TIF Development Agreement
Mandel Group Properties LLC

Parcel ID Nos.: WAKC 1305 480
WAKC 1305 481
WAKC 1305 482

After recording return to:
City Attorney
201 Delafield St Ste 330
Waukesha WI 53188

This Development Agreement, referred to herein as the Agreement, is made by and between the **City of Waukesha, a Wisconsin municipal corporation,** 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and **BridgeWalk Apartments LLC, a Wisconsin limited liability company,** 330 East Kilbourn Avenue, Suite 600 South, Milwaukee, Wisconsin 53202, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

Legal Description is attached as Exhibit A

This real estate is referred to herein as the Property.

Recitals

Developer has proposed a development consisting of a multi-story residential building on the Property containing no fewer than 114 luxury apartments (the "Development"). The Development will also include all required site and infrastructure improvements. The Developer has represented to the City that Developer intends that this Development will be assessable for real property taxes upon completion at no less than $20,500,000 by January 1, 2024.

The City has determined that construction of this proposed Development and its addition to the tax base is in the best interests of the City and its taxpayers, and that it should be built.

The City has been presented with satisfactory evidence by both the Developer and a third-party consultant hired by the City that, but for the extension of tax incremental financing, the proposed development would not be built. Therefore, the statutory "but-for" test for tax increment financing is satisfied by the Developer's proposal.

Tax increment financing to the Developer will be used to offset the cost of constructing certain improvements, including, but not limited to, infrastructure, site grading, drainage, utilities, floodplain mitigation, environmental remediation, enclosed parking, and apartment construction.

The Development is proposed to be built within the current boundaries of the City's Tax Incremental District 11 , referred to herein as TID 11, but a new tax incremental district, referred to herein as TID 30, will be created solely for the Developer's proposed Development.

City has determined that making certain incentive payments to Developer under Part Two of this Agreement constitutes an eligible project cost under Wis. Stat. §66.1105 and that such incentive payments will be used to reimburse Developer's eligible project costs.

The Common Council approved a Term Sheet on December 1, 2020 containing certain economic terms that would be incorporated into a formal development agreement, and the Parties executed that Term Sheet on @@.

The Common Council authorized the execution of a development agreement with the Developer on @@, to provide tax-increment financing to the Developer for the proposed development.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Agreement, the Parties agree and contract as follows:

Part One – Construction of the Development

1. The Development. The Development consists of the Property and the improvements thereon as generally shown on Exhibit B and described in the final development plans approved by the City's Common Council incorporating all City department requirements approved by the Common Council. In general, the Development shall include, at a minimum, the following improvements:

a. Residential. A multi-family luxury apartment development with at least 114 units, amenities including a clubhouse-community room, private courtyard, and a fitness center.

b. Public Infrastructure. The Development shall also include the improvement of private drives, stormwater management facilities, relocation and reconstruction of the portion of the bike path on the Development, and public infrastructure as required in the final plan approval.

2. Deviations from Approved Plans. Material deviations from the approved plans and specifications for the Development that, in the ordinary course of the construction of a multifamily project in the City, would require the approval of the City planning staff, shall still require the approval of the City planning staff in advance, in writing, and the City planning staff reserves the right to refer to the Plan Commission for its approval any changes the City Planning Staff deems so material as to be in conflict with the original plan attached as Exhibit B.

3. Construction Deadlines. Developer shall commence construction of the Development no later than December 31, 2021, and shall complete construction no later than December 31, 2023. These deadlines shall be extended due to circumstances reasonably beyond Developer's control. Completion of construction means the issuance of a certificate of occupancy by the City.

Part Two – Financing

4. Incentive Grant. The City shall pay Developer Two Million Dollars ($2,000,000.00) within 60 days of the issuance of a certificate of occupancy for the Development, but not before April 1, 2022. "Certificate of occupancy" includes a temporary certificate of occupancy, provided it allows the use and/or occupancy, as applicable, of the entire residential portion, entire common areas, and entire parking areas. This payment shall be a grant, with no obligation to repay. The City agrees to provide Developer's lender with verification and any other reasonably requested evidence that the Incentive Grant will be paid upon issuance of a certificate of occupancy.

