

## MEMORANDUM

### GORMAN & COMPANY, INC. OR ITS ASSIGNS

### TIF FINANCIAL ASSISTANCE TERM SHEET

June 2, 2015

The purpose of this Term Sheet ("Term Sheet") is to outline the principal terms and conditions of a Master TIF Loan, conveying four phases of City-owned properties valued at approximately \$5,000,000, by the City of Madison ("City") to Gorman & Company, Inc. or its assigns ("Developer") for \$1.00, to assist in the development of Phase 1, Phase 2, and Phases 3 & 4, of the Union Corners project, to be repaid by aggregate tax increments generated by the aforementioned phases.

The four phases of the project include a 60,000 SF UW Health medical clinic, 100 underground parking stalls and 154 surface stalls ("Phase 1"); approximately 102 apartment units, a 28,200 SF grocery, 7,700 SF of commercial and retail space, 200 underground parking stalls for the apartments and grocery and 47 surface stalls ("Phase 2"); approximately 97 affordable and market rate apartment units, 10,250 SF of commercial and retail (collectively, as "Phases 3&4"); and infrastructure improvements including a serpentine walkway located throughout the Project and 40 angled, on-street parking stalls (collectively, the "Project") located at 2504, 2507 and 2340 Winnebago Street in TID #37 (Union Corners) (collectively, the "Property").

The terms incorporated into the loan documents will be as follows:

1. The Project. Developer agrees to develop:
  - a. Phase 1: An approximately 60,000 square foot medical clinic to be owned by the UW Medical Foundation (UWMF) and operated by UW Health with approximately 100 underground parking stalls and approximately 154 surface parking stalls;
  - b. Phase 2: Approximately 102 apartment units, approximately 28,200 SF grocery store, approximately 7,700 gross square feet of commercial and retail space, 100 underground parking stalls for the apartments, 100 underground stalls and 47 surface stalls for the grocery, commercial and retail space or other use(s) allowed by the zoning text;
  - c. Phases 3 & 4: Approximately 97 affordable and market-rate apartment units 100 underground parking stalls for the apartments and approximately 10,250 square feet of commercial and retail space or other use(s) allowed by the zoning text;
  - d. Infrastructure Improvements: Construction of a serpentine walkway located within the development phases and approximately 40 angled, on-street stalls for grocery, commercial or retail customers, or other use allowed by the zoning text; and
2. Form of Assistance. The Master TIF Loan ("Master TIF Loan") assistance shall be provided to Developer in the form of conveyance of four phases of the Property from the City to Developer, valued at Five Million Dollars (\$5,000,000), for One Dollar (\$1.00) ("TIF Loan") to partially finance Developer's development of Phase 1, Phase 2 and Phases 3 and 4 of the Project. Applicable portions of the TIF Loan ("Phase Loan") shall be apportioned to each Phase or Phases in accordance with a Master TIF Loan Agreement

as set forth in Exhibit D of the Purchase and Sale Agreement, and its subsequent amendments, executed between the City and Developer on October 30, 2013 (“Purchase and Sale Agreement.”) Each of the respective Phase Loans becomes a grant when tax increment recovered from the respective Phase or Phases and/or cash payments by Developer, or any guarantor, are sufficient to repay the respective Phase Loan and the City’s associated borrowing costs. Each Phase Loan, represented as the value of land allocated to each phase, is the following:

Phase 1:	\$2,153,470
Phase 2:	\$2,345,427
Phases 3 & 4:	<u>\$460,425</u>
TOTAL	\$4,959,222

**Approximate Total: \$5,000,000**

3. Evidence of Phase I Investment. Prior to the TIF Loan closing, Developer shall provide evidence of investment from University of Wisconsin Medical Foundation (“UWMF”) for Phase 1 in the aggregate amount of not less than \$22,124,000 (“Investment”), as stated in Developer’s TIF Application dated May 4, 2015 on and its amendments or attachments (“TIF Application”). Investment shall be evidenced in the form of a commitment letter from UWMF and evidence that Developer has met all of the conditions of the Purchase and Sale Agreement. The Project Loan shall be used solely for the purpose of partially funding the TIF-eligible total cost of the Project, as stated in the TIF Application for Phase 1, 2, 3&4, estimated therein at approximately \$66,408,000 (“Project Cost”).
4. Audit. Upon completion of each Phase of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing, to the City’s satisfaction, for the City’s review and approval. If the City does not approve the Developer’s audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer’s books and records related to Project Cost and Financing.
5. Reversionary Rights. As stated in the Purchase and Sale Agreement and its amendments:
  - a. There will be a reversionary interest in the Deed from the City (“Seller”) that provides that the Developer (“Buyer”) will have five (5) years from the Closing to commence construction of any or all of the remaining Phases (in any order) or at the end of five (5) years the Buyer will be required to reconvey to the seller for One Dollar (\$1.00) any Undeveloped Phase(s) unencumbered and receive a credit to the Master TIF Loan. “Commence Construction” or “Commencement of Construction” shall be defined as commencement of excavation for the foundation of a Phase project on the respective Phase or Phases. The Buyer may reconvey any or all Undeveloped Phases to the City at any time within the five (5) year period, in which case the Buyer shall receive a credit equal to the Guarantee Amount for such Phase as set forth on the Phase Apportionment Table [Exhibit D of the Purchase and Sale Agreement].
  - b. The Buyer shall reconvey to the Seller the respective Phase or Phases, by warranty deed, conveying fee simple ownership to such Phase or Phases free and clear of all liens and encumbrances except (a) those subject to which the Buyer took title to the Property, and (b) special assessments not yet due and payable. Real property taxes levied for the year in which the reconveyance occurs will be prorated between the parties. Any real estate transfer fees due shall be paid by the Buyer.

