



## MEMORANDUM

**TO:** Trustee Bill Johnston, Chairperson  
Economic and Community Development Committee

**FROM:** William J. Heniff, AICP, Director of Community Development *WJH*

**MEETING DATE:** March 11, 2019

**SUBJECT:** **101-109 S. Main Street Property – Request for Proposals (RFP)**

On January 17, 2019 the Village Board selected Holladay Properties as the qualified developer for the redevelopment of the 101-109 S. Main Street site which concurred with the ECDC's recommendation. Consistent with the timeline staff presented to the ECDC last month, staff has worked jointly with Holladay Properties and Village Counsel on a talking points/term sheet that will serve as the basis of a Redevelopment Agreement (RDA). Before the parties prepare the final agreement for Village Board consideration, staff is bringing the matter before the ECDC for two reasons: to ensure that the negotiated representations to date are consistent with the direction provided to staff and to answer any final questions or concerns the ECDC may have prior to the creation of the final document.

Attached are the term sheet provisions that are intended to be included in the agreement. At the March 11 meeting staff will walk the ECDC members through the provisions and seek concurrence on the negotiated representations to date. Staff notes that most of the provisions are generated by staff and account for process, clarity and contingency matters (aka, "what if" scenarios). It is the expectation of staff and the developer to proceed to the Plan Commission and the ECDC for requisite zoning entitlement and economic incentive approvals in a matter consistent with the representations in the Request for Proposals (RFP) processes. The ECDC can also provide comment and direction back to staff relative to the agreement, if so warranted. The contract provisions of the document will be incorporated into a formal document upon securing concurrence from the ECDC.

### **COMMITTEE ACTION REQUESTED**

Staff is seeking concurrence by the ECDC of the provisions set forth within the talking points/term sheet associated with the proposed 101-109 S. Main Street Redevelopment Agreement.

**Holladay Property Services Midwest II, Inc. (Developer) / Village of Lombard (Village) –  
101-109 S. Main Street (the Subject Property)**

**Talking Points and Initial Term Sheet – ECDC Review  
for the Drafting of a Redevelopment Agreement (RDA)**

**The Project**

120 market rate luxury apartment units located in a single building, with not less than 3,000 square feet, and up to a 4,000 square feet, of first floor restaurant space located at the northwest corner of the apartment building, along with a second building to house a grocery store of approximately 12,000 square feet in size, as essentially depicted and described on Exhibit A attached hereto (the Project).

**Purchase Price / Earnest Money / Contract / Closing**

The purchase price for the Subject Property, to be paid by the Developer, will be \$1,500,000. The Property will be sold in an “as-is/where-is” condition, without any environmental warranties of any kind. The Developer shall provide the Village with an earnest money deposit in the amount of \$50,000 upon approval of the RDA by the Village. The RDA shall provide for a due diligence period of one-hundred eighty (180) days, during which the Developer can perform environmental investigations, seek zoning entitlements, and/or any required economic incentive requests relative to the Subject Property and the Project. Should the zoning/entitlement process extend beyond the 180 day due diligence period, the due diligence period shall be extended for such period as required to complete zoning/entitlement approvals at no cost to Developer. The Developer shall also have the right to be granted up to two (2) sixty (60) day due diligence period time extensions upon payment of \$10,000 each, with any collected payments to the Village being applicable to the purchase price (said \$10,000 payments, plus the \$50,000 earnest money deposit, being collectively the “Earnest Money”), These time extensions would only be necessary to complete administrative matters required by the Developer prior to closing.

If the environmental investigation, ALTA Survey, Title Report, Soil Borings and/or existing engineering conditions reveal issues unacceptable to the Developer, or the zoning entitlements

for the Project are not approved by the Village by the end of the due diligence period, the Earnest Money shall be returned to the Developer, and the RDA shall be terminated. The Developer shall inform the Village of the issue that was found by the Developer to be unacceptable. Otherwise, the Developer shall close on the purchase of the Subject Property within sixty (60) days after the end of the due diligence period, or the RDA shall be terminated and the Village shall keep the Earnest Money. In the event that the closing takes place, the Earnest Money shall be applied to the payment of the purchase price. The real estate contract shall be part of the RDA.

