State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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May 7, 2001

Mr. Barry R. Mandel
Trostel Square Apartments LLC
111 East Wisconsin Avenue #1700
Milwaukee, WI 53202

Subject: Clarification of Environmental Liability for
Trostel Square Apartments LLC, Milwaukee, Wisconsin
FID#241645030, BRRTs#07-41-260952

Dear Mr. Mandel:

This is a letter of clarification regarding Parcel 4 of CSM No. 6882 in Milwaukee, Wisconsin (the "Property"), requested on your behalf by Foley & Lardner in a letter dated October 17, 2000. The Department of Natural Resources ("Department") agreed to provide you with a letter clarifying the environmental liability associated with the contaminants on the Property. In particular, this letter will address the environmental liability that a purchaser of the Property may have as well as the lender's potential liability exposure. As summarized below, the Department has reviewed the environmental condition of the Property and, on November 16, 2000, issued a "Case Closure Letter" in accordance with s. NR 726.05, Wis. Admin. Code with respect to chromium and sulfate. The Department has also reviewed the environmental condition of the Property with respect to (1) residual lead in soils and (2) the building demolition debris buried in the footprint of the former building ("Lead and Building Zone Issues"). In the Case Closure Letter dated November 16, 2000, the Department indicated that if the remedy for the Lead and Building Zone Issues is carried out as proposed, by implementing the environmental protections described below, the Lead and Building Zone Issues will also be eligible for closure under chapter NR 726.

Upon satisfactory completion of the proposed remedial actions, a final Case Closure Letter will be issued with respect to all of the remaining known issues at the Property. Absent some shortcoming in the completion of the proposed remedial actions, the Department has no intent at this time to take any action against the current owner of the Property, Trostel Square Apartments, LLC, a future purchaser, lessee or lender to compel cleanup of the environmental conditions currently known to exist on the Property. The standard for reopening cases, found in s. NR 726.09, Wis. Admin. Code, is clarified below.

Background

The Property was originally part of an industrial site, dating back to the late 1800s. Located on the Property was a former tannery that operated until the late 1960s. When active operations ceased at the tannery, the building was demolished, and the demolition debris was used to fill the basement of the tannery. During the 1970s, a one-story warehouse building and a multi-story office building associated with the former tannery existed on the Property. Both of these buildings were subsequently removed.

The former industrial site (which includes the Property) was acquired by 1776 Development Corporation ("1776 Development") in 1992. Since that time, 1776 Development conducted environmental investigations and remedial response actions on the former industrial site, including the Property.

I. Soil Contamination

With respect to soil contamination, the investigation showed the presence of lead on the north side of the Property ("Lead Area"). Other contaminants (including chromium and reactive sulfides in addition to demolition debris) were found in the basement of the former tannery building ("Former Building Zone"). The investigation noted that reactive sulfides, which are buried at-depth in the Former Building Zone, when exposed to the atmosphere, form hydrogen sulfide. Based on the investigation, the remedial action targeted the removal of "hot spots" located in the Former Building Zone. The removal has been completed and aside from the Lead and Building Zone issues noted above, no other soil contamination was discovered on the Property that required further monitoring or remedial action.

The Department was provided development plans for the Property. Based on those plans, the Department understands that the intent of Trostel Square Apartments LLC is to build residential apartments on the Property. The development plans for the Property incorporate the following environmental protections (collectively, the "Environmental Protections"):

(1) The Lead Area is to have a roadway built over it. Once this roadway is built, the risk of direct contact exposure with the lead contaminated soil will no longer exist.

(2) The Former Building Zone will have pavement or up to a two-foot layer of clean fill placed above existing site grades in order to remove any direct contact risk.

The Department concurs with the proposed actions and if the remedy for these areas is carried out as proposed, the remaining issues will be eligible for closure under chapter NR 726, Wis. Admin. Code. The Department has also approved the revised Site Barrier Operation and Maintenance Plan submitted on November 16, 2000 ("O & M Plan"). In order to be assured that the Environmental Protections remain in place, the Environmental

Protections will be inspected and maintained in accordance with the approved O&M Plan. Further, the Property will be subject to a deed restriction recorded against the Property, or other Department approved notification, referencing the Environmental Protections. On this basis, the Department will grant closure and issue a Case Closure Letter for the remaining known soil contamination, unless a new environmental risk is created or identified, once documentation is provided to the Department that a satisfactory notification or deed restriction has been recorded and the Environmental Protections have been constructed in accordance with the plans provided to the Department.