- c. The Seller shall be required to release a Phase from its reversionary interest on the date the Buyer close on its construction loan for such Phase if all of the following conditions have been met: (1) the Buyer has obtained the building permits necessary to commence construction, (2) the Buyer has provided the Seller with copies of signed agreements with contractors to commence construction, (3) the commencement of construction has occurred, and (4) and Sections 4.e and f. [of the Purchase and Sale Agreement] have been satisfied. Upon certification of the Developer or the particular Gorman LLC (as defined in section 6) that no construction loan will be required, the Phase will be exempted from complying with that portion of this paragraph.
6. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. As stipulated in the Purchase and Sale Agreement, Developer shall guaranty the City's receipt of increment revenue in the form of a Corporate Guaranty provided by Developer until such time as a Phase or Phases is conveyed to a LLC of which the Developer is a Member ("Gorman LLC") and the respective Gorman LLC's net worth equals or exceeds the then outstanding principal balance of the Phase Note. A schedule of the projected tax increments used to calculate the TIF loan amount shall be attached to the TIF Loan Agreement.
7. Security. The TIF Loan shall be evidenced by a Master Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Developer shall execute a second mortgage in favor of the City of Madison securing payment of the TIF Loan ("Master TIF Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney. Developer shall execute a corporate guaranty guaranteeing payment of the Master TIF Loan and guaranteeing the PILOT payment, if Developer sells or transfers any portion of the Property to a tax exempt entity as more particularly described in section 8 below. As set forth in the Purchase and Sale Agreement, the following shall also apply:
  - a. Upon conveyance of a Phase or Phases from Developer to a Gorman LLC, each Gorman LLC shall execute and collaterally assign a note ("Phase Note") and a mortgage encumbering the respective phase in favor of the City securing payment of the apportioned Master TIF Loan ("Phase Mortgage"). Payment of the Phase Note shall be guaranteed by Developer until the Gorman LLC's net worth equals or exceeds the then-outstanding principal balance of the Phase Note, at which time the City shall release Developer from further liability under such guaranty.
  - b. The original principal amounts of all the Phase Notes shall equal not less than \$4,959,222. Each Gorman LLC shall agree not to remove assets such that its net worth is less than the then-outstanding balance of the Phase Note executed by such Gorman LLC and shall provide annual financial statements to the City demonstrating that its net worth is not less than the then-outstanding balance of the Phase Note.
  - c. None of the Gorman LLCs shall be eligible for additional TIF assistance.
  - d. If a Gorman LLC sells a Phase to any entity other than a Gorman LLC ("Non-Gorman LLC") the Gorman LLC shall pay to the Seller a release price equal to the then-outstanding principal balance of the Phase Note for such Phase.

- e. If Developer sells or transfers any of the Phases to a Gorman LLC that executes a Phase Note, Phase Mortgage and Phase TIF Loan Agreement, the principal amount of the Master Note shall be reduced by the initial principal amount of the Phase Note and the City shall provide a partial release of the Master TIF Loan Agreement and Master Mortgage for the Phase sold or transferred, provided that Developer is not in default of the Master TIF Loan Agreement or Master Mortgage.
  - f. There will be no release price if the Developer sells any Phase to a Gorman LLC. If Developer sells a Phase to a Non-Gorman LLC, the Buyer shall pay to the City a release price equal to the Guarantee Amount for such Phase as set forth in the Phase Apportionment Table [Exhibit D of the Purchase and Sale Agreement].
8. Sale to Tax Exempt Entity – PILOT Payment. If Developer sells or transfers any portion of the Property to a tax exempt entity (“Entity”), whereupon such ownership renders the Property or any portion thereof as property tax exempt, Entity shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Entity, frozen, through July 18, 2033. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Entity shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments (“Entity’s Mortgage”) at the time of Entity’s acquisition of the Property. The Entity’s Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.
9. Exceptions to TIF Policy. The TIF Loan is contingent upon Common Council adoption of the following exceptions to TIF Loan Underwriting Policy that were stipulated in the Purchase and Sale Agreement executed on October 30, 2013:

Guaranty

a. *Increment Guaranty—*

The City hereby grants an exception to TIF Policy that “requires a personal guaranty of increment, sufficient to recover the debt service on City-financed TIF loans.”