The RDA shall be effective from the date of execution by the Parties. The TIF Assistance shall be effective from the date of execution of the RDA through December 31, 2024. The Sales Tax Assistance component of the RDA shall run from the date of issuance of a Certificate of Occupancy/Zoning Certificate for the first non-residential tenant space through the date that is ten years from said date.

If the Parties cannot agree upon the terms of an RDA by the date which is 90 days from the parties' agreement on the terms of this Term Sheet, the Village shall no longer be obligated to negotiate with the Developer relative to the redevelopment of the Subject Property.

### **Performance Measures After Closing**

- Final Engineering Building Permit: Submittal within one-hundred and twenty (120) days after closing.
- Building Permit Application for at Least One of the Principal Buildings: Submittal within one-hundred and twenty (120) days after closing.
- Construction Start: within thirty (30) days after issuance of the aforementioned building permits by the Village. However, if the designated construction time start period is between November 1 and March 1 of the following year, Developer shall have the option of starting construction on March 1.
- Construction Completion: within six hundred and thirty (630) days after construction start.
- Phasing of Construction may be considered.
- *Force majeure* language provisions shall be incorporated into the timeline provisions above.

- In the event that the Developer does not meet the permit application date and construction start date deadlines in the RDA, subject to time extensions for force majeure, the Village shall have the right to reacquire title to the Subject Property by paying to the Developer the same amount as Developer paid the Village for the Subject Property. The RDA will also include a default cure period, which will be applicable to the deadlines set forth above.
- The parties recognize that if any delays occur within the construction timeline, the Economic Incentives offered by the Village - particularly the TIF Assistance - may be impacted. The Village makes no representations that the amount being offered as the TIF Assistance will be fully realized by the Developer at end of the life of the TIF District, and makes no representations that the amount being offered as the Sales Tax Assistance will be fully realized by the Developer by the end of the 10 year period referenced below.

### **Economic Incentives**

Tied to the issuance of a conditional or permanent Certificate of Occupancy/Zoning Certificate, whichever occurs first.

#### **A. TIF Assistance:**

- Up to \$525,000 in TIF incremental revenues generated by the Subject Property (after the payment of any required new student or new library patron TIF obligations, as required by the State statutes), provided the Developer provides documentation to the Village in regard to TIF eligible expenditures of at least \$525,000. The obligation to provide said TIF assistance shall expire upon the Developer's receipt of \$525,000 in TIF incremental revenues, or on December 31, 2024, (even if the Developer has not received \$525,000 in TIF incremental revenues by said date), whichever occurs first.

#### **B. Sales Tax Assistance**

- Performance based, based upon taxes as provided for pursuant to the Retailers' Occupation Tax Act (35 ILCS 120/1 et. seq. and the Service Occupation Tax Act

(35 ILCS/115/1 et. seq.) (Sales Taxes or Sales Tax) generated exclusively from the Subject Property and received by the Village.

- Up to \$500,000, over a period of not-to-exceed 10 years from the date of the issuance of the first conditional or final Certificate of Occupancy/Zoning Certificate for the grocery or restaurant portion of the Project, whichever occurs first.
- Ceases upon the Developer receiving \$500,000 or 10 years from the date of the issuance of the first conditional or final Certificate of Occupancy/Zoning Certificate for the grocery or restaurant portion of the Project, whichever occurs first.
- Developer to receive 50% of applicable Sales Taxes set forth above (exclusive of non-home rule sales taxes) generated by the Project.
- Must meet the requirements of 65 ILCS 5/8-11-20 (Statute that allows municipalities to enter into Sales Tax Rebate Agreements).
- Payments to be made solely to Developer.
- The Developer shall work in good faith to secure a lease for a grocer to occupy the Southern Building in its entirety. The Developer shall provide the Village with a copy of said lease no later than twenty-four (24) months from the date of the execution of the RDA between the Village and the Developer. If in the event the Developer cannot reach an agreement with a grocer within the specified period, through no fault of the Developer, the Developer shall be able to secure alternate uses and tenants for the Southern Building.
- If the grocery portion of the Project does not move forward by the date certain, or if the grocery store tenant occupies the tenant space and then subsequently terminates the lease prior to the end of the RDA, no Sales Tax rebate will be provided relative to the Sales Taxes from the 12,000 square foot Southern Building unless at least fifty percent (50%) or more of the gross floor area of the Southern Building is leased to land use tenants identified within Exhibit B. If less than fifty percent (50%) of the gross floor area is leased to uses listed in Exhibit B, then the Village shall not be obligated to provide any Sales Tax Assistance to the Developer. However, any applicable Sales Tax Assistance granted as part of the RDA shall still remain for any uses within the Northern Building.

