

MEMORANDUM

TO: Interested Parties

FROM: Mike Wittenwyler / Parker Conover
Godfrey & Kahn, S.C.

DATE: July 18, 2022

SUBJECT: Village of Bristol

Despite no obligation to do so, the Village of Bristol (the “Village”) is considering entering into a recordable option agreement (the “Option Agreement”) with Kenosha LandCo, LLC (“Hard Rock Casinos”) which, in exchange for a *below-market option fee*, would give Hard Rock Casinos the *exclusive* option to purchase parcels of, or all of the land (the “Property”) owned by the Village Community Development Authority (the “CDA”). While the Village entered into a Letter of Intent with Hard Rock Casinos, the Village has *not yet* entered into a binding option or purchase agreement with Hard Rock Casinos.

On June 13, 2022, the Village Board and Village Community Development Authority (the “CDA”) voted unanimously to enter into the Letter of Intent offered by Hard Rock Casinos. The Letter of Intent with Hard Rock Casinos contemplates that the CDA and Hard Rock Casinos would initially enter into the Option Agreement, pursuant to which Hard Rock Casinos would hold a recorded option to purchase the Property.

The Option Agreement would give Hard Rock Casinos an initial 12-month period to exercise its option, a time period that could be extended by Hard Rock Casinos for an additional 12-month period. If Hard Rock Casinos were to elect to exercise its option, such Option Agreement would effectively convert into a purchase and sale agreement. Not until that point, would the CDA and Hard Rock Casinos proceed to close on the sale and purchase of the Property.

The Letter of Intent has limited binding effect, only requiring the Village to negotiate exclusively with Hard Rock Casinos through July 28, 2022. If the Village cannot reach an agreement with Hard Rock Casinos on the terms of the Option Agreement before then, the Village can receive and negotiate offers on the Property from other purchasers. In addition, based on our review of the Letter of Intent, Hard Rock Casino’s proposed terms for the Option Agreement are more favorable to Hard Rock Casinos than to the CDA. For example, Hard Rock Casinos proposes to pay the CDA an option fee of *only* \$50,000. A market rate for an option fee to be within a range of 1% to 3% of the \$15,213,221 purchase price stated in the Letter of Intent (i.e., between approximately \$150,000 and \$450,000).

As mentioned above, the proposed Option Agreement terms would allow Hard Rock Casinos to establish site control of the Property for as long as 30 months from the date of the recording of the

Option Agreement. Interestingly, Hard Rock Casinos could eventually elect to purchase only a portion of the Property (which is divided in the Letter of Intent into four parcels; Parcels C and D are the primary parcels, followed by Parcels A and B), and yet continue to hold exclusive site control on all four parcels until such time as Hard Rock Casinos exercises its option, if at all. During the option period, Hard Rock Casinos would have ample opportunity to conduct due diligence investigations of the Property. However, even after this extended period of time to investigate the Property, as proposed, if Hard Rock Casinos were to exercise its option, it would have another 6 months from the date of exercise to actually close on the purchase of the Property.

Finally, the proposed Option Agreement terms did *not* include any seller-favorable provisions that one would customarily expect, such as language calling for the Property to be sold on an “as-is, where-is” basis with no seller representations or warranties with respect to the condition of the Property, or language prohibiting the buyer from conducting invasive testing of the Property’s soil, air or groundwater.

As Hard Rock Casinos’ Letter of Intent states: “This Letter is not intended to constitute a binding and enforceable contract,” except for certain technical provisions unrelated to the land sale. Instead, the Letter of Intent merely requires the Village to “negotiate exclusively, diligently and in good faith with [Hard Rock Casinos] for the purchase and sale of the Property and the entry into the Option Agreement until the date which is forty-five (45) days after the date of full execution of this Letter.”

On July 16, 2022, the Village Board noticed a special meeting for July 19, 2022, to discuss the Option Agreement with Hard Rock Casinos as described in the Letter of Intent. Given the noticed agenda, the Village Board has limited options. The Village may:

- Counter the Option Agreement offer.
- Reject the Option Agreement offer.
- Accept the Option Agreement offer.
- Take no action on the pending Option Agreement offer.

If the Village does not reach an agreement with Hard Rock Casinos before July 28, 2022, the Village may then:

- Negotiate other offers for the Property.
- Place the land back on the market to solicit additional offers.
- Continue negotiating with Hard Rock Casinos.