

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT is made as of _____, 2021, by and between CITY OF MADISON, WISCONSIN, a Wisconsin municipal corporation (“**Seller**”), and MDI JUDGE DOYLE SQUARE HOTEL, LLC., a Minnesota limited liability company (“**Buyer**”).

RECITALS

A. Seller and Beitler Real Estate Services, LLC (“**Beitler**”) are parties to that certain Development Agreement dated as of July 12, 2016 (the “**Original Development Agreement**”), as amended by that certain First Amendment to Development Agreement dated as January 15, 2019 (together with the Original Development Agreement and as may be further amended, the “**Development Agreement**”), pursuant to which Seller has granted to Beitler certain rights to develop the Block 105 Hotel (as defined in the Development Agreement) on the Land (as defined below) (the “**Development Rights**”). Any terms used but not defined herein shall have the meanings given to them in the Development Agreement.

B. Seller owns the Land subject to the Development Agreement and Seller desires to sell, and Buyer desires to purchase, the Land and other improvements and related rights as more fully described in this Agreement.

AGREEMENT

Accordingly, in consideration of the Recitals, the mutual covenants and agreements of the parties set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1. DEFINITIONS.

The following terms shall have the meanings set forth below:

1.1 Agreement: This Purchase and Sale Agreement, together with these attached Exhibits:

<u>Exhibit A</u>	Legal Description of Land
<u>Exhibit B</u>	Room Block Agreement
<u>Exhibit C</u>	Parking Lease
<u>Exhibit D</u>	Second Amendment to Development Agreement
<u>Exhibit E</u>	Temporary Construction Easement Agreement

1.2 Approvals: Any and all development, construction, zoning, entitlement, land use, certified survey map, architectural, design and plans, hotel brand and operator (including franchise agreements), construction easement agreements, and other approvals, easements, licenses and permits necessary for the intended construction, development and operation of the Block 105 Hotel by Buyer (or its assigns or designees, including an affiliate of Apple REIT, Inc.), in a configuration determined by Buyer in its sole discretion, including any such review and approvals by the Urban Design Commission or by the resolution of the City Council.

- 1.3 Closing: Concurrently, the transfer of title to the Property to Buyer, the payment to Seller of the Purchase Price, and the performance by each party of the other obligations on its part then to be performed, all in accordance with Article 5.
- 1.4 Closing Date: The date on which the Closing shall occur as provided in Section 5.1, subject to Section 6.3 and any other provision of this Agreement, which provides for adjustment of the Closing Date.
- 1.5 Commitment: The title insurance commitment described in Section 6.1.1.
- 1.6 Contingency Date: The later of (i) December 17, 2021, or (ii) the date that the Private Development Closing must occur under the Development Agreement.
- 1.7 Executory Period: The period between the date of this Agreement and the Closing.
- 1.8 Hazardous Material: Any substance, chemical, waste or material that is or becomes regulated under applicable law because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, including asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products and any substance, chemical, waste or material regulated by any Hazardous Material Law.
- 1.9 Hazardous Material Laws: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, as such acts may be amended from time to time, and any other Federal, state, county, municipal, local or other law, statute, code, ordinance, rule or regulation which relates to or deals with human health or the environment in the jurisdiction in which the Real Property is located.
- 1.10 Improvements: All structures, fixtures, and improvements located on the Land.
- 1.11 Land: A portion of that certain real property identified in the Development Agreement as “Utility Parcel” on Block 105, and identified as “Block 105 Hotel” in the Development Agreement, which is legally described on the attached Exhibit A, together with all easements, appurtenances, and hereditaments thereto.
- 1.12 Permits: All governmental licenses and permits relating to the Real Property, if any.
- 1.13 Permitted Exceptions: The easements, restrictions, reservations, and other matters included in the Title Evidence, which are determined to be Permitted Exceptions pursuant to Article 6.
- 1.14 Property: The Real Property, the Permits, and the Records, collectively.
- 1.15 Purchase Price: The purchase price for the Property stated in Section 3.1.
- 1.16 Real Property: The Land and the Improvements, collectively.
- 1.17 Records: All records of Seller relating to the Real Property and Permits, including, without limitation (a) all records regarding real estate taxes and assessments, insurance, maintenance,

repairs, capital improvements, and services, (b) all reports and studies (including soil, engineering, geotechnical, structural studies, feasibility reports, MEP studies, environmental reports or tests), including all drafts and letters and other documents which order, describe or limit the scope of such tests, reports or studies, (c) all originals and copies of surveys, blueprints, plans, and specifications regarding the Real Property, and (d) any contracts and leases.

