
AMENDED AND RESTATED DEVELOPMENT AGREEMENT

by and among

THE CITY OF MADISON, WISCONSIN,

and

THE COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON,

and

JDS DEVELOPMENT, LLC

EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Purchase Agreement
- Exhibit C Increment Schedule
- Exhibit D Master Development Schedule
- Exhibit E Parking Structure Predevelopment Cost Reimbursement Schedule
- Exhibit F Targeted Business Participation Plan
- Exhibit G Parking Lease Term Sheet

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement"), dated as of _____, 2015, is made by and among the CITY OF MADISON, a Wisconsin municipal corporation (the "City"), the Community Development Authority of the City of Madison, a public body corporate and politic created pursuant to Wis. Stat. § 66.1335 (the "CDA"), and JDS DEVELOPMENT, LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

WHEREAS, the City owns certain real property more fully described on Exhibit A as the "City Parcel" and the "Utility Parcel" (collectively, the "Property");

WHEREAS, the City, the CDA and the Developer desire to cooperate in the development of the Property as a public-private partnership in accordance with the terms of this Agreement; and

WHEREAS, the City and the Developer entered into a Development Agreement, dated as of July 15, 2015, setting forth the basic terms and conditions upon which the parties will undertake the development of the Property (the "Initial Agreement");

WHEREAS, the Initial Agreement anticipated that additional details, terms and conditions would be resolved with respect to the design and implementation of the development project, all of which was to be set forth in an amended and restated agreement; and

WHEREAS, the parties have now resolved additional details, terms and conditions with respect to the design and implementation of the development project and hereby desire to enter into this Agreement to set forth the following terms and conditions related to the development of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEVELOPMENT OF THE PROJECT

Section 1.1. Development. The City, the CDA and the Developer will develop the Property in accordance with this Agreement and will cooperate with one another in connection therewith. This Agreement hereby amends, restates and supersedes the Initial Agreement in its entirety.

Section 1.2. Project Description. The development of the Property contemplated by this Agreement consists of two primary components: (1) the "Private Development" and (2) the "Public Development" (collectively, the "Project"), with each primary component comprised of several sub-components (each, a "Project Element"), as generally described below:

(a) Private Development. The Private Development consists of the following three Project Elements:

(1) an office and retail component comprising approximately 285,000 gross square feet of floor area in a building to be constructed by the Developer on Block 88 (the “Block 88 Office Building”);

(2) a hotel component having not less than 216 guest rooms within approximately 141,000 gross square feet of floor area in a building to be constructed by the Developer on Block 105 (the “Hotel”), with the final room count subject to completion of design development documents and completion of a market and feasibility analysis to be prepared by the Developer, and reviewed by the City in connection with the application for SIP approval of the Hotel; and

(3) an office and retail component (and/or other commercial or residential use as may be approved) within approximately 139,000 gross square feet of floor area in a building to be constructed by the Developer on Block 105 (the “Block 105 Future Expansion”).

(b) Public Development. The Public Development consists of the following two Project Elements, which will be constructed and paid for by the City and the CDA:

(1) a parking component with approximately 650 structured parking stalls (the “Private Ramp”), to be constructed by the City and the CDA primarily on Block 105 and leased to the Developer for operation by the Developer in connection with the Block 88 Office Building, the Hotel and the Block 105 Future Expansion, as more fully set forth in the Parking Lease (defined in Section 6.2 below); and

(2) a parking component with approximately 600 structured parking stalls (the “Public Ramp”), to be constructed by the City and the CDA primarily on Block 105 for operation as public parking, together with a Bike Center (as further defined in Section 5.1 (a) below) (the Private Ramp and the Public Ramp are collectively referred to herein as the “Parking Structure”).

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 2.1. Real Estate Purchase; Closing. The Developer shall purchase the portion of the Property described in Section 2.4 below as the “Project Parcel” from the City and the City shall sell the Project Parcel to the Developer pursuant to the terms of a real estate purchase agreement in substantially the form attached hereto as Exhibit B (the “Purchase Agreement”). The consummation of the purchase and sale of the Project Parcel pursuant to the terms of the Purchase Agreement shall occur concurrent with the Project Commencement Closing (defined in Section 3.1 below), unless otherwise agreed to by the parties.

Section 2.2. Purchase Price. The purchase price to be paid by the Developer for the Project Parcel at the Project Commencement Closing shall be the fair market value of the

Property, which is anticipated to be Fifteen Million and No/100 Dollars (\$15,000,000.00) (the “Purchase Price”), subject to an appraisal to be obtained by the Developer. The Purchase Price will be allocated between the City Parcel and the Utility Parcel as determined by the City in the exercise of its reasonable discretion.

Section 2.3. Real Estate Holding Company. To facilitate the overall development of the Project, the Developer may, at or prior to the Project Commencement Closing, assign its rights and obligations under the Purchase Agreement to an entity to be formed by the Developer (the “Holding Company”) as set forth in the Purchase Agreement. In the event the Holding Company is formed, the Holding Company will take title to the Property subject to this Agreement and the terms, conditions, covenants and obligations set forth herein.

Section 2.4. Certified Survey Map. Subsequent to the effective date of this Agreement and prior to the Project Commencement Closing, the City shall prepare and approve, by resolution of the common council, a two-lot certified survey map (the “CSM”) for the purpose of dividing the parcel of land upon which the Madison Municipal Building is situated (the “MMB Parcel”) from the portion of the City Parcel required for development of the Project (the “Block 88 Development Site”) (the Block 88 Development Site and the Utility Parcel are collectively referred to herein as the “Project Parcel”). The Project Parcel shall include the subterranean area below South Pinckney Street (the “Pinckney Street Subterranean Area”) and the resolution to be adopted by the common council approving the sale of the Pinckney Street Subterranean Area shall also satisfy the requirements set forth in Wis. Stat. § 66.0914 (4) for the conveyance of the Pinckney Street Subterranean Area to the Developer. The CSM shall be executed by the City and delivered for recording at the Project Commencement Closing. Upon recording of the CSM, the MMB Parcel and the Project Parcel shall constitute legally separate parcels with separate tax parcel numbers assigned to each. The deed conveying the Project Parcel from the City to the Developer (or its assignee as contemplated in the Purchase Agreement) shall be recorded immediately following the CSM, subject to the terms of the Purchase Agreement. To facilitate the development of the Project, the City and the Developer shall execute and record a mutually acceptable reciprocal no-build easement and reciprocal access easement encumbering portions of the Block 88 Development Site and the MMB Parcel.

Section 2.5. Condominium Declaration. Subsequent to the effective date of this Agreement and prior to the Project Commencement Closing, the Developer shall prepare a condominium declaration, plat and association documents (collectively, the “Condominium Documents”) for the purpose of subjecting the fee interest in the Project Parcel to the condominium form of ownership, pursuant to the Wisconsin Condominium Act. The condominium to be established by the Condominium Documents (the “Condominium”) is anticipated to be a five-unit condominium consisting of units (each, a “Unit”) within which the five Project Elements will be constructed: (i) the Block 88 Office Building Unit, (ii) the Hotel Unit, (iii) the Block 105 Future Expansion Unit (Units (i)-(iii), collectively the “Private Units”) and (iv) the Private Ramp Unit and (v) the Public Ramp Unit (Units (iv) and (v), collectively, the “Public Units”). The Condominium Documents will establish a condominium association for the purpose of managing and maintaining the common areas of the Condominium. Common area expenses for the Condominium shall be assessed and paid by Unit owners pursuant to the terms and conditions of the Condominium Documents. The form of the Condominium Documents shall be subject to review and approval by the CDA and the City Attorney prior to the Project

Commencement Closing. The Developer shall cause the Holding Company to record the Condominium Documents at the Project Commencement Closing.

Section 2.6. Conveyance of Public Units. At the Project Commencement Closing, subsequent to the recording of the Condominium Documents, the Developer shall convey, or cause to be conveyed, the Public Units to the CDA by deed. Following completion of construction of the Parking Structure by the CDA, the CDA shall convey the Public Ramp Unit to the City and shall lease the Private Ramp Unit to the Developer pursuant to the Parking Lease.

Section 2.7. Master Lease to Developer. In the event the Holding Company is created, at the Project Commencement Closing, subsequent to the recording of the Condominium Documents, the Holding Company shall master lease the Private Units to the Developer to facilitate the Developer's construction of the Private Development in accordance with the terms of this Agreement. The form of such master ground lease shall be subject to the City's approval, which shall not be unreasonably withheld.

ARTICLE III

PROJECT FINANCING

Section 3.1. Closing. The closing of the financing and entitlement phase of development (the "Project Commencement Closing") shall take place at a date, time and location mutually acceptable to the parties but no later than December 4, 2015 (the "Project Commencement Closing Deadline"), except as may otherwise be agreed to in writing by the parties.

Section 3.2. Summary of Funds for Project Development. The City shall be responsible for (i) all of the costs of the Public Development, at the City's sole cost and expense, and (ii) the contributions to the Block 88 Office Building set forth in Section 3.3 below (the "Public Funding"). The Public Funding shall be legally obligated by the City (as described in Section 3.3 below) at the Project Commencement Closing for disbursement pursuant to a mutually acceptable disbursing agreement (the "Disbursing Agreement"). This Agreement and the Disbursing Agreement shall legally obligate the City to release funds in 2015 and 2016 according to a cash flow schedule to be agreed to by the parties, with an absolute obligation that all such funds shall be disbursed into escrow from Tax Increment District No. 25 ("TID 25"), pursuant to the Disbursing Agreement, no later than December 2016. The Public Funding shall be drawn from a variety of sources, such as TID 25, the proceeds of the sale of the Property, the existing cash reserves of the City's parking utility, future revenues, general obligation borrowing or other sources. The Developer shall be responsible for all of the costs of the Private Development (subject to the City's contributions described in this Agreement) and Developer will contribute total debt and equity to the Project in the aggregate amount of not less than One Hundred Thirty Million and No/100 Dollars (\$130,000,000.00) (the "Private Funding").

Section 3.3. Sources and Uses of Public Funds. The City shall provide funding for the Project in the amounts and for the purposes set forth in this Section 3.3, which amounts shall be committed to the Project prior to the Project Commencement Closing and will be disbursed to pay for the cost of constructing the Project pursuant to the Disbursing Agreement.

(a) Parking Utility Reserves and TID 25 for Public Ramp. The sum of Seventeen Million and Six Hundred Thousand and no/100 Dollars (\$17,600,000), drawn from the cash reserves of the City's parking utility, including proceeds from the sale of the Utility Parcel, and Four Hundred Thousand and no/100 dollars (\$400,000) drawn from TID 25, to be used for the construction of the Public Ramp.

(b) Fleet Parking Costs. The sum of One Million Three Hundred Thousand Dollars and no/100 Dollars (\$1,300,000.00) to pay for the cost of constructing forty (40) above-grade structured parking spaces within the Public Ramp Unit for vehicles in the City's fleet.

(c) Bike Center. The sum of One Million Dollars and no/100 Dollars (\$1,000,000.00) to pay for the cost of constructing the Bike Center within the Public Ramp Unit.

(d) Property Sale Proceeds. The Purchase Price proceeds from the sale of the Property, less the sum of One Million Sixty-three Thousand Dollars (\$1,063,000), which will be disbursed at the City's discretion into the appropriate funds, with an amount equal to the net proceeds being granted to the Developer to pay for a portion of the cost of constructing the Block 88 Office Building.

(e) TID 25 Contribution to Private Ramp. The sum of Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00), drawn from TID 25, to be used for construction of the Private Ramp (the "Parking-TIF").

(f) TID 25 Jobs TIF. The sum of Twelve Million and no/100 Dollars (\$12,000,000.00), drawn from TID 25, to be made available for construction of tenant improvements (the "Jobs-TIF").

Any funds required for completion of the Parking Structure beyond those stated above will be subject to further authorization.

Section 3.4. TIF Guarantees.

(a) Jobs-TIF Guarantee. At the Project Commencement Closing, the Developer and Exact Corporation ("Exact") shall provide the City with a two-stage corporate guarantee (the "Jobs-TIF Guarantee") as security for the Twelve Million and no/100 Dollars (\$12,000,000.00) Jobs-TIF to be disbursed to Exact for tenant improvements as follows:

(i) For the first stage of the Jobs-TIF Guaranty, Exact shall guarantee that: (1) as of the date Exact takes occupancy of the Block 88 Office Building ("Exact's Initial Occupancy Date") pursuant to a lease agreement with the Developer (the "Exact Lease"), Exact will have retained and/or created within the City of Madison not less than three hundred (300) full time equivalent (FTE) living wage jobs; and (2) by no later than January 1, 2019, Exact will employ no less than four hundred (400) FTE employees in living wage jobs at the Block 88 Office Building ("Minimum Job Requirement"). Each job retained or created will be valued at Thirty Thousand and no/100 Dollars (\$30,000.00) based on the City's provision of \$12.0 million in the form of a jobs-based TIF loan (\$12.0 million divided by 400 jobs = \$30,000 per job). In the event the number of jobs created and/or retained does not meet or exceed the agreed upon number at the

deadline for each stage of the Minimum Job Requirement, Exact will have six (6) months from each deadline to cure the shortfall and meet the minimum number of jobs required. If any deficiency exists following the cure period, Exact will make a penalty payment to the City in an amount equal to the sum of Thirty Thousand and no/100 Dollars (\$30,000.00) multiplied by the number of deficient jobs (such amount, a “Shortfall Guarantee Payment”). Any penalty payments made by Exact will be deducted from the total amount of the guarantee to be provided by the Developer as part of the second-stage guarantee set forth below. Finally, the Exact Lease shall include a relocation clause imposing a financial penalty on Exact in the event Exact were to terminate its lease and relocate its operations from the Block 88 Office Building (the “Relocation Penalty”), which Relocation Penalty shall be incorporated as part of the second stage of the Jobs-TIF Guaranty, as set forth in the following paragraph.