5. Municipal Revenue Obligation [MRO]. In addition to the Incentive Grant, additional MRO Payments to Developer shall be made by the City as follows.

a. Definitions. For purposes of this section 5, the following definitions apply.

i. Increment Revenue. Real property tax revenue attributable to the increased assessed value of the Property generated by the Development, including any payments in lieu of taxes made by Developer pursuant to section 13. The assessment for 2021 shall be the base for determination of increased assessed value.

ii. Administrative Expenses. The portion of the City's overall annual administration cost for its tax incremental districts allocated proportionally to TID 30 by the City's Finance Department. The City agrees to allocate such expenses on a fair, good faith and proportional basis across all tax incremental districts in the City. The City's annual Administrative Expenses shall be capped at $35,000 (the "Administrative Expense Cap"). Administration cost is the amount of staff compensation allocated to work done in connection with administration of the City's tax incremental districts, along with the costs of consultants, advisers, and audits, and any Department of Revenue fees.

iii. Available Increment. The Increment Revenue generated by the Development in each year, reduced by 5% which amount shall be retained by the City; further reduced by the amount of regularly-scheduled principal and interest payments on the debt service on the debt obligations issued by the City to fund the Incentive Grant (the "City Debt"); and further reduced by the lesser of the City's Administrative Expenses and the Administrative Expense Cap. The remainder of Increment Revenue is the Available Increment for that year.

b. MRO Payments. Commencing the first year in which Increment Revenue is available, annual MRO Payments will be made by the City to Developer, in the amount of the Available Increment for that year. MRO Payments shall be made no later than July 1 of each year (a "MRO Payment Date") and shall be made by check drawn on the City's treasury. Developer shall pay real property

taxes in full as they become due, and MRO Payments shall not be set off against taxes.

c. Limit of MRO Payments. The total amount of all MRO Payments paid to the Developer shall not exceed $3,562,212, and MRO Payments shall not be made after the date 24 years after formation of TID 30. If the aggregate MRO Payment limit of $3,562,212 has not been reached by the date 24 years after formation of TID 30, payments will cease. The MRO shall terminate when either the payment limit or the time limit has been reached.

d. Appropriation/Condition. If required by law to do so, each year City staff shall include the appropriation of Increment Revenue in the City budget as submitted to the City's Common Council for consideration for the succeeding fiscal year. If, contrary to the provisions hereof, the City's Common Council determines not to appropriate any portion of such Increment Revenue, written notice thereof shall be provided to the Developer within 14 days of the Common Council's determination. The payment of the MRO by the City is conditioned upon Developer complying with section 18.e. within 14 days after written notice of such failure from the City.

6. Conditional Developer Payments. The Developer agrees, under the following circumstances, to make the following payments to the City:

a. Construction Cost Verification. Upon the earlier of (a) the date upon which the Development has achieved and maintained 95% physical occupancy of apartments available for rent continuously over any 90-day period or (b) the fifth anniversary of the date of closing by Developer on its construction financing for the Development, the City and its financial consultant shall perform an analysis of Developer's actual construction costs incurred in the construction of the Development versus the projected "Construction Budget" defined as the projected budget of construction costs presented to the City by Developer (which projected budget shall expressly exclude operating and interest reserves)[1] on which City's financial consultant performed its analysis of the Development for TIF eligibility. City shall provide the results of the analysis to Developer promptly upon completion. If the analysis shows that Developer had a savings of at least $50,000 from the projected Construction Budget amount, then Developer shall pay to the City half of the savings in excess of $50,000. Developer's actual construction costs shall include the total disbursements made by or on behalf of the Developer, its affiliates or their assignees in connection with the construction of the Development, including design and engineering fees and all other categories of soft costs included in the projected budget delivered to the City (excluding any amounts remaining in interest and operating reserves as such reserves are also excluded from the Construction Budget), and including contributions to a Capital Reserve Account, defined below, and any amounts required to be deposited into a reserve account by Developer's mortgage lenders at stabilization or at the time of construction cost verification, as applicable.

Capital Reserve Account shall mean an account created by Developer and may be drawn upon by Developer from time to time for costs that if known at the time of calculating the savings would have or should have been included as part of the actual construction costs, such as costs of maintenance, repair and replacement, including without limitation, insurance deductibles, incurred in connection with matters related to construction defects and final satisfactory construction completion. The Capital Reserve Account shall not exceed $250,000, unless approved in writing by the City, which approval shall not be unreasonably withheld. If any amounts remain in the Capital Reserve Account 30 months after the account is established, or such earlier date as may be determined by Developer, then any remaining amounts shall be distributed half to the City and half to the Developer.

Reserve accounts required by Developer's mortgage lenders at the time of stabilization or at the time of construction cost verification, as applicable, may only be drawn upon as permitted in the Developer's loan documents and only for expenses of the Development, and may not be paid to Developer as fees, savings, or other similar purpose. No more than $50,000 of such lender reserve accounts may be counted towards Developer's actual construction costs.

Developer shall deliver to the City documentation of the total actual construction costs of the Development, sufficient for the City and City's financial consultant to determine the total actual construction costs, including all draws made against Developer's construction loan and all backup information provided to Developer's lender.