## Other Items

Development parameters:

- The Project shall include open space/gathering elements, as identified on the attached Exhibit A, as amended/modified by the Plan Commission/Village Board through the zoning entitlement process.
- The Project shall also include approximately 150 structured parking spaces for the on-site residences in the apartment building, with a companion concierge/lobby entrance for said apartment building. The final number of interior garage spaces shall be at least 1.2 parking spaces per dwelling units for the residential dwelling units.
- Approximately 70 surface parking spaces shall be provided for the proposed non-residential uses to be located on the Subject Property.
- The Developer shall improve the proposed restaurant space in the Northern Building with black iron duct extending to the roof as part of the building permit for the Northern Building and shall install such equipment per Village Code requirements. If the Developer cannot secure a lease for the restaurant space(s), in whole or in part, within twelve months from the date of the issuance of the first conditional or final Certificate of Occupancy/Zoning Certificate for the Northern Building, the developer shall be able to lease all or a part of the space to another use permitted (or permitted through the conditional use process) within the Lombard Zoning Ordinance.
- The Project must meet all provisions of the Lombard Village Code, except as varied through the zoning entitlement process.
- Additional development items shall be undertaken as part of the Project, including, but not limited to:
  - a) any traffic/non-motorized improvements to the public rights-of-way, based upon the Village's traffic consultant review;
  - b) any stormwater/drainage infrastructure improvements;
  - c) providing any public easements or dedications necessary to facilitate any of the public improvements; and
  - d) Developer shall pay all development and building permit fees as set forth within the Lombard Village Code. The fees to be paid by the Developer shall not exceed 103% of the adopted building permit fees and utility connection fees as of May 1, 2019. The Developer shall pay the full cost of any engineering review fees in existence on the permit application date.

- The Developer to hold harmless and indemnify the Village, and its elected officials, officers, agents and employees, relative to any litigation, claims or causes of action arising out of the Developer's or the Developer's officers', agents', employees' or contractors' acts or omissions relative to the Property or the Project.
- Land use restrictions associated with the utilization of the non-residential portions of the Project shall be part of the RDA, as set forth in Exhibit B, attached hereto and made part hereof.
- During the due diligence period, the Village shall provide the Developer with any reports, documents or exhibits pertaining to the existing environmental conditions, soil testing and the like that are in the Village's possession. The Village shall also permit the Developer to enter into the Subject Property to undertake any desired testing activities, subject to the Parties agreeing on provisions in relation thereto as part of the RDA.
- The Village will provide the Developer with a list of the zoning actions which are envisioned to be required as part of a future public hearing process. However, the Village does not represent that the requisite zoning actions will be approved, only that the Village Board will consider the requisite relief after a public hearing is held by the Plan Commission and a recommendation is forwarded from the Plan Commission to the Village Board for final consideration.

### **Future Sale of the Property**

The Village shall receive prior written notice of any proposed transfer of title to the Subject Property during the term of the RDA.

