utilities within deep foundation and utility removal areas. Remove and handle piping, equipment, or structural components for subsequent off-site disposal.
- (6) Removal and handling of stormwater from basements, pits, and sumps (de-watering) for removal of the deep foundation and utilities, but only during the time necessary for removing the deep foundations and utilities.

B. Responsibilities of Buyer:

Buyer will be responsible for the following activities associated with deep foundation removal:

- (1) Provide reasonable Site access to the Seller, and their agents, for all services necessary through demolition.
- (2) Management and disposal of soil generated for underground parking, basement, and underground utilities by reconsolidation onsite or offsite disposal in accordance with local, state, and federal requirements and in accordance with the Materials Handling Plan.
- (3) Management of any accumulated water during building construction including management of any required groundwater dewatering.
- (4) Security and site control measures for all excavation areas after deep foundation removal is complete.
- (5) Design, backfilling, and constructing new building foundations within the deep excavations.
- (6) Compaction of any soils that were replaced in deep foundation excavations and were not subsequently excavated for construction of buildings, utility corridors, parking lots, etc.
- (7) Compliance with the erosion control plan (including maintenance) at the time of the Seller, or their agents, complete of deep foundation removal.
- (8) Maintenance of deep foundation excavation areas including all work for backfilling depressions, addressing any erosion, maintenance of the surface grade (e.g., cutting of grass).
- (9) Replacement of all utilities, surface features, landscaping, sidewalks, right-of-ways, sidewalks, etc., as necessary, for development.

MATERIALS HANDLING PLAN

Introduction

The Pressed Steel Tank (PST) Company Property is located at the intersection of 65th Street and National Avenue in West Allis, Wisconsin. A Site Investigation/Remedial Action Plan (SI/RAP) was prepared for the PST Property and submitted to the Wisconsin Department of Natural Resources (WDNR) for review and approval. The WDNR approved the SI/RAP with conditions, which include preparation of a Materials Handling and Cap Maintenance Plan for management of residual contaminated material. This Materials Handling and Cap Maintenance Plan has been prepared to satisfy the WDNR condition.

In the SI/RAP, the PST Property was divided into two parcels for remedial planning purposes and includes the Operating Facility and Parking Lot Property. This Materials Handling and Cap Maintenance Plan pertains to the Parking Lot Property, which is bounded by West Greenfield Avenue to the north, West National Avenue to the south, South 65th Street to the east, and South 66th Street to the west. Environmental investigations have been completed on the property over the period of 1989 to 2005. A limited area of soil contamination is present at the Parking Lot Property, with all constituent concentrations below the non-industrial land use direct contact residual contaminant levels (RCLs), except for benzene at one soil boring (SB-5). Benzene was the only constituent detected above the non-industrial land use direct contact RCL at the Parking Lot Property. Groundwater contamination was found at low levels in one area of the Parking Lot Property with concentrations above the Chapter NR 140, Wisconsin Administrative Code Groundwater Quality Enforcement Standard.

Redevelopment of the Parking Lot Property is scheduled to begin in Fall/Winter 2005. ARCADIS' Remedial Action Plan (RAP) Update for the Parking Lot Property addresses the soil and groundwater impacts at the Site, which will be present during the redevelopment activities. Due to this residual contamination, precautions will need to be taken during Site redevelopment activities to ensure the protection of human health and the environment.

This Materials Handling Plan describes the procedures to be followed in managing potentially contaminated soil and groundwater at the Parking Lot Property during redevelopment and construction activities. The Cap Maintenance Plan describes the procedures to be followed at the Parking Lot Property following the redevelopment. Additional information regarding the Site

remediation strategy can be found in the RAP Update for the Parking Lot Property (ARCADIS 2005).

Remediation Program

The Site redevelopment and remediation will be blended to enhance the overall performance of the remedial strategy. In accordance with the RAP Update, the following remedial activities will be conducted at the Parking Lot Property:

- While there have been no detections of soil contaminants above the direct contact RCLs besides benzene, the elements of the proposed development will serve as engineering controls to prevent contact with any residual contaminated soils left in place. While not a Soil Performance Standard (SPS) requirement for the Parking Lot Property, institutional controls could be adopted, as necessary, to account for differing site conditions.
- Management of contaminated soil excavated during redevelopment. Contaminated soils that are characteristically hazardous or observed with free draining product (not observed to date) would be transported offsite for disposal, in accordance with the RAP Update. The remaining soil would be reincorporated into the Site grade, based on the overall Site soil balance. Contaminated soil that cannot be reincorporated into the redevelopment shall be managed, at a minimum, as a non-hazardous special waste.
- Natural attenuation will be used to address the remaining residual constituents. Post-development groundwater monitoring will be implemented in conjunction with the Operating Facility groundwater quality monitoring plan.

SPS in accordance with Sec. NR 720.19(2) will be used to minimize the risks associated with the residual contamination that may be left in place within the vadose zone soils across the Site (at levels less than the direct contact RCLs). If necessary, the impervious surfaces (e.g., buildings, asphalt surfaces, etc.) to be incorporated into the Site development will serve as a performance standard for prevention of direct contact in accordance with Sec. NR 720.19 if soils are found at concentrations above the direct contact RCLs.

General Actions

In general, all redevelopment and construction activities will incorporate protection of human health and the environment. To address the materials of concern, the following general actions will be taken at the Site:

Site Health and Safety

- All environmental consultants/environmental contractors involved in the redevelopment project who may be potentially

exposed to onsite contamination must have their own health and safety plan (HASP) to deal with contingencies which may arise at the Site. These plans will reflect standards of care recognized in the trades while working at an environmentally impacted site.

Waste Characterization

- Prior to the offsite disposal of any contaminated soil or material, a waste determination will be made for impacted media in accordance with Sec. NR 615.06. The purpose of the determination will be to classify impacted media as either solid or hazardous waste. The determination will be made based on the sources of impact, if known; and analytical testing.

Soil Contamination

- The investigation results indicated that residual soil contamination exists in an isolated area of the Parking Lot Property. Specifically, impacted soils are located in the west-central portion of the Parking Lot Property along South 66th Street near a former gasoline underground storage tank. Figure 3 of the RAP Update shows the soil analytical results for the Parking Lot Property, and Figure 5 shows the area of the Parking Lot Property with soil impacts that if excavated, would require disposal as a non-hazardous special waste. The area of impacted soils is approximately 30 feet by 60 feet and to a depth of 12 feet below land surface. In the event that additional impacted or suspect impacted soils are encountered during Site redevelopment activities, the soils will be stockpiled on Site and handled as discussed below.
- During the site redevelopment, soils may be excavated during grading activities, installation of utilities, and installation of foundations. All excavated soils will be used as backfill at the Site to the extent practicable. Contaminated soils that are characteristically hazardous or observed with free draining product (not observed to date) would be transported offsite for disposal, in accordance with the Remedial Action Plan.
- Excess excavated soils that cannot be incorporated as backfill material during redevelopment shall be managed and disposed of in accordance with all applicable regulations. Contaminated soil will be required to be placed on and covered with 30-mil plastic sheeting pending characterization for disposal. Waste characterization will include sampling the material for the contaminants of concern in addition to those applicable analyses that are required for characterization and disposal.

Groundwater Contamination

- Active groundwater remediation is not warranted, based on the investigation results. Groundwater impacts will be addressed through a natural attenuation groundwater monitoring program. Due to Site redevelopment and excavation activities, certain monitoring wells located throughout the Parking Lot Property will be abandoned in accordance with NR 141 requirements. Following the redevelopment activities, new monitoring wells shall be installed throughout the Parking Lot Property to continue the groundwater monitoring program.
- Construction activities during the Site redevelopment, including excavations, will be designed to avoid

or minimize any groundwater table interaction. Dewatering or pumping of groundwater will be avoided to the maximum extent practicable.

- Groundwater encountered during construction will be properly characterized and managed in accordance with the regulatory standards. A limited amount of impacted groundwater is expected to be encountered in the west-central portion of the Parking Lot Property, in the area of the soil contamination (Figure 5). A discharge permit will be secured from the Milwaukee Metropolitan Sewerage District (MMSD) for dewatering activities at the Site. Dewatering may occur in excavated areas that intersect the groundwater table or from rainwater accumulating in open excavations. This water will be discharged through a sanitary sewer access on Site and managed in accordance with the MMSD permit.

Other Associated Activities

- Acute direct contact construction worker RCLs for the constituents of concern will be calculated in the HASP. These RCLs will be used to assess exposure hazards during the redevelopment of the Site.
- As discussed earlier, impacted soils will be excavated during the redevelopment activities. Impacted or suspect impacted soils will be evaluated as they are generated to assess the potential presence of contaminants. Composite soil samples will be collected from the impacted and/or suspect impacted soils stockpiled at the Site. Stockpiled soils shall be sampled once for every 250 cubic yards of soil and analyzed for VOCs and lead. Composite sampling will be in accordance with the WDNR's *Development at Historic Fill Sites and Licensed Landfills: Guidance for Investigation*, dated April 2002. The laboratory analytical results of the composite soil samples shall determine if the soil will be reincorporated into the Site grade or managed and disposed of in accordance with state and federal regulations.

Excavated soils will generally be reincorporated in to the Site grade. Soils that are characteristically hazardous or observed with free draining product (not observed to date) will be transported off-site for disposal. Areas of impacted soils have been identified in the RAP Update and are shown on Figure 5.

- Stormwater management practices will be implemented during construction activities to minimize the transport of soils via erosion losses.

Cap Maintenance Plan

This Cap Maintenance Plan shall be applicable to the Parking Lot Property depicted on Figures 2 through 5 of the RAP Update and a copy of this Cap Maintenance Plan shall at all times be kept on file in the offices of the owner of the Parking Lot Property, the Seller, or its successors(s) in interest (the "Owner"), and any company that is retained to manage the Parking Lot Property on behalf of the Owner (the "Property Manager").