II. Groundwater Contamination

As to groundwater, two substances, chromium, and sulfate, were found in the groundwater beneath the Property. However, based on the investigation and remedial action results, the Department has determined that the remaining groundwater conditions do not pose any significant threat to human health or the environment and that site conditions meet the criteria for exemptions to the response requirements of Chapter NR 140, Wis. Admin. Code. No further monitoring or remedial action is required in response to the presence of the low level contaminants in the groundwater beneath the Property. The Case Closure letter includes an exemption from the requirement to take any remedial action respecting chromium and sulfate in the groundwater.

Clarification

This letter will clarify the Department's position on environmental liability in the following situations:

(1) the circumstances under which the Department would reopen a matter and require further investigation or cleanup once a case closure determination has been made;

(2) the liability of a new purchaser or lessee of the Property; and

(3) the potential liability a lender may have that accepts the Property as security for a loan.

I. What assurances does a party receive from the Department once a cleanup is complete?

The Department issues a Case Closure Letter once the cleanup is completed and is accepted by the Department. This letter is issued under s. NR 726.05(7), Wis. Admin. Code, and states that the Department has determined that no further cleanup action is necessary, based upon the information available to the Department, at that time. The Department can only require further action to address a previously closed site "if information regarding the site or facility conditions indicates that contamination on or from the site or facility poses a threat to public health, safety or welfare or the environment." *See* NR

726.09(1), Wis. Admin. Code. Before the Department can require further action, the Department must make a determination that residual contamination in existence prior to the time that the site was closed poses a threat to public health or the environment and requires further action. Based on this standard, very few closed cases have been reopened by the Department.

As noted above, the Department has been provided with the investigation, monitoring, remedial action and development plans (including plans for the Environmental Protections and the O&M Plan) for the Property. Representatives of the Department have reviewed these plans and reports. The reports show residual soil contamination in the Lead Area and residual tannery debris in the Former Building Zone. These Lead and Building Zone Issues are to be addressed by constructing the Environmental Protections.

The Department will issue a Case Closure letter for the remaining soil issues at the Property once documentation is provided evidencing the satisfactory completion of construction of the Environmental Protections as proposed and assuming that the development activities do not create an environmental risk by causing or exacerbating any environmental conditions. Once a Case Closure Letter is issued, if the Environmental Protections are left undisturbed, are not removed without authorization, and the O&M Plan is followed, information would have to be presented to the Department to show that contaminants on or from the Property pose a threat to public health, safety or welfare or the environment in order for the Department to reopen the matter.

With respect to chromium and sulfate in soil and groundwater located beneath the Property, the Department has been provided the results of the environmental investigations, remedial response actions and monitoring activities. These reports show residual contaminants are present in the groundwater beneath the Property. However, the Department determined that no further action needed to be taken to address these contaminants. Based on the information submitted, the Department issued a Case Closure Letter. In order to reopen the matter, information would have to be presented to the Department to show that contaminants on or from the Property pose a threat to public health, safety or welfare or the environment.

II. What cleanup responsibility does a purchaser of the Property have if contamination is subsequently discovered on or beneath the Property?

The state's hazardous substance discharge law, Section 292.11, Wis. Stats., imposes liability on anyone who possesses or controls contaminated property where hazardous substances are continuing to discharge to the environment. This liability exists even if the contamination was caused by another person, such as a prior owner or tenant. However, the Department has determined that it is in the public interest to exercise its enforcement discretion in situations where the Department has clear evidence that a former owner or occupant of the Property or the person who caused the discharge of the hazardous substances has conducted or will conduct the appropriate response actions.

