
DEVELOPMENT AGREEMENT

by and among

THE CITY OF MADISON, WISCONSIN, and

BLOCK 88, LLC

EXHIBITS

Exhibit A Legal Description of the Project Parcel

Exhibit B Podium Purchase Agreement

Exhibit C Form of Guaranty

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), dated as of this __ day of _____, 2019 (the “Effective Date”), is made by and among the CITY OF MADISON, a Wisconsin municipal corporation (the “City”), and BLOCK 88, LLC, a Wisconsin limited liability company (“Developer”).

RECITALS

WHEREAS, the City owns certain real property more fully described on Exhibit A as the “Project Parcel” (hereinafter, the “Project Parcel” or the “Property”);

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

WHEREAS, the parties 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 and Developer will develop the Property in accordance with this Agreement and will cooperate with one another in connection therewith.

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 “Parking Ramp” (together, the “Project”), with the Project anticipated to be comprised of several sub-components (each, a “Project Element”), as generally described below:

(a) **Private Development.** The Private Development shall consist of the following components to be constructed above the Podium as defined below:

(1) A housing component comprising one hundred twenty-four (124) market rate apartments (the “Market Rate Units”);

(2) A housing component comprising twenty (20) apartments restricted to residency by persons earning at or below sixty percent (60%) of the Dane County median income (the “60% Units”); and seventeen (17) apartments restricted to residency by persons earning at or below eighty percent (80%) of the Dane County median income (the “80% Units”). Together, the 60% Units and the 80% Units may be referred to as the “Affordable Units”.

(b) Parking Ramp. The Parking Ramp consists of the following Project Elements, which have been constructed and are owned by the City in accordance with a Phase 1 Specific Implementation Plan (SIP) on the Project Parcel:

(1) A below grade parking component and Madison Bicycle Center to be owned by the City (the “Below Grade Parking”); and

(2) An above grade parking component comprising one hundred forty eight (148) parking stalls (the “Above Grade Parking”); and

(3) A retail component comprising of approximately eight thousand (8,000) square feet of space (the “Retail Component”); and

(4) Air rights from the top of the above grade parking ramp as high as legally permitted (the “Air Rights”) (collectively, the Above Grade Parking, Retail Component and Air Rights comprise the “Podium”).

ARTICLE II

CONVEYANCE OF THE PODIUM

Section 2.1. Real Estate Purchases.

(a) Developer shall purchase the Podium from the City and the City shall sell the Podium to Developer for Five Million Dollars (\$5,000,000) with an additional One Million Dollars (\$1,000,000) deferred until fifteen years from the date a certificate of occupancy is issued for the Private Development (the “Deferred Payment”), pursuant to the terms of a real estate purchase agreement which includes the material terms attached hereto as Exhibit B (the “Podium Purchase Agreement”). The Deferred Payment shall be secured by a guaranty in the form of the attached Exhibit C. The consummation of the purchase and sale of the Podium shall occur pursuant to the terms of the Podium Purchase Agreement and subject to the conditions set forth in Section 3.1 below (the “Podium Closing”).

(b) Prior to the Podium Closing, the City and Developer shall cooperate in creating mutually agreeable condominium documents to change the Parking Ramp into a condominium form of ownership. The condominium will consist of, at minimum, separate condominium units for the following: the Podium (which may include the future housing component), and the Below Grade Parking. Other spaces shall be as described as agreed to in the Podium Purchase Agreement.

ARTICLE III

PROJECT FINANCING AND SECURITY

Section 3.1. Closing.

(a) At or before the Podium Closing, and as a condition to the City's obligation to convey the Podium to Developer, Developer and the City shall execute and deliver the following documents:

- (1) Loan Agreement for Affordable Housing Fund proceeds as described below, subject to budgetary approval by the Common Council of the City of Madison in 2020. A thirty-year land use restriction applicable to the 60% Units, and a fifteen year land use restriction applicable to the 80% Units, will be incorporated in this document and recorded.
- (2) The Podium Purchase and Sale Agreement.
- (3) Evidence of private debt commitment and equity in order to complete the Project.
- (4) A condominium deed conveying the Podium to Developer.
- (5) Land use approvals required to commence construction of the Project.
- (6) Note and Guaranty evidencing the Deferred Payment, which includes terms requiring the immediate payment of the Deferred Payment upon the sale of the Private Development and/or the transfer of management or control to a person or entity not related to or affiliated with the Developer.

Section 3.2. Summary of Funds for Project Development.