- 1.18 Survey: The Existing Survey, if any, together with the New Survey, if any.
- 1.19 Title Company: The Madison office of First American Title Insurance Company [with construction loan disbursements managed through Minneapolis office of First American Title Insurance Company].
- 1.20 Title Evidence: The title evidence with respect to the Property described in Section 6.1.

ARTICLE 2. SALE AND PURCHASE.

Upon and subject to the terms and conditions of this Agreement, Seller agrees to sell, and Buyer agrees to purchase, the Property.

ARTICLE 3. PURCHASE PRICE.

- 3.1 Amount. Buyer shall pay to Seller as and for the Purchase Price for the Property an amount equal to Four Million Twenty Thousand Dollars (\$4,020,000) (the “**Purchase Price**”). Notwithstanding the foregoing, the Purchase Price shall be reduced by the estimated cost at Closing to (i) remove any fill in excess of what is reflected in those Government East Parking Ramp Demolition Specifications prepared by Lothan VanHook Destafano Architecture LLC dated on or about May 22, 2019, and (ii) complete any remediation of pre-existing environmental conditions to a condition reasonably satisfactory to Buyer, which amount shall be agreed to between Buyer and Seller before Closing (such agreed upon amount being, the “**Purchase Price Reduction**”). Buyer and Seller acknowledge that (y) the Purchase Price Reduction represents the parties best estimate of Buyer’s post-Closing costs related to complete the matters specified above, and (z) there shall be no reconciliation of Buyer’s actual costs to complete such activities after Closing.
- 3.2 Manner of Payment. Seller shall pay the Purchase Price (less any credits or adjustments provided for in Article 5) to Title Company by wire transfer of immediately available funds on the Closing Date.

ARTICLE 4. APPROVALS; LAND DIVISION.

- 4.1 Approvals. During the Executory Period, Seller agrees to reasonably cooperate with Buyer in obtaining the Approvals. The cooperation by Seller described herein shall be without cost to Seller and at Buyer’s sole expense. Nothing in this Agreement or the conduct of the parties pursuant to this Agreement, including any cooperation called for herein, shall create a partnership, joint venture, agency or fiduciary relationship between the parties. The relationship between the parties is buyer and seller only. Buyer agrees and understands that the Approvals are to be made, in part, by governmental bodies that are not under the control of Seller. Nothing in the paragraph shall require that Approvals be granted.

- 4.2 Certified Survey Map. If the Land is not its own separate legal tax parcel on the date of this Agreement, Seller shall, at its sole cost and expense, use commercially reasonable efforts to cause the Land to be legally subdivided using a certified survey map to create a separate legal parcel. Seller shall commence such procedure as soon as practical and shall thereafter use reasonable efforts and due diligence to complete the procedure at the earliest possible date but not later than ten days after the date of this Agreement.

ARTICLE 5. CLOSING.

- 5.1 Closing Date. The Closing shall be held on a date selected by Buyer on or before the earlier of the Contingency Date or the date when Buyer notifies Seller that the contingencies in Section 7.1 have been waived or satisfied. The Closing shall be held at 10:00 a.m. on the Closing Date at the offices of Title Company or at such other place, date and time as Seller and Buyer may agree.
- 5.2 Seller's Closing Documents. At Closing, Seller shall execute, acknowledge (where appropriate), and deliver to Buyer the following, each dated as of the Closing Date and in form and substance reasonably satisfactory to Buyer:
- 5.2.1 A special warranty deed conveying to Buyer the Real Property, subject only to Permitted Exceptions.
 - 5.2.2 A Room Block Agreement in the form attached hereto as Exhibit B (the "**Room Block Agreement**").
 - 5.2.3 A Parking Lease in the form attached hereto as Exhibit C (the "**Parking Lease**").
 - 5.2.4 A Second Amendment to Development Agreement in the form attached hereto as Exhibit D. (the "**Second Amendment to Development Agreement**").
 - 5.2.5 A Temporary Construction Easement Agreement permitting the Buyer to use the property owned by the City to the east of the Land for construction mobilization and staging (to include placement of equipment and materials and use of mobile crane(s)), in the form attached hereto as Exhibit E (the "**Construction Agreement**", and together with the Room Block Agreement, Parking Lease and Second Amendment to Development Agreement, the "**Ancillary Agreements**").
 - 5.2.6 A certificate certifying that the representations and warranties contained in Section 8.1 of this Agreement are true and correct as of the Closing Date.
 - 5.2.7 An affidavit of Seller regarding liens, judgments, residence or jurisdiction of formation, tax liens, bankruptcies, parties in possession, survey and mechanics' or materialmen's liens, and other matters affecting title to the Real Property and/or as may be reasonably required by Title Company to delete the so-called "standard exceptions" from the title insurance policy described in Section 7.1.2.
 - 5.2.8 All documents and instruments which (a) Title Company may require as a condition to issuing the title insurance policy described in Section 7.1.2 or (b) may be required of Seller under applicable law, including any revenue or tax certificates or statements, or any affidavits, certifications or statements relating to the environmental condition of any

