

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is entered into effective as of _____, 2023 (the “Effective Date”), by and between the University of Wisconsin-Madison (“UW-Madison”) and Mortenson Development Inc. (or its successors and assigns, “Developer”). UW-Madison and Developer each may be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Developer is in the business of developing residential properties;

WHEREAS, Developer has entered into a Development Agreement with the City of Madison (“Development Agreement”) to acquire the land located at 415 North Lake Street in Madison, Wisconsin (the “Project Site”);

WHEREAS, The City of Madison and Developer intend to develop the Project Site as a mixed-use development with the following components: (i) public parking ramp and intermodal transit station to be owned and operated by the City of Madison (“City Project”); and (ii) a housing component including parking to be owned and operated by Developer (the “Lake Street Project”), as may be modified from time to time and as more particularly described on Exhibit A, attached hereto;

WHEREAS, UW-Madison desires to encourage the construction of economically equitable student rental apartments, recognizing the potential long-term benefits not only to the residents and business owners of downtown Madison but especially to the educational mission of UW-Madison by making available more economically equitable student rental apartments;

WHEREAS, under a Development Agreement between the City of Madison and Developer, the Developer, subject to certain conditions, commits to offer to eligible UW-Madison students, on a first-come first-served basis, a 10% rental discount (“10% Student Discount”) on 68 beds for lease at the Lake Street Project which beds shall be in two (2) bedroom/ two (2) bathroom double occupancy dwelling units leased for four (4) individuals, and a 25% rental discount (25% Student Discount”) on 32 beds for lease at the Lake Street Project which beds shall be in two (2) bedroom/ two (2) bathroom double occupancy dwelling units leased for four (4) individuals at the Lake Street Project (each a “Low-Cost Bed”, and collectively, the “Low-Cost Beds”);

WHEREAS, in light of Developer’s commitment to make the Low-Cost beds available to eligible UW-Madison students, UW-Madison is willing to provide standard support in identifying eligible UW-Madison students.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants, promises and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. UW-Madison Commitment

UW-Madison’s Office of Student Financial Aid (“OSFA”) will support UW-Madison students with financial need in applying for and receiving reduced-cost housing at the proposed Lake Street Project in keeping with standard information release practices as follows:

- a. With a student’s express written permission, OSFA will review and verify information relevant to assessing their need for reduced-cost housing, including a student’s Cost of Attendance and associated elements (tuition & fees, room and board, books and course materials, transportation, loan fees, and other personal/miscellaneous expenses), Expected Family Contribution and/or Student Aid Index, financial aid awarded (including Federal Pell Grants), and/or indication of exceptional financial need

- (“verification process”). This information will be provided to the student or directly to Developer, according to each student’s request and accompanying written permission.
- b. This verification process will be made available through an automated process in _____ 202__, enabling students to authorize electronic release of this information through their UW- Madison Student Center to themselves and/or directly to a third party of their choosing.
 - c. The process provided by OSFA is consistent with standard practice for supporting a student’s application for reduced-cost housing with their express written permission and is available to any student seeking reduced-cost housing with any property manager or landlord.

2. Developer Commitment

Developer will support reduced-cost housing at the Lake Street Project for qualifying UW-Madison students as follows:

- a. The availability of the 10% Student Discount and the 25% Student Discount shall be structured as follows:
 1. Developer will provide the 10% Student Discount on 68 Low-Cost Beds at the Lake Street Project development for Qualified Students (see definition below) who are economically eligible for the 10% Student Discount and Developer will provide the 25% Student Discount on 32 Low-Cost Beds at the Lake Street Project development for Qualified Students who are economically eligible for the 25% Student Discount, provided that the Student Discounts may be modified from time to time (to be reviewed at least once every five years) by written agreement of the Parties to accommodate changes in student demand where such changes to the Student Discounts do not affect the financial performance of the Project;
 2. the Low-Cost Beds shall be made available to Qualified Students on a first-come, first-served basis for the Term unless otherwise modified by mutual agreement of the Parties;
 3. the 10% Student Discount shall be a discount of 10% on the current market rate charged for a bed in a comparable apartment unit in the Lake Street Project calculated as of the date a Qualified Student submits a completed rental application to Developer and the 25% Student Discount shall be a discount of 25% on the current market rate charged for a bed in a comparable apartment unit in the Lake Street Project calculated as of the date a Qualified Student submits a completed rental application to Developer. For the avoidance of doubt, the 10% Student Discount and the 25% Student Discount (each a “Student Discount”) shall apply only to the amount charged for renting a bed in the Lake Street Project and shall not apply to any other fees, costs or charges required to be paid pursuant to a rental agreement, including but not limited to rental application fees, parking fees, default rates or damages. Except for the Student Discount rental rate, the Qualified Student’s leases shall include the same terms and conditions as those set forth in other leases for the Lake Street Project, including, without limitation, the right to relocate to another bed in another dwelling unit (whether in a Low-Cost Bed or in another unit). If a Qualified Student relocates to a bed in a unit other than the Low-Cost Beds, such student shall still count toward the Low-Cost Beds requirement.
 4. OSFA shall determine student financial need factors that Developer may use to determine eligibility for a Student Discount, including that a Qualified Student must demonstrate financial need and be enrolled as a student at UW-Madison;

