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August 22, 2022

**BY EMAIL**

Board of Trustees  
c/o Hector de la Mora  
Village of Elm Grove  
13600 Juneau Boulevard  
Elm Grove, Wisconsin 53122

Re: Development Agreement between Caroline Heights Apartments LLC (“Developer”) and the Village of Elm Grove concerning School Sisters of Notre Dame Central Pacific Province, Inc. (“SSND”) Development

Dear Trustees:

As you know, we represent Caroline Heights Apartments LLC and its affiliates (collectively “Mandel”) in connection with the above-referenced SSND development. I last wrote the Board on June 25, 2022 regarding the motion for an RFP to hire legal counsel to review the creation of Tax Incremental District #3 (TID #3) and process for approval of Tax Incremental Financing (TIF) for TID #3. As I noted in that letter, the Board’s continued attempts to undermine its obligations under the binding Development Agreement are troubling.

Unfortunately, it appears that the Board may be continuing down this troubling path at its meeting tonight. The motion approved by the Board on June 25 called for the engagement of “independent outside counsel” and identified a list of nine law firms of various sizes and breadth of practice. Interestingly, eight of these firms decided either that there was no basis for such a review or that, due to conflicts or other reasons, they did not wish to be involved. The fact that *only one* of these law firms responded to the RFP speaks volumes about the bona fides of the Board’s inquiry.

The only law firm that responded was the Law Offices of Joseph R. Cincotta, LLC. With no disrespect intended to Mr. Cincotta, he is far from “independent” on the matters at issue here. Mr. Cincotta is well known in Southeastern Wisconsin for making many challenges to developments of this nature. Indeed, in his August 19 response materials, he prejudges TID #3 and describes how he would challenge it, and he attached materials from the *No Bayside TID U.A. v. Village of Bayside* case that he is pursuing against a municipality on similar grounds. Mr. Cincotta, a known crusader against TID projects, obviously does not have an open mind with respect to considering a TID. Because the conclusions he will draw are a foregone conclusion, hiring Mr. Cincotta would be further evidence of the Board’s ongoing breach of the duty of good faith and fair dealing that Wisconsin law incorporates into the Development Agreement.

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As we have explained previously, Mandel has relied on the Development Agreement and the Board's obligation to proceed in good faith. Mandel has now incurred more than \$2 million in its development efforts and continues to move forward on a variety of fronts to develop what will be a first-class project for the Village.<sup>1</sup> Among other things, Mandel has secured Wauwatosa's approval of the Wauwatosa-Elm Grove water agreement, has prepared a term sheet with Wauwatosa with respect to bringing water to the project, and has incurred costs for Wauwatosa to begin survey and design for the water main. Mandel has also advanced the architectural, structural, civil, and landscape drawings. In addition, Mandel has worked with the DNR on soil and groundwater sampling and has prepared a Site Assessment Report for DNR review. Mandel has selected a variety of contractors for demolition, abatement, and construction generally. Finally, and critically, Mandel is in the process of securing debt and investors for the project.

While the costs incurred in reliance on the Village's approval of the Development Agreement grow every day, the Trustees should be aware that the costs expended on the project are not the extent of Mandel's damages should the Board continue down the path of breaching its duty of good faith and fair dealing. Costs expended to date likely will be dwarfed by Mandel's consequential damages, including lost profits and lost opportunity costs, which will be suffered if the Board continues this effort. As we have noted in the past, Mandel simply wants to fulfill its part of the bargain and hopes that the Board does the same. If the Board, however, does not fulfill its obligations and continues to undermine the project, Mandel will have no choice but to pursue all legal remedies and all available damages in court and has every intent of doing so. SSND obviously would have significant damages as well.

Thank you for your attention to this important matter.

Very truly yours,

Bryan B. House

cc. Barry Mandel  
Phillip Aiello  
David De Angelis

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<sup>1</sup> Marketing efforts for the project are ongoing. For example, 16 of the 21 single-family lots associated with the project are spoken for. This confirms the demand in the community for a project of the quality of this one.