of the Real Property, the presence (or absence) of wells about the Real Property, the presence (or absence) of storage tanks about the Real Property, or the extent of compliance of any of the Property with applicable law.

- 5.2.9 A settlement statement consistent with this Agreement.
- 5.3 Seller's Additional Closing Deliveries. At Closing, Seller shall cause the following to be delivered to Buyer:
- 5.3.1 The abstract(s) of title to the Real Property, if any, in Seller's possession or control.
- 5.4 Buyer's Closing Deliveries. At Closing, Buyer shall cause the following to be delivered to Seller:
- 5.4.1 The portion of the Purchase Price payable pursuant to Section 3.2, by wire transfer of immediately available funds.
- 5.4.2 A certificate certifying that the representations and warranties contained in Section 8.2 of this Agreement are true and correct as of the Closing Date.5.4.3
- 5.4.3 The Ancillary Agreements.
- 5.4.4 A settlement statement consistent with this Agreement executed by Buyer.
- 5.5 Closing Escrow. Seller and Buyer shall deposit its Closing deliveries described in Sections 5.2, 5.3 and 5.4 (including payment of the Purchase Price) with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.
- 5.6 Closing Adjustments. The following adjustments shall be made at Closing:
- 5.6.1 Seller shall pay for all real estate taxes that are due and payable in the year of Closing, and for a prorated share of real estate taxes for the year in which Closing occurs (and are due and payable in the year following Closing).
- 5.6.2 Seller shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) that are levied, pending or deferred and due, or that constitute a lien that is due and payable, with respect to any of the Real Property as of the Closing Date, including any that are deferred until subdivision, platting or development of the Real Property.
- 5.6.3 Seller shall pay all sales tax due regarding this transaction, if any.
- 5.6.4 Seller shall pay the cost of recording all documents necessary to place record title to the Property in Seller in the condition required by Sections 6.2 and 6.3. Buyer will pay the cost of recording all other documents.
- 5.6.5 Seller will pay all service charges for and costs of the Title Evidence and Buyer shall pay for the premiums for the issuance of the owner's title insurance policy described in Section 7.1.2, including any ALTA survey requested.

- 5.6.6 Seller and Buyer shall each pay one half (1/2) of any closing fee payable to Title Company with respect to the Closing.
- 5.6.7 Except as provided in Section 5.3.2 and Article 14, Seller and Buyer shall each pay its own attorneys' fees incurred in connection with this transaction.

If any of the amounts allocated under this Section 5.6 cannot be calculated with complete precision at Closing because the amount or amounts of one or more items included in such calculation are not then known, then such calculation shall be made on the basis of the reasonable estimates of Seller and Buyer, subject to prompt adjustment (by additional payment or refund, as necessary) when the amount of any such item becomes known. Seller or Buyer, as applicable, shall deposit the amounts so estimated with Title Company at Closing. Title Company shall hold such deposits in an interest-bearing account pending final determination of each such allocated amount, with such interest included in the deposit. From each such allocated amount Title Company shall pay to Seller or Buyer, as applicable, the amount finally determined and refund any excess to the depositing party, in each case as and when each such item is so determined. The depositing party shall promptly pay to the other party any deficiency in any such amount so escrowed.

- 5.7 Possession. Seller shall deliver exclusive legal and actual possession of the Property to Buyer on the Closing Date.

Article 6. Title Examination.

