

TERM SHEET FOR DEVELOPMENT AGREEMENT
BETWEEN HARLOW & HEM APARTMENTS LLC AND CITY OF
WAUWATOSA REGARDING HARLOW & HEM APARTMENTS,
WAUWATOSA, WISCONSIN

FEBRUARY ____, 2025

1. Developer: Harlow & Hem Apartments LLC, and/or successors and assigns

2. Description of Project: Current structures and facilities located at 7470 Blanchard Street, 1330 Wauwatosa Avenue, 7463 Harwood Avenue, and 7460 Blanchard Street, Wauwatosa Wisconsin (collectively, the “Property”) will be demolished with subsequent new construction of approximately 157 rental apartments, with structured and surface parking (the “Project”) as noted below. Not less than 94 of the parking spaces created will be dedicated as public parking, separate from parking required and designated for residents of the Project. The order, unit-types and relative timing of the phases shown below is illustrative only and may adjust based on market conditions. The Developer and the City of Wauwatosa (the “City”) have estimated that the taxable value of the Project is expected to be in excess of \$30,183,700.

3. Contribution to Affordable Housing Fund: Developer shall pay \$471,000 to the City of Wauwatosa Affordable Housing fund (the “Contribution”). The Contribution shall be paid upon substantial completion of the Project, evidenced by a temporary or permanent certificate of occupancy (CO) for the Project (“Substantial Completion”).

4. City Obligations:
 - (a) Seek approval for funding described herein through Wauwatosa Tax Increment District #11 (“TID 11”), which includes the site upon which the Project is to be constructed, as well as other areas and parcels near and around the location necessary to complete the projects described within the TID 11 Project Plan. Such funding is subject to approval of the Wauwatosa Common Council. If necessary, seek an amendment to facilitate the City’s funding obligations outlined herein.

 - (b) Cooperate to structure the TIF funding so as to minimize negative income tax or other impacts on Developer.

 - (c) Contract with Developer (or an affiliated entity) for the construction of \$4,500,000 of Extraordinary Project Cost as set forth in Section 8 herein (“Upfront Payment”). The City shall issue fixed-rate debt to provide the Upfront Payment and such debt shall be fully amortized to provide an approximately 1.25 debt coverage ratio in the TID cash flow *proforma* as required by City policy as more particularly described on a mutually agreeable TID projection exhibit to be prepared by Ehlers and incorporated into a binding development agreement. City debt for this purpose shall be competitively offered and bonds awarded to the bidder with the lowest true interest cost. City agrees to use reasonable efforts to structure the rate, amortization, maturity and other components of such debt such that the debt service provides enough remaining

tax increment to cover City administration fees described in Section 5(d) and the MRO payments to Developer described in Section 7. Upon execution of the debt issuance, City shall confirm terms of such debt in writing to Developer. The debt associated with the Upfront Payment will have priority through the term of repayment over any payments to the Developer pursuant to Section 7 herein.

(d) Within 30 days after receipt of written request, City shall provide to developer commercially reasonable written certification regarding the status of the Project and MRO (defined below).

5. Developer Obligations:

(a) Use commercially reasonable efforts to obtain all necessary zoning, permits, and approvals and complete construction of the Project in accordance with plans approved by City. To the extent any public improvements are included within the scope of work for the Project, complete the installation of same per City specifications and dedicate same to the City upon completion.

(b) The Project will include not less than 94 public parking spaces to replace the public parking currently on the Property, which shall be dedicated to future use of the public at or prior to the transfer of land ownership of city-owned parcels to Developer pursuant to a mutually agreeable parking agreement.

(c) Construct the Project substantially in accordance with construction plans reasonably approved by the City.

(d) Pay all City development fees related to the Project, including but not limited to the upfront fiscal consultant fees related to review, negotiation and preparation of the TID agreement and TIF District (estimated to be between \$25,000 and \$30,000). City acknowledges receipt of \$10,000 escrow to pay for City consultant costs related to review of development *proforma* and negotiation of assistance, drafting and negotiating of the TID Agreement. Developer will replenish escrow upon 10-day request and detailed statement of funds expended from the City to cover any costs not covered by the original deposit. Any funds remaining in the escrow account will be returned to the developer within 30 days of final accounting.