Annual Inspections. Not less than annually, the paved areas of the Parking Lot Property and the landscaped areas of the Parking Lot Property shall be inspected to ensure that the integrity of the soil cover in the landscaped areas is maintained

and that no significant fissures or cracks develop in the paved areas, which would allow a materially significant increase in the infiltration and percolation of precipitation or surface water through the contaminated soils beneath the paved areas. Any disturbances of the soil cover or significant cracking of the pavement shall be noted. Upon completion of the inspection a brief report shall be prepared which identifies the date of the inspection, the individual(s) conducting the inspection, any observed disturbance of the soil cover in the landscaped areas, and any significant cracking observed in the paved areas. A copy of the inspection report shall be kept on file by the Owner and/or Property Manager, with a copy of this Cap Maintenance Plan, and shall be made available for inspection by representatives of the WDNR, upon reasonable request, during the normal business hours of the Owner or Property Manager.

Repairs to Capped Areas. If, during the annual inspection or other routine inspections of the Parking Lot Property, the soil cover is observed to have been disturbed or significant cracking is observed in paved areas, the Owner shall arrange to have repairs made to such areas, in a manner consistent with this Cap Maintenance Plan. Such repairs shall be carried out within a reasonable period of time, not to exceed 120 days, subject to weather and season considerations.

Landscaping Maintenance. The Owner of the Parking Lot Property shall maintain the vegetative cover in landscaped areas according to the custom and practice of the landscaping industry applicable to similarly situated properties in the Metropolitan Milwaukee area. In the event it becomes necessary, or if the Owner desires to install or replace trees, shrubs, fencing or retaining walls, or perform other landscaping that would penetrate below the soil cap into the contaminated soils below the soil cap, the following steps shall be taken:

The contractor performing the work shall be provided with a copy of this Cap Maintenance Plan and shall prepare a health and safety plan, appropriate to the work being performed, to protect workers from any significant or health threatening exposure to contaminated soils beneath the clean soil cover.

Any excavated clean soils from the soil cover shall be separated and segregated so that they may be replaced upon completion of the work. Any excavation into the contaminated soils beneath the soil cover shall be conducted in accordance with the health and safety plan, and any excavated contaminated soils shall be segregated and kept on site, in conformance with the requirements of Chapter NR718, Wis. Adm. Code, until completion of the work. Upon completion of the work, previously excavated contaminated soils may be placed back into the excavation, but only to the extent such replacement does not interfere with the replacement and maintenance of the minimum one foot of clean soil cover over the area of the excavation, and does not constitute a violation

of Wisconsin hazardous waste management law (Chapter 291, Wis. Stats.). The clean soil cover material and any additional clean soil necessary to bring the excavation to grade shall be replaced in such a way to maintain a minimum one foot of clean soil cover, and the area of the excavation shall be seeded and/or mulched in a manner consistent with the landscape plan for the areas and standard landscaping custom and practice.

Any remaining contaminated soils that cannot be replaced in the excavation shall be properly characterized and disposed of at an appropriately licensed facility in accordance with state and federal regulations.

A brief memorandum report describing the work performed, identifying the person(s) performing the work, and verifying that this Cap Maintenance Plan was adhered to, shall be prepared and kept on file by the Owner and/or the Property Manager, and shall be made available for inspection by representatives of the WDNR, upon reasonable request, during the normal business hours of the Owner or Property Manager.

Pavement Replacement and Repairs. If it becomes necessary or desirable to remove or replace pavement, or perform repairs to paved areas, the pavement removal, repair or replacement shall be undertaken in the following manner:

The contractor performing the work shall be provided with a copy of this Cap Maintenance Plan and shall prepare a health and safety plan, appropriate to the work being performed, to protect workers from any significant or health threatening exposure to contaminated soils beneath the paved area.

Any excavated clean soils from the soil cover, or granular layer materials where they exist beneath the paved area to be removed or repaired, shall be separated and segregated so that they may be replaced upon completion of the work. Any excavation into the contaminated soils beneath the soil cover, pavement, or granular layer shall be conducted in accordance with the health and safety plan, and any excavated contaminated soils shall be segregated and kept on site, in conformance with the requirements of Chapter NR718, Wis. Adm. Code, until completion of the work.

Upon completion of the work, previously excavated contaminated soils may be placed back into the excavation, but only to the extent such replacement does not interfere with the replacement and maintenance of either the minimum 1 foot of clean soil cover and/or granular layer over the area of the excavation, and does not constitute a violation of Wisconsin hazardous waste management law (Chapter 291, Wis. Stats.). The clean soil cover material or granular layer material, and any additional clean soil or granular material necessary to bring the excavation to grade shall be replaced in such a way as to maintain either the minimum one foot of clean soil cover or the original thickness of the granular layer, if they previously existed beneath the pavement, and the area of the excavation shall be paved in a

manner consistent with its original condition.

Any remaining contaminated soils that cannot be replaced in the excavation shall be properly characterized and disposed of at an appropriately licensed facility in accordance with state and federal regulations.

A brief memorandum report describing the work performed, identifying the person(s) performing the work, and verifying that this Cap Maintenance Plan was adhered to, shall be prepared and kept on file by the Owner and/or the Property Manager, and shall be made available for inspection by representatives of the WDNR, upon reasonable request, during the normal business hours of the Owner or Property Manager.

Utility Repairs. No utility repairs or installation of new or replacement utilities shall be conducted on the Parking Lot Property until after the utility and any contractor(s) for the utility have acknowledged receipt of a copy of this Cap Maintenance Plan. The utility repairs or installation(s) shall be conducted in strict conformance with the standards set forth above with respect to excavations into landscaped areas and paved areas. In addition, if the utility repairs or installation (s) involve any disturbance of the seals used to seal the entrance of utility lines into structures on the property, such seals shall be replaced with new seals of like or superior quality. The utility or its contractor(s) shall prepare a memorandum report regarding the work, as set forth above, which shall be kept on file and made available for inspection by representatives of the WDNR, upon reasonable request, during the normal business hours of the Owner or Property Manager.

CLOSING SCHEDULE

Phase 2 Construction; Area 1: closing no later than ~~3~~4/31/2006. |

Phase 1 Construction; Area 2: closing no later than 6/31/2008.

Phase 3 Construction; Area 3: closing no later than 6/30/2010.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into as of the ___ day of March, 2006, by and between **TOLDT DEVELOPMENT INC.** ("Developer"), and the **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the **CITY OF WEST ALLIS**, pursuant to Section 66.1335 of the Wisconsin Statutes (the "Authority").

WITNESSETH:

WHEREAS, the Authority is the owner of certain real property located in the Farmers Market area of West Allis, County of Milwaukee, State of Wisconsin (the "Property"), containing approximately 16.6 acres, as more particularly and legally described on attached **Exhibit 1 - A** (the "Property"); and,

WHEREAS, the Authority, on December 12, 2000 declared the Property to be blighted within the meaning of Wis. Stats. §66.1333, making its sale and development subject to the provisions of these Wisconsin Statutes; and,

WHEREAS, the Authority and Developer have executed a Purchase and Sale Agreement, hereby incorporated herein as **Exhibit 2**, including all addenda, exhibits and amendments (the "Purchase and Sale Agreement"), for the purchase by Developer and the sale by the Authority of the Property; and,

WHEREAS, Developer intends to construct upon the Property a number of mixed use buildings consisting of commercial space and residential units (the "Private Development") as described on attached Exhibits 4 & 5 and,

WHEREAS, the purpose of this Agreement is to set forth certain terms, provisions and

conditions as will provide reasonable assurance of the priority of the obligations of Developer with respect to the development of the Property, to provide assurance of the financial and legal ability of Developer to carry out and conform to the Authority's redevelopment objectives; also, to set forth the terms, conditions and specifications concerning construction, maintenance and management of the Private Development and other improvements on the Property, including a development time schedule herein attached as Exhibit 4.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein and in the Purchase and Sale Agreement signed herewith and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **AUTHORITY'S OBLIGATIONS.**

The Authority shall be obligated as follows:

- A. **Sale of the Property.** Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, the Authority shall close the sale of the Property to the Developer as described in Property Acquisition Phases Exhibit 3.
- B. **Zoning and Planning Approvals.** The Authority shall use its best efforts to expedite the approval of the Planned Development District and plan review process to accommodate Developer's development schedule for the construction of the Private Development. To the extent not already approved on or prior to the date of this Agreement, all such required approvals are subject to the final approval of the Common Council, Authority, and Plan Commission.

1. The Authority will assist in obtaining a Grant of Privilege from the City to the Developer for the steel landmark girder to be built over S. 66 St.
2. The Authority will assist in obtaining a Grant of Privilege from the City to the Developer for the landscape island within the cul-de-sac or other traffic-calming feature.
3. The Authority will assist in obtaining a Grant of Privilege from the City to the Developer for outdoor dining and outdoor sales in the public sidewalk areas.
4. The Authority will cause to be demolished existing buildings & structures and removal of footings and foundations on or before the closing of the applicable phase as described in Exhibit 9 Standards for Removal of Footings and Foundations.
5. The Authority will remediate the Property in accordance with the terms and conditions of the Purchase and Sale Agreement on or before the closing of the applicable phase.
6. The Authority will assist in obtaining a Grant of Privilege from the City to the Developer to remove the alley pavement located south of parcel No. 802 in order to allow Developer to landscape the alley right-of-way located south of the proposed condominium building.

C. Public Improvements.

1. The Authority will do its due diligence to negotiate to have the bus route re-routed on W. National Ave. to go southbound on S. 65 St. instead of the existing southbound route on S. 66 St.

2. Construct structural and decorative architectural market improvements within the existing boundaries of the Farmers Market thereby providing for the restoration of the Farmers Market Facility by December 31, 2006.
3. The Authority guarantees that it will lease but not occupy from the Developer up to an accumulative total of ~~1,500~~3,000 sq. ft. at \$15/sq. ft. of the commercial space within various buildings in order to speed up development until any of the buildings are 50% pre-leased for a period of 1 year after completion. In no event shall the Authority be obligated to lease any more then a total of ~~1,500~~3,000 sf. ft. within Phases 1 and 2 of the development.
4. Developer shall be prohibited from posting or other wise discouraging Farmers Market Parking on the "Property".