[1] We should consider attaching as an Exhibit

Developer shall also provide to City all additional documentation to reflect any category of costs that are outside the draws requested by the City or City's financial consultant and reasonably necessary to compute the total actual construction costs, in the City's reasonable discretion.

Regardless of the foregoing, Developer may in its sole discretion pay to the City all or any portion of construction cost savings prior to achieving 95% physical occupancy, if necessary or desirable to comply with loan covenants and obligations in connection with any third-party financing for the Development.

Any payments due under this section 6.a. shall be payable by Developer after calculation of the amount due within 30 days of notification by the City of the amounts of payments due. If Developer defaults in such payment, City shall give written notice to Developer of the default, and if the default is not cured within 30 days of that notice, then the defaulted payments may be set off by the City against any remaining MRO Payments.

b. Internal Rate of Return Review. Upon the sale or fee conveyance of the Development by Developer to a third party; except for a sale or fee conveyance to an entity controlled by any of the Developer, Mandel Group, Inc., or the principals of Developer or Mandel Group, Inc.; the City's financial consultant shall determine the actual, then-current internal rate of return (IRR) for the Development as provided below. If that then-current Actual IRR (as defined below) exceeds 16%, then the amount of sale proceeds generated by the Development that causes the Actual IRR to exceed 16% shall be determined, and Developer shall pay to City 30% of that amount.

If Actual IRR is reasonably foreseen by Developer to be greater than 16%, then Developer shall deposit 30% of the estimated excess in escrow with the title company handling the closing of the sale or as otherwise agreed to by the City and Developer, to be held pending the final calculation of the Actual IRR, whereupon amounts owed to the City will be disbursed from the escrow (the "IRR Escrow").

"Actual IRR" shall be calculated using the same formulas and methodologies used to calculate the initial projected IRR for the Development, and shall be based only on investor equity as more particularly reflected on Exhibit C.

Developer shall deliver to the City all financial records relating to the Development reasonably required for the City's financial consultant to determine the Actual IRR. The calculation of the Actual IRR shall take into account all relevant factors, as determined by the City's financial consultant using income tax basis accounting principles consistently applied as reflected in Exhibit C and reasonable market standards, including the final cost of construction of the Development, the Development's historical cash flow, proceeds of the sale or deemed sale of the Development, brokerage fees, leasing fees, and other disposition costs, equity contributions or loans made to the Developer by its members or others, and construction financing and related financing costs.

Any payments due under this section 6.b. shall be payable by Developer after final calculation of the amount due within 30 days of notification by the City of the amounts of payments due. If Developer defaults in payment, City shall give written notice to Developer of the default, and if the default is not cured within 30 days of that notice, then the City shall be entitled to be paid any amounts owed the City from the IRR Escrow and, if for any reason, those funds are insufficient, shall have right to pursue the Developer directly for any amounts owed to the City hereunder.

7. Conditions for Financing and this Agreement. The City's obligation to provide any financing under this Agreement and the Developer's obligations to construct the Development are conditioned on the (i) successful creation of TID 30 upon terms consistent with the terms of this Agreement, (ii) the approval of this Agreement by the City's Common Council and (iii) the acquisition by the Developer or its affiliate of the Property and the closing of the construction loan for the Development. If any of the conditions listed in (i) and (ii) are not satisfied after good-faith efforts by the Parties to satisfy them, or the Developer or its affiliate does not acquire the Property and close on its construction loan for the Development, then either Party may terminate this Agreement in writing and this Agreement shall terminate and the Parties shall have no further rights or obligations hereunder.

8. No Further City Financing. The financing contemplated by this Agreement shall be the only financial contribution by the City to the Development, regardless of any change in circumstances.

9. Funds Not to Be Used for Tax Payments. Developer shall not use any of the Incentive Grant or

MRO Payment funds for the reimbursement or payment of any real, personal, or other property taxes.

10. Reimbursement of Financial Consultant Expense. Developer shall reimburse the City for expenses incurred in having Ehlers, Inc., perform the analysis required to satisfy the "but-for" test in connection with the Development, up to a maximum of $9,000.00. Payment shall be made within 30 days of the execution of this Agreement and delivery to Developer of reasonable evidence of such expenses.

11. Nature of City Financing Obligation. This Agreement is the only documentation of the City's obligation to pay the Incentive Grant and MRO Payments, and no other instrument will be executed to evidence the obligation. The Incentive Grant and MRO Payments shall not be included in the computation of the City's constitutional debt limitation, because the payments are limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of City's obligation from a limited and conditional obligation to a general obligation.

