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OVERTURE DEVELOPMENT CORPORATION

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CITY OF MADISON
Office of the Mayor

DEC 26 2008

December 23, 2008

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RECEIVED

Ms. Linda Baldwin, Chair
Madison Cultural Arts District
201 State Street
Madison, WI 53703

Mr. Paul Karlen, Senior Vice-President
JP Morgan Chase Bank N.A.
111 East Wisconsin Avenue, Suite 1540
Milwaukee, WI 53202

Mr. David Cieslewicz, Mayor
City of Madison
403 City-County Building
Madison, WI 53703

Mr. Scott Lockard, Market President
U.S. Bank National Association
1 South Pinckney Street
Madison, WI 53703

Mr. W. Jerome Frautschi, Chairman
Overture Foundation
1 South Pinckney Street Suite 816
Madison, WI 53703

Mr. D. Devon Osborn, Senior Vice-President
M&I Marshall & Ilsley Bank
1 West Main Street
Madison, WI 53703

We write to propose an approach to resolve the remaining debt owed under the Overture Center financing. As you know, the credit and liquidity crisis and the market crash in September were more than the SOMCAD portfolio could endure, and the "trust fund" as its been called, fell below the collateral coverage requirements by the end of day on September 15. The letter of credit banks decided to liquidate the entire portfolio on September 18, and the Series A bonds (\$87.3 million) were redeemed by the banks on Monday, September 29. Due to the untimely liquidation, the trust fund was not able to cover the Series B term loan and it remains in place even though the underlying SOMCAD portfolio has been liquidated. The letter of credit banks (JP Morgan Chase, U.S. Bank and M&I Bank), have asked the Overture Development Corporation (ODC), the building owner and borrower in the transaction, to recommend a solution.

We believe time is of the essence in resolving this matter. Too much is at stake to allow the issue to fester. By addressing the issue now and not leaving a resolution to the end of the Series B loan term in December 2011, all of the parties can maximize the available resources to address the shortfall and eliminate a significant issue impacting the planning for Overture Center's long term governance and financial stability. The alternative may be a foreclosure by the banks on the facility, which would create a protracted process that will only increase the cost to resolve the issue. The plan requires the cooperation and participation from all the parties to be successful. We believe it is a fair resolution to the issue.

To that end, the ODC Board of Directors offers the following plan for your consideration. As a fundamental element, upon execution of the plan, the parties would agree that ODC would transfer title to the Center for \$1.00 to the City, MCAD, or some new entity to be agreed on by all parties.

The plan would provide the approximately **\$28 million** in resources necessary to resolve the remaining principal and associated costs owed in the transaction. The elements of the plan are as follows:

- Part I: The backstops that were put in place to support the City's moral obligation credit support of the Series B term loan would be called upon to retire principal on the Series B loan. Jerry Frautschi has agreed to allow the remaining portion of his backstop pledge (approximately **\$4 million**) to be used for debt retirement under the plan. This additional support is beyond all the other financial support he has given to this project.

It should be noted that for each month of delay in resolving the issue, the amount available to the solution is reduced by approximately \$200,000 (the amount of the monthly debt service on Series B which is being paid for by Jerry Frautschi under the agreement with the City). The plan needs to be acted on in the first quarter of 2009 to be viable.

- Part II: MCAD provides its backstop pledge of approximately **\$4 million** in reserve funds to the immediate reduction in the Series B principal. This would be a significant commitment by MCAD and exhaust most of its reserve funds. By doing so however, MCAD and the City can proceed to address the longer term governance and financial sustainability planning unencumbered by the Overture debt obligation.
- Part III: The City releases MCAD from its required payment of the annual Payment In Lieu of Taxes (PILOT). That revenue stream, previously owed to the City by MCAD, would be used to restructure the Series B loan. By using the annual PILOT payment previously agreed to in the Cooperation Agreement between the City and MCAD, at 3.0% tax-exempt rate of interest for 30 years, approximately **\$12 million** of principal repayment would be provided.

In October 2008, an independent group of community leaders studied the Overture Center finances and recommended that the PILOT payment being paid to the City by MCAD be re-examined by the City. This recommendation is particularly relevant if the City assumes ownership of the facility.

- Part IV: The three lenders (JP Morgan Chase Bank, U.S. Bank and M&I Bank) write down **\$8.0 million** of the Series B loan balance. The alternative for the lenders is a protracted process which will cost them additional money also.

We believe the proposal to be a fair resolution of the issues. Now is the time to deal with these matters and we hope you will seriously consider the proposal.

Sincerely,


OVERTURE DEVELOPMENT CORPORATION
George E. Austin, President