Richard Kobriger to offer a suggestion as to wording

5. The Authority will, subject to City of West Allis Common Council approval, finance the construction of all critical public infrastructure improvements, and complete such work in accordance with the timetable as provided for in Exhibit 7 Public Improvements.

2. **DEVELOPER'S OBLIGATIONS.**

Developer shall be obligated as follows:

A. **Purchase of the Property.** Subject to the obligations and contingencies set forth in the Purchase and Sale Agreement, Developer shall close the purchase of the Property from the Authority in Phases, as provided for in the Purchase and Sale Agreement. Failure by the Developer to close on schedule for any phases will release the Authority from any further obligation to sell any additional property to the Developer.

B. **Construction of Mixed-Use Residential and Commercial Private Development.** Prior to the date of this Agreement, Developer has submitted to the Authority the Conceptual Plan in accordance with **Exhibit 4** Phased Development Plan and Exhibit 5 Conceptual Approved Plan.

The Developer has submitted to the Plan Commission of the City of West Allis its plans and specifications sufficient for zoning and plan review purposes (but not for building permit review) for construction of the Private Development, which are in accordance with **Exhibits 4 and 5**, together with required surface parking, which plans and specifications have been approved by the Plan Commission and the Authority (see Section 3, below) according to their normal review and approval procedures.

A copy of the conceptual approved plan is attached hereto as **Exhibit 4 and Exhibit 5**. The Developer shall construct the Private Development in accordance with the approved plans and specifications. The Developer anticipates that the total development value of the Private Development will be approximately \$58,000,000.00. Before commencement of construction of the Private Development, the Developer shall prepare its development budget for the Private Development. Developer shall maintain records such that its actual expenditures may be ascertained and reconciled against said budget. From time to time, upon reasonable notice from the Authority, authorized representatives of the Authority shall be entitled to examine such records to verify total development costs of the Private Development.

C. **Availability of Funds for Construction.** ~~Within six (6) months of the date of this Agreement and p~~Prior to closing on each subsequent phase the Developer shall provide to the Authority evidence satisfactory to the Authority that Developer has available to it sufficient funds for the completion of the Private Development of each phase, as provided for in Exhibit 4 Phased Development Plan. Should the Developer be unable to provide the Authority satisfactory evidence that it has sufficient funds for the completion of the Private Development the Authority will be released from any further obligation to sell

any additional property to the Developer.

D. **No Subdivision**. Without the prior written consent of the Authority, which consent shall not be unreasonably withheld, no owner of any portion of a Phase may subdivide the Phase or any portion thereof nor sell, transfer or convey fee simple title to less than the entire interest of the Phase, except for the sale and conveyance of individual condominium units or the sale and conveyance of individual parcels improved with the improvements as provided for in the private Development.

E. **Payment in Lieu of Taxes (PILOT)**.

1. Ownership of the Property by any person or in any manner which, for a period of twenty (20) years from the execution of this Agreement, that would render any part of the Property exempt from property taxation shall result in a payment in lieu of taxes (PILOT) from the Developerowner of the property, or its heirs, successors, and assigns, to the Authority each year in amount equal to the City's portion of the net general property taxes that would have been due and owing on the exempt portion of the Property if it was not tax exempt. Such payment shall be assessed, billed, due and payable in the same manner as property taxes.

2. Developer and Authority specifically agree that the purchase price and the PILOT are intricately tied together and are material inducements to this Agreement and the Purchase and Sale Agreement.

3. -All residential condo properties are excluded from the above PILOT provision.

My notes suggest that the above words "PILOT provision" were to be replaced with the words " Development Agreement" I would like to discuss this further

Also Richard was going to look at rewording the entire paragraph. However, if the developer is allowed to purchase all three parcels and can sell of any of the commercial buildings and convert the apartments to condos the city could end up without and guarantees. – 2nd mortgage – tax lein?

F. Developer Guarantee's.

1. Developer guarantees that each Phase developed by the Developer shall generate a minimum fair market value in the amount set forth on Exhibit 4 as of January 1, of the year following the year in which the phase is completed as enumerated by year in Exhibit 4. To the extent the general property taxes for any Phase developed by Developer in any calendar year after January 1, of the year following the year in which the phase is completed as identified in Exhibit 4 are less than the equivalent of the guaranteed fair market value multiplied by that year's City of West Allis mill rate, Developer shall pay the difference between that year's actual tax payment and the tax payment that would have been generated by the guaranteed valuation. Developer's obligation to guarantee the payment of any property tax shortfall against the guaranteed valuation shall continue for three years after January 1, of the year following the year in which the phase is completed, as per Exhibit 4.

2. Developer hereby agrees that the amount of any property tax shortfall 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, without notice or hearing, such notice and hearing being expressly waived by the Developer. The special charge shall be a lien on the Property and shall be

extended upon the tax roll for the year in which it is due and owing against the Property. All proceedings in relation to collection, return and sale of the Property for delinquent real estate taxes shall apply to any such special charge.

~~3. All residential condo properties are excluded from the above PILOT provision.~~

G. Building Standards And Utilities.

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

1. Improvements shall be designed by an architect or engineer. All sides, elevations or facades of the Project's buildings visible from and all public areas shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment. Building Improvements are subject to architectural review and approval by the Plan Commission of the City as provided herein.
2. All trash disposal areas shall be screened in such a manner as to be harmonious with the building exterior and design. All trash containers, including dumpsters, must be enclosed by a solid wall or fence that matches the building facade and provide a suitable visual screen. Such wall shall be of sufficient height to cover the material stored and shall be maintained so as to present a good appearance at all times.
3. No additional building Improvements or structures shall be constructed on the Property until a site plan therefore (showing location, land coverage, building intensity, landscaping and off-street parking) has been submitted to and approved by the Planning Commission of the City (the "Site Plan"). Improvements shown

and determined on the Site Plan shall include, but not be limited to:

- (a) All finished grade levels;
- (b) Location of all buildings and other structures (to include a schedule showing: lot area and total square feet in building (each floor));
- (c) Sidewalks and driveways (including types of materials);
- (d) Parking and access drive dimensions and locations, stall numbers and dimensions, curbs, tire stops, loading docks, and snow storage areas;
- (e) Loading areas (including types of materials);
- (f) Intentionally Omitted
- (g) Utility and storage areas (including types of materials);
- (h) Lawns and landscaped areas (including types of materials);
- (i) Water impoundments;
- (j) Fences (including types of materials);
- (k) Lights (including types);
- (l) Areas of fill or cuts;
- (m) Storm water drainage plans and facilities;
- (n) On-site sewer, water and other utility locations, sizes and easement locations;
- (o) Location, screening and type of refuse collection facilities; and
- (p) All exterior signs and all other signs visible from the exterior of the building and other structures.
- (q) Dimensions of all front, side, and rear yards, drives, etc.
- (r) Other paved areas and uses, fencing and walls, outdoor lighting (location

and direction of beams).

- (s) A landscaping and screening plan showing the location, common and botanical names, planting size, root condition and quantity of all plant material. The plan shall also show all ground cover and mulch areas and landscape construction materials.
- (t) Locations and dimensions of all easements.
- (u) Surface details of all outside areas, such as paving.
- (v) Signs: design, size, location, and illumination.
- (w) Designation of future expansion areas.
- (x) Locations of all hydrants within the Site.
- (y) Grading Plan.
 - i. Existing and proposed grades and contours.
 - ii. Surface water drainage and detention and/or retention.
 - iii. Finished grade at building.
 - iv. Catch basins and storm sewer locations.
 - v. Connection to existing utilities.

H. Utilities And Site Lighting.

All utility lines within the Site shall be installed underground in easements provided therefore. No overhead electric power, telephone or cable service will be permitted. Building lighting may be wall mounted. Building, parking and roadway lighting (fixture, height, type and intensity) where provided shall be approved by the City subject to approval by the Plan Commission.

I. Other Site Improvements.

1. **Traffic Circulation.** The location and design compatibility of all lanes, drives, parking arrangements and ingress and egress plans for the Property, including the impact on traffic circulation, shall be part of the site plan review conducted by the Plan Commission.

2. **Landscaping.** Landscaping improvements shall be required as an integral part of the Property. All areas on the Property not used for building, storage, parking, walks, and access roads, shall be suitably graded and drained, seeded or sodded, and maintained in grass and landscaped areas as provided in Sec. 12.13 of the Revised Municipal Code. Landscaped areas shall contain trees, shrubs, grass and/or other suitable groundcover in accordance with a landscape plan for the Property approved in writing by the Plan Commission. All required landscaping shall be completed within one year of the completion of construction of the principal building on the Property and shall, thereafter, be maintained in a manner acceptable to the City. Landscape materials shall be suitable to the climate, soil conditions and intended use of the Property and shall be of sufficient size and density (trees must be at least 2 1/2" caliper, unless otherwise specifically approved by the Plan Commission) to create a "mature appearing landscaped environment."

J. Building Location.

The Project Building Improvements shall be located on the Property substantially as indicated on the Site Plan.

K. Building Design And Materials.

Building plans and specifications, including architectural elevations, for the

Project, to include construction materials, are subject to review and final approval by the City's Plan Commission pursuant to the provisions of this Agreement.

Facade treatments must be compatible with site standards of this Agreement and aesthetically appropriate. Rooftop mechanical units, such as ventilating and air conditioning equipment shall be appropriately screened with building material sensitive/compatible with the rest of the architecture.

L. Property Improvements.

1. Plan Review. No additional buildings or other Improvements shall be erected, placed or altered on the Property until the building plans and specifications for such improvements, including the Site Plan, and grading plan have been submitted to and approved by the Plan Commission of the City. The Plan Commission shall review and approve, approve conditionally, or disapprove the building plans and specifications with respect to their conformity with this Agreement and applicable enactments of the City, and with respect to the harmony of design and land use as it affects other property adjacent to the Property.