(a) The City shall be responsible for all of the capital costs of the Parking Ramp, at the City's sole expense, until a certificate of occupancy is issued for the project as described in Parking Ramp Construction Contract, as defined in Section 5.1, and for all of the operating expenses for the Parking Ramp through the Podium Closing, and

(b) A loan from the City to support the 60% Units in the amount of Four Hundred and Fifty Thousand Dollars (\$450,000) (the "City Funding").

(c) Developer shall be further responsible for all other costs of the Private Development and will contribute total debt and equity necessary for completion of the Project Elements of the Private Development (the "Private Funding"). Beginning sixty (60) days before the Podium Closing, the City shall have the option to review, within 10 days of written notice, pro formas, construction contracts, Market Rate Units and Affordable Housing Units loan commitments or other documentary evidence in order to ensure sufficient funding exists and that the Private Development will be completed.

(d) During the planning of the Private Development, Developer may elect to pursue additional funds from a social equity provider in an effort to increase the number of 60% Units in the Project, up to a maximum of 40% of the Units. However, Developer shall not be obligated to increase the number of Affordable Units.

ARTICLE IV

LAND USE APPROVALS; PERMITTING

Section 4.1. Land Use Approvals.

(a) Applications. As soon as reasonably possible after the Effective Date, Developer will submit application materials 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 Private Development (collectively, the “Land Use Approvals”).

(b) City Cooperation. The City will reasonably cooperate with Developer in processing the applications for Land Use Approvals in connection with the Private Development. This section does not obligate the City to make any application on behalf of Developer, bear responsibility for gaining approvals or removing zoning conditions for the Private Development, or alleviate Developer’s obligations under Section 4.1(a).

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

ARTICLE V

CONSTRUCTION OF PROJECT

Section 5.1. Parking Ramp.

(a) Design. The Parking Ramp has been designed and has been constructed in accordance with the Phase 1 SIP, and construction contract numbers 7952 and 8290 between the City and J. P. Cullen (together the “Parking Ramp Construction Contract”).

Section 5.2. Private Development.

(a) Design. Developer shall (i) prepare and submit detailed plans and specifications for the Private Development for review and approval by the City in accordance with applicable City ordinances, (ii) shall be solely responsible for all pre-development costs associated with the Private Development, including, without limitation, architectural, engineering, planning and design fees, legal, accounting and other professional fees, and any, filing or other development

fees, (iii) shall be solely responsible for the total cost and expense for the construction of its the Private Development;

(b) Bidding. No portion of the Private Development shall be construed as “public construction” and, as such, 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.

(c) Affordable Unit Design and Management. Developer shall ensure that the Affordable Units are materially similar in quality of materials to the Market Rate Units of the same size, with the exception that certain penthouse units may have upgraded finishes. Further, it is understood that the level of property management service provided to the Affordable Unit residents shall be materially identical to the level of property management service provided to the Market Rate Units. The provisions of this paragraph shall survive termination of this Agreement.

Section 5.3. Environmental Sustainability

(a) Developer agrees to incorporate the following environment sustainability elements into the Private Development:

- (1) High efficiency appliances meeting upper Energy Star ratings.
- (2) High efficiency HVAC system, with water source heat pump system with condenser, high efficiency boilers, premium efficiency motors and variable frequency drives on fan motors.
- (3) High efficiency natural gas water heating.
- (4) High efficiency lighting using LED fixtures and occupancy sensors in common spaces.
- (5) Building envelope that performs at least 3% better than code requirements.
- (6) Teaming with Focus on Energy design assistance program for energy modeling and envelope analysis and energy saving recommendations.
- (7) Water efficient plumbing fixtures with low flow showerheads, faucets and toilet fixtures.
- (8) Construction waste recycling.
- (9) Low to zero VOC interior finish materials and sealants.
- (10) Solar panels and additional provisions for solar panels on the upper main roof.
- (11) High recycled content metal panel exterior enclosure.

(b) Developer agrees to investigate whether it is feasible to incorporate the following into the Private Development, and will incorporate these items if the Developer, after consultation with the City, determines it is feasible:

- (1) Obtain LEED equivalency.
- (2) Green roof.
- (3) Blue roof for stormwater retention.

ARTICLE VI

CONTRACT COMPLIANCE PROVISIONS

The following provisions shall be incorporated in the City Funding documents, but Developer agrees and understands that in order to comply with these Contract Compliance Provisions, Developer must proceed in accordance with this Article VI in advance of execution of this Development Agreement. These requirements shall apply only to the design and construction of the Private Development.

