



Hotel Project

Memorandum of Understanding

This Memorandum of Understanding (“MOU”) is entered into as of this 10th day of May, 2012 by and between the Community Development Authority of the City of West Allis, Wisconsin (“SELLER”), and Waterpark Ventures Management Services, LLC, its successors and assigns (collectively, “BUYER”) in order to set forth the terms under which the SELLER and BUYER are willing to negotiate the terms of definitive agreements regarding the entitlement, acquisition and development of the Hotel Site (“Site”) and 84th and Greenfield Redevelopment Area in the city of West Allis, Wisconsin hereinafter described. The basic terms and conditions of the parties’ understandings with respect to the Site, and which each intends to be included in definitive transaction documents to be jointly prepared by the parties, are as follows:

The following are general deal points for the proposed hotel project:

1. **BUYER:** Waterpark Ventures Management Services, LLC, its successors and assigns (collectively, “BUYER”), 631 Cedar Street, Wisconsin Dells, WI 53965.
2. **SELLER:** Community Development Authority of the City of West Allis, Wisconsin (“SELLER”), 7525 W. Greenfield Avenue, West Allis, WI 53214.
3. **BUYER’S Contact Information:**
Mick Hintz
Director of Construction
WVMS
631 Cedar Street, Wisconsin Dells, WI, 53965
mhintz@wildernessresort.com
S. Peter Helland, II, Member

Patrick J. Helland, Member
R. Timothy Lucke, Member

4. Seller's Contact Information:

John F. Stibal, Executive Director
Community Development Authority
City of West Allis
7525 W. Greenfield Avenue
(414) 302-8462
jstibal@westalliswi.gov

Scott E. Post
City Attorney
City of West Allis
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Properties to be sold: The properties to be sold by the SELLER will be sold "as is" to BUYER with a total land mass of 3.04 acres as per Exhibit A - Master Site Plan (hereinafter referred to as the "Site").

5. Purchase Price:

A. Earnest Money. BUYER will provide a payment in the amount of \$10,000 as a refundable deposit to secure the Site and commence the process of preparing and negotiating definitive transaction documents.

B. Price. The purchase price for the Site shall be \$1.00.

6. Timeframe: This MOU shall be null and void unless the parties enter into definitive transaction documents relating to the entitlement, acquisition and development of the Site, including, without limitation, a Purchase and Sale Agreement, a Development Agreement, and a Reciprocal Easement Declaration within 90 days of the execution of this MOU.

7. Development Project: The SELLER and BUYER are entering into this MOU to facilitate the construction of a \$10.0 - \$18.0 million dollar hotel/banquet facility further described below:

A. Hotel:

1. Construct a 3 or 4-story hotel with 100-120 room keys
2. Limited service franchise hotel
3. The hotel will be operated as a nationally recognized franchise brand to be determined by BUYER. Potential hotel franchise brands include

Courtyard by Marriott/Marriott International, Inc., Hilton Garden Inn, Hampton Inn or Homewood Suites by Hilton Worldwide, Inc., Four Points by Sheraton by Starwood Hotels & Resorts, Holiday Inn and Suites by Intercontinental Hotel Group, or similar limited service hotel franchise brands. The franchise brand will be an upper-mid-price to upscale hotel product as identified by Smith Travel Research 2011 STR US Chain Scales. It will potentially be a limited-service, select-service or full-service hotel.

4. Amenities including: indoor pool with spa, executive business center, exercise room

B. Banquet Facility:

1. Banquet facility consisting of approximately 8,000 sq. ft.
2. Facility capacity of up to 300 occupants

C. Parking:

1. Overall site plan shall accommodate 159 parking stalls. BUYER will also have parking rights to the Orchard Street parking lot for employee parking and for guest vehicles with trailers.