5. OSFA shall provide Developer with such student financial need factors ("Student Need Certification") for each student who seeks to rent a Low-Cost Bed and who has provided OSFA with prior written consent to release the Student Need Certification to Developer ("Qualified Student"). Developer may determine eligibility using the Student Need Certification without having to further investigate a student's eligibility for a Student Discount;
 6. Only Qualified Students shall be eligible to rent a Low-Cost Bed;
 7. Notwithstanding anything to the contrary in this Agreement, Developer shall have no obligation to (i) verify the eligibility of students for whom OSFA provided eligibility verification or (ii) to locate or lease to Qualified Students, other than those whose eligibility has been verified by OSFA at any time that OSFA is providing the services described in this Agreement. In the event that OSFA stops providing such service, Developer shall make good faith efforts to apply with the same OSFA rules for eligibility at its own expense.
 8. Qualified Students shall enter into the standard Lake Street Project rental agreement, which has a 12-month term with the beginning and end dates consistent with the term of apartments commonly marketed to students in the City of Madison, subject to adjustment if UW-Madison makes changes to their academic calendar (the "Lease Year");
 9. Qualified Students must meet the Lake Street Project rental application requirements applicable to all tenants with the exception of providing a [parental] guaranty of the rental agreement and meeting the income requirement (which will be modified proportionately to correspond to the applicable Student Discount);
 10. Qualified Students shall have all of the same rights, obligations, access to amenities and roommate choices as any other prospective residents at the Lake Street Project except for the Student Discount;
 11. Any Qualified Student who enters into a rental agreement for a Low-Cost Bed at the Lake Street Project shall remain eligible for the Student Discount applicable to that Qualified Student for the Lease Term.
- b. Developer shall use good faith efforts to market the Low-Cost Beds.
 - c. Provided a sufficient number of Qualified Students are identified for housing at the Lake Street Project, Developer shall be obligated to provide each Student Discount for each Lease Year during the Term (as defined in Section 4 below) of this MOU. If, during any Lease Year, Developer fails to rent all of the Low-Cost Beds to Qualified Students because an insufficient number of Qualified Students who otherwise meet the rental application requirements have sought to rent the Low-Cost Beds ("Insufficient Demand"), and Developer has otherwise complied with the terms and conditions of this MOU, then Developer shall be deemed to have satisfied the Student Discount obligation at the Lake Street Project, and shall be permitted to rent the remaining Low-Cost Beds to non-Qualified Students without application of the Student Discount during such Lease Year. The parties agree that recurring instances of Insufficient Demand shall trigger an evaluation of whether the Student Discount renders the Low-Cost Beds affordable to Qualified Students as provided in section 2.a.1., above.

- a. Developer shall provide UW-Madison's OSFA an annual report by September 1 each year certifying that Developer has satisfied its obligations under this MOU with respect to the Student Discount at the Lake Street Project ("Annual Report"). The Annual Report will provide the following information for the preceding Lease Year :
 1. The number of UW-Madison students who applied for Low-Cost Beds through the process outlined
 2. The number of UW-Madison applicants who are offered Low-Cost Beds and the number denied
 3. The number of UW-Madison applicants who rent Low-Cost Beds
 4. The average and median monthly cost per Low-Cost Bed
 5. Total discounted rents collected
- b. Developer shall be deemed to have satisfied the Student Discount obligation provided that the Annual Report reflects either: (i) that 68 of the beds at the Lake Street Project are rented to Qualified Students with the 10% Student Discount and 32 of the beds at the Lake Street Project are rented to Qualified Students with the 25% Student Discount, notwithstanding the possibility that, after the September 1 reporting date, the number of beds rented to Qualified Students at the Lake Street Project might drop below such figures during the ensuing Lease Year, or (ii) there was Insufficient Demand, which resulted in less than such numbers of the beds at the Lake Street Project being rented to Qualified Students.