6.1 Title Evidence.

- 6.1.1 Promptly after the date of this Agreement, Buyer shall order a current commitment to insure title to the Real Property issued by Title Company, that includes legible copies of all documents described on the Schedule B exceptions thereto.
- 6.1.2 Promptly after the date of this Agreement, Seller shall deliver to Buyer any the most current survey of the Real Property in Seller's possession or control, if any (the "**Existing Survey**").

In addition, at its option, Buyer may elect to obtain a current survey of the Real Property, prepared and certified by a registered land surveyor, reasonably satisfactory to Buyer, who is licensed in the jurisdiction in which the Real Property is located (the "**New Survey**"). The Title Evidence consisting of the Commitment, Existing Survey and, if Buyer elects to obtain one, the New Survey, shall be deemed received by Buyer for purposes of Section 6.2 only when a Commitment, Existing Survey and the New Survey, if obtained, conforming to the foregoing requirements have all been received by Buyer.

- 6.2 Buyer's Objections and Requirements. Buyer shall be allowed until the fifteenth (15th) business day after Buyer's receipt of the last of the Title Evidence (the "**Title Objection Date**"), Buyer may examine the same and make any objections to the form and/or content of the thereof. Any objections not made on or before the Title Objection Date shall be deemed to be waived by Buyer and shall then constitute Permitted Exceptions. Buyer's objections may include additional requirements with regard to the Title Evidence based upon its initial review of the same, including requiring (a) satisfaction of Title Company's requirement as set forth in the

commitment, (b) deletion of all the so-called “standard exceptions” to coverage, (c) affirmative insurance of any easements appurtenant to the Real Property, (d) reasonable affirmative title insurance endorsements (including comprehensive, zoning, access, subdivision, contiguity and survey accuracy) with respect to the Real Property if available in the jurisdiction in which the Real Property is located, and (e) revisions to the Title Evidence as to any matters reasonably warranting additional investigation, affirmative insurance and/or certification. Buyer shall have the continuing right to object in writing to the Title Evidence if and as the same may be revised or endorsed by the Title Company at any time (including following a modification of the legal description arising from the platting process described in Section 4.2); provided that any such objection by Buyer shall be delivered to Seller within ten (10) business days after the later of Buyer’s receipt of the revised or endorsed Title Evidence from the Title Company or the Title Objection Date. Notwithstanding the foregoing, the Buyer hereby objects to all liens evidencing monetary encumbrances (other than liens for non-delinquent real estate taxes, supplemental taxes and assessments), and Seller agrees to cause all such liens to be eliminated, at Seller’s sole cost, on or prior to Closing.

- 6.3 Correction of Title. Seller shall be allowed thirty (30) days after the making of Buyer’s objections to cure the same, in each case on a basis reasonably acceptable to Buyer and acceptable to Title Company to insure such matter, and shall diligently proceed and use its best efforts to do so. Pending such cure, the Closing shall be postponed to the extent necessary to accommodate such time period; provided however, Seller shall not be allowed any additional time beyond the originally scheduled Closing Date to fully pay, discharge, and satisfy any mortgage, judgment or other monetary lien. Upon such cure, the Closing shall be held on the later of (a) the originally scheduled Closing Date, and (b) the first business day occurring ten (10) days after the date such cure is completed. If such cure is not completed within the thirty (30) day period, Buyer shall have the option to do any of the following:
- (i) Terminate this Agreement by notice given to Seller at any time on or before the Closing Date; or
 - (ii) Waive one or more of its objections and proceed to Closing, in which case, such waived objections shall be Permitted Exceptions.

ARTICLE 7. CONDITIONS PRECEDENT.

- 7.1 Conditions in Favor of Buyer. The obligations of Buyer under this Agreement are contingent on each of the following:
- 7.1.1 On or before the Contingency Date, Buyer shall have determined that it is satisfied with the matters and conditions disclosed by the reports, investigations and tests received or performed by Buyer pursuant to Section 9.1.
 - 7.1.2 On the Closing Date, Title Company shall be irrevocably committed to issue to Buyer the owner’s policy of title insurance pursuant to the Commitment with respect to the Real Property, including any affirmative coverage for appurtenant easements or otherwise and/or any endorsements designated by Buyer pursuant to Section 6.2, subject only to the Permitted Exceptions and otherwise strictly in accordance with the form approved by Buyer pursuant to Sections 6.2 and 6.3.