(ii) For the second stage of the Jobs-TIF Guaranty, the Developer shall provide a corporate guarantee in the amount of Twelve Million and no/100 Dollars (\$12,000,000.00) (the “Relocation Guarantee”) (subject to reduction for any Shortfall Guarantee Payment made by Exact as set forth in the preceding paragraph). The Relocation Guarantee shall be reduced annually by One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) until the amount of the Relocation Guarantee is reduced to zero, with the first such reduction occurring on the first anniversary of Exact’s Initial Occupancy Date. If the Relocation Penalty is triggered at any time when the Developer’s Relocation Guarantee is in effect, the Developer shall pay to the City an amount equal to the balance of the Relocation Guarantee then remaining at the time the Relocation Penalty is triggered. Notwithstanding the foregoing, the Developer’s obligation to make payment to the City as contemplated under this paragraph is contingent upon and limited by the actual amount collected by the Developer from Exact under the Relocation Penalty.

(iii) The Minimum Job Requirement set forth in Section 3.4 (a) (i) above shall be subject to the following three-step audit process:

(1) *Certification by Exact.* Within thirty (30) days following the deadline for each stage of the Minimum Job Requirement, Exact shall deliver written documentation to the City certifying employment levels (each, a “Jobs Certification Letter”). Each Jobs Certification Letter shall be a public record as defined under Wisconsin’s Public Records Law and will be subject to release upon request. Each Jobs Certification Letter shall be signed and notarized by an authorized representative of Exact’s executive team and shall indicate the number of individuals employed by Exact as of the applicable deadline, both on a full-time basis (*i.e.* individuals employed at least 40 hours per week) and a part-time basis (*i.e.* individuals employed less than 40 hours per week), whose primary work location is at a facility within the City of Madison and whose wage is equal to or greater than the “living wage” defined in Sec. 4.20, MGO. The Jobs Certification Letter shall provide a breakdown of these employment levels at each facility operated by Exact within the City of Madison (*e.g.* University Research Park, Block 88, other, etc.).

(2) *On-site Review of Payroll Report.* Upon receipt of the Jobs Certification Letter, a representative from the City's finance department (the "Internal Auditor") shall schedule a time to conduct an audit of the payroll records at Exact's offices pertaining to the employees identified by Exact in the Jobs Certification Letter. During this audit, the Internal Auditor will be permitted to review digital or paper versions of a "Payroll Report" prepared by Exact. Exact shall not be required to deliver a copy of the Payroll Report to the City and the Payroll Report reviewed by the Internal Auditor at Exact's offices shall not be construed as a public record under Wisconsin's Public Records Law, will not be subject to release, and the Internal Auditor will not keep any copies that would be subject to Wisconsin's Public Records Law. The Payroll Report shall include, at a minimum, the following: (a) a listing of all individuals (identified by employee identification number) who are employed by Exact at a facility located in the City of Madison and who are earning a wage equal to or greater than the "living wage" defined in Sec. 4.20, MGO; (b) the title of each employee; (c) the primary work location of each employee (*i.e.* University Research Park, Block 88, other); (d) indication of whether the employee is employed full-time (at least 40 hours per week) or part-time (less than 40 hours per week); and (e) the hourly wage of the employee (based on a 2,080-hour per year basis). The Internal Auditor will not have unrestricted access to all of Exact's underlying personnel files but will be permitted to review payroll records in order to verify the accuracy of the Payroll Report. The City acknowledges and agrees that the sole purpose of the audit is to confirm whether the Jobs Certification Letter provided by Exact is accurate and whether Exact has met the Minimum Job Requirement, which shall be confirmed in an Audit Report described below. Accordingly, the City agrees that, notwithstanding anything to the contrary set forth herein, all information obtained by the City during the inspection of the Payroll Report and Exact's employment records shall be treated as strictly confidential and shall not be disclosed for any purpose other than for the purpose of the Audit Report. In keeping with this obligation, the City's Internal Auditor shall be required to execute a nondisclosure agreement before reviewing Exact's records.

(3) *Preparation of Audit Report.* Following the audit of the Payroll Report, the Internal Auditor shall prepare a report (the "Audit Report") indicating whether the Payroll Report is consistent with the Jobs Certification Letter and whether Exact has met the Minimum Job Requirement. The Audit Report shall be a public record as defined under Wisconsin's Public Records Law and will be subject to release upon request, provided, however, the Audit Report shall not include any personally-identifiable information of Exact employees or the specific wage levels paid by Exact to individual employees. If the Audit Report concludes that the Payroll Report is inconsistent with the Jobs Certification Letter, Exact shall have a reasonable opportunity to deliver an amended Jobs Certification Letter or other responsive information to the City. If the Audit Report concludes that Exact has not met the Minimum Job Requirement and Exact has a right to cure the shortfall as set forth in Section 3.4(a)(i) above, the same audit process described herein shall be used at the end of the cure period to confirm whether Exact has cured the shortfall.

The Jobs-TIF Guarantee will be fully satisfied and released on the earlier to occur of (i) the date the Developer makes the Relocation Guarantee payment to the City (subject to collection from Exact as set forth above), or (ii) the date the Relocation Guarantee is reduced to zero.

Finally, as a condition to receipt of the Jobs-TIF, Exact will (a) commit to support diverse hiring through their existing relationship with the Urban League of Greater Madison according to a memorandum of understanding if a form to be agreed upon between Exact and the City (the “Hiring Diversity MOU”) prior to the Project Commencement Closing; and (b) prepare a transportation demand management plan (the “Exact TDM Plan”) that will be submitted for the City’s review and approval prior to the Project Commencement Closing.

(b) Parking-TIF Guarantee. At the Project Commencement Closing, the Developer shall provide the City with a two-tier guarantee (the “Parking-TIF Guarantee”) as security for the Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00) Parking-TIF to be disbursed by the City for construction of the Private Ramp. Each tier of the Parking-TIF Guarantee makes reference to the TIF Increment Projections prepared by the City and attached hereto as Exhibit C (the “Increment Schedule”). The Parking-TIF Guarantee is as follows:

(i) For the first tier of the Parking-TIF Guarantee, which secures the first Ten Million and no/100 Dollars (\$10,000,000.00) of the Parking-TIF (the “Collateral Assignment Guarantee”), the Developer shall collaterally assign to the City all of the net parking income generated by the Private Ramp (defined as gross parking rents from the Private Ramp less all expenses incurred in operating the Private Ramp, reserves for structural repairs (as described in the Parking Lease as defined in Section 6.1 below) and agreed-upon debt service payments) (the “Parking Income”). In the event that (1) the actual tax increment generated by the Project through 2032 is less than the projected amount shown on the Increment Schedule as of the same year and further provided that such actual increment generated is less than the amount of the Collateral Assignment Guarantee (i.e., Ten Million and no/100 Dollars), or (2) the Developer fails to satisfy the net worth covenant described in the following paragraph, the City shall have the right, power and authority to declare the collateral assignment of the Parking Income to be unconditional and absolute, and thereby succeed fully to all of the Developer’s right, title and interest in, and to the Parking Income until such time as the collateral assignment is terminated as set forth below. Notwithstanding the foregoing, the Developer shall have the right to cure any increment shortfall that would otherwise trigger the collateral assignment of the Parking Income by paying the shortfall amount directly to the City. Any payments made hereunder are to be considered as increment created by the Project.

(ii) For the second tier of the Parking-TIF Guarantee, which secures the remaining portion of the Parking-TIF, the Developer shall provide the City with a corporate guarantee in the amount of Ten Million Eight Hundred Thousand and no/100 Dollars (\$10,800,000.00) (the “Developer’s Corporate Parking Guarantee”). The Developer’s Corporate Parking Guarantee shall provide that: (i) over the course of 27 years (the “TID Lifespan”), the Project will have generated total tax increment (as shown on the Increment Schedule) in a cumulative amount equal to at least the Parking-TIF as further described herein; and (ii) at all times during the term of the Parking-TIF Guarantee, the Developer shall maintain a net worth of not less than Six Million Eight

Hundred Thousand and no/100 Dollars (\$6,800,000.00). Each year during the TID Lifespan, the City will calculate any shortfall or excess in actual annual tax increment generated by the Project as compared to the projected amount for such year shown on the Increment Schedule and will carry forward any shortfall or excess on a cumulative basis. If, at the end of the 27th year of the TID Lifespan, the City's accounting indicates a shortfall in the cumulative actual tax increment generated by the Project as compared to the cumulative projected tax increment shown on the Increment Schedule, the Developer shall pay to the City the amount of such shortfall, up to a maximum of Ten Million Eight Hundred Thousand and no/100 Dollars (\$10,800,000.00), provided however, the Terminal Payment (defined in Section 6.2 below) shall be credited toward any required shortfall payment. The Developer's obligations under the Parking-TIF Guarantee will be secured by a subordinate mortgage on the Developer's interest in the Project in the stated amount of Six Million Eight Hundred Thousand and no/100 Dollars (\$6,800,000.00), provided that the City will not exercise its rights under the subordinate mortgage unless the Developer is in default under any loan agreement with any senior mortgage lender and any senior mortgage lender exercises its rights under the first mortgage. Notwithstanding the foregoing, the City can enforce any rights under its mortgage where there is no senior lender.

Notwithstanding anything to the contrary set forth in this Section 3.4(b), the Parking-TIF Guarantee, including the Developer's collateral assignment of Parking Income and the Developer's Corporate Parking Guarantee, will be fully satisfied and released on the date that the amount of the actual cumulative tax increment generated by the Project, plus the amount of any Parking Income collected by the City under the collateral assignment, plus the amount of any payment made by the developer under the Developer's Corporate Parking Guarantee, equals or exceeds Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00). Notwithstanding anything to the contrary set forth elsewhere in this Agreement, title to the Private Parking Unit shall remain vested in the CDA, and the Developer shall have no right to acquire such interest from the CDA, until the Parking-TIF Guarantee is fully satisfied and released.

ARTICLE IV

LAND USE APPROVALS; PERMITTING

Section 4.1. Land Use Approvals.

(a) Applications. The Developer has submitted application materials as required under the City of Madison municipal code for zoning, urban design and any other municipal land use and development approvals required in order to undertake the Project (collectively, the "Land Use Approvals"). A master schedule for development of the Project, including the schedule for the pursuit of the Land Use Approvals, is attached hereto as Exhibit D (the "Master Development Schedule"). All applications for Land Use Approvals shall be reviewed in accordance with the ordinances of the City of Madison, provided, however, without in any way limiting the generality of the foregoing, the City and the Developer shall each diligently and in good faith attempt to follow the Master Development Schedule.

(b) Planned Development. The City and the Developer acknowledge and agree that the Project Parcel must be rezoned to the Planned Development District under section 28.098 of the Madison General Ordinances in order to accommodate the Project. As part of the Land Use Approvals, the Developer is seeking approval of a General Development Plan (“GDP”) pursuant to section 28.098(5)(c) of the Madison General Ordinance. The City and Developer further acknowledge that each Project Element shall be subject to the City’s review and approval as part of a Specific Implementation Plan (“SIP”), pursuant to section 28.098(5)(e) of the Madison General Ordinances, provided, however, nothing shall preclude Developer from combining one or more Project Elements into a single SIP application.

(c) City Cooperation. The City and the CDA will reasonably cooperate with and assist the Developer in applying for and processing the applications for Land Use Approvals in connection with the Parking Structure.

Section 4.2. Building and Construction Permits; Fees. The Developer shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Private Development and the Developer shall pay the normal and customary City charges and shall be responsible for obtaining all building permits prior to such construction. The CDA shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Parking Structure and the CDA shall pay the normal and customary City charges and shall be responsible for obtaining all building permits prior to such construction.

ARTICLE V

CONSTRUCTION OF PROJECT

Section 5.1. Parking Structure

(a) Design. Commencing as of July 15, 2015 pursuant to the Initial Agreement and continuing through the Project Commencement Closing, the Developer shall, at the direction of the City and the CDA, prepare detailed plans and specifications for the Parking Structure for review and approval of the City and the CDA. The program for the Parking Structure shall include a Bike Center consistent with criteria established in the Request for Proposals for Judge Doyle Square issued by the City (the “Bike Center”). For all purposes of this Agreement, the defined term “Parking Structure” shall be inclusive of the Bike Center. Based on the direction and input of the City, the design of the Parking Structure shall be approved by the City and CDA prior to the Project Commencement Closing.

(b) Pre-development Costs. The City acknowledges that the Developer was selected by the City to pursue development of the Project at the City’s invitation. In that role, the Developer has provided and will continue to provide valuable assistance to the City in the planning and design of the Parking Structure that comprises the Public Development component of the Project. The City has allocated funding in the City’s 2015 capital budget for the planning and design of the public portion of the Parking Structure. Funding for the private portion of the Parking Structure will be included as part of the City’s 2016 capital budget, subject to approval

by the Common Council. Pursuant to the Disbursing Agreement to be executed by the Parties at the Project Commencement Closing, the City shall reimburse the Developer for the actual, but reasonable costs incurred by the Developer in the planning and design of the Parking Structure, including, without limitation, architectural, engineering, planning and design fees and other related professional fees.

