

CONSTRUCTION AND STAGING
EASEMENT AGREEMENT

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Recording Area

Name and Return Address

Joshua P. Roling
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202

Parcel Identification Number (PIN)

CONSTRUCTION AND STAGING EASEMENT AGREEMENT

This Construction and Staging Easement Agreement (this “Agreement”) is dated as of _____, 2022 (the “Effective Date”), by and between the SCHOOL SISTERS OF NOTRE DAME CENTRAL PACIFIC PROVINCE, INC., a Missouri nonprofit corporation (“SSND”) and _____ APARTMENTS LLC, a Wisconsin limited liability company (“Developer”).

RECITALS:

- A. SSND and Mandel Group Properties LLC (“MGP”) entered into that certain Real Property Purchase Agreement dated January 30, 2020 (as amended from time to time, the “Purchase Agreement”), pursuant to which SSND agreed to sell to MGP, and MGP agreed to purchase from SSND, the Property (defined below) in phases, all as more particularly described therein.
- B. MGP has assigned its rights under the Purchase Agreement to Developer, and simultaneously herewith, Developer acquired from SSND the portion of the Property legally described on Exhibit A attached hereto (the “Apartment Property”).
- C. The remainder of the Property has been divided into two parcels legally described on Exhibit B attached hereto (collectively the “Single-Family Parcels,” and together with the Apartment Property, the “Property”).
- D. The Single-Family Parcels will be conveyed by SSND to Developer in accordance with the Purchase Agreement at a later date or dates.
- E. Simultaneously herewith, Developer and the Village of Elm Grove (the “Village”) have entered into a Development Agreement in connection with development of the Apartment Property and the Single-Family Parcels (the “Development Agreement”).
- F. Pursuant to the Development Agreement, Developer has agreed to construct on the Apartment Property three (3), three (3)-story buildings containing not more than two hundred thirty-seven (237) residential units, along with ancillary improvements and infrastructure related thereto (collectively, the “Apartment Project”), and has agreed to construct on the Property certain public improvements that are to be dedicated by Developer to the public (as more particularly defined in the Development Agreement, the “Dedicated Improvements”) and facilities for storm and surface water drainage management for the Property in accordance with the Development Agreement (the “SWM System”).
- G. Pursuant to the Purchase Agreement, SSND has agreed to grant to Developer, certain exclusive and non-exclusive easements over the Single-Family Parcels to facilitate the construction of the Apartment Project, Dedicated Improvements, SWM System and certain site work and infrastructure in anticipation of the future development of the Single Family Parcels, all as more particularly set forth below.

IN WITNESS THEREOF, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, IT IS AGREED:

1. Grant of Easements. SSND hereby grants and conveys to Developer a permanent non-exclusive easement in, to, over, under, upon and across the Single-Family Parcels in the approximate locations as depicted on Exhibit C attached hereto (the “Permanent Easement Area”) for purposes of the construction, installation, use, maintenance, repair, relocation and replacement of those portions of the Pubic Improvements and SWM System to be located on the Single-Family Parcels pursuant to the Development Agreement (the “Permanent Easement”). SSND hereby grants and conveys to Developer a temporary exclusive easement in, to, over, under, upon and across the Single-Family Parcels in the approximate locations as depicted on Exhibit D attached hereto (the “Temporary Easement Area”) for purposes of, (i) grading, construction staging, worker parking, and storage of vehicles, machinery, equipment and materials, (ii) installation of temporary storage facilities and office trailers, (iii) installation and maintenance of construction fencing and/or barriers, and (iv) ingress and egress to and from the Apartment Property for all construction vehicles, machinery and equipment (collectively, the “Temporary Easement,” and together with the Permanent Easement, the “Easement”). All actions taken by Developer in connection with the grant, use or exercise of the rights and the Easement granted pursuant to or under this Agreement shall be referred to herein as the “Easement Activities.”
2. Use. The easement rights granted hereby shall be exercised in a safe and prudent manner, and in accordance with all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction thereof.
3. Term. The term of the Temporary Easement shall commence as of the Effective Date and shall terminate and be of no further force or effect on the earlier of (i) the date on which the Apartment Project, the Dedicated Improvements and the SWM System are substantially completed, but in any event no later than December 31, 2024, or (ii) forty-eight (48) hours after Developer gives SSND written notice of termination. Upon the request of either party, SSND and Developer shall record any such instrument as reasonably necessary to memorialize such termination. For the avoidance of doubt, the Permanent Easement shall survive and remain in full force and effect notwithstanding the expiration or termination of the Temporary Easement.
4. Indemnification. Developer shall indemnify, defend and hold SSND, its agents, and employees harmless from any and all claims, damages, losses, liabilities, expenses and fees (including reasonable attorneys’ fees and costs) arising out of (a) the Easement Activities of Developer or Developer’s agents, employees, contractors, subcontractors or invitees, or (b) a breach of this Agreement by Developer or Developer’s agents, employees, contractors, subcontractors or invitees, except, in each case, to the extent caused by the negligence or willful misconduct of SSND or its successors and assigns. This indemnity shall benefit the successors and assigns of SSND only if Developer or its affiliate fails to close on the Single-Family Parcels as required under the Purchase Agreement.
5. Restoration. Developer covenants and agrees to promptly repair, at its sole cost and expense, any damage that occurs to a Single-Family Parcel as a result of its exercise of its

rights under this Agreement if Developer or its affiliate fails to close on that Single Family Parcel pursuant to the Purchase Agreement.