- 7.1.3 On the Closing Date, each of the representations and warranties of Seller in Section 8.1 shall be true and correct as if the same were made on the Closing Date.
- 7.1.4 On the Closing Date, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement as and when required under this Agreement.
- 7.1.5 The absence at all times before Closing occurs of the discovery of any Hazardous Material on or about the Property (i) the presence and/or extent of which was not specifically disclosed in any environmental assessment or other report provided to Buyer by Seller; and (ii) which fails to comply fully with Hazardous Material Laws.
- 7.1.6 On the Closing Date, Buyer shall have received all Approvals, including those required for Buyer to deliver the Block 105 Hotel pursuant to the terms of the Development Agreement.
- 7.1.7 On the Closing Date, all closing conditions with respect to Block 105 Hotel under Development Agreement have been satisfied, including the Private Conditions Precedent, and Buyer shall be ready in all respects to commence construction of the Block 105 Hotel.
- 7.1.8 On or before the Closing Date, Beitler shall have assigned to Buyer all of its Development Rights under the Development Agreement.
- 7.1.9 On the Closing Date, Buyer shall have entered into a loan to construct the Block 105 Hotel, on terms and conditions as shall be acceptable to Buyer.
- 7.1.10 Prior to the Closing Date, the certified survey map described in Section 4.2 shall be recorded and the Land shall be its own separate legal tax parcel in compliance with all applicable laws.
- 7.1.11 On or before the Closing Date, Buyer and Seller shall have agreed on the amount of the Purchase Price Reduction pursuant to Section 3.1.

If any of these conditions have not been satisfied by the applicable date set forth above (or it becomes apparent to Buyer that such condition(s) will not be satisfied by the applicable date set forth above) with respect to each condition, then Buyer may terminate this Agreement by notice to Seller given not later than ten (10) days after such applicable date, subject to Article 15. To the extent that any of the conditions in this Section 7.1 require the satisfaction of Buyer, such satisfaction shall be determined by Buyer in its sole and absolute discretion. The conditions in this Section 7.1 are for the sole benefit of Buyer. Buyer in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Seller; provided, however, if Buyer elects to close without satisfying the condition specified in Section 7.1.9, Buyer shall deliver to Seller at Closing a written certification signed by an officer of Buyer (or one of its affiliates) affirming that Buyer has sufficient funds to proceed with its development of the Block 105 Hotel without third party construction financing.

- 7.2 Conditions in Favor of Seller. The obligations of Seller under this Agreement are contingent upon each of the following:

- 7.2.1 On the Closing Date, each of the representations and warranties of Buyer in Section 8.2 shall be true and correct as if the same were made on the Closing Date.
- 7.2.2 On the Closing Date, Buyer shall have performed all of the obligations required to be performed by Buyer under this Agreement as and when required under this Agreement.
- 7.2.3 On the Closing Date, all closing conditions with respect to Block 105 Hotel under Development Agreement have been satisfied, including the Private Conditions Precedent, and Buyer shall be ready in all respects to commence construction of the Block 105 Hotel.
- 7.2.4 On or before the Closing Date, Beitler shall have assigned to Buyer all of its Development Rights under the Development Agreement.
- 7.2.5 On or before the Closing Date, Buyer shall have entered into a franchise license agreement for a minimum term of twenty (20) years (using an Embassy Suites flag) after the Closing Date.
- 7.2.6 On or before the Closing Date, Buyer and Seller shall have agreed on the amount of the Purchase Price Reduction pursuant to Section 3.1.

If any of these conditions have not been satisfied by the applicable date set forth above with respect to each condition, then Seller may terminate this Agreement by notice to Buyer given within ten (10) days after such applicable date, subject however to Article 15. The conditions in this Section 7.2 are for the sole benefit of Seller. Seller in its discretion may unilaterally waive either or both of the conditions, or any part thereof, by notice to Buyer.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES.