With respect to the Property, five separate investigations have been conducted on the site between 1988 and 2000, including the installation of at least 81 soil borings or test pits and 7 monitoring wells as summarized in the February 11, 1994 Practicability Analysis prepared by STS Consultants, Ltd. Considering the extent and duration of the investigation, the Department has determined that the conditions at the site are adequately established as of the date of this letter and the Department agrees to exercise its enforcement discretion. The Department can assure a purchaser of the Property, including Trostel Square Apartments LLC, that it will not compel the purchaser to further investigate or remediate all or a portion of any environmental contamination that was discovered by 1776 Development during the course of its investigation of the Property to be on or beneath the Property or migrating onto or from the Property, unless a Case Closure Letter is not issued for the Lead and Building Zone Issues and as long as the case is not reopened under s. NR 726.09, Wis. Admin. Code. If the Department determines that residual contamination that was identified prior to the time of case closure being granted to 1776 Development poses a threat to public health, welfare or safety or the environment, the Department will take all steps available to it through state law to compel the party that the Department believes to have caused the discharge on the Property to take the additional response action necessary to address that threat. The Department would only require the party in current possession or control of the Property to address that threat if the Department was unable to compel the person who caused the discharge to take the appropriate response action.

You should be aware that the Department and the United States Environmental Protection Agency ("EPA"), on October 27, 1995, entered into a Brownfields Memorandum of Agreement ("MOA") to clarify the role of the federal Superfund program in Wisconsin. The MOA is intended to address property owners' concerns that the federal Superfund program may independently compel an environmental investigation and/or cleanup in situations where the Department either is addressing the matter under state law or has issued a Case Closure Letter. In essence, the MOA states that the federal Superfund program will not take action at any property where an investigation and/or cleanup has been conducted under the Department's rules. It is the Department's position that sites proceeding through the NR 700 process satisfy all of the requirements of the MOA.

Also, the Department is in the process of negotiating a similar MOA with EPA-Region V addressing the Resource Conservation and Recovery Act ("RCRA") cleanup program. The Department's position is that sites which follow the state's cleanup process, as set forth in NR 700, Wis. Admin. Code, satisfy all of the RCRA requirements. With respect to the Property, the Department has no reason to believe that EPA's RCRA program will take any action with respect to the Property.

III. Can a lender who may accept this Property as security for a loan be held liable for any environmental contamination?

As of May 13, 1994, lenders were provided with an exemption from environmental liability under Wisconsin's hazardous substance discharge law. In order to

qualify for the liability exemption, lenders must be involved in lending activities at a property contaminated by a hazardous substance discharge. Subject to certain limited conditions, lenders involved with a contaminated property cannot be held environmentally responsible for investigation or cleanup of the property if the lender:

(1) engages in normal lender activities, such as executing mortgages, providing financial assistance or advancing funds;

(2) acquires the property as part of a foreclosure and conducts an environmental assessment;

(3) inspects the property before acquiring it;

(4) enforces a security interest in personal property or fixtures; or

(5) acts as a representative.

At this Property, the Department cannot hold a lender responsible for the environmental cleanup, except in the rare situation where the lender would directly or indirectly cause a discharge of a hazardous substance. Therefore, any lender engaged in normal lending activities at this Property or with a future owner could not be held liable under Wisconsin's Hazardous Substance Discharge law for the cost of investigating and cleaning up the Property. However, if a lender acquired the Property as part of a foreclosure, the lender would be responsible to comply with the requirements and conditions in any deed restriction for the Property.

Please feel free to contact Pam or Judy if you have any further questions.

Sincerely,

Pamela Mylotta
Remediation and Redevelopment Program
Southeast Region

Judith Ohm
Program Attorney
Legal Services

cc: Bruce A. Keyes
SER Casefile

RECORDED
CERTIFIED SURVEY MAP

DCD #2085

CERTIFIED SURVEY MAP NO. 6882

A DIVISION OF PART OF LOTS 3, 4 & 5 IN BLOCK 48 OF SHERMAN'S ADDITION; PART OF LOT 1 OF PLAT OF LOTS 2 & 3 AND PART OF PARCELS 1 & 2 IN C.S.M. NO. 1433, BEING PART OF THE S.E. 1/4 OF THE N.E. 1/4 OF SECTION 20, AND THE S.W. 1/4 OF THE N.W. 1/4 AND THE N.W. 1/4 OF THE S.W. 1/4 OF SECTION 21, ALL IN TOWNSHIP 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN.