D. Site Layout:

1. Site layout and landscaping standards shall be consistent with **Exhibit A-Master Site Plan.**

8. Schedule and Performance Goals: Projected construction timeframe of hotel/banquet project -

Item	Description	Date	Entity
1	MOU	By May 15, 2012	BUYER/SELLER
2	Rendering	60 days following full execution of MOU	BUYER/SELLER

3	Purchase and Sale Agreement/Development Agreement/ Reciprocal Easement Declaration/Ancillary Closing Documents	70 days following full execution of MOU	BUYER/SELLER
4	Purchase and Sale Agreement/Development Agreement/ Reciprocal Easement Declaration/Ancillary Closing Documents Approved	100 days following full execution of MOU	Common Council
5	Site, Landscaping, Architectural Plans	December 1, 2012	Plan Commission BUYER
6	Closing	December 1, 2012	SELLER/BUYER
7	Construction Start – Storm Water Detention	April 1, 2013	BUYER
8	Construction Start – Footings & Foundations	April 1, 2013	Building Inspection/State of Wisconsin

*The dates for Item Nos. 5 through 8, inclusive, set forth above are expressly contingent upon BUYER obtaining satisfactory financing as set forth in Section 12 below and upon satisfaction of any other conditions of closing. The dates for those items may be extended or retracted by mutual consent provided that BUYER's performance remains subject to project financing requirements and any other conditions of closing.

**In addition to possible extension or retraction of the dates for Item Nos. 7 and 8 set forth above as described in the preceding paragraph, those dates may be extended or retracted due to favorable or adverse weather conditions, as applicable.

9. [Intentionally Omitted].

10. **Responsibilities of the SELLER:** The following deal points will be the responsibility of the SELLER:

A. Equity Equivalent Investment. The SELLER is willing to provide a \$600,000.00 fully subordinated, unsecured loan, which shall accrue simple interest at 10% per annum, amortized over 10 years and shall be paid from BUYER's net available cash following payment of all operating costs, expenses and fees (including all management and consulting fees), and all required lender debt service payments.

1. All terms & conditions of investors and lender shall be transparent and full disclosure shall be provided to the SELLER to the extent commercially reasonably possible.

B. Zoning and Land Use:

1. The site is currently zoned C-3 Community Commercial District, which permits hotels as a Special Use.
2. The City's Large Retail Development Requirements as per municipal code RMC Section 12.13 Site, Landscaping and Architectural Review Procedures, apply to all buildings to be built on this redevelopment site.

C. Reciprocal Easement Declaration:

1. As a condition of Closing, the SELLER will execute and record a Reciprocal Easement Declaration in form and substance approved by BUYER in its sole but commercially reasonable discretion.
2. The Reciprocal Easement Agreement will provide reciprocal easement rights over, upon, across and through each of the properties located within the project area for parking, traffic flow, utilities and drainage.

D. Survey/ALTA survey of project area:

1. As a condition of Closing, the SELLER will obtain and provide BUYER an ALTA survey containing such Optional Table A items as required by BUYER, in form and substance approved by BUYER.
2. As a condition of Closing, the SELLER will obtain and provide a Certified Survey Map of the new site, in form and substance approved by BUYER.

E. Title Insurance:

1. As a condition of Closing, the SELLER will obtain and provide BUYER an ALTA owner's extended title insurance policy with a face amount of the appraised value as provided by the BUYER, in form and substance approved by BUYER.
2. Notwithstanding the immediately preceding paragraph, BUYER shall be permitted to engage another title insurance company to provide the ALTA owner's extended title insurance policy without an appraisal, and at closing SELLER agrees to pay the premium cost of such a title insurance policy up to a \$900,000 face amount.

F. Utilities and Storm water: The SELLER has provided **Exhibit B-Utility Map**, a map showing locations of laterals and connections to utilities.

1. The SELLER makes no representations or warranties concerning the condition of these utilities.

G. Special Use Authorizations and Liquor Licenses: The SELLER will provide the necessary assistance for BUYER to obtain approval for a Special Use authorization for the hotel and for the banquet facility, and in securing the proper class of liquor license for the operation of the hotel and banquet facility from the city of West Allis. Obtaining approval of the Special Uses and proper class of liquor license shall be conditions of Closing.