8.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

- 8.1.1 Seller is a municipal corporation duly organized and existing under the laws of the State of Wisconsin and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller. This Agreement has been duly executed and delivered by Seller and is a valid and binding obligation of Seller enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Seller have each been duly authorized by all necessary corporate action on the part of Seller and that such execution, delivery and performance does and will not conflict with or result in a violation of Seller's articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and any of the Property is bound or subject, including the Permitted Exceptions.
- 8.1.2 Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of

all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

- 8.1.3 Seller has good and marketable record title to the Real Property, subject to no liens, easements, restrictions, or other encumbrances other than the Permitted Exceptions.
- 8.1.4 Other than the Development Agreement, as amended by the First Amendment (and the Second Amendment at Closing), the Seller has not entered into any contracts for the sale of any of the Property other than this Agreement. Seller has not entered into, and has received no notice of and has no knowledge, of any rights of first refusal or first offer, options to purchase any of the Property, or any other rights or agreements that may delay, hinder or prevent this transaction.
- 8.1.5 There has been no labor or materials of any kind furnished to or for the benefit of the Property for which payment in full has not been made.
- 8.1.6 No person or entity is entitled to possession of any of the Property, other than Seller, and except as permitted by Permitted Exceptions.
- 8.1.7 Except as otherwise disclosed to the Buyer, Seller has received no notice and has no knowledge (a) that any Hazardous Material are or have ever been generated, manufactured, buried, spilled, leaked, discharged, emitted, stored, disposed of, used, or released about the Real Property in violation of any Hazardous Materials Law, or (b) of any, requests, notices, investigations, demands, administrative proceedings, hearings, litigation, or other action proposed, threatened, or pending relating to any of the Real Property and alleging non-compliance with or liability under any Hazardous Material Law, or (c) that any above-ground or underground storage tanks or other containment facilities of any kind containing any Hazardous Materials are or have ever been located about the Real Property.
- 8.1.8 Seller has delivered or, within the time frame provided in Section 9.2, shall deliver to Buyer true, correct and complete copies of the Records in Seller's custody and control. Seller does not warrant and shall not be responsible for the accuracy or completeness of any Record not prepared by Seller or an affiliate of Seller or their conclusions or recommendations unless Seller or any affiliate knows, or reasonably should know, that the same are inaccurate, incomplete or misleading in any material respect.
- 8.1.9 No management, leasing or maintenance personnel or agents employed in connection with the operation of the Property have the right to continue such employment after Closing. No person or entity is entitled to claim any brokerage or leasing commissions or other payments with respect to any of the Property.
- 8.1.10 Seller has received no notice of and has no knowledge of any pending or threatened condemnation or eminent domain proceeding or transfer in lieu thereof affecting any of the Property, nor has Seller agreed or committed to dedicate any of the Property.
- 8.1.11 Seller has received no notice, and has no knowledge, that any action, litigation, investigation, or proceeding of any kind pending or threatened against Property or

against Seller's interest therein, and Seller knows of no facts which could give rise to any such action, litigation, investigation, or proceeding.

- 8.1.12 All leases and possessory rights in favor of any party, service or maintenance contracts, equipment leases or other contracts or agreements regarding any of the Property, other than the Development Agreement and Permitted Exceptions, will be terminated at Seller's sole cost prior to the Closing Date.

The foregoing warranties are express representations and warranties that Buyer shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Buyer. Consummation of this Agreement by Buyer with knowledge of any breach of these representations and warranties shall not constitute a waiver or release by Buyer of any claims arising out of or in connection with such breach. These representations and warranties (including as remade pursuant to Section 5.2.6) shall survive the Closing of this Agreement for a period of twelve (12) months after the Closing Date. Notwithstanding the foregoing or anything appearing to the contrary in this Agreement, if, prior to Closing, Seller obtains knowledge of a fact or circumstance the existence of which would constitute a breach by Seller of its representations and warranties hereunder or would render any such representations and warranties untrue or incorrect in any material respect, Seller shall promptly notify Buyer in writing of the same.

- 8.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

- 8.2.1 Buyer has been duly incorporated or formed under the laws of the State of Minnesota, and is in good standing under the laws of such jurisdiction, is in good standing and is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer. This Agreement has been duly executed and delivered by Buyer and is a valid and binding obligation of Buyer enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant hereto have each been duly authorized by all necessary corporate action on the part of Buyer and that such execution, delivery and performance does and will not conflict with or result in a violation of Buyer's articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Buyer is a party.
- 8.2.2 Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties that Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. These representations and warranties shall survive the Closing for a period of twelve (12) months after the Closing Date.

ARTICLE 9. INSPECTION; CONDITION OF PROPERTY AT CLOSING.