NW COR. OF NW 1/4 SEC. 21, T7N, R22E.
BRASS PLUG
N: 393,430.70
E: 2,559,104.38

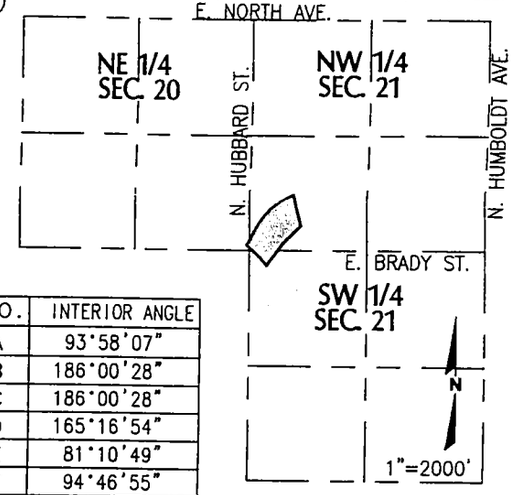
TAX KEY NO. 354-0922-111 & -0922-112 ZONING: C9B(A)

● INDICATES 1" IRON PIPE (FOUND)
○ INDICATES SET 1" IRON PIPE 24" IN LENGTH, 1.13 LBS. PER LINEAL FOOT.
• INDICATES SET 1" IRON PIPE 24" IN LENGTH, 1.13 LBS. PER LINEAL FOOT ON LOT LINE, 20.00 FEET NORTHWEST OF DOCK LINE.

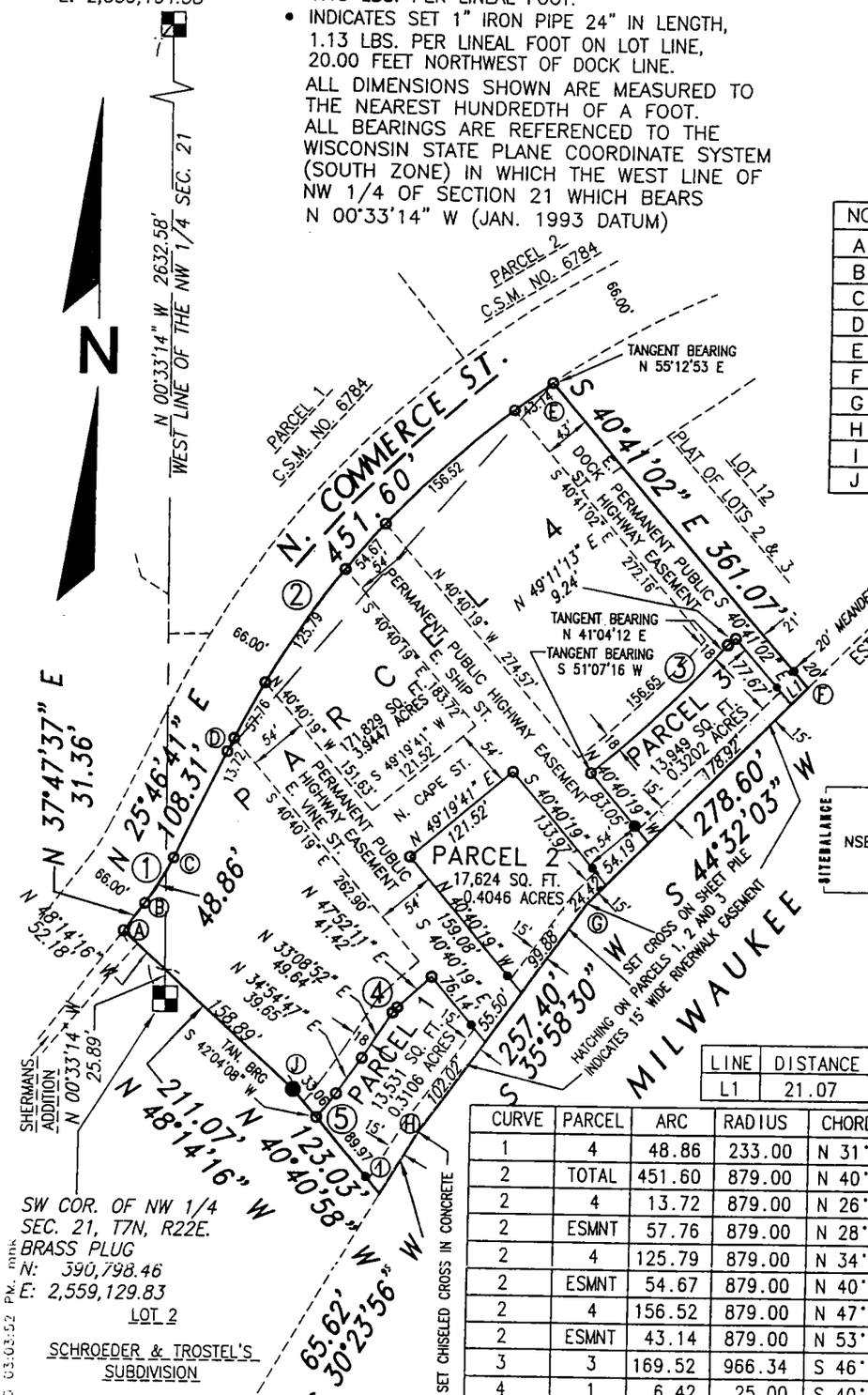
ALL DIMENSIONS SHOWN ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT.
ALL BEARINGS ARE REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM (SOUTH ZONE) IN WHICH THE WEST LINE OF NW 1/4 OF SECTION 21 WHICH BEARS N 00°33'14" W (JAN. 1993 DATUM)

