

Term Sheet

This Term Sheet is acknowledged as of this _____ day of November, 2020 by Mandel Group Properties LLC, referred to as the Developer; and the City of Waukesha, referred to as the City; regarding the development of vacant land on St. Paul Avenue in Waukesha and known as tax parcels WAKC 1305 480, WAKC 1305 481, and WAKC 1305 482, together referred to as the Property.

This Term Sheet sets forth the basic economic terms on which the parties might enter into an eventual agreement for the development of the Property, and does not set forth all matters that would be covered by a final development agreement drafted by the parties' respective counsel and approved and executed by the parties hereto, referred to as the Development Agreement. The parties acknowledge that this Term Sheet does not in any way create any legally-binding obligation on the parties, and that negotiations may not result in an executed Development Agreement.

The Project. The project is proposed to be a high-density residential community substantially as shown in the preliminary plan attached as Exhibit A, and is referred to as the Project.

Proposed Financing. The City would create a tax incremental district that includes only the Property, referred to as the District. The City would provide tax increment financing to Developer 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 proposed financing would be provided in two ways:

- (1) \$2,000,000 paid to Developer within 60 days of a certificate of occupancy being issued by the City for the multi-family structure shown in Exhibit A, but not earlier than April 1, 2022. This payment is referred to as the Up-Front Payment.
- (2) Up to an additional \$3,562,212 in the form of a municipal revenue obligation, referred to as the MRO.

The MRO would provide for an annual payment by the City equal to the tax increment generated by the District minus (a) 5% of that year's gross increment, and (b) the City's debt service and administration costs related to the District. The projected debt service and administration costs are shown in Exhibit B. The MRO payments would continue until \$3,562,212 has been paid to Developer (or such lesser amount as expressly provided in the event of a default by Developer in the payment of savings as provided below), or the date 24 years after the formation of the District, whichever is reached first, whereupon the MRO would expire. The terms and conditions of the MRO would be stated in the Development Agreement.

The Up-Front Payment and the MRO would be the only financing to be provided by the City, regardless of any changes in circumstances. The financing would be contingent on the successful creation of the District and the approval by the City's Common Council of the Development Agreement.

Developer's Obligation to Build. Developer would commence construction of the residential building portion of the Project on or before September 30, 2021 and complete construction by September 30, 2023, subject to extension for circumstances reasonably beyond Developer's

control. Developer expects that the Project would have a value of no less than \$20,500,000 by January 1, 2024, subject to extension for circumstances reasonably beyond Developer's control.

Warranty of Value, Payments in Lieu of Taxes. The Development Agreement would contain a provision by which the Developer warrants that the assessed value of the Project for real property tax purpose will be at least \$20,500,000 as of January 1, 2024, subject to extension for reasons outside of Developer's reasonable control, and on each succeeding January 1 until the earlier of (i) January 1 of the year after the District closes and (ii) January 1 of the year that is two years after the MRO has been paid in full (the "Guaranty Period"). In each year during the Guaranty Period in which the Project does not have an assessed value of at least \$20,500,000 as of that January 1, unless such reduced assessed value is the result of a casualty or condemnation, the Developer would 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.

Other Development Agreement Provisions. The Development Agreement would contain provisions addressing the following matters, and such other terms and conditions as are agreed upon by the Developer and City:

- The Project could not be conveyed to a tax-exempt entity, or any other action resulting the Project becoming exempt from property taxation, during the life of the District plus 10 years after the District closes, unless (i) the Property is subject to a PILOT Agreement requiring the owner thereof to pay an amount equivalent to the amount of the real estate taxes it would be required to pay on the Property if not exempt and (ii) the tax exempt entity transferee has been approved by the City, which approval shall not be unreasonably withheld, it being agreed that it would be reasonable for the City to withhold its approval if it reasonably determines that the tax exempt entity transferee is not sufficiently credit worthy to make the PILOT payments.
- During the term of the MRO, the Project would be insured against casualty loss at all times, and the owner of the Property will agree to use commercially reasonable efforts to rebuild or repair the Property to substantially the pre-loss value or higher in the event of casualty loss, and for all purposes hereof "commercially reasonable efforts" means that if the then mortgage lender allows sufficient insurance proceeds to be used for rebuilding and repairs and there are sufficient insurance proceeds, then the owner shall be required to so rebuild or repair.
- The assessed value of the Project could not be contested, to the extent that the assessed value would be reduced to less than \$20,500,000 at any time during the term of the MRO, unless the Assessor has failed to reflect any taking by the City through condemnation or any material casualty.
- Developer would pay the expenses of Ehlers, Inc., reviewing development pro-forma statements and preparing for the City a report stating whether the Project meets the "but-for" test, up to a maximum of \$9,000.00. If the but-for test is not met, no Development Agreement will be executed.
- A "look-back" analysis of "Net Savings" meaning the positive difference between the (i) estimated development costs for the Project to be provided by Developer to the City ("Development Budget") as compared to (ii) actual development costs, i.e., total