H. Environmental Condition: SELLER has conducted environmental investigations at the Site, which included the collection of soil and groundwater samples. Low-level contamination was found in soil and groundwater and is associated with fill material (primarily foundry sand) and underground storage tanks (USTs) formerly located at the Site.

1. As a condition of Closing, the SELLER will obtain from the Wisconsin Department of Natural Resources ("WDNR") Case Closure with respect to the contaminated soil and groundwater located on the Site in accordance with **Exhibit C – Environmental Addendum**.
2. All environmental reports and investigations conducted by the SELLER will be provided to BUYER.
3. Exhibit C, the Environmental Addendum, is attached hereto as a part of this MOU and sets forth Buyer's environmental responsibilities in addition to those set forth herein.

11. Responsibilities of BUYER: The following deal points will be the responsibility of BUYER:

A. Rendering: BUYER will provide a rendering of the proposed hotel and banquet facility project not later than the date set forth in Section 8 of this MOU. The rendering will be subject to the approval of the SELLER, which approval shall not be unreasonably withheld or delayed.

B. Conditions of Development:

1. Special Uses approval for the hotel and banquet facilities will need to be obtained by the City of West Allis, with the assistance of the SELLER.
2. Liquor License approval will need to be obtained from the City of West Allis, with the assistance of the SELLER.
3. Obtaining approval of the Special Uses and Liquor License shall be conditions of Closing.

C. Architecture:

1. Base middle top - The first floor of the building, especially public elements/rooms, should set-off from the middle and top of the building through increased height and fenestration. The top floor should be visually distinct from the middle section (windows, massing, color, texture).
2. Facades - Building walls shall be broken up with projections or recessions to reduce the unbroken massing into lengths of approximately 30 feet or fewer along all sides of the building. Projections from the façade can be used as an alternate approach. Along any public street frontage, the building design should include vision windows, arcades, awnings or other acceptable features along at least 60 percent of the building length.
3. Materials and Color - A minimum of 70% of the building's façade should consist of acceptable high-quality materials including: brick, wood, sandstone, hardiplank, other native stone and glass. Secondary materials (like EIFS) should be used minimally as a compliment. A variety of exterior textures and colors is preferred.
4. Entryways and Windows - Entrances should be connected directly to the public right-of-way by pedestrian oriented walkways. Windows should be "punched" (or not flush) with the wall surface to create relief. Headers and sills shall be incorporated into the design. Exterior AC units shall be integrated into the design of the window unit. Spandrel glass should be avoided. Operable windows that allow the circulation of fresh air are encouraged.
5. Roofs. A strong, but simple, roofline and/or overhang with corresponding brackets and screening of Mechanical Equipment.

6. Landscaping. Each parking area shall be surrounded by a landscaped buffer area to include canopy trees at regular intervals or in clusters. Shade and ornamental trees (2 trees/island minimum) are also required in landscape islands within parking areas.
7. Pedestrian Flows. The project shall provide for distinguishable, decorative and durable surfaces for pedestrian accessibility, safety, and convenience to reduce traffic impact and enable the development to project a pedestrian-friendly, inviting image.
8. Parking Lots. Parking to be distributed around the building and no more than 30% of total parking should be located on any side facing a street. Landscaping shall be used to define parking areas, primary vehicular drives and pedestrian areas in an aesthetically and environmentally pleasing manner.

D. Environmental: Exhibit C – Environmental Addendum is attached hereto as a part of this MOU and sets forth BUYER'S environmental responsibilities. In addition:

1. Prior to Closing, BUYER and their agents shall have complete access to SELLER environmental records and reports of the Site and to conduct necessary inspections and/or testing of the Site to facilitate development.
2. Additional cost for investigation and testing of the Site is the sole responsibility of the BUYER except as necessary by SELLER to fulfill the obligation set forth in Section 10.H.1. of this MOU.
3. BUYER will provide the SELLER access to any subsequent environmental reports or results.
4. BUYER and their agents will be responsible for providing proper documentation of the limits of insurance prior to being granted access the Site.