Part Three – Warranty of Taxable Value, Payments in Lieu of Taxes

12. Warranty of Assessed Value. Developer warrants to the City that the Development shall have a real estate tax assessed value of not less than $20,500,000 as of January 1, 2024, which date is subject to extension for the duration of circumstances reasonably beyond Developer's control that prevent the Development from achieving that value, and as of each successive January 1 until the earlier of (i) January 1 of the year after TID 30 closes or (ii) January 1 of the year that is two years after the date the MRO terminates pursuant to section 5.c ("Warranty Period"). It shall not be a breach of this Section 12 if the failure to meet the warranted value is due to taking by eminent domain or casualty loss, provided Developer complies with the reconstruction requirements of section 18.f.

13. Payments in Lieu of Taxes. In each year during the Warranty Period, in which the assessed value of the Development is not at least the value warranted in section 12, and as the City's sole remedy for a breach of section 12, Developer shall make a payment in lieu of taxes, in addition to the real property taxes payable that year, equal to the property taxes that would have been paid on the difference in value between the actual assessed value and $20,500,000. Payment in lieu of taxes shall not be required to the extent that the failure to meet the warranted value is due to taking by eminent domain or casualty loss, provided Developer complies with the reconstruction requirements of section 18.f. If as a result of a casualty loss, the Increment Revenue for a given year is less than the total amount of regularly-scheduled principal and interest payments on the debt service on the City Debt for that year (the "Annual City Debt Payments"), then the amount of such annual difference is referred to herein as the "Shortfall". Provided Developer is pursuing the reconstruction of the Development, then if and to the extent Developer receives business interruption insurance proceeds allocated to the payment of real estate taxes applicable to any period when there is a Shortfall, then Developer agrees to apply such proceeds to such Shortfall, and, at Developer's sole option, to an amount up to the full payment in lieu payment. If any such allocated business insurance proceeds are not sufficient to cover the Shortfall, then the Parties agree that the City may recover the aggregate amount of any unpaid Shortfall from Increment Revenue, but only after the MRO has been paid in full. If the Developer is not required to reconstruct pursuant to section 18.f and does not reconstruct and, as a result thereof, there is a Shortfall that is unlikely to be recovered by the City over time from the Increment Revenue that is reasonably estimated by the Parties to be generated from the Development as impacted by the casualty and then as restored/repaired/reconstructed/improved (the "Anticipated Aggregate Shortfall"), then Developer agrees that for every dollar of insurance proceeds received by Developer as a result of the casualty that is not applied to the Development, including, without limitation, the repair, razing, landscaping, rebuilding and/or new construction on the Property, or to the payment of any liabilities and/or debt owed by the Developer arising out of the Development or Property, shall be shared 50/50 with the City until the City has received an amount equivalent to the lesser of the Anticipated Aggregate Shortfall or the actual Shortfall, at which time all remaining insurance proceeds shall be the property of Developer.

Payments in lieu of taxes shall be due on May 31 of the year in which regular property tax payments are due. For example, if on January 1, 2024, the Development is assessed by the City at $19,500,000, a payment in lieu of taxes equal to $1,000,000 times the tax rate for 2024 would be due on May 31, 2025.

14. Warranty; Effect of Conveyance to Successors. The warranty of assessed value and the obligation to make payments in lieu of taxes described in sections 12 and 13 binds only the then-current title holder of the

Development, and upon conveyance of the Development to a bona-fide third-party successor, the obligations of the conveying party to make payments in lieu of taxes cease and, except as set forth in section 22, are assumed by the third party to which the Lot is conveyed, except for payment obligations that have already arisen and are payable as of the time of the conveyance.

15. Payments in Lieu of Taxes Due without Regard to Tax-Exempt Status or Challenge to Assessment. The obligation to make payments in lieu of taxes continues even if the Development or the Developer becomes exempt from the payment of property taxes, or if the Developer successfully challenges the assessment of the Development in court and has the assessment reduced, unless the challenge arises out of the failure by the assessor to take into account a taking by eminent domain or a casualty loss, provided Developer complies with the reconstruction requirements of section 18.f.

16. Unpaid Amounts to Be Special Charge. If Developer fails to make any payment in lieu of taxes when due, the Developer consents that any unpaid amount may either be a special charge imposed upon the Development pursuant to Wis. Stat. §66.0627 and §74.01(4), or reduce future incentive payments to the Developer, in the City's discretion.

17. Mill Reserve Ogden Settlement Agreement. The City represents and warrants that it has extended the Settlement Agreement by and among the City, Mill Reserve LLC and Ogden Development Group, Inc. to settle the lawsuit captioned City of Waukesha v. Mill Reserve LLC, Waukesha County Circuit Court Case No. 15 CV 1859 so that the Settlement Agreement will remain effective in accordance with its terms through the acquisition by Developer or its affiliate of the Property and has provided Developer with a fully executed copy of such extension. The City further agrees not to amend the Settlement Agreement without Developer's approval, which approval shall not be unreasonably withheld.

