

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 **MANDEL DEVELOPMENT, INC.**, a Wisconsin corporation ("Contractor"), 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 Six Points West Apartments LLC, a Wisconsin limited liability company ("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. Pursuant to the Purchase Agreement, Authority and Contractor intend to enter into an Environmental and Capping Services Contract (the "ESC Contract"), pursuant to which Authority will engage Contractor to act as construction manager for the performance of the services necessary or desirable to comply with the Soil Management Plan: Former Pressed Steel Tank Co. Property dated March 1, 2018, and prepared by GZA GeoEnvironmental, Inc. (as the same may be amended and modified from time to time, the "SMP") and address the unique site conditions with respect to the Apartment Property, including the removal and proper disposal and/or placement of any contaminated soils, the proper capping of contaminated soils that may remain on the Apartment Property, and grading activities, including without limitation, the excavation and disposal of historic building materials and fine grading to prepare the Apartment Property for vertical construction, all as more particularly described in the Scope of Work attached hereto as Exhibit A (the "Work").

D. Prior to entering into the ESC Contract, Contractor desires the right to enter upon the Property for the purposes of commencing the Work, and Authority desires to grant a license to Contractor 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 Contractor 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, Contractor 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 Contractor. Contractor agrees that all Work must be performed in accordance with (a) the SMP and (b) 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 Contractor, the Contractor 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 Contractor 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, Contractor shall provide written notice to Authority. Following such notice, Contractor 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.

2. Term; Restoration. This Agreement shall commence on the Effective Date and shall expire automatically upon the earlier of (i) the date that Authority and Contractor enter into the ECS Contract or (ii) December 31, 2018. Upon the expiration of this Agreement pursuant to item (i) above, the terms of the ECS Contract shall control the obligations of Contractor with respect to the Work. Upon the expiration of this Agreement pursuant to item (ii) above, Authority shall have the right, upon written notice to Contractor, to require that Contractor, at Contractor's sole cost, restore the Property to substantially the same condition as it existed as of the Effective Date. Contractor 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 Contractor, 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 Contractor's, its agents', employees', contractors', and/or subcontractors' methods and means of such restoration.

3. Insurance. At any time while Contractor, its agents, employees, contractors and subcontractors are performing work on the Property during the term of this Agreement, Contractor 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 Contractor'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, Contractor 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 Contractor's insurance primary and noncontributory.

4. Indemnity Regarding Contractor's Activities. Contractor 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 Contractor, 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 Contractor: Mandel Development, Inc.
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 Contractor 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
John F. Stibal, Executive Director

"CONTRACTOR"

MANDEL DEVELOPMENT, INC.

By: B. K. Mandel
Name: Barry K. Mandel
Its: Manager

Approved as to form this 3 day
of July, 2018.

Nicholas S. Cerwin
~~City Attorney~~ City Attorney, Deputy
NICHOLAS S. CERWIN 1082414

Exhibit A

Scope of Work

The Market at Six Points redevelopment consists of 177 apartment units and a 30,000 square foot medical office building located in West Allis, WI, on the former Pressed Steel Tank Co. property. Certain contaminated soils exist on site and require specific management. The soils must also be capped in order to achieve case closure from the WNDR. GZA GeoEnvironmental, Inc. has prepared a Soil Management Plan to manage soils excavated during construction activities for the proposed apartment development. The plan also identifies the required engineered caps for the site which include, clean soil, landscaping, asphalt, concrete and building foundations. The plan also notes the required vapor barrier systems to be installed on site.

The underground parking structure beneath the residential building requires excavation of soils. The management of these soils includes the re-consolidation of and relocation of certain soils based on their contamination levels. The soils that exceed the respective direct contact residual contaminant levels (RCLs) will be placed in areas of the site that will allow for an asphalt or soil cap or will be beneath the buildings. Therefore, all landscaping, asphalt paving, concrete and building foundations serve as the engineered cap on these soils. The residential underground parking structure serves as an active ventilation system against vapor intrusion from the beneath the apartment building footprints. The stairwells and elevator shafts will be sealed with a geomembrane system to prevent vapors from migrating upward into the residential portion of the building.

The scope of work covered by this agreement based on the abovementioned site conditions shall include the following:

1. Grading, excavation and backfill;
2. Site utilities, including handling, placement and disposal of spoils;
3. Asphalt paving;
4. Site concrete;
5. Landscaping and hardscaping, including installation of clean fill cap material;
6. Waterproofing and caulking, including waterproofing of foundation systems;
7. Concrete slabs, foundations and podiums;
8. Elevator shafts;
9. Deep foundation systems;
10. All soft costs related to the foregoing, contractor fee, overhead, insurance and general conditions.

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

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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
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Milwaukee, WI 53202
Attn: Sarah O. Jelencic

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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.

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"AUTHORITY"

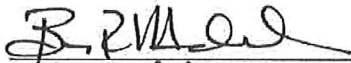
**COMMUNITY DEVELOPMENT AUTHORITY
OF THE CITY OF WEST ALLIS**

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