~~2. 2.-~~ Plan Submittal. ~~Within sixty (60) days of~~ Prior to the closing of the particular Phase, Developer shall submit to the City's Plan Commission its building plans and specifications for parking sufficient for review purposes (but not for building permit review) pursuant to this Section.

Scott wanted to think about moving this to the Purchase & Sale Agreement

3. Plan Requirements. Plans drawn to scale shall be submitted to the Plan

Commission for review. Ten (10) sets of all site plans and two (2) sets of all building plans shall be submitted as follows:

- (a) Floor plans of typical floors.
- (b) Entrances, exits, loading docks, and building service areas.
- (c) Storage areas and buildings.
- (d) Architectural treatment of building exteriors including building materials, and colors.
- (e) Samples of construction materials.

4. Determination. After review, the Plan Commission shall make a reasonable effort to approve or disapprove the building and parking plans and specifications within forty-five (45) days of submittal. If the Plan Commission denies a request, written evidence shall be provided as to why the request was denied. Subsequent changes to approved building plans and specifications shall also be subject to review and approval by the Plan Commission in accordance with the procedures set forth herein.

5. Enforcement. In the event the Developer proceeds to make improvements and/or construction without first having received the approval, as provided above; or, in the event the Developer proceeds in a manner, which does not comply with the plans and specifications as approved by the Plan Commission, the City may take action to stop construction of the improvements. Action by the City shall consist of a notice to the Developer who is proceeding in violation of, or without approval from Plan Commission, which notice shall be in writing, pursuant to Section 20. The Notice shall advise the Developer of the nature of the violation and shall

order immediate cessation of work on the improvements. The Developer may request a meeting with the City Plan Commission, which shall be granted within fifteen (15) days of the request. If the Developer can demonstrate compliance with approved plans and specifications to the satisfaction of the Plan Commission, the City shall rescind its order stopping construction. If the Developer is still in violation, the City may take all legal and equitable action it deems necessary to ensure compliance.

M. Accessory Structures.

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

N. Fencing.

Fenced areas are permitted under the following terms and conditions:

1. **Placement.** Not permitted in front yard or easement areas, with the exception of fencing required by code or by specific approval from the Plan Commission.
2. **Type.** The type and style of fencing material used is subject to approval by the Plan Commission.
3. **Height.** Fences shall not exceed four (4) feet in height with solid side facing outward from Property. Additional height may be approved by the Plan Commission.

4. Maintenance. All fences shall be maintained in good condition including painting as required.

O. Signage.

1. Review. The Plan Commission reserves the right to review all exterior signs and to approve only those which comply with the City's signage regulations, and which are environmentally and aesthetically suitable. Developer shall submit a plan to the Plan Commission indicating, in sufficient detail for review and approval, the type, size, shape and location of its proposed signs. Planning Commission approval shall be required prior to the fabrication or installation of a sign or the filing of a formal application for a permit with the Department of Building Inspection and Zoning.
2. Standards.
 - (a) Intentionally Left Blank
 - (b) The Facility identification sign located at the curb must include a landscaped setting of ornamental shrubs, flowers, ground cover or a combination of the three in an area equal to two times the area of the sign.
 - (c) Sign lighting, if desired, must be ground-mounted hidden from view from the street. Individual letters may be internally illuminated.
 - (d) Directional Signage shall be a post and panel system and shall be limited in size to four (4) square feet and not posted more than six (6) feet above the grade. Not more than one sign shall be provided at each access drive.

P. Satellite Dish Antennas

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

unless such satellite dish placements when installed are not visible from public roads or sidewalks. Approvals will be subject to the following criteria:

1. Antennas shall be erected or maintained in the rear yard of buildings and not on the street side of buildings. The Plan Commission shall have the authority to authorize other locations based on demonstrated site constraints.
2. Height restriction: 35 feet
3. Antennas shall not be located in any required setback or easement area.
4. The antenna shall be located and designed so as to minimize the visual impact on surrounding properties and its visibility from the public street. Antennas should be screened through the addition of harmonious architectural features and/or landscaping in keeping with the elements and characteristics of the Property.
5. No obstruction shall protrude into the airspace defined by the forward extension of a plane from the outer edge of the antenna dish to infinity and at the same horizontal and vertical angle as the central axis of the antenna dish.
6. Materials used in constructing the antenna shall not be unnecessarily bright, shiny, garish, or reflective.
7. Advertising placed on the dish face or any other antenna component is prohibited except for the corporate name and/or identification logo.

Q. Maintenance Responsibilities

1. The Developer or any subsequent owner shall keep the Property, and all contiguous street right-of-way to edge of pavement, and easement areas in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) The removal of all litter, trash, refuse, and wastes.
- (b) The mowing of all lawn areas to a height of less than five (5) inches unless otherwise approved in writing by the Plan Commission. Those designated and approve unused lot areas shall be cut a minimum of three (3) times per year.
- (c) The maintenance of lawn and landscape areas in a weed-free, healthy and attractive condition.
- (d) The care and pruning of trees and shrubbery outside of easements within Property boundaries.
- (e) The maintenance of exterior lighting, signs, and mechanical facilities in working order.
- (f) The keeping of all exterior building surfaces in a clean, well maintained condition.
- (g) The striping and sealing of parking and driveway areas.
- (h) The removal of unlicensed or inoperable vehicles.
- (i) Snow and ice removal.

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

R. Other Developer Responsibilities:

1. Intentionally left blank.
2. Developer will provide a financial commitment for each Phase from a lender prior to the applicable Phase being sold to the Developer.
3. Intentionally left blank.
4. Any public improvements requested by Developer which exceed the “standard” treatments provided by the City would be paid by the developer, i.e. more attractive street lighting, larger street trees, wider sidewalks, specialty lighting, or other lighting and architectural and artwork features in the right-of-way.
5. Developer will secure all necessary building permits for the first building to be constructed within the applicable phase prior to land conveyance for each Phase.
6. Intentionally left blank
7. ~~Intentionally left blank. Developer will complete a parking and traffic study for the proposed development and all findings will be provided to the City prior to the sale of each Phase and the study shall be reasonably completed to the satisfaction of the City Engineer.~~
8. Developer will complete a Market Study and all findings will be provided to the City prior to the sale of each Phase and the study shall be reasonably completed to the satisfaction of the Director of Development.
9. Developer guarantees that there will be a minimum of 13 condominium units built and that re-evaluations of the marketplace will take place on a Phase basis. The number of condominiums provided could be 185 or more.
10. Developer shall construct such other improvements as provided for in Exhibit 8 Privately Developed Public Amenities.
11. All residential developments shall be provided with high speed data lines.

3. **BUILDING, SITE AND ARCHITECTURAL APPROVALS.** All building, site, landscaping and architectural plans require approval by the Plan Commission of the City of West Allis. Said plans also require approval by the Authority. The Authority shall not unreasonably withhold, condition, or delay such approval.

4. **AUTHORITY'S CONTINGENCIES.** ~~Developer acknowledges that various of the specific undertakings of the Authority described herein may require public hearings and other legal procedures, as conditions precedent thereto. The Party's agreements hereunder are conditioned upon the obtaining of all such required approvals in the manner required by law. The Authority cannot assure that all of such approvals will be obtained; however, it agrees to use its best efforts to obtain them on a timely basis.~~

~~If the Authority has not provided written notice to Developer within thirty (30) days after the date of this Agreement and within 30 days of scheduled closing for each subsequent phase, as provided for in Exhibit 3 A Property Acquisition Phases, that it has not obtained all approvals necessary for the undertakings described herein, this contingency shall be deemed satisfied and waived. If it does provide such timely notice, this Agreement and the Purchase and Sale Agreement shall be null and void, Developer's Earnest Money, if any, shall be returned, and neither party shall have any further rights or obligations with respect thereto. The Authority's inability to grant or obtain the necessary approvals within the thirty (30) day period described herein shall not constitute a default hereunder.~~

Scott wanted to look at the above to modify it or delete it.

5. **DEVELOPER'S CONTINGENCIES.** The obligations of Developer hereunder are contingent upon the closings of the sale of the Property and performance of all obligations of the Authority pursuant to the Purchase and Sale Agreement. If said closings do not occur pursuant to the terms and conditions of the Purchase and Sale Agreement, this Agreement shall be null and void, with regard to any Property in a Phase not acquired by Developer. However, the Parties obligations with regard to that portion of the private Development for that portion of the Property Developer acquires shall remain in effect.

6. **NO ASSIGNMENT.** Prior to completion of construction of the Private Development the Developer may not assign its rights and obligations in and to this Agreement without the prior written consent of the Authority. Upon completion of all phases of construction, Developer may assign its rights and obligations in and to this Agreement with respect to any portion of the Property without the Authority's consent in the event of a sale or other transfer of all of Developer's interest in and to the transferred portion of the Property. The Authority may not assign its rights and obligations in and to this Agreement without the prior consent of the Developer. Consent may not be unreasonably withheld, conditioned, or delayed.

7. **BUILDING LOCATION.** The Private Development shall be substantially located on the Property as indicated on the Concept Plan approved by the Authority, subject to minor adjustments due to soil, grading and engineering conditions. The Developer may revise the Concept Plan, with the Authority's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

8. **BUILDING DESIGN.** The Private Development shall be constructed in accordance with building plans, including architectural elevations, as approved by the Plan Commission of the City of West Allis and the Authority.

9. **OTHER SITE IMPROVEMENTS.** The location and design compatibility of all lanes, drives, parking arrangements and ingress and egress plans for the Property, including the impact on traffic circulation, are part of the site plan approval process by the Plan Commission and the Authority. Landscaping improvements are an integral part of the Private Development and shall be installed and maintained in accordance with the landscape plan for the Property also as

approved by the Plan Commission and the Authority. All required landscaping shall comply with Section 12.13 of the Revised Municipal Code of the City of West Allis, shall be completed within one year of the completion of construction of the principal building and shall, thereafter, be maintained in a manner reasonably acceptable to the Plan Commission. Landscape materials shall be suitable to the climate, soil conditions and intended use of the Property and shall be of sufficient size and density to create a "mature appearing landscaped environment."