(e) All customary permitting, licensing, inspection and plan review fees will be paid by the Developer. An escrow may be required for plan review fees for the City's engineering department.

(f) Construct the Project and maintain it in good condition through the Termination Date, subject to ordinary wear and tear and damage by casualty. As used in this Agreement "Termination Date" means the expiration or earlier closure of TID 11.

(g) Material changes to construction plans must be approved by the City, such approval not to be unreasonably withheld or conditioned.

(h) Designate the following sustainability features or standards (collectively, the “Sustainability Features”): electric car charging stations, a decrease in impervious surface, bike/ped/trail system facilities/connections, efficient HVAC systems and added storm water storage.

(i) Subject to unavoidable or force majeure delays, construction and Substantial Completion of the Project will be as follows:

Commence Construction	Substantially Complete Construction
July 1, 2025*	December 31, 2027

*Subject to extensions approved by the Community Development Authority of the City.

The City hereby acknowledges and agrees that We Energies shall be performing the first phase of work on the Project and that Developer does not control We Energies schedule. Developer shall not be in default of the commencement date as long as it uses reasonable efforts to cause We Energies to commence and the Substantial Completion date shall be extended day for day for each day after October 1, 2025 that We Energies does not commence construction.

(j) Developer will retain and the City hereby approves Mandel Property Services, Inc., an affiliate of Developer, as the initial management company for the Project. Developer may replace the initial management company only with a reputable management company with experience in the management of multifamily rental housing developments similar in size to the Project, or as otherwise reasonably approved by the City.

(k) Developer will install the following items, at a minimum, in conformity with the approved PUD:

- a. Two level-two electric vehicle charging stations available to the public, located in the public surface parking lot.
- b. A minimum of 3 level-one electric vehicle charging stations along with the electrical infrastructure necessary to add charging stations as may be reasonably necessary to accommodate apartment resident demand.
- c. Pedestrian connections to Harwood Avenue and Wauwatosa Avenue.
- d. Installation of an electronic parking space monitoring system; and
- e. The Sustainability Features.
- f. Wireless water meter signal boosters, if needed (or other solution.)

(l) Complete Project substantially in accordance with approved plans.

(m) Developer is required to take commercially reasonable efforts to hire or sub-contract with firms registered as Disadvantaged Business Enterprises with Milwaukee County or the State of Wisconsin Department of Transportation to complete 25% of the construction and professional services (to the extent hired after the date hereof) work for which there are competitive DBE firms. The Developer also agrees to set a goal of hiring 25% of their additional

construction work force needed for this project from distressed zip codes within Milwaukee County. Developer shall not be obligated to hire any DBE firms that are not qualified to perform the applicable scope of work. Moreover, Developer shall not be obligated to hire a DBE firm if the lowest qualified DBE bid is 5% or greater higher than the lowest qualified bid from a non-DBE firm. Developer will work with a consultant hired by the City and paid through the TIF to develop and implement a Participation Plan to meet these goals and provide any necessary documentation for monitoring. (The details of the above goals and requirements will be set out in the Participation Plan).

6. City Financial Assistance: The City shall provide financial assistance in the form of a reimbursement for Developer-Funded Expenditures (defined below).

7. Funding for Developer-Funded Expenditures: The City will make Municipal Revenue Obligation (“MRO”) payments to Developer over the life of TID 11 having a net present value of \$3,880,000 plus interest (such payments totaling \$7,062,340 in the aggregate), as shown in the table in sub. 7(d), below, to Developer as described below:

(a) Developer must submit evidence of adequate funding commitments reasonably acceptable to the City before the City will issue an MRO.

(b) The City will reconfirm the MRO upon Substantial Completion of the Project, subject to any adjustments noted in paragraph 9.