VICINITY MAP

NE 1/4 SEC. 20 & NW 1/4 & SW 1/4 SEC. 21, T7N, R22E.



NO.	INTERIOR ANGLE
A	93°58'07"
B	186°00'28"
C	186°00'28"
D	165°16'54"
E	81°10'49"
F	94°46'55"
G	188°33'33"
H	185°34'34"
I	71°04'54"
J	187°33'18"



LINE	DISTANCE
L1	21.07

GRAPHIC SCALE
75 0 37.5 75 150 300
(IN FEET)
1 inch = 150 ft.

CURVE	PARCEL	ARC	RADIUS	CHORD BEARING	CHORD	DELTA	DELTA / 2
1	4	48.86	233.00	N 31°47'09" E	48.77	12°00'56"	06°00'28"
2	TOTAL	451.60	879.00	N 40°29'47" E	446.65	29°26'12"	14°43'06"
2	4	13.72	879.00	N 26°13'31" E	13.72	00°53'40"	00°26'50"
2	ESMNT	57.76	879.00	N 28°33'18.5" E	57.75	03°45'55"	01°52'57.5"
2	4	125.79	879.00	N 34°32'15" E	125.68	08°11'58"	04°05'59"
2	ESMNT	54.67	879.00	N 40°25'08.5" E	54.66	03°33'49"	01°46'54.5"
2	4	156.52	879.00	N 47°18'07" E	156.31	10°12'08"	05°06'04"
2	ESMNT	43.14	879.00	N 53°48'32" E	43.13	02°48'42"	01°24'21"
3	3	169.52	966.34	S 46°05'44" W	169.30	10°03'04"	05°01'32"
4	1	6.42	25.00	S 40°30'31.5" W	6.41	14°43'19"	07°21'39.5"
5	1	28.06	224.64	S 38°29'27.5" W	28.04	07°09'21"	03°34'40.5"

WISCONSIN
DONALD C. CHAPUT
S-1316
BROOKFIELD,
LAND SURVEYOR
REV 8-29-00

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INFRASTRUCTURE SERVICES DIVISION
Marcia Lindholm 8/31/00
CENTRAL DRAFTING & RECORDS MANAGER
Martin Aguirre 9/5/00
ENGR. IN CHARGE ENVIRON. ENGR.
CORRECT
Jeffrey Polenske 9/5/00
CITY ENGINEER
APPROVED

RECEIVED
JUL 17 2000
DEPT
City Development

DEPARTMENT OF CITY DEVELOPMENT
JUN 17 2000
APPROVED

CERTIFIED SURVEY MAP
DATE RECORDED OCT 24 200
MAP NO. 6882
DOCUMENT NO. 7980454
CITY OF MILWAUKEE
DEPARTMENT OF CITY DEVELOPMENT
809 N. BROADWAY ST.
MILWAUKEE, WIS. 53202
PHONE 223-5710

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