In the event this Agreement is terminated pursuant to Section 14.1 below, the City shall nonetheless be obligated to promptly reimburse the Developer for the actual costs incurred by the Developer in planning and designing the Parking Structure. The maximum amount that may be due from the City in the event of termination shall be capped at the amounts set forth on the attached Exhibit E. The obligations set forth in this Section 5.1(b) shall survive termination of this Agreement.

(c) Bidding. The City and/or the CDA shall publicly advertise, bid and contract for the construction of the Parking Structure in accordance with applicable Wisconsin law governing such public construction, under the supervision of the Developer pursuant to the Construction Administration Agreement (defined below). Statutory bid bonds, performance bonds and payment bonds shall be required for the Parking Structure in a form, and from sureties, approved by the City and/or the CDA. The City and/or the CDA, with assistance from the Developer, shall prepare all public bidding documents, contracts and bonds. All contracts for construction of the Parking Structure shall be awarded by the City and/or the CDA to the lowest responsible bidder (the "Parking Structure Construction Contracts").

(d) Construction. The City and/or the CDA shall be solely responsible for the total cost and expense involved in: (i) demolition of all improvements located on the Block 88 Development Site prior to the Project Commencement Closing; (ii) demolition of the Government East parking ramp prior to commencement of the Parking Structure for the Project; and (iii) construction of the Parking Structure in accordance with plans and specifications approved pursuant to Section 5.1(a). The allocation and payment of costs associated with any demolition, construction or reconstruction of the Pinckney Street, Doty Street and Wilson Street public rights-of-way (collectively, the "ROW Work"), including, without limitation, paving, utilities, sidewalk, landscaping, and lighting incorporated into such reconstructed public rights-of-way will be determined and agreed to by the City, CDA and Developer on or before the Project Commencement Closing as set forth in Section 7.1(z) below. Notwithstanding the foregoing, the City and/or the CDA shall enter into an agreement with the Developer (the "Construction Administration Agreement"), the form of which shall be agreed upon by the City and/or the CDA and the Developer prior to the Project Commencement Closing, pursuant to which the Developer shall administer the Parking Structure Contracts in coordination with the development of the overall Project. The Construction Administration Agreement shall provide for reasonable market-based compensation for the construction administration services provided to the City. The City shall be permitted to continue operating the Government East parking structure at its sole cost and expense until March 1, 2016, under a lease or several leases with the CDA and Developer with the rental amount for such leases to be one dollar (\$1.00).

(e) Commencement. Commencement of construction of the Parking Structure shall take place immediately following the Project Commencement Closing.

(f) Completion. Subject to Unavoidable Delays, the City and/or the CDA shall cause the Parking Structure to be completed no later than June 1, 2017 (the “Parking Structure Completion Date”). Construction of the Parking Structure will be performed in accordance with this Agreement, the Parking Structure Construction Contracts, the Construction Administration Agreement and the generally accepted standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar construction work at the time and in the locality where the work is performed and will be free of defects. As used in this Agreement, the term “Unavoidable Delays” means delays which are the direct result of strikes or other labor troubles, lack of responsible bidders, actual and reasonable delays caused by a failure to receive any bids that would not cause the estimated cost of the Parking Structure to exceed the authorized amounts, unforeseeable and unavoidable casualties to the Project, governmental actions, judicial action commenced by third parties, the implementation of an environmental agency-approved work plan for remediation, or severe weather, acts of God, fire or other casualty.

(g) Right of First Refusal on Public Ramp. The parties will enter into a Right of First Refusal at the Project Commencement Closing, upon mutually satisfactory terms and conditions, granting the Developer a right of first refusal on the Public Ramp (the “Public Ramp ROFR”) in the event the City (or the CDA, if applicable) ever intends to sell the Public Ramp to a third-party. The Public Ramp ROFR shall provide that the Developer will have the right to purchase the Public Ramp upon the same terms and conditions that may be offered by a third-party.

Section 5.2. Block 88 Office Building.

(a) Design. The Developer has prepared and submitted detailed plans and specifications for the Block 88 Office Building for review and approval by the City as set forth in Article IV above.

(b) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Block 88 Office Building, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any, filing or other development fees.

(c) Bidding. No portion of the Block 88 Office Building shall be construed as “public construction” and, as such, the Developer shall not be required to comply with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Block 88 Office Building.

(d) Construction. The Developer shall be solely responsible for the total cost and expense for the construction of the Block 88 Office Building in accordance with plans and specifications approved pursuant to Article IV above.

(e) Targeted Business Participation. At the Project Commencement Closing, the Developer shall execute an agreement governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) in substantially the form attached hereto as Exhibit F.

(f) Project Labor Agreement. Prior to commencement of construction of the Block 88 Office Building, the Developer shall enter into a project labor agreement with organized labor concerning construction of the Block 88 Office Building.

(g) Commencement. Subject to Unavoidable Delays, commencement of construction of the Block 88 Office Building shall take place no later than January 1, 2016, subject to the City's obligation to timely complete demolition of the improvements on the Project Parcel. Any delay in the City's performance of its obligations under this Agreement shall extend the deadline for Developer's commencement of construction of the Block 88 Office Building on a day-for-day basis.

(h) Completion. Subject to the completion of the Parking Structure by or before the Parking Structure Completion Date and any Unavoidable Delays, the Block 88 Office Building shall be completed no later than nineteen (19) months following commencement, as evidenced by the issuance of a certificate of occupancy by the City.

Section 5.3. Hotel

(a) Design; Style, Size; Location. The Developer has prepared general plans and specifications for the Hotel, which have been submitted to the City for review and approval as part of the GDP contemplated in Article IV above. The Hotel shall be an urban mixed-use style hotel consisting of approximately 141,000 gross square feet of floor area in a building to be constructed on the south half of Block 105. The Hotel will have not less than 216 hotel rooms, with the final room count subject to completion of design development documents and the completion of a market and feasibility analysis to be prepared by the Developer, and reviewed by the City in connection with the application for SIP approval of the Hotel.

(b) City Council Approval. The plans for the Hotel advanced by the Developer will address or incorporate the following concepts, each of which will be subject to review and approval by resolution of the City Council prior to the Project Commencement Closing:

(1) *Brand and Operator*. The Developer's selection of (i) a hotel franchise company offering an appropriate and credible brand for the Hotel with a national sales force and reservation system and (ii) an experienced hotel operator reasonably acceptable to the City and Developer.

(2) *Room Block Agreement*. A room block agreement to support the Monona Terrace Community and Convention Center.

(c) Targeted Business Participation. Prior to commencement of construction of the Hotel, the Developer shall enter into an agreement with the City governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) with a goal of having not less than ten percent (10%) of all construction contracts for the Hotel, as measured by overall contract value, will be awarded to targeted businesses. Such agreement shall be similar in form to Exhibit F attached hereto.

(d) Project Labor Agreement. Prior to commencement of construction of the Hotel, the Developer shall enter into a project labor agreement with organized labor concerning construction of the Hotel.

(e) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Hotel, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any, filing or other development fees.

(f) Bidding. No portion of the Hotel shall be construed as “public construction” and, as such, the Developer shall not be required to comply with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Hotel.

(g) Construction. The Developer shall be solely responsible for the total cost for the construction of the Hotel in accordance with plans and specifications approved pursuant to Article IV above and by resolution of the Common Council approved pursuant to Section 5.3 (b) above.

(h) Commencement. Provided that the CDA’s construction of the Parking Structure has been completed by or before the Parking Structure Completion Date, and subject to any Unavoidable Delays, commencement of construction of the Hotel shall take place no later than May 1, 2017.

(i) Completion. Subject to Unavoidable Delays, the Hotel shall be completed no later than eighteen (18) months following commencement, as evidenced by the issuance of a certificate of occupancy by the City.

(j) Labor Peace Agreement. No later than the Project Commencement Closing, and to protect the City’s proprietary interests in the Project, the Developer and/or its successor in interest shall supply to the City evidence that the Developer, or its successor in interest, has entered into (or caused the Hotel operator to enter into) a fully-executed labor peace agreement with a labor organization that validly represents hotel employees and seeks to represent Hotel workers at the Project (the “Labor Peace Agreement”). The Labor Peace Agreement must be a valid agreement which prohibits the labor organization and its members from engaging in any picketing, work stoppages, boycotts, or any other economic interference with the Hotel, and must cover all operations of the Hotel which are subject to the management agreement or a lease with the Hotel operator (other than construction, alteration or repair of the premises). The Labor Peace Agreement shall not include any provision that would require or compel an employee to be a member of the labor organization. This Section 5.3(j) is not intended to favor any particular outcome in the determination of employee preference regarding union representation and neither Developer nor the labor organization shall be deemed to waive any rights. The Developer may be relieved of this obligation by the Common Council if the labor organization places conditions upon the Labor Peace Agreement that would be commercially unreasonable, arbitrary or capricious, or inconsistent with federal or state law.

Section 5.4. Block 105 Future Expansion.

(a) Design. The GDP contemplated by Section 4.1(b) above shall establish the general parameters for the development of the Block 105 Future Expansion, which may include, without limitation, additional office space for Exact or another office tenant, additional hotel capacity, or a residential use.

(b) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Block 105 Future Expansion, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any, filing or other development fees.

(c) Bidding. No portion of the Block 105 Future Expansion shall be construed as “public construction” and, as such, the Developer shall not be required to comply with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Block 88 Office Building.

(d) Construction. The Developer shall be solely responsible for the total cost for the construction of the Block 105 Future Expansion in accordance with plans and specifications approved pursuant to Article IV above.

(e) Targeted Business Participation. The Developer shall commit to an agreement governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) with a goal of having not less than ten percent (10%) of all construction contracts for the Block 105 Future Expansion, as measured by overall contract value, will be awarded to targeted businesses. Such agreement shall be similar in form to Exhibit F attached hereto.

(f) Commencement. Commencement of construction of the Block 105 Future Expansion shall take place at a time reasonably determined by Developer based upon market conditions.

(g) Completion. Subject to Unavoidable Delays, the Block 105 Future Expansion shall be completed no later than twenty-four (24) months following commencement, as evidenced by the issuance of a certificate of occupancy by the City.

Section 5.5. Reacquisition by the City for Failure to Timely Commence Construction of the Hotel.

(a) Developer Grace Period. The parties intend that the Hotel will be completed according to the schedule set forth in Section 5.3 and the Developer shall use commercially reasonable efforts to do so. Notwithstanding the foregoing, however, the parties acknowledge and agree that the Developer’s ability to undertake construction of the Hotel is subject to (i) timely completion of the Parking Structure by the City and the CDA, (ii) market conditions, (iii) receipt of the necessary SIP approval for the Hotel and (iv) Unavoidable Delays. In the event any of the forgoing conditions do not permit Developer to commence construction of the Hotel by May 1, 2017, as determined by the Developer in the exercise of the Developer’s sole discretion, Developer shall be permitted to extend the deadline for commencement by up to

eighteen (18) months upon delivery of written notice to the City on or before May 1, 2017 (the “Developer Grace Period”)

(b) City Reacquisition Rights. As contemplated in Section 7.1(y) below, as a Condition Precedent (as defined below) to the Project Commencement Closing, the parties shall enter into a mutually satisfactory City Reacquisition Agreement at or before the Project Commencement Closing, which shall provide the following reacquisition rights to the City with regard to the Hotel Unit (the “City Reacquisition Rights”), and shall further provide that such City Reacquisition Rights will be legally protected from the rights of creditors for the term of such City Reacquisition Rights (as further described in subsections (i) and (ii) below) including protection from creditors through the use of a bankruptcy remote special purpose entity or other legal structure acceptable to the parties:

(i) First City Reacquisition Right. In the event the Developer has not commenced construction of the Hotel by or before the end of the Developer Grace Period described in Section 5.5(a) above, the City shall have the right (the “First City Reacquisition Right”), but not the obligation, for a period of eighteen (18) months commencing at the end of the Developer Grace Period (the “First City Reacquisition Period”) to solicit proposals from, and negotiate with, other developers (each an “Alternative Developer”) solely for the development of a hotel on the Hotel Unit (the “Alternative Hotel Proposal”), provided that any Alternative Hotel Proposal must be in accordance with the design, size and style of the Hotel plans and specifications prepared by the Developer as part of its GDP and SIP submissions. In the event that prior to the end of the First City Reacquisition Period the City and an Alternative Developer execute a binding development agreement concerning the Alternative Hotel Proposal, which agreement shall include similar requirements with respect to the Alternative Hotel Proposal as provided herein (as such requirements set forth in this Agreement may be further amended and modified), including, without limitation, the City’s approval of the operator of such Alternative Hotel Proposal, a labor peace agreement with respect to the operations of such Alternative Hotel Proposal and documented evidence of the necessary debt and equity financing, similar to that provided by Developer prior to this Agreement, for such Alternative Hotel Proposal (the “Reacquisition Condition”), the City shall have the right to reacquire fee simple title to the Hotel Unit from the Developer (and Holding Company, as applicable) upon payment by the City to the Developer (or Holding Company, as applicable) of a reacquisition payment of \$232,000.00 (the “Reacquisition Payment”) and the Developer (and Holding Company, as applicable) shall be obligated to convey fee simple title to the Hotel Unit to the City by a Special Warranty Deed (the “Reacquisition Deed”) upon receipt of the Reacquisition Payment. In the event the City reacquires title to the Hotel Unit as described in the foregoing but the Alternative Developer does not commence construction of the Alternative Hotel Proposal within twelve (12) months of the date the City and the Alternative Developer execute a binding development agreement for the Alternative Hotel Proposal, the Developer shall have the exclusive right to immediately reacquire the Hotel Unit upon payment to the City of the Reacquisition Payment, subject to the terms and conditions of this Agreement, including, without limitation, subparagraph (ii) below. Notwithstanding anything to the contrary set forth in this Section 5.5(b), during the First City Reacquisition Period, Developer shall continue to have the right to develop the Hotel on the Hotel Unit in accordance with this

Agreement, and in the event that the Developer commences construction of the Hotel prior to the City and Alternative Developer fully satisfying the Reacquisition Condition described above and the City delivering the Reacquisition Payment, then the City Reacquisition Rights shall be deemed to automatically terminate and be of no further force and effect and the City will promptly execute and record a release of the City Reacquisition Rights set forth in this Section 5.5(b) to reacquire the Hotel Unit.