- 9.1 Right of Entry. During the Executory Period, Buyer and its employees, agents, and independent contractors shall have the right to enter the Property during normal business hours and upon reasonable prior notice to Seller to inspect the same, perform surveys, environmental assessments, soil and other tests, and for other investigations and activities consistent with the purposes of this Agreement. Buyer shall restore any damage to the Property caused by such inspection and shall indemnify and hold Seller harmless from all liabilities incurred by Seller and arising out of any such entry, except that Buyer shall not have any obligation in respect of any Hazardous Materials on the Property unless brought onto the property by Buyer, its employees, agents or independent contractors. The foregoing indemnity shall survive the Closing and any termination of this Agreement, as the case may be. If Buyer determines that the Property is unsuitable for Buyer's intended purposes, in Buyer's sole and absolute discretion, Buyer may terminate this Agreement by delivering written notice of such election to Seller on or before the Contingency Date. If Buyer fails to terminate this Agreement on or before the Contingency Date, then Buyer's right to terminate this Agreement under this Section 9.1 shall be extinguished.
- 9.2 Delivery Requirements. To the extent not previously delivered by Seller to Buyer, Seller shall deliver to Buyer within five (5) business days after the date of this Agreement true and complete copies of each of the Permits and the Records.
- 9.3 Condition of Property at Closing. Seller shall deliver the Property to Buyer at Closing in a condition consistent with the representation and warranties in Section 8.1, and in any event in substantially the same or better condition that existed on the earlier of (a) the date Buyer waives its pre-Closing conditions in Section 7.1, and (b) the Contingency Date. On or before the Closing Date, Seller shall remove all trash and personal property.
- 9.4 Pre-Closing Inspection. Notwithstanding the occurrence of the Contingency Date, Buyer may upon notice in compliance with Section 9.1, inspect the Property at any time during the seven (7) day period prior to Closing to determine whether the condition of the Property conforms to the requirements of Section 9.3.
- 9.5 As-Is Sale. Buyer acknowledges that Buyer will have the opportunity to assess the size, configuration, utility service, environmentally sensitive areas, means of access, permitted uses, status of title, value, condition, and all other material aspects of the Property and, except as specifically stated in this Agreement or in the documents executed at Closing, Buyer is not relying on, nor has Buyer been influenced by, any statement or representation of Seller or any agent or representative of Seller regarding any of these items. Buyer acknowledges that except as expressly stated in this Agreement or in the documents executed at Closing, Buyer is acquiring the Property "AS IS, WHERE IS" in its current condition existing as of the Closing, without any representation or warranty of any kind or nature by Seller.

ARTICLE 10. OPERATION PENDING CLOSING; POST-CLOSING OPERATION AND SEPARATION.

- 10.1 Operation Pending Closing. During the Executory Period, Seller shall (a) operate, maintain, and manage the Property in the ordinary course of business in accordance with past practices including maintenance of adequate insurance with respect to the Property, and full and timely compliance with any contracts affecting the Property, the Permits and applicable law, (b) not

lease, convey or otherwise transfer any of the Property, (c) not execute any contracts, leases, or other agreements regarding any of the Property nor any amendment or modification of any existing contract or Permit that cannot be terminated prior to Closing without the prior written agreement of Buyer, except that Seller may terminate all contracts and leases affecting the Property prior to the Closing Date, (d) promptly deliver to Buyer a copy of any notice, consent, waiver, request, or other communication Seller receives from or delivers to any public or private entity with respect to any of the Property, and (e) use commercially reasonable efforts to obtain any “no further action” or “no further remediation” letters from the Wisconsin Department of Natural Resources relating to pre-existing environmental conditions on Property, as contemplated in the Development Agreement.

Article 12. Intentionally Omitted.

Article 13. Intentionally Omitted

Article 14. Brokers.

Each of the parties represents to the other that such party has not incurred any brokerage commission or finder's fee as a result of this transactions and each party agrees to hold the other harmless from all liabilities incurred by the other relating to such brokerage commission or finder's fee incurred as a result of the actions of such party. The provisions of this Article 14 shall survive termination of this Agreement and the Closing.

Article 15. Default.

If either party shall default in any of their respective obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than thirty (30) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. In the case of any default by Buyer, Seller's sole and exclusive remedy shall be termination of this Agreement as provided above. In the case of any default by Seller, Buyer shall have the right to specifically enforce this Agreement or seek damages from Seller, provided that any action therefor is commenced within six (6) months after such right arises. In any action or proceeding to enforce this Agreement or any term hereof, the prevailing party shall be entitled to recover its costs and attorneys' fees.