10. **ACCESSORY STRUCTURES**. The location, size and design compatibility of all permitted accessory structures in the Project, such as garages, maintenance buildings, etc., are subject to the approval by the Plan Commission and Authority. The term "accessory structure" includes, but is not limited to, the following (if such structures are to be located within the required setbacks): ground-mounted telephone and electrical transformers, gas meters, ground-mounted air conditioners, exhaust ducts and similar structures.

11. **SIGNAGE**. The Plan Commission shall review all exterior signs and approve only those, which are environmentally and aesthetically suitable. Developer shall submit a plan to the Plan Commission indicating, in sufficient detail for review and approval, the type, size, shape and location of its proposed signs. Any buildings intended predominantly for rental should be designed with a sign frieze to assure uniformity and continuity of style. Plan Commission approval, which approval shall not be unreasonably withheld, shall be required prior to the fabrication or installation of a sign or the filing of a formal application for a permit with the Department of Building Inspection and Zoning of the City of West Allis. Off-premise and rooftop signs are expressly prohibited.

12. **PARKING SPACES.** Automobile parking and loading spaces as required by the City of West Allis Codes shall be provided for the Private Development. The location and design of parking and loading arrangements are subject to the approval of the Plan Commission and the Authority as provided in Section 9, above.

13. **CONSTRUCTION TIMETABLE FOR BUILDING IMPROVEMENTS.**

A. **Construction Timetable.** Developer shall commence construction of Phase 1 and all subsequent Phases of the Private Development within six (6) months after closing the purchase and sale of each Phase and shall proceed with due diligence to completion and occupancy, according to Exhibit 4 ~~subject to force majeure~~. The Private Development shall be constructed in accordance with the approved final plans and as per Exhibit 4 time schedule. Failure by the developer to construct in accordance to Exhibit 4 shall allow the Authority to proceed under Section B. Construction Remedies immediately below and / or any other remedies provided for under this Agreement.

B. **Construction Remedies.**

(1) In the event Developer does not commence and/or complete construction of the Private Development as hereinabove set forth, because of the public interest involved, the Authority shall have the right to specific performance of the covenants and obligations of Developer to be performed hereunder by it, in addition to all other remedies the Authority may have under this Agreement or at law or in equity.

(2) In addition to all other remedies the Authority may have under this Agreement or at law or in equity, and as an alternative thereto, in the event Developer does not commence and/or complete construction of the Private Development as set

forth above, the Authority may, but shall not be required to, purchase the Property for the price paid to the Authority by Developer (assuming no construction has occurred on the Property), if another price is not willingly agreed to in writing by the Authority and Developer, by giving written notice to Developer of its intention to repurchase. If construction of the Private Development has begun, the repurchase price shall include the lesser of the cost or the fair market value of the construction and the Property. If the Authority and Developer are not able to reach agreement as to the fair market value, such fair market value shall be determined by appraisal as follows. Either party may by notice to the other, appoint a disinterested MAI appraiser as one of the appraisers. Within ten (10) days thereafter the other party shall, by written notice to the party appointing the first appraiser, appoint another disinterested MAI appraiser as a second appraiser. The appraisers thus appointed shall appoint a third disinterested MAI appraiser, and such three appraisers shall as promptly as possible determine such value, provided however that:

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

(b) if, within five (5) days after the appointment of the second appraiser, the two appraisers appointed by the parties shall be unable to agree upon the appointment of a third appraiser, they shall give written notice of such failure to agree to the parties, and, if the parties fail to agree upon the selection of such third appraiser within five (5) days after the appraisers appointed by the parties gave notice as aforesaid, then within five (5) days thereafter either of the parties upon written notice to the other party hereto

may apply for such appointment to the highest court of general jurisdiction in the county in which the Property is located.

The parties shall each be entitled to present evidence and argument to the appraisers. The determination of the majority of the appraisers or the sole appraiser, as the case may be, shall be conclusive upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The appraisers shall give written notice to the parties stating their determination, and shall furnish to each party a copy of such determination signed by them. The expense of such appraisal(s) shall be borne equally by the parties. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as provided above for the appointment of the appraiser so failing, refusing or unable to act.

The notice of intention to exercise the repurchase right can be given at any time after failure of Developer to comply with this section and before this section terminates as provided below. Title to the Property shall be conveyed to the Authority in the same condition as conveyed by the Authority to Developer and a title insurance policy shall be provided at the expense of Developer in the amount of the repurchase price and insuring the Authority's title is in the aforementioned condition.

This section 13 shall terminate upon final completion of construction of the Private Development and related improvements on the Property pursuant to plans approved in accordance with the terms hereof.

14. **DEFAULT.**

A. **Remedies of the Authority.** In the event of Developer's default hereunder,

and in addition to other rights and remedies provided for in this Agreement, the Authority shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, the Authority shall have the following specific rights and remedies:

- (1) With respect to matters that are capable of being corrected by the Authority, the Authority may at its option enter upon the Property for the purpose of correcting the default and the Authority's reasonable costs in correcting same, plus interest as provided in Subsection E., below, shall be paid by Developer to the Authority immediately upon demand;
- (2) Injunctive relief;
- (3) Action for specific performance; and
- (4) Action for money damages.

B. Reimbursement to the Authority.

Scott wanted to think about this ????????

Any amounts expended by the Authority in enforcing this Agreement, and any amounts expended by the Authority in curing a default on behalf of Developer, together with interest at the rate provided in Subsection E., below, shall be paid to the Authority and shall constitute a lien against the Property until such amounts are reimbursed or paid to the Authority, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

C. Remedies of Developer. In the event of Authority's default hereunder, and in addition to other rights and remedies provided for in this Agreement, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition,

and without limitation, Developer shall have the following specific rights and remedies:

(1) With respect to matters that are capable of being corrected by Developer, Developer may at its option correct the default and Developer's reasonable costs in correcting same, plus interest as provided in Subsection E., below, shall be paid by the Authority to Developer immediately upon demand;

(2) Injunctive relief;

(3) Action for specific performance; and

(4) Action for money damages.

D. **Reimbursement to Developer.** Any amounts expended by Developer in enforcing this Agreement, and any amounts expended by Developer in curing a default on behalf of the Authority, together with interest at the rate provided in Subsection E., below, shall be paid to Developer.

E. **Interest.** Interest shall accrue on all amounts required to be reimbursed above at the rate of the Prime Rate as established from time to time by M&I Marshall & Ilsley Bank, or its successors, plus two percent (2%) per annum from the date of payment until the date reimbursed in full with accrued interest.

F. **No Exemplary Damages.** Neither party shall be liable to the other for consequential, indirect, incidental or exemplary damages.

G. **Remedies are Cumulative.** All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

H. **Failure to Enforce Not a Waiver.** Failure of a Party to enforce any provision contained herein shall not be deemed a waiver of its rights to enforce such provision or any other provision in the event of a subsequent default.

I. **Notice.** Before any default hereunder shall be deemed to have occurred, a detailed written notice of the default shall be provided together with a reasonable period thereafter to correct the same.

15. **NO PERSONAL LIABILITY.**

A. Under no circumstances shall any alderman, officer, official, director, member, partner or employee of the Authority have any personal liability arising out of this Agreement, and neither party shall seek or claim any such personal liability.

B. The Authority agrees to look solely to Developer's interest in the Property for the recovery of any judgment for money damages from Developer, it being agreed that its managers, directors, officers or members shall never be personally liable for any such judgment.

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

17. **PARTIES AND INTERESTS; SURVIVAL OF AGREEMENTS.** Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the Parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain

operative and in full force and effect until fulfilled and shall survive the closing.

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

19. **INDUCEMENTS AND RELIANCE**. Developer acknowledges that the warranties and representations made here by the Developer are a material inducement to Authority entering into the Purchase and Sale Agreement for the Property and this Agreement, and that Authority is entitled to rely upon these warranties and representations despite independent investigation undertaken by Authority and that the warranties and representations made here and by the Developer shall survive the Closing and the execution and delivery of the Deed for the Property.

20. **NOTICES**. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given (i) upon receipt if hand-delivered to the party or person intended, or (ii) one business day after deposit if deposited with a nationally recognized overnight commercial courier service, airbill prepaid, or (iii) two (2) business days after deposit if deposited in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person identified to receive Notice in the Purchase and Sale Agreement. Any party may, by written notice to the other party, designate a change of party, person or address for the purposes aforesaid.

To Buyer: Toldt Development, Inc.
Helmut Toldt, President
4040 N. Calhoun Road
Brookfield, WI 53005

To Seller: Community Development Authority of the
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: John F. Stibal
Facsimile Number: (414) 302-8401

with a copy to:

Scott Post, City Attorney
City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Facsimile Number: (414) 302-8444

Attorney Richard R. Kobriger
Cramer, Multhauf & Hammes, LLP
1601 East Racine Avenue
P.O. Box 558
Waukesha, WI 53187-0558

Any party may, by written notice to the other party, designate a change of address for the purposes aforesaid.

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

22. **ENTIRE AGREEMENT.** Except for the Purchase and Sale Agreement, this writing constitutes the entire Agreement between the parties hereto, and all prior statements, letters of intent, representations and offers, if any, are hereby terminated. This Agreement may be modified or amended only by written instrument signed by the Authority and Developer.

23. **GOVERNING LAW.** The laws of the State of Wisconsin shall govern this Agreement.

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

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

26. **SEVERABILITY.** If any provisions of this Agreement shall be held or deemed to be

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

27. **ATTORNEY'S FEES.** In litigation arising out of this Agreement, the prevailing party shall be entitled to court costs, and out-of-pocket expenses from the unsuccessful party. Attorney fees shall be paid by each party and shall not be awarded to the successful party.