(ii) Second City Reacquisition Right. In the event that the City has not satisfied, or caused to be satisfied, the Reacquisition Condition and delivered the Reacquisition Payment by or before the end of the First City Reacquisition Period, Developer shall have the exclusive continuing right to develop the Hotel on the Hotel Unit in accordance with this Agreement for a period of eighty-four (84) months from the end of the First City Reacquisition Period, and in the event that the Developer commences construction of the Hotel by or before the conclusion of this eighty-four (84) month time period, then any and all reacquisition rights of the City under this Section 5.5(b) shall be deemed to automatically terminate and be of no further force and effect and the City will promptly execute and record a release of the rights set forth in this Section 5.5(b) to reacquire the Hotel Unit. In the event that Developer does not commence construction of the Hotel by or before the end of this eighty-four (84) month period, the City shall have the right (the “Second City Reacquisition Right”), but not the obligation, to reacquire the Hotel Unit by delivery of written notice to the Developer and the Holding Company (the “Reacquisition Notice”) within one hundred eighty (180) days (the “Second City Reacquisition Period”) following the end of the eighty-four (84) month period. If the City exercises the Second City Reacquisition Right by delivery of the Reacquisition Notice by or before the end of the Second City Reacquisition Period, the Developer (and Holding Company, as applicable) shall be obligated to convey the Hotel Unit to the City by special warranty deed upon receipt of the City’s Reacquisition Payment. In the event that the City does not exercise the Second City Reacquisition Right and deliver the Reacquisition Payment to the Developer by or before the end of the Second City Reacquisition Period as described above, or the Developer commences construction of the Hotel in accordance with this Agreement prior to the receipt of the City’s Reacquisition Notice, then the City Reacquisition Rights under this Section 5.5(b) shall be deemed to automatically terminate and be of no further force and effect and the City will promptly execute and record a release of the City Reacquisition Rights set forth in this Section 5.5(b) to reacquire the Hotel Unit.

ARTICLE VI

PARKING LEASE

Section 6.1. Parking Lease. Upon completion of the Parking Structure, the CDA shall lease the Private Ramp to Developer pursuant to a parking lease agreement (the “Parking Lease”) upon substantially the terms and conditions set forth on the attached Exhibit G. The Parking Lease shall be in a form agreed to by the City, the CDA and the Developer prior to the Project Commencement Closing and executed by the CDA and Developer at the time of such closing. The City, the CDA and the Developer acknowledge and agree that (i) the development of the Project is a joint undertaking of the City, the CDA and the Developer; and (ii) the terms of the

Parking Lease provide the CDA with substantial control focused on preserving the CDA's ownership benefits. Accordingly, the CDA, as landlord, shall be deemed to be the owner of the Private Ramp Unit. Further, if during the term of the Parking Lease the City seeks a payment in lieu of taxes from the CDA related to the Private Ramp Unit, the CDA covenants and agrees that the obligation to make the payment in lieu of taxes shall not be passed through to Developer.

Section 6.2. Purchase by the Developer. At the end of the 27-year term of the Lease, the CDA shall convey to the Developer fee title to the Private Ramp. As consideration for the conveyance, the Lessee shall pay to the Lessor the lump sum of Four Million and 00/100 Dollars (\$4,000,000.00) (the "Terminal Payment").

Section 6.3. Subleasing. The Developer shall be expressly permitted, without the consent of the CDA, to sublease or grant licenses or other occupancy rights to the Private Ramp in accordance with the Parking Lease provided such subleases or licenses are on commercially reasonable terms including, without limitation, the payment of rent at commercially reasonable rates, as determined by the Developer in the exercise of the Developer's reasonable discretion.

Section 6.4. Memorandum of Parking Lease. A memorandum of the Parking Lease shall be recorded in the Dane County Register of Deeds office, and any sublessee shall be permitted to record a memorandum of such sublease in the Dane County Register of Deeds office.

ARTICLE VII

CONDITIONS PRECEDENT TO PROJECT COMMENCEMENT

Section 7.1. Conditions Precedent. The parties' respective obligations to complete the financing and entitlement phase of development and undertake the Project contemplated by this Agreement are conditioned on timely satisfaction of each of the following conditions (collectively, the "Conditions Precedent") at or prior to the Project Commencement Closing Deadline:

(a) Approval by the City Council of the CSM and the resolution for conveyance of the Pinckney Street Subterranean Area, as set forth in Section 2.4.

(b) Delivery of the fully-executed CSM by the City, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.4.

(c) Delivery of the fully-executed deed conveying the Project Parcel to the Developer, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.4.

(d) Preparation of a mutually acceptable set of Condominium Documents, to be executed and recorded by the parties at the Project Commencement Closing, as set forth in Section 2.5.

(e) Delivery of the fully-executed deed conveying the Public Units to the CDA, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.6.

- (f) Delivery of a fully-executed master lease agreement between the Developer and the Holding Company for the Private Units, as set forth in Section 2.7.
- (g) Approval within the City's 2016 capital budget of all of the funds required of the City under this Agreement.
- (h) Preparation of a mutually acceptable Disbursing Agreement, to be executed by the parties at the Project Commencement Closing, as set forth in Section 3.1.
- (i) Approval of an amendment to the Project Plan for TID 25 by, and submission of the Agreement to, the Joint Review Board and the City of Madison Common Council.
- (j) Preparation of a mutually acceptable Hiring Diversity MOU, to be executed by Exact and the City at the Project Commencement Closing, as set forth in Section 3.4 (a).
- (k) Delivery to the City by Exact of an acceptable transportation demand management plan prior to the Project Commencement Closing, as set forth in Section 3.4 (a).
- (l) Delivery by Exact Corporation of the fully-executed Jobs-TIF Guarantee required under Section 3.4 (a).
- (m) Delivery by the Developer of the fully-executed Parking-TIF Guarantee required under Section 3.4 (b).
- (n) Approval of the GDP for the Project.
- (o) Approval of an SIP for the Parking Structure and the Block 88 Office Building.
- (p) Receipt of all other Land Use Approvals necessary to initiate the Parking Structure and the Block 88 Office Building.
- (q) Approval by the City and the CDA of the plans and specifications for the Parking Structure, including the Bike Center, as set forth in Section 5.1 (a).
- (r) Payment by the City of its proportionate share of the pre-development costs pursuant to Section 5.1 (b).
- (s) Preparation of a mutually acceptable Construction Administration Agreement, to be executed by the parties at the Project Commencement Closing, as set forth in Section 5.1 (d).
- (t) Delivery of a fully-executed Labor Peace Agreement as required under Section 5.3 (j).
- (u) Approval by the Common Council of each element of the Hotel development set forth in Section 5.3(b).
- (v) Preparation of a mutually acceptable Parking Lease, to be executed by the parties at the Project Commencement Closing, commencing upon substantial completion of the Parking Structure, as set forth in Section 6.1.

(w) Authorization of any approvals that may be required by the CDA in order to undertake the Project.

(x) Preparation of a mutually acceptable Public Ramp ROFR, to be executed by the parties at the Project Commencement Closing, as set forth in Section 5.1(g).

(y) Preparation of a mutually acceptable Reacquisition Agreement, to be executed by the parties at the Project Commencement Closing, as set forth in Section 5.5(b), and mutual approval by the parties of the legal structure used to provide protection to the City Reacquisition Rights from creditors as described in Section 5.5(b) above.

(z) Developer, City and, as necessary, the CDA entering into a contract for the construction of public improvements related to the ROW Work, which such agreement shall provide for the allocation of costs to be paid by the parties for the ROW Work.

ARTICLE VIII

INSURANCE

Section 8.1. Insurance. The parties shall purchase and maintain such insurance coverages as may be required by the parties' respective lenders and risk managers and as the parties otherwise agree is necessary to adequately protect the parties' respective interests in the Project. The insurance policies and provisions to be set forth in the documents contemplated by this Agreement to be executed and delivered as part of the Project Commencement Closing shall be subject to the review and approval of the City's Risk Manager and the Developer.

ARTICLE IX

INTENTIONALLY OMITTED.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Section 10.1. Representations and Warranties by the City. The City represents and warrants that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State. The City has the power to enter into this Agreement and carry out its obligations hereunder and provision has been made to pay the liability that will accrue under this Agreement, as contemplated at Wis. Stat. § 62.09(10)(f).

(b) The City has no knowledge as to the presence of hazardous substances as the same are described in the regulations promulgated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and/or in the environmental laws of the State in, on or under the Property. With respect to the Project, the City of Madison is aware of no facts the existence of which would cause it to be in violation of any state, local or federal environmental law,

regulation or review procedure, or which would give any person a valid claim under the environmental laws of the State.

(c) There is not pending, nor to the best of the City's knowledge after due inquiry is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforceability of this Agreement.

Section 10.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company organized and validly existing under the laws of the State.

(b) The Developer has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) There are no pending or threatened legal proceedings of which the Developer has knowledge which seek to restrain or enjoin the transactions contemplated by this Agreement or which question the authority of the Developer to execute and deliver this Agreement or the validity of this Agreement.

Section 10.3. Representations and Warranties by the CDA. The CDA represents and warrants that:

(a) The CDA is a public body corporate and politic properly created pursuant to Wis. Stat. § 66.1335 and validly existing under the laws of the State.

(b) The CDA has duly authorized the execution of this Agreement and the performance of its obligations hereunder, and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, is prevented, limited by or conflicts with or results in a breach of, any indebtedness, agreement or instrument of whatever nature to which the CDA is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) There are no pending or threatened legal proceedings of which the CDA has knowledge which seek to restrain or enjoin the transactions contemplated by this Agreement or which question the authority of the CDA to execute and deliver this Agreement or the validity of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1. Indemnification Covenants. Indemnification clauses incorporated into any contracts resulting from this Agreement will be subject to review and approval by the CDA and the City's Risk Manager and City Attorney. In accordance with City of Madison Administrative Procedure Memorandum 1-1, the City cannot agree to indemnify any party without approval of the Common Council. Therefore, any contract resulting from this Agreement requiring the City to indemnify the Developer is subject to approval of the Common Council and CDA Board.

ARTICLE XII

EVENTS OF DEFAULT

Section 12.1. Notice and Opportunity to Cure. Whenever any party to this Agreement alleges a default by the other, the party alleging the default shall provide written notice to the other specifying the nature of the default and the actions necessary to cure the default. If the alleged default is not cured within thirty (30) days after the defaulting party's receipt of such notice, the non-defaulting party may take any one or more of the actions set forth below:

(a) The non-defaulting party may suspend its performance under this Agreement until it receives assurances from the defaulting party that the defaulting party will cure its default and continue its performance under this Agreement.

(b) The non-defaulting party may cancel and terminate this Agreement.

(c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the defaulting party, including any actions to collect any payments due under this Agreement or to pursue any claims for monetary damages at law or to enforce performance and observance of any obligation, agreement, or covenant to the defaulting party under this Agreement.

The non-defaulting party may elect to take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) day period, if the defaulting party provides the non-defaulting party with written assurances satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible. No notice of such election by the non-defaulting party shall be required.

Section 12.2. No Remedy Exclusive. No remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be construed to be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient.

Section 12.3. No Implied Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any rights or remedies which the non-breaching party shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed hereunder.

ARTICLE XIII

ADDITIONAL PROVISIONS

Section 13.1. Amendments; Incorporation of Exhibits. As the parties continue work on the pre-development activities contemplated herein and prepare the various agreements referenced above in connection with the design, development, and financing of the Project, the parties will amend this Agreement to incorporate additional details, terms and conditions and the various agreements referenced above may be appended as exhibits to this Agreement. The parties may amend this Agreement, including but not limited to extending any deadlines, only by a written document agreed to by the parties, and in conformity with Section 13.2 below.

Section 13.2. Consents and Approvals; Good Faith. Except for matters for which there is a standard of discretion specifically set forth herein, wherever this Agreement provides for a determination, decision, selection, consent, approval, acceptance, adoption, satisfaction, or other action, the parties hereto shall exercise good faith in undertaking such actions and shall not unreasonably withhold, condition or delay any determination, decision, selection, consent, approval, acceptance, adoption, satisfaction or other action that may be necessary to fully implement the terms of this Agreement.

Section 13.3. Conflict of Interests. No member, official, or employee of either “City Party” (defined herein to include the City and the CDA) shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of either City Party shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by either City Party for any amount which may become due to the Developer on any obligations under the terms of this Agreement, except in the case of willful misconduct.

Section 13.4. Restrictions on Use. The Developer shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

Section 13.5. Provisions Not Merged With Assignment. Notwithstanding any provision of law or court decision to the contrary, none of the provisions of this Agreement are intended to or shall be merged by reason of any assignment or conveyance transferring any interest in the Condominium Property and any such assignment or conveyance shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 13.6. Broker's Commission. The parties acknowledge that no broker's commission or finder's fee is payable with regard to this transaction. Each party agrees to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind arising from or connected with any broker's commission or finder's fee or other charge claimed to be due any person arising from the indemnifying party's conduct with respect to this transaction.