Section 6.1. Accessibility Accommodations. Developer agrees to ensure the Private Development will be accessible to persons with physical disabilities in compliance with Section 39.05 of the Madison General Ordinances and the Americans with Disabilities Act, where applicable. The City warrants and represents that the Podium has been designed and constructed in a manner that complies with the aforementioned laws and ordinances relating to accessibility.

Section 6.2. Non-Discrimination. In the performance of their 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 6.3. Ban The Box. Arrest and Criminal Background Checks. (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000.)

A. Definitions. For purposes of this section, “Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

B. Requirements. For the duration of this Agreement, the Developer shall:

1. Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant’s arrest and conviction record, as defined herein.
2. Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
3. Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
4. Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
5. Comply with all other provisions of Sec. 39.08, MGO.

C. Exemptions: This section does not apply when:

1. Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
2. Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.
3. The contractor is identified by the City as being subject to the Vulnerable Populations Resolution adopted by the Common Council on May 21, 1996 (Substitute Resolution No. 53, 279.)

To be exempt under sec. C. 1. or 2. above, Developer must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the Developer is exempt from this section for the position(s) in question.

Section 6.4. Workforce Utilization. Developer agrees that, within thirty (30) days after the commencement of construction of the Private Development, Developer will provide to the City of Madison Affirmative Action Department certain workforce utilization statistics upon request, 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 or within thirty (30) days after the form is provided by the City to Developer, whichever is later.

Developer further agrees that, for at least twelve (12) months after commencement of construction of the Private Development, 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 6.5. Affirmative Action. As used in this Section 6.5, 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:

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 fifty thousand dollars (\$50,000), 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 ten thousand dollars (\$10,000), 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 6.6. Affirmative Action Definitions.

(a) Targeted Business Enterprise (TBE) shall mean any businesses certified by the Department of Civil Rights in one of the following categories: Section 3 enterprise, small business enterprise, minority business enterprise, women business enterprise, or disadvantaged business enterprise, as those terms are defined in MGO 39.02(9)(a)(9)-(12).

(b) Maximum Feasible Opportunity shall mean using good faith efforts in taking actions including, but not limited to, the items below, which shall be taken in the aggregate to the greatest extent possible:

- (1) Attendance at the pre-bid meeting.
- (2) Using the City of Madison's directory of TBEs to identify TBEs from which to solicit bids.
- (3) Assuring that TBEs are solicited whenever they are potential sources.
- (4) Referring prospective TBEs to the City of Madison Affirmative Action Division, Department of Civil Rights for certification.
- (5) Dividing total project requirements into smaller tasks and/or quantities, where economically feasible, to permit maximum feasible TBE participation.
- (6) Establishing delivery schedules, where requirements permit, which will encourage participation by TBEs.
- (7) Providing TBEs with specific information regarding the work to be performed.
- (8) Contacting TBEs in advance of the deadline to allow such businesses sufficient time to prepare a bid.

(9) Utilizing the bid of a qualified and competent TBE when the bid of such a business is deemed reasonable (i.e., 5% above the lowest bidder), although not necessarily low.

(10) Contacting TBEs which submit a bid, to inquire about the details of the bid and confirm that the scope of work was interpreted as intended.

(c) Goal shall mean the percentage of the total value of construction of the Private Development contracted to TBE's set by DCR based on a schedule of values provided by Developer. Should the Developer meet the Goal, then the Developer shall be deemed to be in compliance with Section 6.5. For clarity, in the event that the Goal is not met, then compliance with Section 6.6(b) will be reviewed.

ARTICLE VII

INSURANCE

The parties shall purchase and maintain such insurance coverages as may be required by the parties' respective lenders and risk managers.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1. 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 of Wisconsin. 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.

(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 of Wisconsin in, on or under the Project Parcel. With respect to the Parking Ramp, 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) The City has no knowledge of any defects or deficiencies in the design or construction of the Podium.

(d) 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 8.2. Representations and Warranties by the Developer. Developer respectively represents and warrants that:

(a) As of the Effective Date, Developer:

(1) is a limited liability corporation organized and validly existing under the laws of the State of Wisconsin.

(2) 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 Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

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

(b) Developer has confirmed that the Parking Ramp does not require any modifications to provide additional structural support for the Private Development. In the event any modification is required, that cost shall be borne by Developer.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.1. 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. Subject to reasonable unavoidable delays, 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 non-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 by 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. No notice of such election by the non-defaulting party shall be required.

Section 9.2. 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 9.3. No Implied Waiver. In the event any provision 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.