**Exhibit A**

**120 market rate luxury apartment units located in a single building,  
with no less than 3,000 square feet, and up to a 4,000 square feet of first floor restaurant  
space located at the northwest corner of the apartment building,  
along with a second building to house  
a grocery store of approximately 12,000 square feet in size**

(Depiction and Description attached)



## Exhibit B

### Use Regulations Pertaining to the Non-Residential Portions of the Project within the Northern Building as a Restaurant Space and within the Southern Building

A. During the life of the RDA, the Developer shall be permitted to initially sell and/or lease the not less than 3,000 square foot (up to 4,000 square foot) non-residential space located in the Northern Building (the Restaurant Space) exclusively for a fast-food restaurant or a sit-down restaurant use as defined in the Lombard Zoning Ordinance. Developer shall have the right to partition the Restaurant Space into no more than two restaurant tenant spaces, subject to all provisions of Lombard Village Code. Should this occur, the Developer shall still be required to meet the aforementioned restaurant space land use requirements. If in the event the Developer seeks to add additional non-residential tenant space on the first floor of the Northern Building, the Developer shall be able to sell and/or lease the tenant space to any permitted use as set forth within the B5 Central Business District Zoning District, provided that said land use and activity otherwise meets the provisions set forth within the Lombard Zoning Ordinance.

B. The Southern Building shall be initially sold and/or leased exclusively for a single tenant retail grocery store. Thereafter, during the term of the RDA, if the single tenant grocer does not occupy the premises or should greater than fifty percent (50%) of the gross leasable floor space subsequently become vacant, for whatever reason, the Developer shall be permitted to sell and/or lease the Southern Building to no more than eight (8) tenants, provided that the land uses intended to be located on the Subject Property would otherwise be permitted by Section 155.418 (the B5 Central Business District Requirements) of the Lombard Zoning Ordinance.

In order to be eligible for a Sales Tax incentive rebate for retail sales activity to be located within the Southern Building, no less than fifty percent (50%) of the gross leasable floor space of the Southern Building is or remains occupied by the retail uses set forth below. If less than fifty percent (50%) of the tenant space is occupied by the uses listed below, then no Sales Tax Assistance shall be provided from that point forward.

1. Amusement establishments, indoor only
2. Art shops or galleries, including auction rooms when ancillary to the retail business
3. Bakeries
4. Bicycle sales
5. Book and stationery stores
6. Camera and photographic supply stores, including photographic studio services when ancillary to the retail business
7. Candy and frozen confection stores
8. Carpet and rug stores, retail sales only

9. China and glassware stores
10. Closet and storage organizer store
11. Clothing and apparel establishments
12. Compact disc, record and sheet music stores, including future technologically advanced mediums
13. Computer hardware and software sales and service
14. Drug stores/Pharmacies
15. Electrical and household appliance stores
16. Florists
17. Food stores, including grocers, specialty food markets and convenience food stores
18. Furniture and home accessory stores
19. Furriers
20. Garden supply stores
21. Gift shops
22. Hardware stores
23. Hobby shops, for retail sales of items to be assembled or used away from the premises
24. Home improvement stores
25. Jewelry stores, including watch repair
26. Leather goods and luggage stores
27. Liquor stores, packaged goods
28. Office supply stores
29. Paint, glass, and wallpaper stores
30. Pet shops, including pet grooming and pet care services when ancillary to the retail business
31. Restaurants (sit-down and fast-food without drive through)
32. Shoe stores

33. Sporting goods stores
34. Theater, indoor (performance and movie)
35. Toy and game stores
36. Videotapes, compact and laser disc, electronic game cartridges and similar items, sales and rental
37. Cellular phone stores, including future technological advancements of products
38. Nutritional/Vitamin shops

Retail uses shall be determined to be those business entities which generate Sales Taxes primarily from on-site product sales. Should any of the aforementioned uses not result in the generation of Sales Taxes the listed use shall not be deemed a permitted use during the remaining life of the RDA.

- C. If the Southern Building is never fully occupied by a grocery store, the Developer shall have the ability to sell and/or lease the Southern Building in accordance with the terms and conditions set forth in B. above. If the use is not listed above, the use provisions set forth within the Lombard Zoning Ordinance shall apply.