Section 13.7. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 13.8. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, transmitted by facsimile, delivered by a recognized overnight carrier, or delivered personally to the following addresses:

If to the Developer: JDS Development, LLC
Attn: Robert P. Dunn
33 East Main Street, Suite 500
Madison, WI 53703
Phone: 608-274-7447
Fax: 608-274-7442

With a copy to: Michael, Best & Friedrich, LLP
Attn: Michael S. Green
One South Pinckney Street, Suite 700
Madison, WI 53703
Phone: 608-257-7482
Fax: 608-283-2275

If to a City Party: City of Madison
Attn: Manager, Office of Real Estate Services
215 Martin Luther King, Jr. Blvd., Room 312
Madison, WI 53703
Phone: 608-267-4933

With copy to: City Attorney
City County Building, Room 401
210 Martin Luther King Jr. Blvd.
Madison, WI 53703
Phone: 608-266-4511
Fax: 608-267-8715

Section 13.9. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 13.10. No Third-Party Beneficiaries. It is the intention of the parties to this Agreement that no person who is not a party signatory to this Agreement shall, under a third party beneficiary theory or otherwise, have any rights or interests hereunder as against either City Party, and no such other party shall have standing to complain of either City Party's exercise of, or alleged failure to exercise, its rights and obligations, or of either City Party's performance or alleged lack thereof, under this Agreement.

Section 13.11. Litigation. Each City Party and the Developer will reasonably cooperate with one another with respect to any litigation commenced by third parties in connection with this Agreement.

Section 13.12. Mortgagees Not Obligated To Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to those which are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any holder which obtains title to any Unit as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to any Unit or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to complete the construction.

Section 13.13. Accessibility Accommodations. The Developer agrees to ensure the Project will be accessible to persons with physical disabilities, and that the Project is in compliance with section 39.05 of the Madison General Ordinances and the Americans with Disabilities Act, where applicable.

Section 13.14. Non-Discrimination. In the performance of its obligations hereunder, Developer agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Developer further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity, or national origin.

Section 13.15. Workforce Utilization. Developer agrees that, within thirty (30) days after the effective date of this Agreement, Developer will provide to the City of Madison Affirmative Action Department certain workforce utilization statistics, using a form to be furnished by the City.

If this Agreement is still in effect, or if the City enters into a new agreement with Developer, within one year after the date on which the form was required to be provided, Developer will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Affirmative Action Department no later than one year after the date on which the first form was required to be provided.

Developer further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the City of Madison Affirmative Action Department of each of its job

openings at facilities in Dane County for which applicants not already employees of Developer are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. Developer agrees to interview and consider candidates referred by the Affirmative Action Department if the candidate meets the minimum qualification standards established by the Developer, and if the referral is timely. A referral is timely if it is received by Developer on or before the date stated in the notice.

Section 13.16. Affirmative Action. As used in this Section 13.16, the term “Developer” means Developer and all contractors and subcontractors who perform work on the Project. The Developer agrees and understands that an Affirmative Action Plan is required by this agreement. Options C. and D. in Article IV below are not available to the Developer, per MGO sec. 39.02(9)(a)3., which requires the submission of an Affirmative Action Plan by all developers or other entities who enter into a contract authorized by Wis. Stat. § 66. 1105(3)(e), and their contractors and subcontractors.

Article I

The Developer shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Developer. The Developer agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

Article II

The Developer shall in all solicitations or advertisements for employees placed by or on behalf of the Developer state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity, or national origin.

Article III

The Developer shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Developer's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

Article IV

(This article applies only to non-public works contracts.)

The Developer agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Developer warrants and certifies that one of the following paragraphs is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 CFR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.*

- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than twenty-five thousand dollars (\$25,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.*

** Options C and D under Article IV are not available to the Developer under this Agreement.*

Article V

(This article is not applicable)

Article VI

The Developer will maintain records as required by Section 39.02 (9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

Article VII

In the event of the Developer's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.02 and 39.03 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the Developer ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime Developer 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Developer in the manner described above. The preceding sentence shall not be construed to prohibit a prime Developer from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

(This article is not applicable)

Article IX

The Developer shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article.)

Section 13.17. Living Wage. Developer agrees to pay all employees employed by Developer in the performance of this Agreement, whether on a full-time or a part-time basis, a base wage of not less than the City minimum hourly wage as required by Sec. 4.20, MGO.

Section 13.18. Equal Benefits. For the duration of this Agreement, the Developer agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of

Sec. 39.07, MGO. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(a) Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, the Developer is unable to provide the benefit, the Developer shall provide the employee with the cash equivalent of the benefit.

(b) Proof of Domestic Partner Status. The Developer may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

(c) Notice Posting, Compliance. The Developer shall post a notice informing all employees of the equal benefit requirements of this Agreement, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

(d) Subcontractors (Service Agreements Only). Developer shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Sec. 39.07, MGO.

Section 13.19. Notification of Position Openings. The Developer agrees to notify the State of Wisconsin Department of Workforce Development and the local workforce development board established under 29 USC 2832 of any positions to be filled in Dane County, as required by Sec. 66.1105(6c), Wis. Stats.

Section 13.20. Exclusivity. During the term of this Agreement, the Developer shall have the exclusive right to negotiate with the City concerning the acquisition and development of the Property and the City agrees that it shall not directly or indirectly solicit or entertain any other proposals for the acquisition and development of the Property during the term of this Agreement.

Section 13.21. Adequate Consideration. The parties acknowledge and agree that this Agreement is intended to be binding and enforceable and each party waives any right to challenge the enforceability of this Agreement based on discretion afforded either party in evaluating the fulfillment of certain conditions precedent to the Project Commencement Closing. Each party covenants and agrees to exercise good faith in seeking to satisfy such contingencies. Each City Party acknowledges that this Agreement requires Developer to commit time and resources in pursuing the Project and that such expenditures constitute good and sufficient consideration to each City Party for entry into this Agreement. Furthermore, the parties agree that, upon satisfaction or waiver of the last of the contingencies set forth herein, this Agreement shall be deemed affirmed without inclusion of such contingencies.

Section 13.22. Sale to Tax Exempt Entity – PILOT Payment. With the exception of the conveyance of the Public Units to the CDA as contemplated in this Agreement, if Developer sells or transfers any portion of the Property to a tax exempt entity (“Buyer”), whereupon such ownership renders the Property or any portion thereof as property tax exempt, Buyer 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 Buyer, frozen, through the TID Lifespan. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments (“Buyer’s Mortgage”) at the time of Buyer’s acquisition of the Property. The Buyer’s Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.

ARTICLE XIV

TERMINATION OF AGREEMENT

Section 14.1. Termination. In the event all of the Conditions Precedent to the Project Commencement Closing are not satisfied on or before December 4, 2015, this Agreement shall automatically terminate unless the parties agree in writing to extend such date.

Section 14.2. Expiration. If not terminated pursuant to Section 14.1 above, this Agreement shall terminate upon the date all of the parties’ other respective obligations hereunder are satisfied, but no such termination shall terminate any indemnification or other rights or remedies arising hereunder due to any default which occurred and was continuing prior to such termination.

Section 14.3. Effect of Termination. Upon termination of this Agreement pursuant to this Article XIV, this Agreement shall be null and void and, except for obligations that expressly survive termination, neither party shall have any further obligations or liabilities hereunder. Upon such termination the Developer and each City Party shall deliver to each other such documents as may be necessary to evidence the termination of this Agreement.

(Signatures begin on next page.)

CITY OF MADISON, WISCONSIN,
a municipal corporation

By: _____
Paul R. Soglin
Mayor

By: _____
Maribeth Witzel-Behl
City Clerk

APPROVED:

APPROVED AS TO FORM:

David P. Schmiedicke
Finance Director

Michael P. May, City Attorney

The execution of this Agreement by City officials was authorized by Enactment No. _____,
File No. _____, adopted _____, 2015.

**COMMUNITY DEVELOPMENT
AUTHORITY OF THE CITY OF MADISON,**
a body corporate and politic

By: _____
Dean Brassler
Chair

By: _____
Natalie Erdman
Executive Director

The execution of this Agreement by CDA officials was authorized by Enactment No.
_____, File No. _____, adopted _____, 2015.

JDS DEVELOPMENT, LLC

By: _____
Robert P. Dunn
Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

City Parcel

Block 88, Madison, according to the original plat thereof, in the City of Madison, Dane County, Wisconsin.

Utility Parcel

Lots 1, 2, 3, 11, 12 and 13, Block 105, Madison, according to the original plat thereof, in the City of Madison, Dane County, Wisconsin.

EXHIBIT B

PURCHASE AGREEMENT

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “Agreement”), made as of _____, 2015 (the “Effective Date”) by and between the City of Madison, Wisconsin, a Wisconsin municipal corporation (“Seller”), with an address at City County Building, 210 Martin Luther King Jr. Blvd., Madison, WI, 53703, and JDS Development, LLC, a Wisconsin limited liability company (“Buyer”), with an address at 33 East Main Street, Suite 500, Madison, WI, 53703.

WITNESSETH:

WHEREAS, Seller is the fee owner of that certain real property located in Dane County, State of Wisconsin and more particularly described in Exhibit A attached hereto together with, all and singular, the rights, privileges, advantages, and appurtenances belonging or in any way appertaining thereto (the “Land”);

WHEREAS, concurrent with the date hereof, Seller and Buyer have entered into that certain Amended and Restated Development Agreement (the “Development Agreement”) with respect to the Judge Doyle project as further described in the Development Agreement (the “Project”).

WHEREAS, pursuant to the terms of the Development Agreement, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Property (as defined in Article I below), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, and intending to be legally bound hereby, Seller and Buyer agree as follows:

ARTICLE I PURCHASE AND SALE

Seller hereby agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Land, together with all of the buildings and other improvements located thereon unless otherwise specifically excepted herein or in the Development Agreement, if any (together with the Land, collectively referred to herein as the “Property”).

ARTICLE II PURCHASE PRICE

Subject to the adjustments and prorations described in Article III below, the total purchase price to be paid by Buyer to Seller for the Property is the amount of Fifteen Million and no/100 (\$15,000,000.00) (the “Purchase Price”). The Purchase Price shall be paid in full on the Closing Date (defined herein), delivered to First American Title Insurance Company (the “Escrow Agent”), by bank wire transfer of immediately available good funds, less any credits against the Purchase Price due to Buyer.

ARTICLE III ADJUSTMENTS AND PRORATIONS

The Purchase Price shall be adjusted at Closing (hereinafter defined) on the following basis:

3.1 Property Taxes, Assessments. Seller shall pay all real and personal property taxes for years prior to the year of Closing. Real and personal property taxes levied for the year of Closing shall be prorated on a daily basis to the Closing Date using the actual real and personal property taxes levied for the year of Closing, and Buyer shall receive a credit to the Purchase Price at Closing for Seller's pro rata share. If the actual tax levy is not known at the time of Closing, Buyer and Seller shall prorate the real and personal property taxes at the time of Closing on a daily basis based on the net real and personal property taxes for the previous year. If the Property is part of a larger tax parcel, the real and personal property taxes shall be further prorated, based upon the ratio of the total square footage of the Property to the total square footage of such tax parcel. Seller shall pay all special and area assessments for work actually commenced, completed, or levied prior to the date hereof. Buyer shall be responsible for all other special and area assessments and for all connection or interceptor charges payable to any utility or municipality as a prerequisite to obtaining any sanitary or storm sewer, gas, water or electrical service not now provided to the Property.

3.2 Other Costs. Seller shall pay all utility charges, including charges for storm water, sewer, electricity, gas and water on the basis of the meter readings taken as of the Closing Date. Buyer shall pay all recording fees, except that Seller shall pay the recording fees for such documents as are required to be recorded in order to cause title to the Property to be in the condition called for by this Agreement. Seller shall pay all transfer taxes, if applicable (including the Wisconsin Real Estate Transfer Fee).

ARTICLE IV TITLE AND SURVEY

4.1 Title. Within ten (10) days of the Effective Date, Seller shall order from Escrow Agent (or another title company at Buyer's choice) a current title insurance commitment (the "Commitment") for an ALTA Owner's Form Policy of Title Insurance ("Title Policy") together with copies of all underlying documents relating to the Schedule B exceptions (the "Underlying Documents"; collectively, with the Commitment, the "Title Commitment"). Within ten (10) days of the Effective Date, Seller shall provide a copy of the existing survey of the Land that it previously obtained at its sole cost and expense (the "Survey"), which such Survey shall be subject to Buyer's review and approval pursuant to the terms set forth in this Article IV. Any additional survey of the Property or amendment or update to the Survey provided by the City pursuant to the preceding sentence, including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 that may be required to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the title company providing the title insurance described in this Section 4.1 shall be at the sole cost and expense of the Buyer.