(c) The City will pay an amount equal to 75% of the tax increment (minus administrative costs which shall include the costs of the annual financial audit, staff time, and construction monitoring) generated annually by the Developer’s Project via an MRO for Extraordinary Project Costs (defined below), including but not limited to the costs of acquisition, demolition and site preparation, affordable housing fund contribution, new and enhanced public parking construction and maintenance, overhead and underground electrical relocation, green stormwater infrastructure, environmental remediation, earth retention as well as any required public infrastructure constructed for purposes of the Project. This payment will be calculated solely from the property tax payments actually received from the Developer and from no other funds of the City or the Tax Incremental District. Annual payments may be made to the Developer up to 45 days after the tax liability for that year has been paid in full by Developer, no earlier than July 15th. For the avoidance of doubt, the MRO payment in any given year shall not be limited to the amount of the annual MRO payment shown on the TIF Projections for such year, provided that the total amount of the MRO payments shall not exceed the total aggregate maximum amount of the MRO shown in the table below. The City will make payments on the amended amounts until a total aggregate amount as follows for the Project has been paid:

Financing Rate (a/k/a Discount Rate)	Future Value (gross aggregate MRO payments)	Present Value
Lesser of 6.0% or actual financing rate	\$7,062,340	\$3,880,000

The future value of \$7,062,340 in the chart above is based on the net present value of \$3,880,000 being monetized at the time of construction completion using an imputed interest rate of 6.0%. Notwithstanding the foregoing, the City agrees to delay funding of administration costs in the first three years of the MRO payments if the Developer demonstrates that failure to do so will cause Developer to fail a debt service or other covenant with the lender for the Project.

8. Extraordinary Project Costs: “Extraordinary Project Costs” means project costs eligible for reimbursement through TID funding under Wisconsin law, examples of which are further described in the chart below. Extraordinary Project Costs can vary between categories but cannot exceed total Extraordinary Project Costs shown in the chart below on a net present value basis. Prior to the issuance of the first MRO payment, the Developer must substantiate the actual Extraordinary Project Costs.

Extraordinary Project Costs	Total
Public Parking – Structured	\$1,582,419
Public Parking – Surface Lot	132,903
Private Parking – Structured	5,169,170
Selective Demolition	71,781
We Energies Reconfiguration	990,000
Soil Stabilization, Soil Nailing, Shotcrete	2,145,508
Public Access Stair Paths	200,000
EV Charging Stations	45,000
Affordable Housing Fund Contribution	471,000
Total	10,807,782

9. Adjustment of Reimbursement for Extraordinary Project Costs and Developer-Funded Expenditures for Construction Savings: Following Substantial Completion of the Project, the City will engage a construction expert to review actual development costs vs. budgeted development costs. Developer’s actual development costs shall include the total costs incurred by or on behalf of the Developer, its affiliates or their assignees in connection with the construction of the Project, including design and engineering fees and all other categories of soft costs included in the final project budget delivered to the City (excluding any amounts remaining in interest and operating reserves as such reserves are also excluded from the budget), and including 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. Cost of said expert shall be an eligible TID administrative expense. Developer will provide access to the site and supporting documentation for all line items, including but not limited to, invoices and construction draw documents, to verify the total development costs of the Project and the Extraordinary Project Costs. MRO payments may be withheld until such documentation is provided. If Developer's total costs for the Project are less than the final budget, the City and Developer shall share equally in those cost savings subject to a mutually agreeable holdback for potential latent defects and subject to contributions to a Capital Reserve Account (defined below). “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. Any holdbacks and/or amounts in the Capital Reserve Account that remain unused thirty (30) months after the holdback or account is established, or such earlier date as may be determined by Developer, shall be distributed half to the City and half to the Developer. Developer will have the right to move costs between the line items, except that the Developer overhead and Developer fee shall remain fixed at an overall percentage equal to or less than that shown in the project budget through Substantial Completion of the project. In the event of any savings, the amount of the gross aggregate MRO payments shown in the table in sub. 7(d) will be reduced by 50% of said savings. Developer shall have the right, in its sole discretion, to make a payment to the City equal to the City's share of the savings in lieu of a reduction the MRO payment. If sufficient unpaid TIF funds do not remain at that time, Developer shall pay such amount to the City within 90 days of determination. Said funds shall be applied to the special fund for the TID for uses consistent with the Project Plan. Any such amount which remains unpaid after 90 days shall be levied as a special charge against the property pursuant to Sec. 66.0627, Wis. Stats. If Developer's costs exceed the final approved budget for such items, Developer shall be responsible for all cost overruns. Upon reasonable agreement from the City, Developer may utilize construction savings on additional expenses that will increase the overall taxable value of the project, and any savings so used shall reduce the City's share of such savings.