4. Term and Termination.

- a. This MOU shall commence on the Effective Date and shall continue for a term of 30 years from the earliest date that a temporary or permanent certificate of occupancy is issued for the Lake Street Project or that portion of the Lake Street Project containing the Low-Cost Beds (the "Term"), unless this MOU is earlier terminated as provided in this Section 4 or unless the Term is otherwise modified by mutual agreement of the Parties.
- b. The first "Lease Year" for purposes of this Agreement shall mean the period commencing at the beginning of the first full academic year for UW-Madison following issuance of a permanent certificate of occupancy for the Lake Street Project and the City Project.
- c. Developer may terminate this MOU if at any time and for any reason Developer decides to not proceed with developing the Lake Street Project or the Lake Street Project is no longer subject to a recorded land use restriction in favor of the City of Madison to provide Low-Cost Beds.
- d. UW-Madison may terminate this MOU with 30 days' written notice in accordance with Section 8(b) below. Termination by UW-Madison ends the parties' formal obligations under the MOU but does not preclude UW-Madison from continuing to assist students who request disclosure of their respective financial need documentation for reduced-cost housing opportunities at the Lake Street Project.
- e. If a Party decides to terminate this MOU pursuant to this Section 4, it shall provide written notice of its termination of this MOU to the non-terminating Party, and termination shall be effective as of the effective date of the notice given in accordance with Section 5(b) below, unless otherwise provided herein.

- f. In the event that in any Lease Year during the Term of this MOU, Developer is unable to satisfy its obligation to provide the Student Discount as a result of its failure to make good

faith efforts to satisfy its obligations, UW-Madison shall be entitled to require Developer to add the deficient number of Low-Cost Beds (the “Make-Up Low-Cost Beds”) to the number of Low-Cost Beds required for the next Lease Year.

5. Miscellaneous.

- a. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given in accordance with this Section:

If to UW-Madison:

Office of Student Financial Aid
University of Wisconsin-Madison
333 East Campus Mall #9701
Madison, WI 53715-1382
Attention: Helen Faith
Email: helen.faith@wisc.edu

With a copy to:

Office of Legal Affairs
University of Wisconsin-Madison
500 Lincoln Drive, Room 360
Attention: Nancy Lynch
Email: nancy.lynch@wisc.edu

If to Developer:

c/o Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, MN 55422
Attention: Nate Gundrum and Stacey
Braybrook
Email:
nate.gundrum@mortenson.com;
stacey.braybrook@mortenson.com

With a copy to:

Attention: _____
Email: _____

Notices sent in accordance with this Section shall be deemed effectively given: (i) when received, if delivered by hand (with written confirmation of receipt); (ii) when received, if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by e-mail, with confirmation of transmission if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient.

- b. No Endorsement. Developer may not issue any press release or other statement which states or implies an endorsement by UW-Madison or OSFA of the Developer, the Lake Street Development, or that UW-Madison or OSFA believe the Low Cost Beds are affordable to low income students.
- c. Further Actions of the Parties. Immediately upon the execution of this MOU, the Parties shall take all action necessary to effectuate the purposes of this MOU, and will commence good faith negotiations to draft and, where appropriate, execute any documents that implement the purposes contemplated by this MOU, including a definitive agreement.
- d. Assignment. Developer shall have the right to assign this MOU to an affiliated entity or

a successor owner or party to Developer's rights in the Development Agreement, provided any such assignee assumes in writing all of Developer's obligations under this MOU.

- e. Amendment; Modification. This MOU may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.
- f. Governing Law; Submission to Jurisdiction. This MOU and all related documents, and all matters arising out of or relating to this MOU, are governed by, and construed in accordance with, the laws of the State of Wisconsin, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Wisconsin.
- g. No Joint Venture. This MOU shall not constitute a partnership, joint venture or create an agency relationship between the Parties.
- h. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this MOU delivered by facsimile, e-mail or other means of electronic transmission (to which a PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this MOU.

[signature pages follow immediately]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective as of the date set forth above.

UNIVERSITY OF WISCONSIN-MADISON

By: _____

Its: _____

MORTENSON DEVELOPMENT, INC.

By: _____

Its: _____