4.2 Title Notice. Buyer shall have ten (10) days following the date of receipt of both the Title Commitment and the Survey, whichever is later (the "Title Review Period") to give Seller and Escrow Agent written notice ("Buyer's Title Notice") of Buyer's disapproval or conditional approval of any matters shown in the Title Commitment, the Underlying Documents or the Survey (collectively, the "Title Documents") except for the following "Standard Objections" which Buyer shall not be required to object to, and it shall be presumed that Seller shall cause to be satisfied or release at or before Closing: (a) standard exceptions which can be removed by the Survey or an affidavit of the Seller, (b) mortgages and other secured liens, and (c) real property taxes and special assessments to be prorated or paid at Closing in accordance with Article III. Seller shall respond to Buyer's Title Notice within five (5) business days of Seller's receipt thereof indicating whether Seller elects to cure to Buyer's satisfaction the disapproved or conditionally approved title matters identified in Buyer's Title Notice ("Seller's Title Notice"). If Seller

does not elect to cure any disapproved or conditionally approved title matters, or if Buyer disapproves Seller's Title Notice, or if Seller fails to timely deliver Seller's Title Notice, then Buyer shall have the right, upon delivery to Seller and Escrow Agent of a written notice, to either (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved, or (2) terminate this Agreement. If Buyer fails to give Buyer's Title Notice on or before the end of the Title Review Period, then Buyer shall be deemed to have approved the condition of title except for the Standard Objections, which Seller shall satisfy or release at or before Closing. Any title matters deemed approved shall be referred to herein as "Permitted Encumbrances." If prior to Closing, a new matter affecting title is disclosed to Buyer, it shall have the same rights thereafter as set forth in this paragraph. Seller shall discharge any liens at Closing.

ARTICLE V DUE DILIGENCE AND CONTINGENCIES

5.1 Due Diligence Period. Unless otherwise agreed to in writing by the Seller and Buyer, Buyer shall have until 5:00 p.m. Central Time on the date which is sixty (60) days following the Effective Date, (the "Due Diligence Period"), to determine, in Buyer's sole and absolute discretion, whether it is feasible to acquire the Property. Buyer may terminate this Agreement for any or no reason prior to expiration of the Due Diligence Period.

(a) Documents and Materials. Within ten (10) business days of the Effective Date, Seller shall deliver to Buyer all leases, occupancy agreements, management agreements, insurance policies, other agreements, documents, reports (including, without limitation, environmental, engineering and soil, and zoning reports), appraisals, title reports and policies, surveys, crop plans, maps, materials, tax bills and statements and other instruments relating to the Property in its possession or control, together with any other agreements, documents, information, reports, materials and instruments that Buyer reasonably requests as necessary to perform its complete due diligence review of the Property (collectively, the "Documents and Materials").

(b) Physical Inspection. During the Due Diligence Period, Buyer, its employees and agents (collectively, "Buyer's Representatives") shall have the right to enter upon the Property, at reasonable times during ordinary business hours, to make such inspections, surveys and tests as may be necessary in Buyer's discretion, including, without limitation, soils tests, environmental studies, toxic waste analysis, geological studies, engineering studies, archeological studies and land use or related studies. Buyer and Buyer's Representatives shall use care and consideration in connection with any of its inspections or tests and Seller shall have the right to be present during any inspection of the Property by Buyer or Buyer's Representatives. Buyer shall restore the Property to its original condition after any and all tests or inspections. Buyer shall have the right to perform invasive testing of the Property or any portion thereof, including, without limitation, any boring of the Property in connection with an environmental audit or otherwise.

(c) Indemnification. Buyer and its authorized agents, engineers, consultants and contractors shall be liable to and shall agree to indemnify, defend and hold harmless the Seller, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in

connection with, caused by or resulting from the acts or omissions of the Buyer and /or its authorized agents, engineers, consultants and contractors, and all of their and Buyer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property pursuant to this Section 5.1. Negligence on the part of the Seller and its officials, officers, agents or employees shall not eliminate the indemnification obligations stated in the preceding sentence. The parties acknowledge and agree that Seller shall have no liability for any matters subject to the indemnification responsibilities of Buyer set forth in this section. The obligations contained in this Section 5.1(c) shall survive the Closing.

(d) Insurance. During the pendency of any inspection and testing activities occurring pursuant to this Section 5.1, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property related to the inspection and testing activities described in this Section 5.1 shall carry commercial general liability insurance covering as insured the Buyer and naming the Seller, its officers, officials, agents and as additional insured's, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the Seller's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the Seller thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of the Agreement. As evidence of this coverage, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish the Seller with a certificate of insurance on a form approved by the Seller, and, if requested by the Seller's Risk Manager, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to the Seller prior to the performance of any work on the Property related to the inspections and testing in this Section 5.1. If the coverage required above expires while the Agreement is in effect, the Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to the Seller for approval.

(e) Acceptance of Due Diligence. Prior to the expiration of the Due Diligence Period, Buyer may deliver to Seller either (1) a notice confirming that it is satisfied with the results of its due diligence review described in this Section 5.1 (an "Acceptance Notice"), or (2) a notice terminating this Agreement if Buyer determines that it is dissatisfied with any aspects of the Property or the feasibility of its ownership of the Property or with any of the Documents and Materials or for any or no reason ("Termination Notice"). If Buyer fails to deliver either an Acceptance Notice or a Termination Notice on or before the expiration of the Due Diligence Period, then the Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, with the exception of any representations and warranties set forth in this Agreement, the Development Agreement and any documents contemplated by or to be entered into at Closing pursuant to this Agreement or the Development Agreement, and the parties shall proceed to close the transaction as provided herein, subject to the satisfaction of the conditions to closing set forth in Article VI hereof.

(f) The Buyer agrees that if it terminates the Agreement, as provided herein, or fails to close the transaction contemplated hereby for any reason, then, the Buyer shall deliver to the Seller, at no cost to the Seller, complete and accurate copies of all of the Buyer's due diligence materials other than any attorney work product or attorney-client privileged documents.

(g) The Buyer shall keep the Property free of all liens in connection with its inspection of the Property and shall cause all such liens to be removed immediately upon being notified of same.

ARTICLE VI
CONDITIONS TO CLOSING

6.1 Conditions to Seller's Obligation to Sell. The obligation of Seller to close on the sale of the Property is conditioned on the following being satisfied or waived by Seller on or before the Closing Date:

- (a) The delivery to Seller of the Purchase Price;
- (b) Closing on the transactions and satisfaction of the Conditions Precedent described in the Development Agreement; and
- (c) Buyer shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Buyer on or before the Closing Date.

6.2 Conditions to Buyer's Obligation to Purchase. The obligation of Buyer to close on the purchase of the Property is conditioned on the following being satisfied or waived by Buyer on or before the Closing Date:

- (a) The delivery to Buyer of the Deed as provided herein, plus the payment by Seller to the appropriate parties of any closing costs to be paid by Seller hereunder;
- (b) All representations and warranties of Seller contained in this Agreement shall be true in all material respects at and as of the Closing Date and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Seller on or before the Closing Date including, but not limited to, the delivery by Seller of the items described in Section 7.2 below;
- (c) Buyer's acceptance of the Property consistent with Article V herein;
- (d) Buyer's review and approval of the Title Commitment and Survey consistent with Article IV herein;
- (e) The delivery to Buyer of the Property in substantially the same condition as of the Effective Date of this Agreement;
- (f) Closing on the transactions and satisfaction of the Conditions Precedent described in the Development Agreement; and
- (g) The delivery of full, complete and exclusive possession of the Property as of the Closing Date, free and clear of any rights of tenants, occupants or other parties, unless otherwise agreed in writing by the parties hereto.

In the event of failure for all of the above conditions to be satisfied (or waived by Buyer) on or before the Closing Date, Buyer may, at its option, terminate this Agreement.

ARTICLE VII CLOSING

The closing of the purchase and sale of the Property (the "Closing") shall be as follows:

7.1 Time and Place. The Closing shall take place at the offices of the Escrow Agent on the date of the Project Commencement Closing (as defined in the Development Agreement), or upon such other date as agreed to in writing by Buyer and Seller (the "Closing Date").

7.2 Seller's Obligations. At the Closing, Seller shall do the following:

The following documents or items shall be delivered to the Escrow Agent, Buyer or Seller, as set forth below, on or before the Closing Date:

(a) Seller shall execute, acknowledge and deliver to Buyer a Quit Claim Deed in a form reasonably satisfactory to Buyer (the "Deed") conveying all of the Property to Buyer, subject only to Permitted Encumbrances.

(b) Seller shall deliver to Buyer evidence of termination of any leases or management agreements currently affecting the Property.

(c) If applicable, Seller and Buyer shall each execute and deliver an assignment of contracts, permits and/or licenses.

(d) Seller shall execute, acknowledge and deliver to the Escrow Agent an owner's affidavit and gap indemnity affidavit in form reasonably satisfactory to the Escrow Agent.

(e) Seller shall deliver to Buyer a non-foreign person certification, if applicable.

(f) Buyer shall deliver to Seller the Purchase Price pursuant to, and in accordance with, Article II and Article III above.

(g) Seller and Buyer shall each execute and deliver to each other and Escrow Agent a closing statement (the "Closing Statement").

(h) Seller and Buyer shall each approve the form of the Wisconsin Transfer Tax Return to be submitted electronically at Closing.

(i) Seller and Buyer shall each execute and deliver any other documents reasonably requested by the other or the Escrow Agent necessary to effectuate the transactions contemplated hereby.

(k) Seller and Buyer shall equally share any escrow and closing fees charged by the Escrow Agent.

ARTICLE VIII
SELLER REPRESENTATIONS AND WARRANTIES

Seller hereby represents, warrants and covenants to Buyer that:

8.1 Binding Agreement. The acceptance and performance of the terms and provisions of this Agreement have been duly authorized and approved by all necessary parties. Upon Seller's execution and delivery of this Agreement this Agreement shall be binding and enforceable against Seller in accordance with its terms and upon Seller's execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms,

8.2 Consents. Neither the execution or delivery of this Agreement nor the consummation of the Transaction is subject to any requirement that Seller obtain any consent, approval or authorization of or make any declaration or filing with, any governmental authority or third party which has not been obtained or which in any case or in the aggregate, if not obtained or made would render such execution delivery or consummation illegal or invalid, or would constitute a default under, result in the creation of any lien, charge or encumbrance upon the Property or Personal Property.

8.3 Litigation. There is no litigation, arbitration or administrative proceeding pending, nor to the actual knowledge of Seller, threatened against Seller with respect to the Property or this Agreement nor is there any basis known to Seller for any such action or proceeding.

8.4 Condemnation. There are no pending or threatened condemnation proceedings affecting any portion of the Property.

8.5 Compliance. Dedicated access exists to the Property meeting all applicable governmental requirements and the Property complies with all zoning, use, environmental, flood control, planning, building, fire, health, traffic and similar laws codes rules regulations, ordinances and requirements imposed by any local, state and federal governmental authority and is not in violation of any agreements covenants, conditions or restrictions affecting the Property.

8.6 Prior Agreement. Seller has not committed nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than Buyer.

8.7 Assessments. Seller has not been notified of contemplated improvements to the Property or the area surrounding the Property that would result in the assessment of a special improvement or similar lien against the Property.

8.8 Mechanics' Liens. Seller has paid in full for all labor performed and professional services performed in respect to and materials, machinery fixtures and tools delivered to, furnished to, or incorporated into the Property, or which would otherwise give rise to a lien or a right to lien the Property.

Seller agrees to keep the Property free from any such liens and to indemnify, defend, protect, and hold Buyer harmless from any such liens and all attorney's fees and other costs incurred by reason thereof.

8.9 Hazardous Substances. The Property has not been used to generate, manufacture, refine transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances (defined below) or solid waste, except in compliance with all applicable federal state and local laws rules and regulations and Seller has not caused or permitted and has no knowledge of the presence or any Release (defined below) of any Hazardous Substances on or offsite the Property. For the purposes of this Agreement "Hazardous Substances" shall include, without limitation, asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof) and materials or substances defined as "hazardous waste," "hazardous substances" "hazardous materials" "pollutants" or "*toxic* substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601 et, seq.; the Resource Conservation and Recovery Act as amended 42 U.S.C. Section 6901 et. seq.; the Federal Water Pollution Control Act as amended, 33 U.S.C. Section 1251 et. seq.; any environmental law promulgated by the State of Wisconsin: and in the rules or regulations adopted and guidelines promulgated pursuant to said laws. "Release" shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

8.10 Seller's Information. All certificates, permits, schedules and other documents containing factual information to be delivered by Seller or by Seller's officers and other agents pursuant to or in connection with this Agreement, are and shall be true and correct and do not and shall not contain any untrue statement of a material fact or omit to state any material fact the disclosure of which is necessary to make the statements contained therein and herein, in light of the circumstances under which they are made not misleading.

8.11 No Leases. Seller has not entered into any unrecorded and undisclosed leases, contracts or obligations affecting the Property except the following agreements which shall be terminated before Closing:

- (a) B-Cycle
- (b) Photovoltaic Parking Canopy

8.12 Notice of Litigation. Seller has received no written notice of any claims, actions, or lawsuits by any person or entity with respect to the Property

8.13 Compliance with Agreement. Seller has, or will have on or before the Closing, performed observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed observed and complied with by Seller, and will execute and deliver all documents required to be executed and delivered by Seller in order to consummate the transaction contemplated herein.

ARTICLE IX
BUYER REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller that, as of the date hereof, Buyer has full power and authority to execute and deliver this Agreement and it constitutes, the legal, valid and binding obligations of Buyer. Buyer has, or will have on or before the Closing, performed observed and complied with all of the covenants, agreements and conditions required by this Agreement to be performed observed and complied with by Buyer, and will execute and deliver all documents required to be executed and delivered by Buyer in order to consummate the transaction contemplated herein.

ARTICLE X
OPERATION OF THE PROPERTY PRIOR TO CLOSING; CONDEMNATION

Between the date hereof and the Closing Date, Seller shall continue to operate and maintain the Property in the ordinary course of business. If, prior to the Closing Date, all or any portion of the Property is taken by eminent domain (or is the subject of a pending taking which has not yet been consummated), Seller shall notify Buyer of such fact promptly after obtaining knowledge thereof and Buyer shall have the option to terminate this Agreement by giving notice to Seller not later than ten (10) days after the giving of such notice. If Buyer does not elect to terminate this Agreement, the parties shall proceed to close, at Buyer's option, with a corresponding proportionate reduction in Purchase Price or Seller shall assign to Buyer on the Closing Date the rights of Seller to the award for the taking.