Section 9.4. Duty to Provide Information. Each party shall have the obligation to communicate information upon the reasonable request of the other party where the information can reasonably be deemed necessary to ensure performance under this Agreement. Failure to comply with this section may be deemed a default under this Article IX. This section shall not apply to communications that are subject to attorney-client privilege or any other recognized privilege under the law.

ARTICLE X

ADDITIONAL PROVISIONS

Section 10.1. 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 Private Development, 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.

Section 10.2. 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.

If to City:

City of Madison
Attn: Matt Wachter, Office of Real Estate Services
215 Martin Luther King, Jr. Blvd., Suite 300
Madison, WI 53703
Phone: 608-266-5940

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

Section 10.9. 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 the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of its performance or alleged lack thereof, under this Agreement.

Section 10.10. 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 Podium Closing. Each party covenants and agrees to act diligently and expeditiously, and to exercise good faith, in seeking to satisfy such contingencies. City acknowledges that this Agreement requires Developer to commit time and resources in pursuing the Private Development and that such expenditures constitute good and sufficient consideration to City 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 10.11. Wisconsin Law. This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin.

Section 10.12. Severability. If any term or provision of this Agreement or the application thereto to any person or circumstance, shall, to any extent, be held invalid, unlawful or otherwise unenforceable, the remainder of this Agreement, or the application of such term or provisions to the persons or circumstances other than those as to which it is invalid, unlawful or otherwise unenforceable shall not be affected thereby and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.13. Inspection of Records. The City shall, from the date of this Agreement, have the right upon reasonable notice and during business hours to audit and inspect any and all

records, contracts, financial statements, ledgers or written documents from, to or in the possession of Developer which relate to the Contract Compliance Provisions in Article VI as applicable to the construction of the Private Development and which are generated by the responsibilities of this Agreement. The City's rights hereunder shall apply to not only those records and documents that are within the physical control and custody of Developer but also any records, statements and documents that may be within the custody and control of third parties or generated by third parties in the performance of the obligations and responsibilities hereunder, including but not necessarily limited to the architect, contractor and all subcontractors of Developer.

ARTICLE XI

TERMINATION OF AGREEMENT

Section 11.1. Termination. This Agreement shall terminate upon the earlier of the following:

(a) In the event the condition set forth in Section 3.1(a) is not satisfied, Developer shall have the option to terminate this Agreement upon written notice to the City.

(b) December 31, 2020 if the conditions stated in Sections 3.1 and 3.2 have not been satisfied unless the parties agree in writing to extend the time period for satisfying the conditions.

Section 11.2. Expiration. If not terminated pursuant to Article IX following an uncured default or Section 11.1 above, this Agreement shall expire upon the date the certificate of occupancy is received for the Private Development. 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 11.3. Effect of Termination. Upon termination of this Agreement pursuant to this Article XI, this Agreement shall be null and void and, except for obligations that expressly survive termination, and no parties shall have any further obligations or liabilities hereunder. Upon such termination the Developer and the City shall deliver to each other such documents as may be necessary to evidence the termination of this Agreement.

Section 11.4. Authority. Each of the undersigned individuals signing this Agreement represent and warrant that they have the power and authority to sign this Agreement on behalf of the entity they represent.

(Signatures begin on next page.)

CITY OF MADISON, WISCONSIN,
a municipal corporation

By: _____
Satya Rhodes-Conway
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 _____, 2019.

[Signatures Continue on Following Page]

Block 88, LLC:

By: SHD, Inc., Its Manager

By: _____

Name:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT PARCEL

Part of:

Lot Two (2) Certified Survey Map No. 14577 recorded in the Office of the Register of Deeds for Dane County, Wisconsin on August 9, 2017, in Volume 101 of Certified Survey Maps, Page 1, as Document No. 5348219, located in the city of Madison, Dane County, Wisconsin.

Tax Parcel No. 251/0709-242-0702-4

The Podium's legal definition will be created upon the approval of the condominium plat.