18. Preservation of Value of Development

a. Prohibition of Conveyance to Tax-Exempt Entity. During the life of TID 30 and an additional 10 years thereafter ("Exempt Restriction Period"), Developer shall not convey the Development or any portion of the Development to any entity which is exempt from payment of property taxes unless such entity and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the property taxes that would otherwise be owed, for each year that such entity owns the Development during the Exempt Restriction Period. Any conveyance attempting to do otherwise shall be void and of no effect. City may refuse to enter into an agreement for payments in lieu of taxes if the City deems, in its reasonable discretion, that the transferee entity is not an acceptable credit risk.

b. Prohibition of Obtaining Tax-Exempt Status. Developer shall not make application for, obtain, or accept recognition of tax-exempt status which would result in the Development being exempt from real-property taxation unless the owner and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the property taxes that would otherwise be owed, for each year that such entity owns the Development during the Exempt Restriction Period.

c. Prohibition of Contesting Real Property Taxes. Until such time as the MRO payments have terminated pursuant to section 5.c, Developer waives its rights to, and shall not, contest in any manner or in any forum the City's assessed value of the Development to the extent that the requested re-assessment would result in an assessed value less than the amount shown in section 12, unless the assessed value does not take into account any taking through eminent domain or casualty loss, provided Developer complies with the reconstruction requirements of section 18.f. The Developer shall have the right to participate in and to forward information to the Assessor to assist in a proper valuation of the Development. The Assessor shall share information with, and solicit the opinions of, the Developer, and its successor of the warranty obligations of Developer prior to issuing a formal notice of assessed value. It is acknowledged by the parties that the Developer may have better access to both development-specific information as well as relevant market sale and income data to assist the Assessor in determining a reliable fair market valuation for the stabilized Development. Regardless of the foregoing, Developer shall not be required to provide the Assessor with more information than is required by applicable law and the Assessor shall assess the Development according to the requirements of law, in the Assessor's discretion, provided that such discretion may be challenged as permitted by law.

d. Requirement to Maintain the Development. Developer shall maintain the Development, and all additions, improvements, and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code.

e. Requirement to Maintain Casualty Insurance. Until such time as the MRO payments have terminated pursuant to section 5.c, Developer shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction, at replacement value of all insurable improvements. Developer shall provide the City with proof of such coverage upon request.

f. Requirement to Reconstruct after Casualty Loss. Until such time as the MRO payments have terminated pursuant to section 5.c, Developer shall make commercially-reasonable efforts to repair, rebuild and/or reconstruct the Development promptly after any casualty loss, to restore the Development to either substantially the condition it was in prior to the loss or to substantially to its pre-loss value or higher. "Commercially-reasonable efforts" means that if the then mortgage holder allows sufficient insurance proceeds to be used for reconstruction and repairs, and there are sufficient insurance proceeds, then the Developer shall be required reconstruct or repair. It being understood that if the Developer is required to and fails to comply with its obligation to repair, rebuild and/or reconstruct, then the warranty in section 12 shall be reinstated as of the first January after the Development would have been repaired, rebuilt and/or reconstructed if the Developer had so complied, but that until such date, the section 12 warranty and the section 13 payment in lieu shall not apply after a casualty and the Development shall be assessed based on its then value as impacted by the casualty and Developer shall be obligated only to pay assessments based on such value.

Part Four – General Provisions

19. Agreement Runs with the Land and Binds Successors. The City shall record this Agreement against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. This Agreement shall run with the land. This entire Agreement is binding on and inures to the benefit of the Developer; the following sections of this Agreement, only, are also binding upon all of Developer's successors in interest: 12, 13, 14, 15, 16, 18, and all of Part Four, except as provided in section 22. References to Developer in those sections shall be deemed to refer to Developer and all of Developer's successors in interest. Permitted conveyances to successors in interest relieve the transferor of obligations hereunder first arising after the transfer.

20. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions. The City shall not participate in, or have any responsibilities connected with, the Development in any way other than the City's specific obligations in this Agreement and applicable laws.

21. Governmental Immunities and Notice Requirement Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

22. Assignment and Transfer. Prior to completion of the Development, this Agreement, and the Developer's responsibilities under this Agreement, may not be assigned by the Developer, except to an entity controlled by Developer, Mandel Group, Inc., or the principals of Developer or Mandel Group, Inc. After completion of the Development, the Development may be freely transferred without the City's consent.