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

29. **GOOD FAITH.** The Parties covenant and agree to act in good faith in the performance and enforcement of the provisions of this Agreement.

30. **MEMORANDUM OF AGREEMENT.** The Authority and Developer agree that at the request of the Authority, they will execute a memorandum of this agreement to be recorded in the office of the Register of Deeds of Milwaukee County.

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

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

**AUTHORITY:
COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

By: _____
John F. Stibal, Secretary/Executive Director

LEGAL DESCRIPTION

AREA 1: W. National Ave. to a portion of W. Mitchell St., S. 66th St. to the RR spur and the small parcel on W. Lapham St. and S. 66th St.

Lots 1 through 11 in Block 1, Lots 1 and 2 in Block 2, and Vacated West Lapham Street in Central Improvement Co. Subdivision No. 3 and Lots 5, 6 and part of Lots 7 and 8 in Block 2 of Assessor's Plat No. 269, and Lots 1, 2 and 3 in Block 9 of Central Improvement Co. Subdivision No. 7, all in the Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 3, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4;
Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 445.51 feet;
Thence S 01°53'33"E, a distance of 33.00 feet to the North right-of-way line of West Greenfield Avenue and the east right-of-way line of a railroad spur track;
Thence S 53°05'12"W along said East right-of-way line, a distance of 15.85 feet to the arc of a curve; Thence southwesterly along said East right-of-way line, a distance of 294.70 feet along the arc of a curve whose center is S 36°54'48"E a radial distance of 313.27 feet and whose chord bears S 26°08'13"W, 283.95 feet;
Thence S 00°48'46"E along said East right-of-way line, a distance of 583.91 feet to the north right-of-way of West National Avenue;
Thence S 00°13'36"E, a distance of 97.31 feet to the south right-of-way line of West National Avenue and the POINT OF BEGINNING;
Thence N 64°30'07"E along said south right-of-way line, a distance of 491.67 feet to the west right-of-way line of South 66th Street;
Thence S 00°59'09"E along said west right-of-way line, a distance of 290.08 feet;
Thence N 88°07'11"E along the south right-of-way line of West Lapham Street and it's extension thereof, a distance of 60.01 feet to the intersection of said south right-of-way line and the east right-of-way of South 66th Street;
Thence N 88°07'11"E along said south right-of-way line, a distance of 90.01 feet;
Thence S 00°59'09"E, a distance of 120.00 feet;
Thence S 88°07'11"W, a distance of 90.01 feet to the east right-of-way line of South 66th Street;
Thence N 00°59'09"W along said east right-of-way line, a distance of 120.00 feet to the intersection of said east right-of-way line and the south right-of-way line of West Lapham Street;
Thence S 88°07'11"W along the south right-of-way line of West Lapham Street and it's extension thereof, a distance of 60.01 feet to the west right-of-way line of South 66th Street;
Thence S 00°59'09"E along said west right-of-way line, a distance of 250.50 feet;
Thence S 88°07'11"W, a distance of 127.00 feet;
Thence S 00°59'09"E, a distance of 120.46 feet;
Thence S 88°07'11"W, a distance of 59.21 feet to the arc of a curve;
Thence westerly, 220.68 feet along the arc of a curve whose center is S01°52'49"E a radial distance of 333.13 feet and whose chord bears S69°08'31"W, 216.67 feet;
Thence S 00°59'09"E, a distance of 105.03 feet to the north right-of-way line of West Mitchell Street; Thence S 89°00'51"W along said north right-or-way line, a distance of 58.53 feet to east right-of-way line of a railroad spur track;
Thence N 00°53'05"W along said east right-of-way, a distance of 638.64 feet to the POINT OF BEGINNING.

Containing 262,117 square feet or 6.0174 acres, more or less.

AREA 2: W. National Ave. to W. Greenfield Ave.; S. 65th to S. 66th Streets.

Lots 1 through 19 inclusive and Lots 28 through 35 inclusive and parts of Lots 20 through 27 in Block 2 of C. A. Maynard & Agnew's Subdivision No. 3, all in the Northwest 1/4 of the Northeast 1/4, of Section 3 Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4;
Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 819.03 feet;
Thence S 01°53'33"E, a distance of 33.00 feet to the South right-of-way of West Greenfield Avenue and the POINT OF BEGINNING;
Thence N 88°05'31"E along said south right-of-way line, a distance of 246.00 feet to the west right-of-way line of South 65th Street;
Thence S 01°53'33"E along said west right-of-way line, a distance of 455.85 feet;
Thence S 57°20'37"W, a distance of 286.29 feet to the east right-of-way line of South 66th Street;
Thence N 01°53'33"W along said east right-of-way line, a distance of 602.22 feet to the south right-of-way line of West Greenfield Avenue and the POINT OF BEGINNING;

Containing 130,142 square feet or 2.9876 acres, more or less.

AREA 3: W. National Ave. to W. Greenfield Ave., S. 66th to the RR spur.

Part of Lot 5 in Block 1 of Assessor's Plat 269 and Lots 1 through 18 inclusive and part of Lots 19 through 22 in Block 3 of C. A. Maynard & Agnew's Subdivision No. 3, all a part of the Northwest 1/4 of the Northeast 1/4 of Section 3, Township 6 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northwest corner of said Northeast 1/4;
Thence N 88°05'31"E along the North line of said Northeast 1/4 and the centerline of West Greenfield Avenue, a distance of 445.51 feet;
Thence S 01°53'33"E, a distance of 33.00 feet to the south right-of-way of West Greenfield Avenue and the POINT OF BEGINNING;
Thence N 88°05'31"E along said south right-of-way line, a distance of 313.52 feet to the west right-of-way line of South 66th Street;
Thence S 01°53'33"E along said west right-of-way line, a distance of 637.83 feet;
Thence S 64°30'07"W, a distance of 513.94 feet to the east right-of-way line of a railroad spur track;
Thence N 00°48'46"W along said east right-of-way line, a distance of 583.91 feet to the arc of a curve;
Thence northerly along said east right-of-way line, 294.70 feet along the arc of a curve whose center is N 89°11'14"E a radial distance of 313.27 feet and whose chord bears N 26°08'13"E, 283.95 feet;
Thence N 53°05'12"E along said east right-of-way line, a distance of 15.85 feet to the south right-of-way line of West Greenfield Avenue and the POINT OF BEGINNING.

Containing 331,261 square feet or 7.6047 acres.

For Reference Purposes

THE PROPERTY BY AREAS

AREA 1

Parcels	Parcel #	Tax Key #	Address	Acreage
1	701	454-0253-000	67** W. National Avenue	
2	702	454-0246-000	6615-17 W. National Avenue	
3	703	454-0247-000	6601-03 W. National Avenue	
4	704	454-0248-000	1573 S. 66 St.	
5	705	454-0245-001	6633-39 W. National Avenue	
6	802	454-0269-000	65** W. Lapham	
7	709	454-0249-000	6709 W. National Ave.	
Total				6.0174

AREA 2

Parcels	Parcel #	Tax Key #	Address	Acreage
1	102	454-0218-001	1452 S. 66 St.	
2	103	454-0217-000	1436-38 S. 66 St.	
3	104	454-0216-000	14** S. 66 St.	
4	105	454-0215-000	14** S. 66 St.	
5	106	454-0214-000	1416 S. 66 St.	
6	107	454-0213-000	6533 W. Greenfield Av	
7	108	454-0212-000	6527 W. Greenfield Av	
8	109	454-0211-000	65** W. Greenfield Av	
9	110	454-0210-001	6513-19 W. Greenfield Av	
10	111	454-0208-000	6509-11 W. Greenfield Av	
11	112	454-0207-000	6501-05 W. Greenfield Av	
12	113	454-0228-001	1441 S. 65 St.	
13	114	454-0225-000	6506 W. National Av	
14	115	454-0226-000	6500 W. National Av	
Total				2.9876

AREA 3

Parcels	Parcel #	Tax Key #	Address	Acreage
1	101	454-0231-000	1445 S. 66 St.	
Total				7.6047

EXHIBIT 2

PURCHASE AND SALE AGREEMENT

PRIVATE DEVELOPMENT

TO BE REVISED by Helmut such as the below:

Total Number of Units: 626

 Main Street Flats – 96

 Main Street Lofts – 32

 Courtyard Flats – 235

 Row House Town Homes – 18

 Row House Flats – 64

 Live/Work Housing – 18

 Market Lofts – 7

 Corporate Units – 18

 Manor House Condos – 13 + expansion of up to 172 additional units in buildings that would be attractive condominiums (H I J K L).

 Total Possible Condominiums – 185 or 30% of the units

Total Commercial Space: 47,400 Sq. Ft.

Parking: 566 Underground Parking Spaces

- 1329 total parking spaces (includes 170 stall parking structure)

PROPERTY ACQUISITION PHASES

Phase 2 Construction; Area 1: closing no later than 3/31/2006.

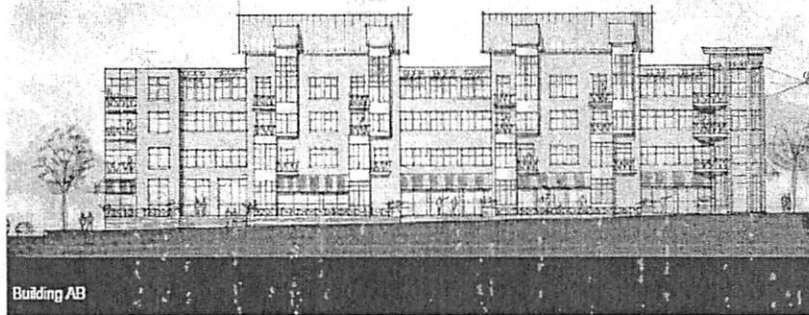
Phase 1 Construction; Area 2: closing no later than 6/31/2008.

Phase 3 Construction; Area 3: closing no later than 6/30/2010.