E. Utilities: All existing and proposed utilities will be installed underground. BUYER is responsible for all connections to utility services.

1. Existing water and sanitary utilities servicing the project area include:

Street	Pipe Size (inches)		
	Water	Sanitary	Storm
W. Greenfield Avenue	8	8	*
S. 82 St.	6	8	*
W. Orchard St.	6	12	*

* refer to Storm water Management Plan

F. Storm Water Management and Controls. BUYER will be required to install, the necessary storm water management and controls. See **Exhibit D – Storm Water Management and Controls Addendum** for additional details. BUYER will, to the extent required by the city of West Allis (CWA), Wisconsin Department of Natural Resources (WDNR), and the Milwaukee Metropolitan Sewerage District (MMSD) be responsible for all costs and work associated with designing, permitting, constructing (including management of contaminated soil and groundwater), operating and maintaining the storm water management and controls (detention and water quality) and adhering to the terms of any permits obtained for the entire 84th and Greenfield Redevelopment Area as shown on **Exhibit A – Master Site Plan**. Additionally, the BUYER shall ensure that all contractors, subcontractors, agents, etc. involved with or who may have an impact on storm water will be responsible for storm water conveyance piping necessary to control storm water runoff on the Hotel Site. The BUYER shall be responsible for all costs and work associated with storm water management and controls at the time of purchase, including pre-construction, construction and post-construction. Additionally, the BUYER shall ensure that all contractors, subcontractors, agents, etc. involved with or may have an impact to storm water pollution prevention and storm water management controls shall be informed and maintain compliance with all requirements. The BUYER agrees to take all practicable and cost effective actions necessary to incorporate into the redevelopment of the Hotel Site and 84th and Greenfield Redevelopment Area the placement and on-site reuse of contaminated soil, consistent with any conditions of reuse established by the WDNR, generated during construction. The SELLER is responsible for the disposal costs for excess material that cannot be reconsolidated onsite. BUYER shall commit \$210,000 for construction of underground storm water detention and water quality measures for the entire 84th and Greenfield Redevelopment Area. The SELLER shall commit to cover the

additional costs associated with construction of the entire 84th and Greenfield Redevelopment Area storm water detention and water quality control measures.

- G. Job Creation: The project anticipates the creation of 20 full-time equivalent (10 full-time and 20 part-time) employment opportunities. It is required, that at least 51% or 11 full-time equivalent employment opportunities will be made available to employees whose total household income is less than 80% of the county median income (the "Job Creation Goal"). BUYER will be required to provide information relative to job creation based on the project being located within 84th and Greenfield Redevelopment Area that was assisted with Community Development Block Grant- Emergency Assistance Program funds. Job creation statistics will be tracked by BUYER and its subsidiary or hotel operator having employees complete the Beneficiary Profile form provided under **Exhibit E- Job Beneficiary Profile Form**. BUYER reporting requirements will terminate upon the hiring of 11 full-time equivalent applicants who meet the 80% of the county median household if income. Other than the above-referenced reporting requirements, BUYER shall have no other obligation to SELLER with respect to achieving or failing to achieve the Job Creation Goal.
- H. Parking Restricted Use Area. The western-most land mass (formerly 8201 W. Greenfield Avenue) will be limited to parking use for the banquet center/hotel and be prohibited from future development.
- I. Curb and Sidewalk Replacement. BUYER will be responsible for sidewalk and curb replacement and necessary drive-way apron and carriage walk removal restored as greenspace within the Site, or a new carriage walk within the Site consistent with the Master Site Plan.
- J. Hotel Flag. BUYER will submit a Letter of Commitment from a hotel chain consistent with the above Section 7.A.3. within a commercially reasonable period of time following BUYER's acquisition of permanent project financing. Submittal of the Letter of Commitment shall not be a condition of Closing.
- K. Guarantee:

Based on the timeframe outlined under Section 8, Schedule and Performance Goals, BUYER will guarantee the following minimum assessed values by December 31 of each year:

<u>Schedule</u>	<u>Minimum Assessed Value</u>
12/31/2012	\$ 900,000
12/31/2013	\$ 4,000,000
12/31/2014 and following tax years	\$ 6,000,000

1. To the extent that the general property taxes from the property in the calendar year following acceptance of the Purchase and Sale/Development Agreement are less than the equivalent of the guaranteed assessed value multiplied by that year's mill rate, BUYER shall pay the difference between that years actual tax payment and tax payment that would have been generated by the guaranteed valuation.
 2. BUYER obligation to guarantee the payment of any property tax shortfall against the guaranteed valuation shall continue for the life of the district.
 3. BUYER will agree that any amount of property tax shortfall will be treated as a special charge due and owing to the City of West Allis extended upon the tax roll for the year which it is due and owing only against the project and not against BUYER or against BUYER's other assets.
- 12. Closing:** Closing of the transactions contemplated by this MOU will occur after Plan Commission Approval of the Site Plan and Architectural Review, BUYER providing evidence of firm financing with no contingencies and/or unfulfilled equity requirements and with term and conditions satisfactory to BUYER in its discretion, approval by both parties of the Purchase & Sale and Development Agreement, and satisfaction of each of the other pre-conditions to Closing set forth in this MOU and in the Purchase and Sale Agreement.
- 13. Approval:** The terms and conditions outlined in the MOU are subject to both approval by the Community Development Authority of the City of West Allis and the Common Council of the City of West Allis.

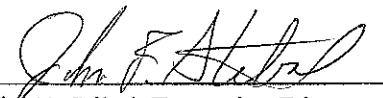
While this letter expresses the principal terms and conditions of the contemplated Purchase and Sale Agreement, Development Agreement, and Reciprocal Easement Declaration, and contemplates the later execution of definitive versions of those documents, it is agreed that this MOU, when executed by both parties, will obligate the parties to pursue in commercially reasonable good faith the negotiations for the definitive Purchase and Sale Agreement,

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Development Agreement, and Reciprocal Easement Declaration substantially in accordance with the outline herein contained. However, this MOU is not a contract or otherwise binding upon either party; it is intended only as an outline of the preliminary discussions between us to date and does not contain all matters upon which agreement must be reached in order for binding contracts to exist. A binding commitment regarding the transactions contemplated in this MOU will exist, if at all, only upon execution of definitive versions of the Purchase and Sale Agreement, Development Agreement, and Reciprocal Easement Declaration with terms acceptable to the SELLER and BUYER in their sole discretion. Neither party has or will have any obligation to make a Purchase and Sale Agreement, Development Agreement, and Reciprocal Easement Declaration on any basis.

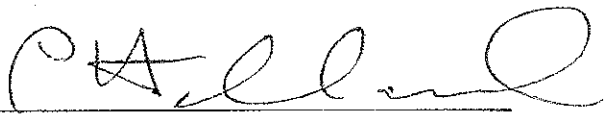
The Parties have executed this Memorandum of Understanding per the signature acceptance date stated below:

**Community Development Authority
City of West Allis**



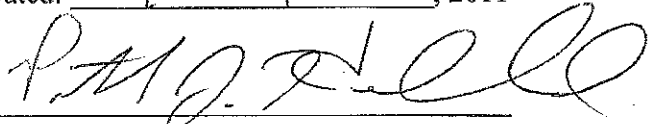
John F. Stibal, Executive Director

**Waterpark Ventures Management
Services, LLC**



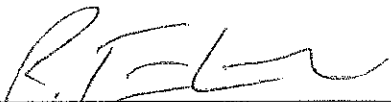
S. Peter Helland, Member

Dated: 5/17/12, 2011



Patrick J. Helland, Member

Dated: 5-17-12, 2011



R. Timothy Lucke, Member

Dated: 5-17-12, 2011

List of Exhibits

Exhibit A - Master Site Plan

Exhibit B – Utility Map

Exhibit C – Environmental Addendum

Exhibit D – Storm Water Management and Controls Addendum

Exhibit E – Job Beneficiary Profile Form