Other assignments or transfers of this Agreement are permitted with the City's prior written consent, which shall not be unreasonably withheld. This Agreement may be pledged to Developer's lenders as collateral. No such lender shall have any liability hereunder by virtue of holding this Agreement as collateral unless said lender elects to effectuate such assignment and exercise the Developer's rights hereunder. Any such lender shall have the right to cure any default by the Developer hereunder provided such lender elects to undertake such cure within 90 days after receipt of notice of such default. If such lender timely elects to cure such default, then the lender shall have a commercially reasonably period of time to effectuate such cure. In the event that any such lender forecloses on its collateral and succeeds to ownership of the Development, then the City shall fulfill its obligations hereunder, provided that such lender, or the party purchasing the Development at a foreclosure sale, assumes in writing all of the obligations of the Developer hereunder, except as set forth below. Notwithstanding anything to the contrary set forth in this Agreement, if a lender holding a mortgage on the Property forecloses on its collateral and succeeds to ownership of the Development, such lender, or the party

purchasing the Development at a foreclosure sale, shall not be required to, and shall be automatically released from any obligation to, warrant the assessed value pursuant to section 12, make payments in lieu of taxes under section 13, or rebuild the Development under section 18.f. The City agrees not to assign or encumber the Available Increment to any party or purpose, until the amounts due under this Agreement are paid in full, or upon an earlier termination of the obligation by the City to make the MRO Payments.

23. Notices. All notices required by this Agreement shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City: Director of Community Development
City of Waukesha
201 Delafield St Ste 200
Waukesha WI 53188

To Developer: Mandel Group Properties LLC
330 East Kilbourn Ave.
Suite 600 South Tower
Milwaukee, WI 53202
Attention: Phillip Aiello

With a copy to: Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Attention: Sarah Jelencic

Notices shall be deemed received on the third business day after deposit in the US Mail, postage prepaid.

24. City Access to Development. Developer shall give City representatives access to the Development during construction, upon reasonable notice, to inspect and verify compliance with this Agreement. Any such access is at the City's and its representatives' own risk.

25. Proof of Existence and Authorization. Developer shall provide to City a certificate of existence issued by the Wisconsin Department of Financial Institutions, and a resolution of the Manager of Developer authorizing the execution of this Agreement by the individual signing, within 10 days of the execution of this Agreement.

26. Default. Neither Party shall be in default of this Agreement unless written notice of the default has been delivered and 30 days have passed without the default being cured by the defaulting Party and if cannot be reasonably cured within such 30 day period, then such longer period as may be reasonably necessary to effectuate such cure. An election by either Party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults.

27. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including reasonable attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

28. No Discrimination. Developer shall not discriminate against any employee or contractor, or potential employee or contractor, in the construction of the Development on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

29. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer warrant and represent that they are duly authorized to bind the Developer to this Agreement. Developer warrants and represents that the execution of this Agreement is not prohibited by the Developer's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Developer shall provide proof upon request.

30. Estoppel Certificate. City will provide Developer with an estoppel certificate upon Developer's reasonable request.

31. Assistance of Counsel, Voluntary Agreement. The Developer acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

32. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

33. Governing Law and Jurisdiction. This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and

subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

34. Integration. This Agreement constitutes the entire agreement of the Parties with respect to the specific subject matter contained herein. However, nothing in this Agreement shall be construed to limit the Common Council in the exercise of its legislative powers not in breach of this Agreement.

35. Force Majeure. Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, such as civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, governmental restrictions, and pandemics, provided the Party has used commercially reasonable diligence to resume performance in good faith as soon as possible. Time for performance shall be extended by the period of delayed performance.

36. Financial Information: Confidentiality. All financial reports and information required to be provided by Developer to the City under this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. At the request of the Developer, all financial reports and information provided to the City or its financial consultant in connection with this Agreement shall be held and treated as confidential and shall not be part of the public record associated with the Development, if and as may be permitted under the Wisconsin Open Records Law.

37. Change in Property Tax. If the laws of the State of Wisconsin regarding ad valorem taxation are amended or modified during the term of this Agreement such that the projected Increment revenue from the Development are materially reduced, i.e., five percent (5%) or more, and there are no corresponding amendments or modifications to the Tax Increment laws of State of Wisconsin to compensate for such reduction, the parties agree to work in good faith to consider amendments to this Agreement toward the end of rendering the respective positions of the parties generally equivalent to the positions set forth herein.

38. Cooperation and Information. The City agrees to work in good faith, promptly, and diligently in connection with the issuance or grant of all such approvals, consents, permits, certificates, and any other documents as may be necessary or desirable in connection with the development, utilization, and operation of the Development and to act reasonably and expeditiously and in cooperation with the Developer in connection therewith; it being understood and agreed that this provision is not intended to limit the rights of the City. As soon as practicable, but no later than December 15 of each calendar year, the City shall provide to Developer the information pertaining to the Available Increment for the calendar year of the request.