ARTICLE XI
DEFAULT; DAMAGES

In the event of any default under this Agreement, Buyer and Seller agree that the sole and exclusive remedy shall be to terminate this Agreement, and thereafter neither Buyer nor Seller shall have any further liability or obligation to the other hereunder.

ARTICLE XII
GENERAL PROVISIONS

12.1 Entire Agreement; Governing Law; Counterparts. This document contains the entire agreement between Buyer and Seller. This Agreement may be amended or modified only by written instrument duly executed by both of the parties hereto. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. This Agreement may be executed in counterparts and delivered by facsimile or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

12.2 Assignment; Successors and Assigns. Buyer may assign this Agreement in to an affiliate for purposes of acquiring the Property to facilitate the development of the Project in accordance with the Development Agreement. Any such assignment shall be in the form attached hereto at Exhibit B and a copy of such delivered to the Seller. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.3 Confidentiality. Seller and Buyer agree that each will not disclose the contents of this Agreement or any agreement contemplated hereby to any third parties without the consent of the other party, except as may be required to ensure compliance with any applicable laws, rules or regulations of

any governmental authority having jurisdiction over such party. Nothing contained herein shall be construed as prohibiting either party from disclosing the contents of this Agreement on a confidential basis to its officers, directors, employees, affiliates, principals, shareholders, partners, members, lenders, investors, counsel, accountants, consultants and other agents. The provisions of this Section 12.3 shall survive the termination of this Agreement.

12.4 Severability; Attorneys Fees. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. In the event that litigation arises between the Parties, each Party will be responsible for its own costs of litigation unless otherwise permitted by statute or court order.

12.5 Exclusive Dealing. Seller agrees that so long as this Agreement is in effect, Seller will not solicit or accept any offer or enter into any agreement for the Property, or any portion thereof, or any transaction regarding the Seller which would result in any sale, disposition or transfer of any portion of the Property.

12.6 Indemnification by Seller. Seller shall hold harmless, indemnify and defend Buyer from and against any and all claims and liability, and expenses related thereto (including reasonable attorneys' fees), which Buyer incurs by reason of any breach of a representation or warranty of Seller herein. If any Hazardous Substances in any quantities that violate any environmental laws are discovered on any portion of the Property, Seller shall be solely responsible for all costs of remediation in accordance with all applicable environmental laws, except that Buyer shall not be responsible for the remediation of any Hazardous Substance released on the Property by Buyer or Buyer's agents following Closing. The parties acknowledge and agree that Buyer shall have no liability for any matters subject to the indemnification responsibilities of Seller set forth in this section. The obligations contained in this Section 12.6 shall survive the Closing.

12.7 1031 Transaction. Buyer and/or Seller (the "1031 Party") may take such steps as such party shall deem necessary or desirable to qualify the purchase or sale of the Property (or any portion thereof) under Section 1031 of the IRS Code (a "1031 Transaction"). Buyer or Seller (as the case may be, the "Non-1031 Party") each agrees to use reasonable efforts to accommodate the 1031 Party in effectuating a 1031 Transaction, if so desired by the 1031 Party; provided, however, that (a) such transaction does not directly or indirectly increase or decrease the Purchase Price, (b) such transaction will not delay or otherwise adversely affect the Closing, and (c) there is no additional unreimbursed loss, cost, damage, tax, expense or adverse consequence incurred by the Non-1031 Party resulting from, or in connection with, such transaction.

12.8 Adequate Consideration. The parties acknowledge and agree that this Agreement is intended to be binding and enforceable and each party waives any right to challenge the enforceability of this Agreement based on discretion afforded either party in evaluating the fulfillment of certain conditions precedent in the Development Agreement. Each party covenants and agrees to exercise good faith in seeking to satisfy such contingencies. Seller acknowledges that this Agreement and the Development Agreement requires Buyer to commit time and resources in pursuing the Project and that such expenditures constitute good and sufficient consideration to Seller for Seller's entry into this Agreement. Furthermore, the parties agree that, upon satisfaction or waiver of the last of the contingencies set forth herein, this Agreement shall be deemed affirmed without inclusion of such contingencies.

12.9 Cooperation. Seller and Buyer agree to cooperate in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or Buyer's contemplated use and occupancy of the Property. Seller and Buyer each agree at any time or from time to time at the written request of the other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BUYER:

JDS DEVELOPMENT, LLC

By: _____

Name: _____

Title: _____

Date: _____

SELLER: CITY OF MADISON

By: _____ Date: _____
Name: Paul R. Soglin
Title: Mayor

By: _____ Date: _____
Name: Maribeth Witzel-Behl
Title: City Clerk

Approved:

Approved:

David Schmiedicke, Finance Director Date

Eric Veum, Risk Manager Date

Approved as to form:

Michael P. May, City Attorney Date

EXHIBIT A

The Property

That certain parcel of land situated in the City of Madison, Dane County, Wisconsin further described as the "Project Parcel" in Section 2.4 of the Development Agreement.

EXHIBIT B

Form of Assignment and Assumption Agreement

See attached.

**ASSIGNMENT AND ASSUMPTION OF
PURCHASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT (this "Assignment") is made and entered into as of this _____ day of _____, 20__, by JDS DEVELOPMENT, LLC, a Wisconsin limited liability company ("Assignor") and _____ ("Assignee").

RECITALS:

WHEREAS, Assignor, as Buyer, has entered into that certain Purchase Agreement dated as of September ___, 2015 (the "Purchase Agreement"), with the City of Madison, Wisconsin ("Seller"), a copy of which is attached hereto at Exhibit A; and

WHEREAS, pursuant to the Purchase Agreement, Buyer has agreed to purchase and Seller has agreed to sell, certain real and personal property located in Madison, Wisconsin (the "Property"), as more particularly described in the Purchase Agreement; and

WHEREAS, Assignor desires to assign all of its right, title and interest in and to the Purchase Agreement to Assignee, and Assignee desires to assume the Purchase Agreement, as more fully described below.

ASSIGNMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged,

1. Defined Terms. Terms utilized but not defined herein shall have the meanings set forth in the Purchase Agreement.

2. Assignment. Assignor hereby assigns to Assignee all right, title and interest of Assignor under the Asset Purchase Agreement.

3. Assumption of Obligations. Assignee assumes and agrees to perform, all of Assignor's obligations under the Purchase Agreement and does hereby acknowledge and agree to the obligations of _____ under the Development Agreement.

4. Authority of Seller for Assignment and Assumption. This Assignment is permitted and contemplated by Section 12.2 of the Purchase Agreement and therefore no additional consent of Seller to this Assignment need be obtained. Consequently, from this day on, Assignee is for all purposes the "Buyer" as defined in the Purchase Agreement.

5. Counterparts. This Assignment may be signed in counterparts and may be delivered by facsimile, and each counterpart and facsimile will be considered an original, but all of which, when taken together, will constitute one instrument.

6. Counterparts. This Assignment may be executed in counterparts and delivered by facsimile or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Wisconsin.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

ASSIGNOR:
JDS DEVELOPMENT, LLC
a Wisconsin limited liability company

ASSIGNEE:

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Purchase Agreement

EXHIBIT C

TIF INCREMENT SCHEDULE

		Phase I Increment	Phase II Increment	Combined Increment	Cumulative Increment
	2015	-		-	-
	2016	-		-	-
	2017	-		-	-
1	2018	997,172.91		997,172.91	997,172.91
2	2019	1,242,515.07	462,240.90	1,704,755.97	2,701,928.87
3	2020	1,243,452.82	575,969.60	1,819,422.42	4,521,351.29
4	2021	1,244,391.27	576,404.30	1,820,795.57	6,342,146.86
5	2022	1,245,330.44	576,839.32	1,822,169.75	8,164,316.62
6	2023	1,246,270.31	761,502.52	2,007,772.83	10,172,089.45
7	2024	1,247,210.89	1,123,580.97	2,370,791.86	12,542,881.31
8	2025	1,248,152.18	1,124,428.96	2,372,581.14	14,915,462.45
9	2026	1,249,094.18	1,125,277.58	2,374,371.77	17,289,834.22
10	2027	1,250,036.89	1,126,126.85	2,376,163.75	19,665,997.96
11	2028	1,250,980.32	1,126,976.76	2,377,957.08	22,043,955.04
12	2029	1,251,924.45	1,127,827.31	2,379,751.76	24,423,706.80
13	2030	1,252,869.30	1,128,678.50	2,381,547.80	26,805,254.60
14	2031	1,253,814.86	1,129,530.33	2,383,345.19	29,188,599.79
15	2032	1,254,761.14	1,130,382.81	2,385,143.95	31,573,743.74
16	2033	1,255,708.13	1,131,235.92	2,386,944.05	33,960,687.79
17	2034	1,256,655.83	1,132,089.69	2,388,745.52	36,349,433.32
18	2035	1,257,604.25	1,132,944.09	2,390,548.35	38,739,981.66
19	2036	1,258,553.39	1,133,799.15	2,392,352.54	41,132,334.20
20	2037	1,259,503.24	1,134,654.84	2,394,158.08	43,526,492.28
21	2038	1,260,453.81	1,135,511.19	2,395,965.00	45,922,457.28
22	2039	1,261,405.09	1,136,368.18	2,397,773.27	48,320,230.55
23	2040	1,262,357.10	1,137,225.81	2,399,582.91	50,719,813.47
24	2041	1,263,309.82	1,138,084.10	2,401,393.92	53,121,207.38
25	2042	1,264,263.26	1,138,943.03	2,403,206.29	55,524,413.68
26	2043	1,265,217.42	1,139,802.61	2,405,020.03	57,929,433.71
27	2044	1,266,172.30	1,140,662.84	2,406,835.14	60,336,268.85
28	2045	-	1,141,523.71	1,141,523.71	61,477,792.56

EXHIBIT D

MASTER DEVELOPMENT SCHEDULE

Land Use Approvals and Subdivision

- Written Pre-Application Notices for Rezoning June 22, 2015
- Submittal to Landmarks Commission for Demo, CSM July 27, 2015
- Submit CSM for Approval July 22, 2015
- Landmarks for advisory opinion on Subdivision/Demo Aug 17, 2015
- State Preservation Office Approval of Subdivision and Demo Sept 2015
- Land Use Application (PD) Submittal Aug 19, 2015
- Land Marks Submission for Land Use Sept 8, 2015
- Land Marks Advisory Recommendation on Land Use Sept 21, 2015
- UDC Advisory Recommendation Oct 7, 2015
- Plan Commission Hearing on CSM and Rezoning Oct 19, 2015
- Common Council Action on CSM and Rezoning Nov 3, 2015
- Remove Conditions of Approval for Permits Dec 5, 2015

City Financial Participation and Land Sale

- Preliminary Development Agreement to BOE June 29, 2015
- Preliminary Development Agreement to Common Council July 7, 2015
- Sign Preliminary Development Agreement July 15, 2015
- TIF Application Submitted July 31, 2015
- BOE Action on Amended and Restated Dev Agreement Aug 24, 2015
- 2016 Executive Capital Budget to Council Sept 1, 2015
- CDA Approval of Amended and Restated Dev Agreement Sept 10, 2015
- Council Action on Amended and Restated Dev Agreement Sept 29, 2015
- Board of Estimates Action on Capital Budget Sept 28, 2015
- Final 2016 Capital Budget Adopted by Council Nov 10-12, 2015
- Review and approval of the following by BOE and Council Nov 2015
 - Hotel Operator and Franchise
- Project Commencement Closing Dec 4, 2015

Tax Increment Financing/TID #25 Project Plan Amendment

- Proposed financing structure to taxing jurisdictions for discussion Sept 2015
- Letter to Overlying Taxing Jurisdiction Sept 28, 2015
- Introduce Resolution to Common Council Oct 6, 2015
- Plan Commission Public Hearing and Action Oct 19, 2015
- Board of Estimates Action Oct 26, 2015
- Common Council Action Nov 3, 2015
- DOR approval of Project Plan Amendment Feb 1, 2015

Redevelopment District

- CDA Presentation of Redevelopment District/Dev Agreement Aug 27, 2015
- Notice Creations of Redevelopment District
 - First Notice Aug 24, 2015
 - Second Notice Aug 31, 2015
- CDA Public Hearing Sept 10, 2015
- Council Introduction of Creation Resolution and Plan Sept 15, 2015
- Plan Commission Action on Redevelopment Plan Sept 21, 2015
- Common Council Adoption of Redevelopment Plan Oct 6, 2015
- CDA Certification Oct 9, 2015
- Record Plan with Register of Deeds Oct 13, 2015

Construction

- Demolition of MMB Annex Nov 2015
- Commence Construction on Block 88 Dec 2015
- Block 105 Parking Ramp Closes** March 2016
- Commence Construction of Hotel on Block 105*** May 2017
- Complete Construction of Block 105 Parking June 2017
- Complete Construction of Exact Sciences on Block 88 July 2017

* Detailed schedule for approvals necessary for demolition of the MMB Annex exist, but are not included here.

**The schedule for engineering and architectural documents needed to construct the parking has not yet been determined; however, review and approval of the construction documents, public bidding and construction contracts in accordance with City of Madison policies will need to occur by December 2015.