6. No Liens. Developer shall not allow any construction lien to be filed against the Single-Family Parcels arising out of any Easement Activities unless such lien is contested in good faith by Developer. In the event such a lien is filed against the Single-Family Parcels and Developer does not close on the Single-Family Parcels as required under the Purchase Agreement, then Developer shall have thirty (30) days after written demand from SSND to satisfy the lien, to bond over the lien in an amount sufficient to clear title to the Single-Family Parcels, or to provide SSND with title insurance or other security in a form or amount requested by SSND, as determined in its sole discretion.
7. Non-Interference/Cooperation. The parties, on behalf of themselves and their officers, agents, employees, invitees, members, tenants, contractors, subcontractors, successors and assigns, hereby agree not to unreasonably interfere and to reasonably cooperate with each other with respect to the exercise of their rights hereunder.
8. Insurance. At any time while Developer, its agents, employees, contractors and subcontractors are undertaking Easement Activities on the Single-Family Parcels during the term of this Agreement, Developer shall obtain and maintain, or shall cause its contractor to maintain, in full force and effect at Developer's or such contractor's expense, a standard commercial general liability insurance policy (or policies) which will include SSND 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 the Single-Family Parcels arising from Developer's conduct, with a liability limit of not less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limit, and which shall not be canceled except after thirty (30) days written notice to SSND. Before commencing any Easement Activities on the Single-Family Parcels, Developer shall furnish SSND with evidence of insurance reasonably acceptable to SSND demonstrating compliance with the terms of this Section 8, including but not limited to a certificate of insurance and endorsements naming SSND as an additional insured, waiving the insurance company's right to recover against SSND, providing notice of cancellation for all causes, and making Developer's insurance primary and noncontributory.
9. Representation Regarding Mortgages. SSND represents that as of the date hereof, there are no mortgages, liens or, to its knowledge, other rights of third parties, in the Single-Family Parcels which could divest any of the easements granted hereby.
10. Real Property Taxes. Until Developer closes on the Single-Family Parcels as required under the Purchase Agreement, Developer shall not, by reason of this Agreement, be obligated to pay any real estate taxes or special assessments levied against the Single-Family Parcels.
11. Costs. Upon the occurrence of any breach or default under this Agreement by either party, the defaulting party shall be liable for and shall reimburse the non-defaulting party upon demand for all reasonable attorneys' fees and costs incurred by the non-defaulting party in

enforcing the defaulting party's obligations under this Agreement, whether or not the non-defaulting party files legal proceedings in connection therewith.

12. Covenants Running with the Land. All of the terms, covenants and conditions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, it being the intent of the parties hereto that all of the covenants hereunder shall be "covenants running with the land" and, as such, shall run with, be binding upon, and be for the benefit of the Apartment Property and shall run with, be binding upon, and burden the Single-Family Parcels.
13. Estoppel Certificate. Within ten (10) days after written request therefor, the parties hereto agree to provide an estoppel certificate to the requesting party, its lenders, or any proposed purchaser of all or any part of the Property, or such purchaser's lenders, stating that the requesting party is not in default hereunder or if the requesting party is in default hereunder setting forth any such defaults.
14. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
15. Recording. This Agreement shall be recorded in the records of Waukesha County, Wisconsin.
16. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.
17. Notices. Any notice given hereunder shall be in writing and personally delivered, mailed by registered or certified mail, return receipt requested, or delivered via overnight courier:

To SSND: School Sisters of Notre Dame
 Central Pacific Province, Inc.
 10700 W. Research Drive, Suite 145
 Wauwatosa, WI 53226
 Attention: Debra M. Sciano

with a copy to: Godfrey & Kahn, S.C.
 833 E. Michigan Street, Suite 1800
 Milwaukee, WI 53202
 Attention: Elizabeth R. Johnson

To Developer: c/o Mandel/_____ Apartments LLC
 330 East Kilbourn St., Suite 600 South

Milwaukee, WI 53202
Attention: Phil Aeillo

with a copy to: Foley & Lardner LLP
777 East Wisconsin Ave.
Milwaukee, WI 53202
Attention: Candace Flatley

Any party may, by notice as provided above, designate a different address from time to time. Any such notice shall be effective on the date of receipt.

18. Amendment; Waiver. This Agreement may not be modified, amended, or terminated except in a writing signed by each party hereto. No waiver of, acquiescence in, or consent to any breach or default of any term or condition hereof shall constitute or be construed as a waiver of, acquiescence in or consent to any other, further or succeeding breach or default of the same or any other term or condition.
19. Governing Law. This Agreement shall, in all respects whether as to validity, construction, capacity, performance, or otherwise, be governed by the laws of the State of Wisconsin. Any suit or proceeding 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 Waukesha County, Wisconsin. Each party irrevocably consents to submit to the exclusive jurisdiction of such courts.
20. No Third Party Beneficiaries. No person or entity shall be deemed a beneficiary of the terms of this Agreement, unless specifically provided for herein.
21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

DEVELOPER:

_____ Apartments LLC

By: Mandel/_____ Apartments LLC

Its: Manager

By: BR Mandel LLC

Its: Manager

By: _____

Name:

Its:

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this _____ day of _____, 202_ the above-named _____, to me known to be the person who executed the foregoing acknowledged that he executed the same as the Manager of BR Mandel LLC, the Manager of Mandel/_____ Apartments LLC, the Manager of _____ Apartments LLC.

Subscribed and sworn to before me
this _____ day of _____, 202_.

NOTARY PUBLIC, State of Wisconsin
Print Name: _____
My Commission: _____

[Signature Page to Construction and Staging Easement Agreement]

EXHIBIT A

Legal Description of Apartment Parcel

EXHIBIT B

Legal Descriptions of Single-Family Parcels

EXHIBIT C

Permanent Easement Area

EXHIBIT D

Temporary Easement Area