

CONSTRUCTION LICENSE AGREEMENT

THIS CONSTRUCTION LICENSE AGREEMENT (the “**Agreement**”) is made and entered into effective as of the 18th day of June, 2018 (the “**Effective Date**”), by and between **COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes (“**Authority**”), and **SIX POINTS WEST APARTMENTS LLC**, a Wisconsin limited liability company (“**Developer**”), its successors and assigns.

RECITALS

A. Authority is the owner of that certain real property within the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 4.8641 acres of land which is more particularly described as Lot 2 of Certified Survey Map No. 8966 (the “**Apartment Property**”), and that certain real property described as Lots 1, 2 and 3 of Certified Survey Map No. 8866 (the “**SONA Property**,” and together with the Apartment Property, the “**Property**”).

B. Authority and Developer are parties to a Purchase and Sale Agreement dated as of May 1, 2018 (the “**Purchase Agreement**”), pursuant to which Authority agreed to sell the Apartment Property to Developer on the terms and conditions set forth in the Purchase Agreement.

C. Prior to Developer’s purchase of the Apartment Property pursuant to the Purchase Agreement, Developer desires the right to enter upon the Property for the purposes of commencing construction of a two multi-story buildings containing approximately 177 apartments, with approximately 243 underground and 59 surface parking spaces (the “**Apartment Project**”), including, without limitation, clearing, excavating, grading, fencing, erosion control and other work required to construct and install the Apartment Project and the stormwater management system serving the Property (the “**Work**”).

E. Authority desires to grant a license to Developer to perform the Work, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, for and in consideration of the money spent by Developer in furtherance of Developer’s proposed construction of the Apartment Project on the Apartment Property and the related development on adjacent parcels of real property owned by Authority (collectively, the “**Project**”), which Authority desires be constructed, including, without limitation, Developer’s out-of-pocket costs to prepare plans, specifications and renderings for the Project; to perform due diligence with respect to the Property and the Project; and to seek entitlements, permits and approvals for the Project; and for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Grant of License. Authority hereby grants to Developer and its successors, assigns, agents, employees, contractors and subcontractors the non-exclusive right and license to enter upon the Property for the purposes of performing the Work and no other purpose; provided that in conducting all such Work, Developer complies with all applicable laws and regulations and obtains and maintains the insurance coverage set forth in Section 3. All costs of the Work

(including all utility charges, if any, attributable to the Work) shall be borne solely by Developer. Developer agrees that all Work must be performed in accordance with the footing and foundation permits issued by the City of West Allis, Wisconsin, as Permit Nos. 209507 and 209508. Except as otherwise agreed in writing by Authority and Developer, the Developer shall (i) procure all inspections, permits and licenses, (ii) pay all charges and fees, and (iii) give all notices necessary and incidental to the due and lawful prosecution of the Work. The Developer shall perform the Work in accordance with all applicable laws, rules, regulations, orders, ordinances and building and safety codes.

All Work, including the grading and movement of soils and handling of all environmental contaminants, if any, shall be performed in accordance with all applicable laws, rules, regulations and ordinances, including, without limitation, requirements of the Wisconsin Department of Natural Resources. Prior to moving any soils from the Apartment Property to the SONA Property, Developer shall provide written notice to Authority. Following such notice, Developer shall work with an environmental consultant designated in writing by Authority regarding the placement of such soils on the SONA Property, including complying with the reasonable requirements of the Authority's environmental consultant for the location and manner of such placement.

Notwithstanding anything to the contrary, the Work shall exclude any work that is intended to be performed by Mandel Development, Inc., a Wisconsin corporation ("MDI"), pursuant to an Environmental and Capping Services Contract (the "ECS Contract") to be entered into by and between Authority and MDI in accordance with the Purchase Agreement, which work is more particularly described in the ECS Contract.

2. Term; Restoration. This Agreement shall commence on the Effective Date and shall expire automatically upon the earlier of (i) the closing of the purchase of the Apartment Property by Developer pursuant to the Purchase Agreement or (ii) July 1, 2019. Upon the expiration of this Agreement pursuant to item (ii) above, Authority shall have the right, upon written notice to Developer, to require that Developer, at Developer's sole cost, restore the Property to substantially the same condition as it existed as of the Effective Date. Developer shall complete such restoration within one hundred eighty (180) days of receipt of written request from Authority, subject to delays caused by force majeure, and Developer, its agents, employees, contractors and subcontractors shall have a non-exclusive license to enter the Property for such purpose. Authority shall have the right to reasonably approve Developer's, its agents', employees', contractors', and/or subcontractors' methods and means of such restoration.

3. Insurance. At any time while Developer, its agents, employees, contractors and subcontractors are performing work on the Property during the term of this Agreement, Developer shall obtain and maintain in full force and effect, at its own expense: (i) workers' compensation insurance required under state law, if applicable; (ii) a policy of insurance written by one or more responsible insurance carrier(s), which will include Authority as an additional insured, insuring against liability for injury to persons and/or property and death of any person or persons occurring in, on or about Property arising from Developer's conduct, with a liability limit of not less than \$1,000,000 per occurrence, and \$3,000,000 general aggregate limit, and which shall not be canceled except after thirty (30) days written notice to Authority; and (iii) umbrella insurance providing a minimum limit of \$5,000,000.00 per occurrence and in the aggregate. Before commencing any Work on the Property, Developer shall furnish Authority with evidence of insurance reasonably acceptable to Authority demonstrating compliance with the terms of this Section 3, including but not limited to a certificate of insurance and endorsements naming the Authority as an additional insured, waiving the insurance company's right to recover against the

Authority, providing notice of cancellation for all causes, and making Developer's insurance primary and noncontributory.

4. Indemnity Regarding Developer's Activities. Developer shall indemnify and hold harmless Authority from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, reasonable out-of-pocket attorneys' fees and court costs) to the extent caused by the Work performed by Developer, its authorized agents, employees, contractors and subcontractors on the Property during the term of this Agreement, except to the extent arising from the negligence or willful misconduct of Authority, its agents, employees, contractors or subcontractors. The provisions of this Section 4 shall survive the expiration or termination of this Agreement for a period of eighteen (18) months.

5. Notices. All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one calendar day after deposit with a nationally recognized overnight commercial courier service, or two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To West Allis: Community Development Authority of West Allis
Office of the Executive Director
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Executive Director

With a copy to: City of West Allis
Office of the City Attorney
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: City Attorney

To Developer: Six Points West Apartments LLC
c/o Mandel Group, Inc.
330 East Kilbourn Avenue,
Suite 600 South Tower,
Milwaukee, Wisconsin 53202

With a copy to: Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Attn: Sarah O. Jelencic

6. Binding on Successors. The terms and conditions contained in this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

7. Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, in accordance with the laws of the State of Wisconsin. Any suit, proceeding, or other action arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the

state or federal courts located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the exclusive jurisdiction of such courts. The Developer and the Authority shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this Agreement.

8. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

9. Entire Agreement. All exhibits referred to herein are attached hereto and incorporated herein by this reference. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and cannot be amended or modified except by a written agreement, executed by each of the parties hereto.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

"AUTHORITY"

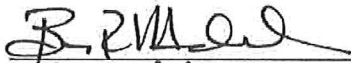
**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

By: 
John F. Stibal, Executive Director


"DEVELOPER"

SIX POINTS WEST APARTMENTS LLC

By: Mandel/Six Points West Apartments LLC
Its: Manager

By: 
Name: Barry R. Mandel
Title: Manager

Approved as to form this 28 day
of JUNE, 2018.


Scott E. Post, City Attorney, Deputy
NICHOLAS S. CERWIN 1088914