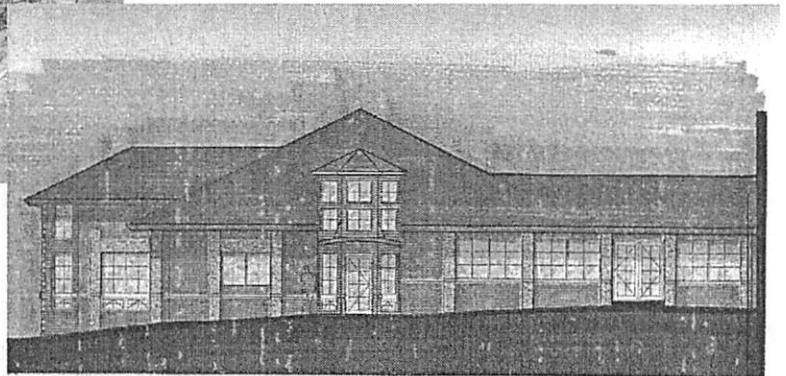
~~The buyer shall dedicate to the City the South 11.00 feet of Lot 5 in Block 1 of Assessor's Plat No. 269 and Lots 19 thru 22 in Block 3 of the C.A. Maynard and Agnew's Subdivision No. 3, also South 11.00 feet of Lots 20 thru 27 in Block 2 of C.A. Maynard and Agnew's Subdivision No. 3. The dedication of the land to the City shall take place upon the buyer creating a Certified Survey Map for Phases 1 and 3 of the development, these dedications shall be complete by January 1, 2007.~~

Representative examples of the – Quality, Design, and Style of Buildings:

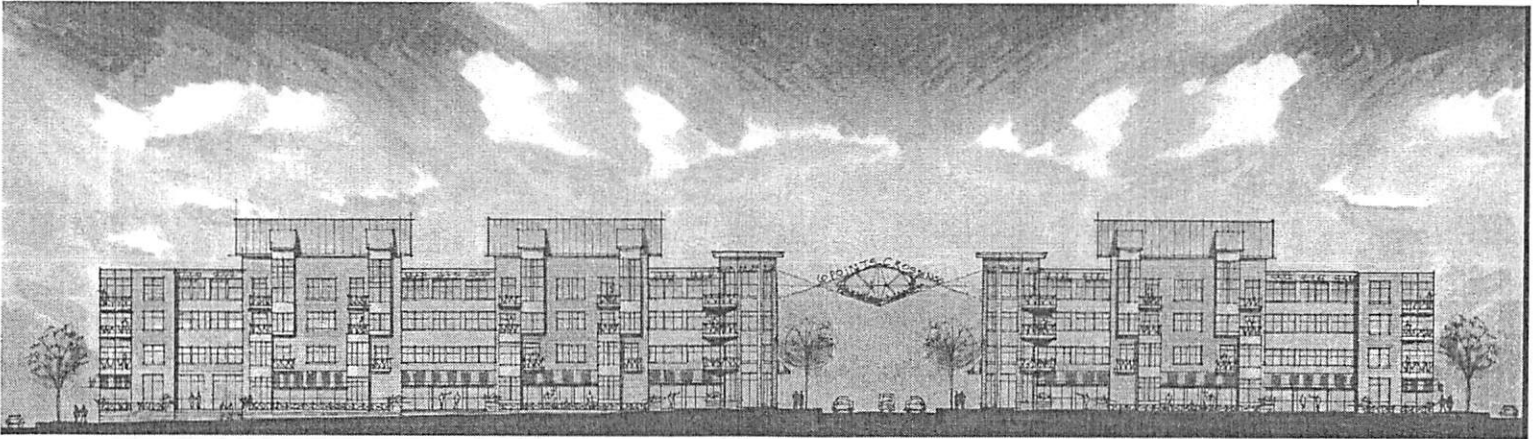
Phase:



Phase 2:



Phase 3:



PHASED DEVELOPMENT PLAN											
Phase	Description	Start	End	Area	Construction					Notes	
					Start	End	Area	Start	End		Area
1	Site Preparation	01/01/06	03/31/06	1000	01/01/06	03/31/06	1000	01/01/06	03/31/06	1000	Site preparation and clearing.
2	Foundation	04/01/06	06/30/06	1000	04/01/06	06/30/06	1000	04/01/06	06/30/06	1000	Foundation work.
3	Structure	07/01/06	09/30/06	1000	07/01/06	09/30/06	1000	07/01/06	09/30/06	1000	Structure construction.
4	Roofing	10/01/06	12/31/06	1000	10/01/06	12/31/06	1000	10/01/06	12/31/06	1000	Roofing work.
5	Interior Finishes	01/01/07	03/31/07	1000	01/01/07	03/31/07	1000	01/01/07	03/31/07	1000	Interior finishes.
6	Exterior Finishes	04/01/07	06/30/07	1000	04/01/07	06/30/07	1000	04/01/07	06/30/07	1000	Exterior finishes.
7	Final Inspection	07/01/07	09/30/07	1000	07/01/07	09/30/07	1000	07/01/07	09/30/07	1000	Final inspection.
8	Occupancy	10/01/07	12/31/07	1000	10/01/07	12/31/07	1000	10/01/07	12/31/07	1000	Occupancy.

PHASED DEVELOPMENT PLAN - Building

EXHIBIT 4-A

PHASED DEVELOPMENT PLAN - Parking

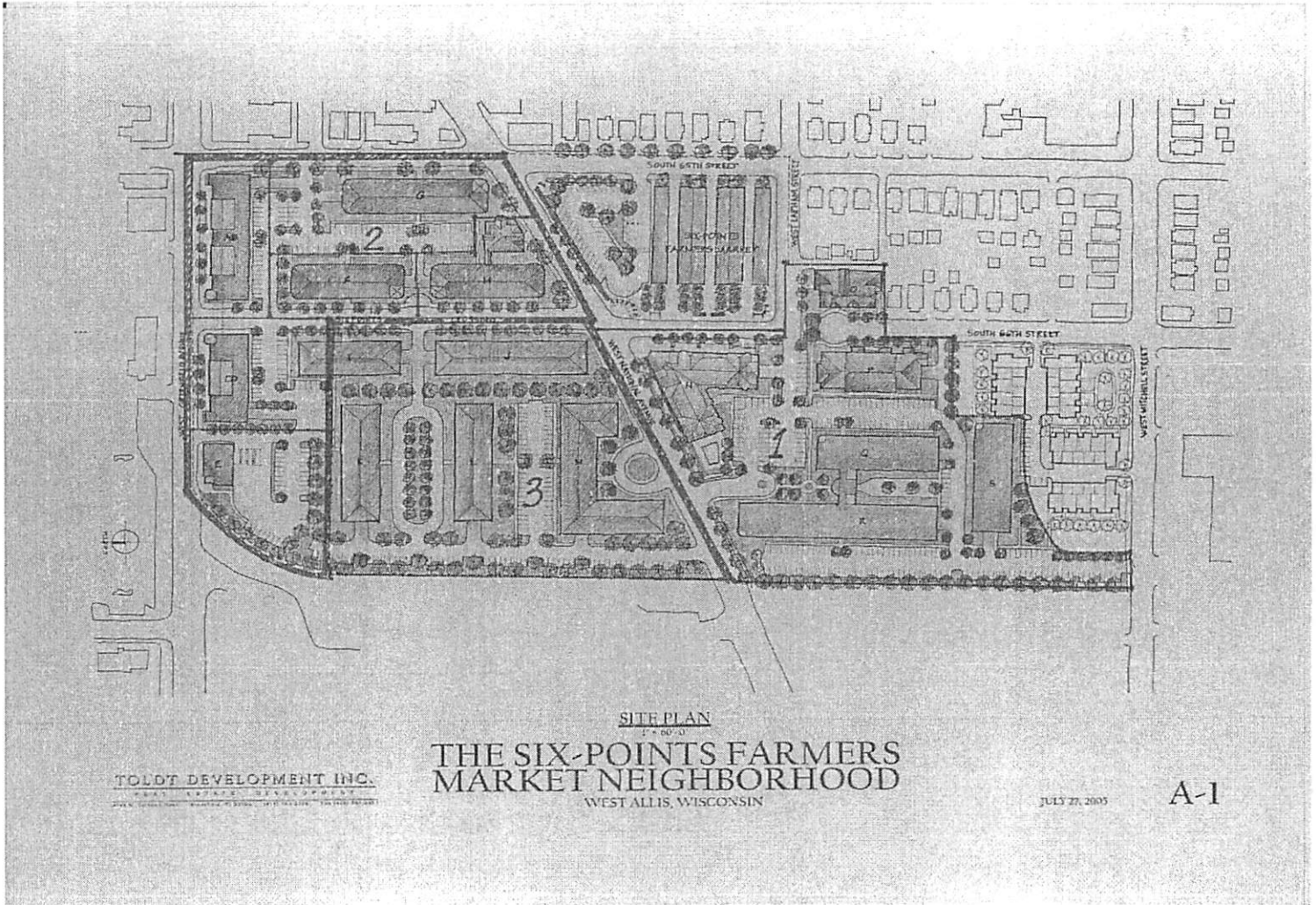
Market Neighborhood Unit Mix/Parking Summary										
Bldg.	Bldg. Size	Phase 1 (3.0A)	Apts	Comm'l	1BR	2BR	Site		Total Parking	
							Underground Prov'd	Surface Prov'd		
1	N*	4 story mixed use: apts & comm. 44 units & 11,000sf comm'l	44	15,673	23	21	44			Comm'l Res
	O	2 story condo 5 units	5			5	10			Res
	P	2 story condo 16 units	16		2	14	28			Res
	QRS	4 story apts 118 units	118		42	76	132			Res
	T	4 story apartments 42 units	42		16	26	40			Res
		Community Center								
		Phase Total	225	15,873	83	142	254	207	461	
					37%	63%				
Phase 2 (3.0A)										
2	AB	4 story mixed use: apts & comm. 36 units & 15,000 sf comm'l	36	15,673		36		42		Comm'l Res
	CD	4 story mixed use: apts & comm. 24 units & 11,000sf comm'l	24	11,204		24		27		Comm'l Res
	E	2 story Bank Building 4,100sf		4,310						Comm'l
	F	4 story apartments 40 units	40		16	24		32		Res
	G	4 story apartments 36 units	36		32	24		30		Res
	H	4 story apartments 40 units	40		16	24		55		Res
		Community Center								Res
		Phase Total	196	31,177	64	132	206	188	394	
					33%	67%				
Phase 3 (7.0A)										
3	I	3 story apartments 30 units	30		27	3		30		Res
	J	3 story apartments 42 units	42		6	36		42		Res
	K	3 story apartments 42 units	42		6	36		42		Res
	L	3 story apartments 42 units	42		6	36		42		Res
	M	4 story apartments 80 units	80		30	61		70		Res
		Community Center				0				
		Phase Total	236		75	172	226	148	374	
					33%	67%				
		Project Total	697	47,050	222	416	686	543	1,229	
					34%	66%				

x.SixPoints.PhaseDescription,UnitMix&ParkingSummary
10.6.03

City Lots 125
Street 100
Total 1,454

* 10,000sf will be rented for commercial use. 5,873sf will be used as Community Space and common areas.