39. Limitation on Liability. The parties acknowledge and agree that in carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of either Parties' officers, managers, members, partners, agents, shareholders, employees, or representatives, it being understood and agreed that in such matters they act as agents and representatives of the applicable party,.

40. Prevailing Wage. The City does not impose any prevailing wage requirements or public bidding requirements applicable to the Developer or the Development.

41. City Authority. Subject to the approval of the City's Common Counsel, the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City, and no other or further acts or proceedings of the City or its officials are necessary to authorize and approve the execution, delivery, and performance of this Agreement, and the matters contemplated hereby, except as specifically stated herein. This Agreement, the exhibits, documents, and instruments associated herewith and made a part hereof, have, if applicable, been duly executed and delivered by the City and constitute the legal, valid, and binding agreement and obligation of the City, enforceable against the City in accordance with their respective terms, except as the enforceability thereof may be limited by applicable law.

42. Notwithstanding the foregoing, the City shall not (i) terminate this Agreement unless the Developer fails to construct the Development or (ii) pursue, exercise or claim any rights or remedies arising out of a default by Developer hereunder except claims for moneys owed the City pursuant to the terms of this Agreement, injunctive relief, specific performance or the temporary suspension of the MRO Payments.

Executed this _____ day of _____, 2021.

City of Waukesha

_____ _____
Shawn N. Reilly, Mayor Gina L. Kozlik, Clerk-Treasurer

State of Wisconsin)
) ss.
Waukesha County)

Shawn N. Reilly and Gina L. Kozlik, known to me to be the persons who executed this Agreement on behalf of the City of Waukesha in the indicated capacities, personally came before me this _____ day of _____, 2021, signed their names in my presence, and acknowledged the same.

_____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

BridgeWalk Apartments LLC

By: **Mandel/BridgeWalk Apartments LLC**, its Manager

By: **BR Mandel LLC**, its Manager

_____ _____
(sign above) (sign above)
Print name:_____ Print name:_____
Title:_____ Title:_____

State of Wisconsin)
) ss.
_____ County)

_____ and _____, known to me to be the persons who executed this Agreement on behalf of , in the indicated capacities, personally came before me this _____ day of _____, 2021, signed their names in my presence, and acknowledged the same.

_____
Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires_____)

This document was drafted by City of Waukesha Department of Community Development.

Incorporated attachments: **Exhibit A – Legal Description**
Exhibit B – Site Development Plan
Exhibit C – Sample Actual IRR Calculation

MANDEL GROUP

330 East Kilbourn Avenue
Suite 600 South
Milwaukee, Wisconsin 53202
414 . 347 . 3600
mandelgroup.com

BridgeWalk Apartments, LLC
Development Agreement
Exhibit A:

Legal Description:
Lots 2 and 3 and Outlot 1 of Certified Survey Map No. 10422, recorded July 26, 2007, in Volume 99 of Certified Survey Maps on Pages 119 to 129 as Document No. 3500216, being part of the Southwest 1/4 of the Northeast 1/4 and the Northeast 1/4 of the Southwest 1/4 and the Southeast 1/4 of the Northwest 1/4 of Section 3, Township 6 North, Range 19 East, and being a Redivision of Block K and Mill Reservation of Northwest Addition to Prairieville, in the City of Waukesha, County of Waukesha, State of Wisconsin. Excepting therefrom that part of Outlot 1 described in Quit Claim Deed recorded as Document No. 2832279.

Exhibit B – Site Development Plan

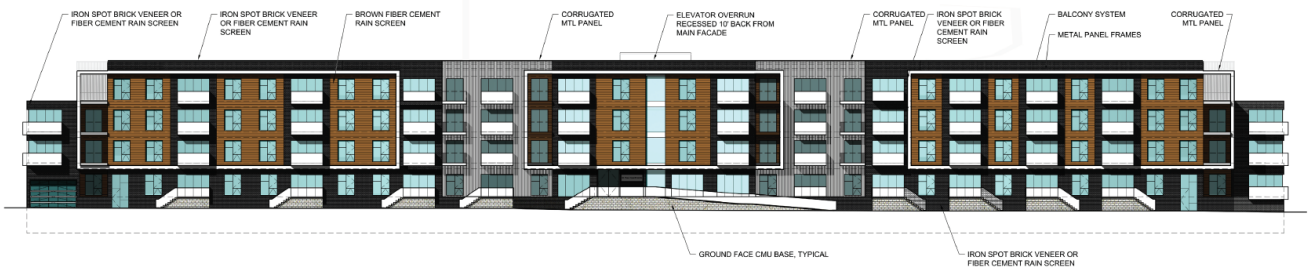
ST PAUL APARTMENTS: PRELIMINARY SITE PLANNING