10. Adjustment of Reimbursement for Extraordinary Project Costs and Developer-Funded Expenditures based on Cash-on-Cash Reproject (the "Reproject"): City Financing is to eliminate any funding gap related to construction of the Project which could not be repaid through anticipated revenues in the future and is based on certain assumptions regarding likely costs and income associated with the Project. The tax increment assistance will be subject to a one-time Reproject to be performed by the City's municipal advisor sixty (60) days after the earlier of: (i) the date that is one year after the date of Stabilization (as defined below); and (ii) the date of any sale of the Project.

(a) If the Reproject is performed based on the date of Stabilization, and the Project's cash-on-cash Return, which will be calculated in accordance with the example attached as Exhibit A (the "Cash-on-Cash Return"), exceeds 11.0%, then the gross aggregate amount of the remaining MRO payments will be reduced by an amount equal to 50% of the amount by which the Cash-on-Cash Return exceeds 11.0%. Such reductions shall be taken from the end of the projected MRO payments. Developer agrees to provide reasonable background documentation of actual Project costs, project sources, and financing terms to construct the Project as well as the actual income and operating expenses for the period from the date of Substantial Completion through the date which triggers the Reproject as described herein. The future projections shall be based upon 3% income and expense growth and 3% annual increase for real estate taxes, and actual permanent financing loan terms. Notwithstanding the foregoing, the future projections shall be based on: (i) fully-stabilized and assessed real estate taxes, (ii) fully-stabilized operating expenses, (iii) replacement reserves equal to \$39,250 per year (subject to the 3% growth rate), and (iv) the contribution of the MRO payments to the determination of the projected mortgage amount based on the projected remaining MRO payments discounted at the actual discount rate. As used herein, "Stabilization" means the earlier of (i) the last day of the third consecutive calendar month during which the Project is at least 95% leased and (ii) the date

Developer closes on permanent (non-construction) financing for the Project. If the calculated debt service results in a debt service coverage ratio of less than 1.25, the cash-on-cash calculation will be based on the original equity investment plus additional equity required to satisfy the 1.25 debt service coverage ratio. City shall provide the Developer written notification and an opportunity to review the calculations if the Reproject results in a reduction to the MRO payments.

(b) If the reproject is triggered by a sale, and based on such review the investor IRR exceeds 15.0%, the City shall receive 30% of the proceeds above the 15.0% IRR not to exceed the net present value total amount of the City assistance provided at the closing of the sale, and future MRO payments will remain unchanged.

11. Minimum Equalized Value: Subject to Section 13 below, after January 1, 2029, and thereafter during the life of TID 11, Developer will not challenge the value of the property through the assessment process to a value below \$30,183,700 (the "Minimum Equalized Value") unless uninsured damage to the Property reduces value to a lower amount.

12. Property Taxes: Prior to the Termination Date, the Developer shall pay all real property taxes payable with respect to all and any parts of the Property acquired and owned by it until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement. The Developer has contractual (as well as statutory) obligations to pay property taxes and shall avoid causing the reduction of property taxes through (a) willful destruction of the Project; (b) willful refusal to reconstruct damage or destroyed property if sufficient insurance funds are available; (c) seeking exemption from property tax; or (d) application for a deferral of property tax.