CONCEPTUAL APPROVED PLAN



**DEVELOPER GUARANTEE OF FAIR MARKET
VALUES**

TO BE REVISED

By Helmut and Richard

PUBLIC IMPROVEMENTS

- ~~1. W. National Ave. from S. 65th St. to Union Pacific Railroad: The Authority shall reconstruct W. National Ave., including replacement of sidewalks, curb and gutter, lighting fixtures, street signage, and street trees (the estimated cost is approximately \$1,400,000).~~
- ~~2. S. 66th Street 100' north and 80' south of W. National Ave.: The Authority shall reconstruction of S. 66th Street from W. National Ave to approximately 100 feet north W. National Ave. of and approximately 80 feet south W. National Ave. due to the reconstruction of W. National Ave. including replacement of sidewalks, curb and gutter, lighting fixtures, street signage, and street trees (the estimated cost is approximately \$150,000).~~
- 3.1. Street Renaming: The Authority will encourage the City, upon petition by the Developer, to rename S. 66th Street from Greenfield Avenue to Lapham Street to "Six Points Crossing" Street.
- 4.2. Special Assessments:
- A. The Developer waives the right to object to a Special Assessment normally levied in the reconstruction of W. National Ave. at the current rates for 2006 (the estimated Special Assessment is approximately \$62,000).
 - B. Left Turn Lanes - W. National Ave: The Developer waives the right to object to a Special Assessment for the construction of left turn lanes for the W. National Ave. reconstruction (the estimated Special Assessment is approximately \$65,000).
 - C. Traffic Signal - W. Greenfield Ave. and S. 66th Street: The Developer waives the right to object to a Special Assessment for the construction of a new traffic signal at the intersection of W. Greenfield Ave. and S. 66th Street (the estimated Special Assessment is approximately \$150,000) to be installed as required by traffic volumes.

Approval by City Engineer:

Any public improvements constructed and/or any private improvements constructed in the public right-Of-Way by the Developer shall be constructed per City of West Allis

Department of Engineering standard specifications. All plans for public improvements must be submitted and be approved by the City Engineer. The City Engineer shall be the approval authority over the plans and specifications and construction materials and methods. All construction work must be inspected and accepted by the City Engineer. For any public improvement that the Developer agrees to finance the Developer agrees to allow the City Engineer, Building Inspector, and other City inspectors to enter the property at all times during construction and upon adequate notice at all other reasonable times until such time as construction is completed to inspect work in progress. Developer agrees to pay all reasonable engineering costs incurred by the West Allis Engineer Department in the review, staking, and inspection of the public improvements located on public Right-Of-Way and private property. Any public utility constructed on private property shall be dedicated to the City of West Allis including an easement area specified by the City Engineer upon acceptance by the City Engineer.

WAIVER FOR ADDITIONAL WORK

2007 PROJECT NO. _____

LOCATION: W. National Ave. from S. 65 St. to Union Pacific Railroad
S. 66 St. - 100' north and 80' south of W. National Ave.

KEY NO. 454-0231-000, 454-0218-001, 454-0226-000, 454-0225-000, 454-0253-000,
454-0249-000, 454-0245-000, 454-0246-000, 454-0247-000

OWNER/S: Toldt Development, Inc.

TYPE OF WORK PROPOSED: Street reconstruction, left turn lanes, traffic signal

ESTIMATED ASSESSMENT FOR PROPOSED WORK:

Street Reconstruction- \$62,000
Left turn lanes- W. National Ave.- \$65,000
Traffic signal- W. Greenfield Ave. and S. 66 St.- \$150,000

TOTAL ESTIMATE: \$277,000

We, the undersigned property owners, in consideration of the City of West Allis proceeding to have the above described work completed at the earliest possible date, do hereby waive all statutory requirements and proceedings in public work of this nature as provided in Wisconsin Statutes Chapter 66, Subchapter VII, and do hereby agree to pay all assessments levied against our abutting property in the same manner and with the same effect as if said statutory requirements relating to said work had been followed.

Upon receipt of the final billing, payment for this work can be made in cash without interest prior to due date, or extended on the tax roll under either of the following methods at 6% interest on the unpaid principal balance.

1. Assessments up to and including \$100.00 shall be payable in a single installment.
2. Assessments between \$100.01 and \$250.00 shall be payable in not more than 5 (five) annual installments.
3. Assessments over \$250.00 shall be payable in not more than 10 (ten) annual installments.

Witness Signature: _____ Owner Signature: _____

_____ Print Name _____ Print Name

West Allis, Wisconsin

_____, 20____

PRIVATELY DEVELOPED PUBLIC AMENITIES

To be reconsidered by Scott:

A. Public Amenities Privately Constructed

1. S. 65th Street: The Developer shall reconstruct all sidewalks and all curbs & gutters (if necessary) located on the west side of S. 65th St. from Greenfield Ave. to W. National Ave. except for any area required by the reconstruction of W. National Ave. Work on the west side of S. 65th Street will be completed no later than completion of Building G.
2. S. 66th Street: The Developer shall reconstruction of all sidewalks and all curbs & gutters (if necessary) along both sides of the S. 66th Street from W. Greenfield Ave. to W. National Ave. and along the west side of S. 66th Street from W. National Ave. to W. Lapham St. except the portions of S. 66th Street reconstructed by the Authority due to the reconstruction of W. National Ave. Work on the east side of S. 66th St. will be completed no later than completion of Buildings F and H. Work on the west side of S. 66th St. will be completed no later than completion of Buildings I and J.
3. S. 66th Street – south of W. Lapham St.: The Developer shall reconstruction all sidewalks, all curbs & gutters (if necessary), and a traffic calming feature or roundabout, or other feature mutually agreed upon by the Authority and Developer at the intersection of S. 66th Street and Lapham Street to southern most portion of parcel 802 within the S 66th Street Right-Of-Way.
4. Alley – south an east of W. Lapham St.: The Developer shall resurface approximately 120 feet of the alley located east of the proposed condominium development in the area south of W. Lapham St and east of S. 66th Street.
5. W. Greenfield Ave.: The Developer shall reconstruct all sidewalks and all curbs and gutters (if necessary) along the south side of W. Greenfield Ave. from S. 65th St. to Union Pacific Railroad. Work will be completed no later than the completion of Buildings CD and E.
6. Damaged Areas: The Developer shall construction or reconstruction of any curbs, sidewalks and street areas damaged by the developer.
7. The Developer shall be responsible for having prepared Certified Survey Maps (CSM) showing the dedication of the eleven (11”) of Right-Of-Way along the north side of W. National Ave.
8. Traffic signals, turning lanes, and any other necessary improvements to the traffic control infrastructure as identified by the Traffic Impact Study For The Farmers Market

Neighborhood, City of West Allis, Wisconsin prepared by Traffic Analysis & Design, Inc. dated September 1, 2005 and as approved by the City of West Allis City Engineer shall be paid by the Developer as a special assessment on the property. Work will be completed no later than the completion of work of adjacent buildings.

B. Private Amenities Constructed in the Public Right-Of-Way.

1. Steel landmark girder structure to be built over S. 66th St. as the gateway feature on the south side of & W. Greenfield Ave.
2. Pedestrian Feature on S.66th Street south of W. Lapham Stand immediately north of the proposed new traffic calming feature or roundabout, or other feature mutually agreed upon by the Authority and Developer.

C. Public Amenities Constructed on Private Property.

1. The Developer will grant the City an easement within the first ten (10) feet of private property along both sides of S. 66th Street to allow the installation of street trees and/or street signage, and/or street lighting fixtures.

D. Approval by City Engineer:

Any public improvements constructed and/or any private improvements constructed in the public right-Of-Way by the Developer shall be constructed per City of West Allis Department of Engineering standard specifications. All plans for public improvements must be submitted and be approved by the City Engineer. The City Engineer shall be the approval authority over the plans and specifications and construction materials and methods. All construction work must be inspected and accepted by the City Engineer. Developer agrees to allow the City Engineer, Building Inspector, and other City inspectors to enter the property at all times during construction and upon adequate notice at all other reasonable times until such time as construction is completed to inspect work in progress. Developer agrees to pay all reasonable engineering costs incurred by the West Allis Engineer Department in the review, staking, and inspection of the public improvements located on public Right-Of-Way and private property. Any public utility constructed on private property shall be dedicated to the City of West Allis including an easement area specified by the City Engineer upon acceptance by the City Engineer.

STANDARDS FOR REMOVAL OF FOOTINGS AND FOUNDATIONS

The Authority will be responsible for only the removal of all footings and foundations that would be specifically required to be removed for construction of new buildings, underground garages, utility lines and structures necessary of the development of the approved project.