MANDEL GROUP STRIEGEL AGACKI STUDIO

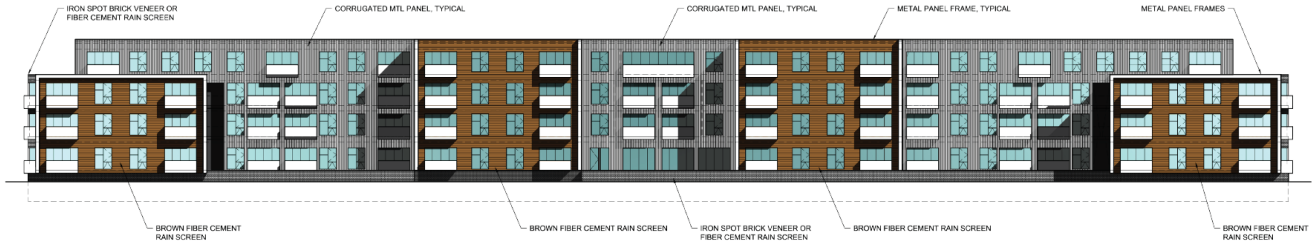
DESIGN UPDATE

11.18.20

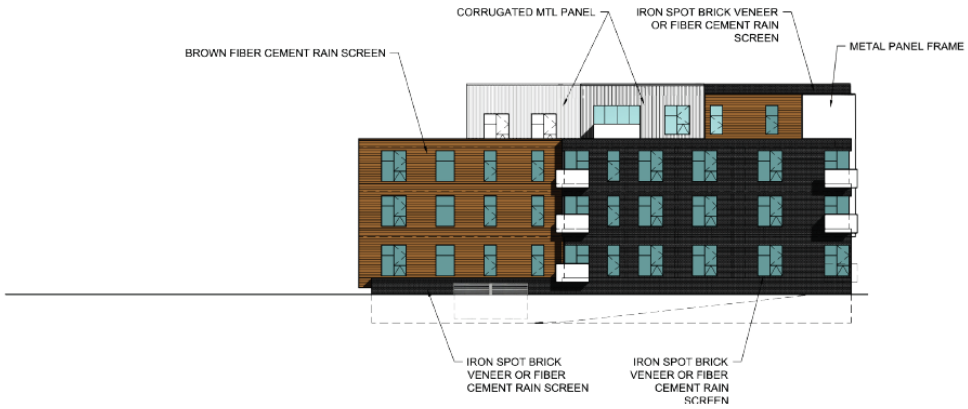
NORTH ELEVATION



SOUTH ELEVATION



EAST-WEST ELEVATION



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BridgeWalk Apartments LLC
Development Agreement
Exhibit C:

BridgeWalk Apartments
Contingent Interest Hypothetical Analysis

Investor IRR Summary (Base Projections)				**Projections Modified to Apply 4.50% Cap Rate**	
Year Ten NOI (Yr 11 Proj)			$1,657,898		$1,657,898
Cap Rate			6.00%		4.50%
Original Equity Investment			5,526,634		5,526,634
Year 10 Cash Flow			670,795		670,795
Sales Price			27,631,634		36,842,178
Value of TIF/City Refi Proceeds			1,163,223		1,163,223
Less Costs of Sale	1.50%		-431,923		-570,081
Gross Sales Proceeds			$28,362,934		$37,435,320
Subordinate City Loan (Mortgage)	0				
Accrued Preferred Return	0				
Permanent Financing	19,164,063				
Equity	4,860,917				
Sponsor Created Savings	1,006,874				
Total Debt/Equity			$25,031,853		$25,031,853
Net Available for Distribution			$3,331,081		$12,403,467
Distributable Cash/Cash to Achieve Investor IRR of 16% (Not including Sponsor Distribution)		$	2,165,202		$6,079,753
Investor IRR Calculation	**Year**		**Return**	**Year**	**Return**
*The IRR calculation shown is an approximation for illustration only. The actual IRR will be based on actual dates and amounts of distributions which will be quarterly.	1		($5,526,634)	1	($5,526,634)
	2		$147,725	2	$147,725
	3		$1,352,080	3	$1,352,080
	4		$522,813	4	$522,813
	5		$555,907	5	$555,907
	6		$591,494	6	$591,494
	7		$397,730	7	$397,730
	8		$435,713	8	$435,713
	9		$468,757	9	$468,757
	10		$7,535,415	10	11,449,967
	IRR*		**12.16%**		**16.00%**
Distributable Cash in Excess Investor IRR of 16%		$-			$ 3,050,000
City of Waukesha	**30%**	**$-**			**$915,000**