Article 16. Termination; Confirmation.

If this Agreement is terminated pursuant to the terms hereof, the respective rights of Seller and Buyer arising out of this Agreement shall immediately cease.

Article 19. Notices.

Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's addresses below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic

mail constitutes notice under the terms of this Agreement.

If to Seller: City of Madison
Office of Real Estate Services
Economic Development Division
PO Box 2983
Madison, WI 53703
jfrese@cityofmadison.com; ores@cityofmadison.com

with copy to:

City Attorney
City County Building, Room 401
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
kramakrishna@cityofmadison.com; and
attorney@cityofmadison.com

If to Buyer: MDI Judge Doyle Square Hotel, LLC
700 Meadow Lane North
Minneapolis, Minnesota 55422
Attention: Nate Gundrum
Nate.Gundrum@mortenson.com

with copy to:

Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, Minnesota 55422
Attention: Stacey Braybrook
Stacey.Braybrook@mortenson.com

with copy to:

Faegre Drinker Biddle & Reath LLP
90 South 7th Street
2200 Wells Fargo Center
Minneapolis, Minnesota 55402
Attention: Allen Wheeler
allen.wheeler@faegredrinker.com

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

Article 20. Tax Deferred Exchange.

Seller acknowledges that Buyer may elect to acquire any of the Real Property in connection with the completion of a tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as

amended. Seller hereby agrees to take such steps as Buyer may reasonably require in order to complete such tax-deferred exchange, including accepting payment of all or a portion of the Purchase Price from a third party.

Article 21. Miscellaneous.

- 21.1 Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between Seller and Buyer, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in a writing executed by both Seller and Buyer. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.
- 21.2 Survival; No Merger. The terms of this Agreement shall survive and be enforceable after the Closing and shall not be merged therein.
- 21.3 Governing Law. This Agreement shall be construed under and governed by the laws of the State of Wisconsin.
- 21.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.
- 21.5 Time of the Essence. Time is of the essence under this Agreement. If the time for performance of any of the terms, conditions, and provisions of this Agreement fall on a Saturday, Sunday, or legal holiday, then the time of performance will be extended to the next business day thereafter.
- 21.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Buyer merely because of their respective efforts in preparing it.
- 21.7 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall include one another, and the following words and phrases shall have the following meanings: (i) “including” shall mean “including but not limited to”, (ii) “terms” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties and indemnities”, (iii) “any of the Property” or “any of the Real Property” shall mean “the Property or any part thereof or interest therein” or “the Real Property or any part thereof or interest therein”, as the case may be, (iv) “rights” shall mean “rights, duties and obligations”, (v) “liabilities” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys’ fees”, (vi) “incurred by” shall mean “imposed upon or suffered or incurred or paid by or asserted against”, (vii) “applicable law” shall mean “all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations”, (viii) “about the Property” or “about the Real Property” shall mean “in , on, under or about the Property” or “in, on under or about the Real Property”, as the case may be, (ix) “operation” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance or management”, and (x) “this transaction” shall mean “the purchase, sale and related transactions contemplated by this Agreement”.

21.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Buyer.

21.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Digital or signatures transmitted by PDF or electronic format on this Agreement shall be deemed the same as originals. The parties shall promptly deliver original executed counterparts to each other upon request.

[The remainder of this page is intentionally left blank.]

**SIGNATURE PAGE
FOR
PURCHASE AND SALE AGREEMENT**

Seller and Buyer have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

CITY OF MADISON, WISCONSIN
A municipal corporation

By: _____

Name: Satya Rhodes-Conway

Its: Mayor

By: _____

Name: Maribeth Witzel-Behl

Its: Clerk

APPROVED:

APPROVED AS TO FORM:

By: _____

Name: David P. Schmiedicke

Its: Finance Director

By: _____

Name: Michael R. Haas

Its: City Attorney

The execution of this Agreement by City officials was authorized by Enactment of No. RES-_____,
File No. _____, adopted _____, 20 ____.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

BUYER:

MDI JUDGE DOYLE SQUARE HOTEL, LLC,
a Minnesota limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

Legal Description of the Land

[insert CSM legal description after recording]

EXHIBIT B

Room Block Agreement

EXHIBIT C

Parking Lease

EXHIBIT D

Second Amendment to Development Agreement

EXHIBIT E

Temporary Construction Easement Agreement