disbursements by or on behalf of the Developer, its affiliates or their assignees in connection with the Project (including contributions to the Capital Reserve Account [as hereinafter defined] and amounts required to be deposited into a reserve account by the then mortgage lender, if any [“Loan Reserve”]), would be performed by the City’s financial advisor after a specified time, but not sooner than Project Stabilization (as hereinafter defined). If the “look-back” indicates that Developer recognized Net Savings in excess of \$50,000 as compared to the Development Budget, then the City shall be entitled to 50% of such documented Net Savings as provided below. The Loan Reserve can be drawn upon by Developer as permitted under the Developer’s loan documents and only for the Project and cannot be disbursed to Developer as fees, savings or any similar purpose and shall not exceed \$50,000.

“Project Stabilization” shall mean the earlier of (a) the date upon which the Project has achieved and maintained 95% physical occupancy of apartments available for rent (i.e., excluding from total apartment count, models and units occupied for marketing and management purposes) continuously over any ninety (90) day period or (b) the fifth (5th) anniversary of the date of closing by Developer on its construction financing for the Project. Notwithstanding the foregoing, Developer may make a distribution of all or any percentage of Net Savings payable to the City prior to achieving 95% physical occupancy if necessary or desirable to comply with any applicable loan covenants and obligations in effect in connection with any third party debt financing for the Project.

“Capital Reserve Account” shall mean an account created by Developer from the amount of any savings subject to the look back 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 development 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 by the City acting reasonably. If any amounts remain in the Capital Reserve Account within thirty (30) months after the establishment of such account or such earlier date as may be determined by Developer (the “Account Closure Date”) then any remaining amounts shall be distributed 50% to the City and 50% to the Developer.

Developer shall pay to the City the amounts due hereunder, if any, within thirty (30) days after the calculation of the savings and as to any amounts remaining in the Capital Reserve Account, within thirty (30) days after the Account Closure Date. If the Developer fails to make either such payment when due and such failure continues for thirty (30) days after written notice from City to Developer setting forth such failure, then the City may deduct the amounts owed by Developer to the City hereunder from the MRO payments due to Developer.

- A “look-back” analysis to determine the actual internal rate of return (“IRR”) for the Project, would be performed by the City’s financial consultant upon sale of the Project. The actual IRR will be determined by the City’s financial advisor according to an agreed upon methodology used for the initial projected IRR and set forth in the Development Agreement. The parties agree that the initial projected IRR will be based

on the IRR for investor equity only and will not include developer or sponsor created savings from fee reductions or otherwise or any promote or profits interest. If the “look back” analysis shows an actual investor equity IRR in excess of 16%, then the City shall be entitled to 30% of such excess. If the IRR is reasonably estimated to be excess of 16%, then immediately upon the closing of the sale of the Project, Developer shall be required to escrow with a title company 30% of the estimated excess over an IRR of 16% until the final calculation of the IRR has been made and agreed upon, at which point the funds owed to the City will be distributed to the City and the remainder to Developer.

- The Project could be assigned to a third-party entity prior to completion, provided the entity is controlled by Developer, Mandel Group, Inc. or its principals or executives or the transfer is approved by the City. The Development Agreement could be pledged as collateral to a Project lender at any time. After Project completion, the Project will be freely transferable without the consent of the City.
- The Development Agreement would be recorded against the Project, and its executory terms would be binding on all successors and assignees of the Developer. Upon a conveyance permitted under this Term Sheet, the transferor will be fully released from any obligations under the Development Agreement arising after the date of the transfer.
- The City would execute an estoppel certificate in connection with the Development Agreement upon request by Developer.

City of Waukesha

By Shawn N. Reilly, Mayor

Developer, Mandel Group Properties LLC

By: Mandel Group, Inc., Manager
By: Barry R. Mandel, CEO

Exhibit A - Preliminary Plan

Project Summary

The proposed project is a Class "A" apartment development that will consist of approximately 114 luxury apartments within a four/five-story building above one level of underground parking. The Developer will offer sophisticated interior unit features: controlled access entry gates, a clubhouse/leasing center, state-of-the-art fitness room and a private courtyard. This project will be developed as a rental community.