***Subject to terms and conditions set forth in Section 5.5 of this Agreement.

EXHIBIT E

PARKING STRUCTURE PREDEVELOPMENT COST REIMBURSEMENT SCHEDULE

	Total	Portion Attributable to Public Ramp
July	\$190,000	\$91,200
August	\$200,000	\$96,000
September	\$220,000	\$105,600
October	\$240,000	\$115,200
November	\$270,000	\$129,600
December	\$270,000	\$129,600
Total Estimated Costs July - Dec 2015	\$1,390,000	\$667,200

*Note: these are work in place estimates, actual payments will be made a month later than the work done in the months shown.

EXHIBIT F

TARGETED BUSINESS PARTICIPATION PLAN

PROJECT MANUAL

Judge Doyle Square

SECTION 00 7336 TARGETED BUSINESS & WORKFORCE DIVERSITY PROGRAM

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Attention is directed to Bidding Requirements and Contracting Requirements, and to Division 1, General Requirements, which are hereby made a part of this Section 00 7336.
- B. The Contractor is responsible to administer the Targeted Business & Workforce Diversity Program for the Project, which is hereby made a part of this Section 00 7336.

1.2 SUMMARY REQUIREMENTS

- A. Companies awarded contracts for the Judge Doyle Square Project shall demonstrate good faith efforts to use minority (MBE), disadvantaged (DBE), women-owned (WBE), small (SBE), and Section Three (S3BE) business enterprises and, hereafter referred to as, "Targeted Businesses" and to meet workforce diversity goals established for the Project by the Owner. The criteria for inclusion as a Targeted Business will be included in the Targeted Business & Workforce Diversity Manual.

Failure to comply could result in the contract being awarded to another contractor demonstrating good faith efforts to utilize targeted businesses and a diverse workforce.

- B. The Contractor shall use its best efforts to engage local contractors whose primary offices are located in Wisconsin, with an emphasis on City of Madison employers.

1.3 TARGETED BUSINESS & WORKFORCE DIVERSITY GOALS

- A. The following goals have been established for the Judge Doyle Square Project:
- B. Contract dollar goals:
 - 1. It is the goal of all construction contractors involved in the Judge Doyle Square Project to achieve at least percent (10.00%) of the aggregate dollar value of the contract(s) being awarded to Targeted Businesses. All bidders must submit a Targeted Business Affidavit of Contracting Plan with their bid. All construction contractors of the Project will be required to submit a monthly Targeted Business Program Affidavit of Payment.

- C. Workforce diversity goals:

1. It is the goal of all construction contractors involved in the Judge Doyle Square Project to achieve at least six percent (6%) utilization for racial/ethnic employee hours and four percent (4%) utilization for female employee hours for the overall work on this project. In addition, a goal of five percent (5%) of all employee hours will be obtained through employees which have been trained in any of the following programs funded by the City of Madison: Construction Trades, Inc., Latino Workforce Academy, Construct-U, Workforce Development Board Foundations for the Trades, WRTP-Big Step, Operation Fresh Start, and the Urban League of Greater Madison. All construction contractors of the Project will be required to submit a monthly Workforce Diversity Affidavit that tracks the demographics and hours worked of employees and new hires.

D. What constitutes a good faith effort?

1. A Contractor and/or Bidder can show that they have made a good faith effort to use Targeted Businesses, and to hire minorities, disadvantaged, women or underemployed by:
 - a. Contacting the local Trade Unions, requesting assistance in locating Targeted Businesses, minority, disadvantaged, female and underemployed individuals.
 - b. If a company contacts the local Trade Unions, requests assistance, provides descriptions of the types of subcontractor or supplier needed, and follows through with the local Trade Unions' suggestions, the company shall be determined to have made a good faith effort.

OR

2. If a company chooses not to use the services of the local Trade Unions, that company shall:
 - a. Make all reasonable efforts to contact Targeted Businesses, solicit bids from them, evaluate those bids, and document the efforts made to use those Targeted Businesses. (See Section 1.06 Documentation of "Good Faith Efforts")

For the purposes of this Project, in order to be counted as Targeted Business, a company must meet the eligibility standards of the City of Madison and be certified by a recognized certifying agency. These include but may not be limited to:

Approved Certifying Agency - an organization whose certifies a business as a disadvantaged, minority, small, section three, or women business enterprise.

The approved certifying agencies are:

- City of Madison - Disadvantaged, Minority, Small, Section 3 and

Women Business Enterprise

- National Minority Supplier Development Council ("NMSDC") or a regional council - Minority Business Enterprise
- North Central Minority Supplier Development Council ("NCMSDC") - Minority Business Enterprise
- Women Business Enterprise National Council ("WBENC") - Women Business Enterprise
- Wisconsin Department of Administration ("WDOA") - Minority and Women Business Enterprise
- Wisconsin Unified Certification Program ("WI UCP") - Disadvantaged Business Enterprise. Also identifies the business as minority or woman owned

Inclusion - The active, intentional, and ongoing engagement which seeks, accepts, and welcomes diverse suppliers and workers.

Disadvantaged Business Enterprises ("DBE") - A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a disadvantaged individual or group. In the case of publicly owned businesses, at least 51% of the stock is owned, controlled, and managed by one or more such individuals.

Minority Business Enterprises ("MBE") - A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a minority individual or minority group. In the case of publicly owned businesses, at least 51% of the stock is owned, controlled, and managed by one or more such individuals.

Small Business Enterprises ("SBE") – A business that has been certified by an approved agency and that is independently owned and controlled with annual gross receipts of \$4 million or less when averaged over the past three years, and a personal net worth maximum of \$1.32 million dollars.

Section Three Enterprise ("S3BE") – A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a Section 3 resident, at least 30% of the permanent, full-time employees are Section 3 residents or were within 3 years of the date of employment, or provides evidence of a commitment to subcontract in excess of 25% of all subcontracts to Section 3 Business Concerns.

Women Business Enterprises ("WBE") - A business that has been certified by an approved agency and that is at least 51% owned and controlled by a woman or women. In the case of publically owned business, at least 51% of its stock is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

NCMSDC - North Central Minority Supplier Development Council is a regional council of NMSDC and certifies businesses in Iowa, Minnesota, North Dakota, South Dakota and Wisconsin as minority business

enterprise.

NMSDC - National Minority Supplier Development Council advances business opportunities for certified Asian, Black, Hispanic and Native American business enterprises and connects them to corporate members. NMSDC's rigorous certification process is considered the gold standard for certifying minority-owned businesses by corporate America.

WBENC - Women's Business Enterprise National Council is dedicated to advancing the success of Corporate Members, certified women business enterprises and government entities in partnership with its 14 Regional Partner Organizations. WBENC is the largest third-party certifier of businesses owned, controlled and operated by women in the United States

WI UCP - Wisconsin Unified Certification Program (UCP) is a cooperative of 24 different Wisconsin cities, counties, and airport authorities that benefit from USDOT funding. These state and local agencies certify minority and women owned enterprises as disadvantaged business enterprises.

1.4 PROGRAM OVERSIGHT

The Owner will assign a Targeted Business Coordinator to assist the Contractor in understanding the requirements for the inclusion of Targeted Businesses in the construction of Judge Doyle Square. The Targeted Business Coordinator will serve as a monitor on behalf of the Owner to evaluate and measure the Contractor's compliance with the Targeted Business & Workforce Diversity Program.

The Targeted Business Coordinator will perform the following duties in relation to the Targeted Business & Workforce Diversity Program:

- Provide internal and external communication of the goals and scope of the Targeted Business & Workforce Diversity Program.
- Assist the Contractor in the development and implementation of outreach programs.
- Work with the Contractor's management and technical staff to ensure inclusion of qualified Targeted Businesses on bid invitation lists.
- Attend scope review and pre-award meetings to ensure understanding of Project requirements by all Subcontract and Sub-subcontractor bidders.
- Consult with the City of Madison Department of Civil Rights prior to subcontract awards which do not meet or exceed the Targeted Business goals for the public project to ensure progress toward Targeted Business goals.
- Monitor Contract Revisions and Change Orders to ensure that the Targeted Business &

Workforce Diversity Program requirements are maintained.

- Participate in job-site meetings to discuss strategies for greater levels of targeted business participation.
- Convene review meetings with the Contractor, Subcontractors, Sub-subcontractors and suppliers to assure achievement of agreed-upon goals.
- Monitor payment procedures to ensure that payment is withheld from firms that are delinquent in the submission of required reports or documentation.

1.5 CONTRACTOR'S (AND BIDDER'S) RESPONSIBILITIES

- A. The Contractor and/or Bidder shall contact the Project Manager to coordinate and seek assistance in satisfying the Owner's requirements for demonstrating good faith efforts, and in developing a plan to reach those goals.

The Contractor and/or Bidder shall take the following steps to the fullest extent possible to accomplish the stated goals:

1. Identify the trades, services and suppliers needed for the Project.
2. Identify Targeted Businesses that have the resources to participate in the Project.
3. Contact Targeted Businesses to solicit bids for work on the Project.
4. Refer currently uncertified companies for participation in the Project.
5. Track participation of targeted and City of Madison businesses, as well as workforce demographics and hours.
6. Prepare reports required by the Owner.

- B. The Project Manager will further assist the Contractor and/or Bidder by performing the following activities:

1. Further identifying, contacting, and assisting in referring targeted businesses that can provide trades, services and supplies associated with changes in the Project or its staffing.
2. Find those that can assist contractors in hiring minority and women workers.

1.6 DOCUMENTATION OF "GOOD FAITH EFFORTS"

Documentation of "Good Faith Efforts" shall contain all of the following:

- A. A list of all subcontractors, suppliers and other firms to be used on the Project, including name of company, contact person, telephone and fax numbers, and email address.

- B. Documentation that non-targeted subcontractors were notified of the Judge Doyle Project's Targeted Business requirements early enough so that they could contact Target Businesses in a timely fashion and prepare and submit their individual *Targeted Business Affidavit of Contracting Plan*¹.
- C. Documentation that, upon request by any targeted businesses, the firm has either provided targeted businesses with plans, specifications and other information relevant to the Project or provided a list of individuals and firms in possession of plans, specifications and other information relevant to the Project that they might access for such information.
- D. Documentation that the Contractor or Subcontractor has either reached out to targeted workers when hiring new people for any project at Judge Doyle Square, or has signed and submitted the *Judge Doyle Square Contractor Work Force Declaration* form declaring that you will be hiring no new workers to complete work in Judge Doyle Square. Outreach documentation must clearly state what steps have been taken to hire minority and women workers.

1.7 REMEDIES

- A. The Owner may withhold payment to the Contractor and/or any Subcontractor or Sub-subcontractor that is not in compliance with the reporting and demonstration of a good faith effort, as described in the Summary Requirements above, of this Targeted Business and Workforce Diversity Program. Payment may be withheld until that firm demonstrates that it is in compliance with the requirements of the Targeted Business & Workforce Diversity Program and/or that it has satisfied the requirement to demonstrate a good faith effort toward the goals to the satisfaction of the Owner.
- B. The Owner may impose monetary sanctions on the Contractor and any Subcontractor or Sub-subcontractor that is not in compliance with this Targeted Business & Workforce Diversity Program and has failed to meet the criteria for measuring good faith effort as described in Summary Requirements above to the satisfaction of the Owner. Such monetary sanctions shall be established by the Owner after evaluation of the scope of the contract and good faith effort toward the inclusion of Targeted Businesses in the work and commensurate with the anticipated costs of achieving such participation to mitigate the impact of not meeting the goals of this Targeted Business & Workforce Diversity Program for that specific phase of the Project.

END OF SECTION 00 7336

¹ Targeted Business Affidavit of Contracting Plan shows how a company will meet Targeted Business and workforce diversity goals. Form is attached.

EXHIBIT G

PARKING LEASE TERM SHEET

Lessor. City of Madison Community Development Authority

Lessee. JDS Development, LLC

Premises. The area depicted on the attached Exhibit A, consisting of approximately 69 spaces on Basement Level 1, and 581 spaces on Basement Levels 2, 3 and 4, for a total of 650 parking spaces.

Term. 27 years

Rent. \$115,000 annually

Operation. Lessee will be responsible, at its sole cost, for operation and management of the Premises. Lessee shall cooperate with the Parking Utility on the parking management system and the operation of the common entrances/exits to the ramp. There shall be a single rate for hourly parking within the Parking Structure, as reasonably determined by the Lessor, which rate may be adjusted from time-to-time. Reciprocal easements or similar cross-access rights will be put in place allowing for seamless flow of pedestrian vehicular traffic throughout the entire parking ramp.

Maintenance. Lessee will be responsible, at its sole cost, for all routine maintenance and repair of the Premises. Lessee shall create a reserve fund for structural repairs and improvements of a capital nature to the Private Ramp.

Capital Expenses. Lessee will be responsible, at its sole cost, for all structural repairs and improvements to the Premises of a capital nature.

Parking Management During Peak Periods. The parties will negotiate in good faith for inclusion within the Parking Lease of a mutually-acceptable provision pursuant to which the City will use its best efforts and cooperate in good faith with the Developer to permit a certain number of parking spaces within the Public Ramp to be available on a reserved based for the use of the Project's tenants, occupants, employees, guests and invitees during certain peak periods of operation.

Transfer of Title. At the end of the Term, the Lessor shall convey to the Lessee fee title to the Premises. As consideration for the conveyance, the Lessee shall pay to the Lessor the lump sum of Four Million and 00/100 Dollars (\$4,000,000.00).

Subleasing. Lessee is expressly permitted, without Lessor's consent, to sublease parking spaces provided such subleases are on commercially reasonable terms, at commercially reasonable rates.

Insurance. Lessee shall maintain, at its sole cost, a policy of commercial general liability insurance, in an amount to be agreed upon by the parties.