Per the terms of the Purchase and Sale Agreement, a corporate guaranty of Gorman and Company, Inc. or its assigns was accepted in lieu of a personal guaranty.

b. *Loan Agreement Guaranty—*

The City hereby grants an exception to TIF Policy that “requires a personal guaranty to provide the highest level of security to the City, of the terms and conditions of the loan agreement. A corporate agreement may be acceptable if it provides the City with adequate security.”

Per the terms of the Purchase and Sale Agreement, a corporate guaranty of Gorman and Company, Inc. or its assigns was accepted in lieu of a personal guaranty.

Equity Participation Payment

The Purchase and Sale Agreement, executed on October 30, 2013, granted an exception to the Equity Participation Payment, a requirement that Developer must pay a percentage of gross sales proceeds upon sale of a TIF-financed project to an unrelated third party. The Equity Participation policy was subsequently eliminated as part of the amended TIF Policy, adopted of a resolution by the Common Council on February 25, 2014. The City

hereby recognizes that said exception to TIF Policy made in the Purchase and Sale Agreement is now authorized.

10. Satisfaction. Subject to Section 4, the following applies to the respective mortgages:
  - a. For any phases that are not conveyed to a Gorman LLC, the Master TIF Mortgage will remain against the untransferred Phases. The Master TIF Mortgage shall be satisfied and the Master Note cancelled upon full payment of the apportioned amounts of the TIF Loan as specified in section 2 or full payment of a PILOT payment, if applicable.
  - b. Subject to Section 7, for any phases that are conveyed to a Gorman LLC, the Master TIF Mortgage and Master TIF Note with regard to that phase will be released and replaced with a Phase Mortgage and Phase Note relating only to that phase.
  - c. Phase Mortgages will be satisfied upon the full payment of the apportioned TIF Loan in accordance with the Phase Notes, or upon payment of a PILOT payment, if applicable.
11. Option for Phases 5 & 6. Phases 5 & 6 shall be retained by the City. The City shall grant a 3-year option to Developer, from the date of closing, to purchase for one dollar (\$1.00). Phases 5 & 6, including showing a financing gap of One Million Dollars (\$1,000,000). Phases 5 and 6 can be purchased separately, but the financing gap must be equal to the Guarantee Amount stated in Exhibit D of the Purchase and Sale Agreement.
12. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract with a minimum Small Business utilization to be negotiated with the City's Affirmative Action Division based on total construction costs.
13. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.
14. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
15. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
16. Material Changes. With the exception of sales to Gorman LLCs in accordance with the PSA, any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, shall subject this TIF Loan commitment to reconsideration by the City, or if the loan has been made to immediate repayment of the TIF Loan by Developer. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be

unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and size of apartments may be increased or decreased, and certain space designated for office use may be converted to residential use).

17. Project Completion. Developer shall guarantee that the construction of Phase 1 of the Project shall be completed by December 31, 2018. Project completion shall be evidenced by the issuance of a certificate of occupancy. All other Phases must be completed within 3 years of transfer to a Gorman LLC.
18. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
19. Title Insurance. At least fifteen (15) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount (i.e. the amount of the TIF Loan) of coverage to the City. The City shall receive a lender's policy.
20. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval of zoning and other land use approvals for the Project as described in the TIF Application and its amendments and attachments including a 60,000 SF UW Health medical clinic, 100 underground parking stalls and 154 surface stalls ("Phase 1"); approximately 102 apartment units, a 28,200 SF grocery, 7,700 SF of commercial and retail space, 200 underground parking stalls for the apartments and grocery and 47 surface stalls ("Phase 2"); approximately 97 affordable and market rate apartment units, 10,250 SF of commercial and retail (collectively, as "Phases 3&4"); and infrastructure improvements including a serpentine walkway located throughout the Project and 40 angled, on-street parking stalls or other use allowed by the zoning text.
21. Requirements for Phase Loan Document. All loan documents for phases of the Project shall be in conformity with the terms of the PSA, the Master Loan Agreement, TIF Policy and standard City practices. City staff will be authorized to execute Phase loan documents without additional approvals from Common Council unless the terms of the documents, except as provided in Section 9 above, deviate materially from the standard and approved terms in the documents listed herein.

If the terms and conditions outlined above are acceptable to Gorman and Company, Inc. or its assigns please so indicate by signing in the space provided below. While it is the intent of the City to provide the TIF Loan in a timely manner, no binding agreement will exist between the City and Gorman and Company, Inc. or its assigns unless and until the terms and conditions are approved by the City's Common Council and is executed between the Mayor, City Clerk and Gorman and Company or its assigns.

## ACCEPTANCE

The terms and conditions as set forth in this term sheet are acceptable to Gorman and Company, Inc. or its assigns. I further certify that I have the full authority to accept these terms and conditions on behalf of Gorman and Company, Inc. or its assigns.

  
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Edward B. Matkom, General Counsel

June 3, 2015  
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Date