The Developer agrees that prior to the Termination Date:

- i. It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax, and nothing in this sub (i) shall prevent Developer from challenging the property tax assessment for the Project in accordance with the terms of the Agreement;
- ii. It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax, and nothing in this sub (ii) shall prevent Developer from challenging the

property tax assessment for the Project in accordance with the terms of the Agreement;

- iii. It will not seek any tax deferral or abatement, either presently or prospectively authorized under any State or federal law, of the ad valorem property taxation of the Property between the date of execution of this Agreement and the Termination Date.

13. Tax Petitions: If the Developer brings a petition challenging an assessment of the Project, the Developer must inform the City of such petition. During the pendency of any such action, the City may temporarily withhold the portion of the MRO payments for the years subject to challenge that are in excess of the Minimum Equalized Value or the requested value, whichever is greater. Developer would receive MRO payments for all years that the taxes were paid. Upon resolution of Developer's tax petition, any Available Tax Increment deferred and withheld will be paid, without interest thereon, to the extent payable under the final determination of the assessed value. Notwithstanding anything to the contrary, Developer may challenge an assessment below the Minimum Equalized Value if the assessment on the Property on a per unit basis is more than 5% greater than the average per unit assessment of projects of similar style and level of amenities within Wauwatosa.

14. Tax Exempt Covenant: The Developer shall enter into a restrictive covenant requiring any owner of the Project to make payments in lieu of taxes, in an amount equal to the amount of property taxes which would otherwise be payable to all taxing jurisdictions, in the event that all or any portion of the Project site becomes tax exempt during the life of TID 11 and for 20 years thereafter. The covenant shall be recorded and shall run with the land.

15. Bike Share Station: If the public bike-share system in the City of Wauwatosa is designed to include a station located at or adjacent to the Project, Developer will permit the installation of said public bike-share station, which station must be consistent with the capacity and other characteristics recommended or anticipated in the overall system design. If such station is installed, Developer shall be responsible for the cost of installation and operation of such station, to a maximum of \$75,000; provided, however, in the event that there are any savings pursuant to Section 9 above, the City's portion of such savings shall first be applied to the Developer's \$75,000 contribution herein.

16. Further Conditions: The Development Agreement shall contain such additional provisions and assurances as are customarily contained in similar agreements with the City and shall provide for tax incremental financing as set forth herein.

17. Project Valuation Information: During construction and prior to Project stabilization, Developer will provide the City Assessor with customary plans and rent and operating expenses in a format as necessary to reach an accurate and defensible valuation of the Project for purposes of real and personal property taxation. Following project stabilization, Developer will provide the City Assessor with the necessary income and expense information annually for the accurate valuation of the Project during the life of TID 11 consistent with the type and quantity of information that is customarily requested by the City's Assessor for like

properties, which information shall be maintained in confidence in a manner consistent with Wisconsin law. The parties agree that other financial reports and information considered confidential by the Developer 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 such 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 Project, if and as may be permitted under the Wisconsin Public Records Law, Wis. Stats. §§19.21 et seq (the "Public Records Law").

18. To the extent in compliance with applicable law, if any tax, assessment or like charge is properly imposed on or assessed against the Project or the use and operations thereof or income therefrom, as an alternative to, a replacement of, or as supplemental to, any or all of the property taxes that are intended by the parties hereto to constitute the Tax Increments, or increment or like revenues under the Tax Increment Law or any equivalent, then such taxes, assessments, and charges shall be deemed to be Tax Increments hereunder and shall be disbursed as set forth in this Agreement. Notwithstanding the foregoing, special assessments and special charges levied by the City for permitted purposes not already within the scope of this Agreement, such as to pay for improvements and services that may benefit the Property or the Project, shall not be included as Tax Increments.

Exhibit A

Example of Cash-on-Cash Return Calculation