EXHIBIT B

PODIUM PURCHASE AGREEMENT

1. **Property.** Block 88, LLC (the “Buyer”) shall purchase, and the City of Madison (the “Seller”) shall sell and convey by Warranty Deed (the “Deed”), Seller’s right, title and interest in and to: (a) the above grade parking component comprising one hundred forty-eight (148) parking stalls; and (b) a retail component comprised of approximately eight thousand (8,000) square feet of space, common areas, stairs, exits, trash room, and other areas on the ground floor of the parking garage constructed on the Real Property, as shown on Exhibit A; and (c) air rights from the top of the above grade parking ramp as high as legally permitted (collectively, the “Property”), all of which are located on the real property described on Exhibit B (the “Real Property”). For purposes of clarification, the Property does not include the bike center and storage area on the ground floor of the parking garage, which are being retained by Seller.
2. **Effective Date.** The “Effective Date” shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
3. **Purchase Price.** Subject to the adjustments and prorations described in this Agreement, the total purchase price to be paid by Buyer to Seller for the Property is Six Million and no/100 Dollars (\$6,000,000.00) (the “Purchase Price”), with Five Million and no/100 Dollars paid at Closing. No later than fifteen years after the date that a final certificate of occupancy is obtained for the Apartment Building, Buyer shall make the final payment of the purchase price to Seller, in the amount of One Million Dollars (\$1,000,000).
4. **Earnest Money.** Within seven (7) days after the Effective Date, the sum of Twenty-Five Thousand Dollars (\$25,000) (the “Earnest Money”), in the form of Buyer’s check, shall be deposited with the Title Company as earnest money to be applied against the total Purchase Price on the Closing Date. If the purchase and sale under this Agreement fails to close due to the failure of any contingency due to Seller’s default, Buyer shall be entitled to a refund of all earnest money (except for the Termination Fee of \$100). If, however, such purchase and sale fails to close after all of the contingencies due to Buyer’s default, then Seller shall retain the earnest money as liquidated damages and Buyer shall have no further obligations or liabilities relating to this Agreement.
5. **Due Diligence.** Buyer will have one hundred twenty (120) days after the Effective Date (the “Due Diligence Deadline”) within which to conduct such due diligence activities as Buyer deems necessary to satisfy itself that the development is feasible and the Property can be used for Buyer’s Intended Use, including but not limited to performing an architectural, engineering, construction, and environmental review of the Property that is satisfactory to Buyer and Buyer’s engineers, architects, lenders, environmental consultants, and attorneys. Such review may include, but is not limited to, the right to conduct any desired tests and inspections of the Property. Buyer and its agents and representatives shall have the right to enter upon the Property to perform any and all inspections or testing of the Property, however, Buyer shall provide Seller with at least forty-eight (48) hours notice of entry onto the Property. Buyer shall repair at its cost any

damage to the Property caused by the testing conducted by Buyer or its agents or representatives, and shall indemnify and hold Seller harmless from and against any damages that Buyer or its agents or representatives caused to the person or property of third parties during the course of inspections or tests permitted under this Agreement. If such review discloses any evidence of any condition that is not satisfactory to Buyer, Buyer shall have the option of: (a) declaring this Agreement null and void, in which case neither party shall have any further rights or duties to each other hereunder, or (b) giving Seller a period of sixty (60) days to cure such conditions.

Buyer will have until the expiration of the Due Diligence Deadline to obtain or review a survey of the Property and/or Real Property prepared by a registered Wisconsin land surveyor. The survey shall show sufficient information and detail to permit the Title Company to eliminate its standard survey exception from the title insurance policy. Buyer shall notify Seller in writing of any objection to the state of facts revealed by such survey. Seller shall have thirty (30) days following receipt of such objection to cure such objection.

6. Buyer Contingencies. If the Buyer timely terminates the Agreement as a result of any of the Buyer's contingencies, the Earnest Money shall be promptly refunded to the Buyer. In addition to the Due Diligence contingency above, Buyer shall have the following contingencies:
 - a. Land Use Approvals. Buyer will have One Hundred Eighty (180) days after the Effective Date (the "Approvals Deadline") to receive all Municipal development and zoning approvals that Buyer deems necessary at Buyer's sole discretion to allow Buyer's Intended Use at the Property, including without limitation, obtaining any design, zoning approvals and utility agreements needed, with terms acceptable to Buyer.
 - b. Project Financing. Buyer will have One Hundred Eighty (180) days after the Effective Date (the "Financing Deadline") within which to receive all confirmations, awards, and approvals from lenders that Buyer deems necessary, at Buyer's sole discretion to allow Buyer to develop and construct the Property for its Intended Use, including but not limited to any approvals needed for loans from the Wisconsin Housing and Economic Development Authority.
 - c. Condominium Documents. During the Due Diligence period, the parties shall work diligently and in good faith to agree upon a Declaration of Condominium and Plat (together, the "Condominium Documents") that are acceptable to both parties, which at a minimum must: (a) satisfy the legal requirements necessary for the creation of a condominium; (b) provide for separate condominium units for the Property (which may, at Buyer's sole discretion, include the Apartment Building) and the below grade parking on the Real Property (that is being retained by the City); (c) require each party to pay its own costs for maintenance and repairs of its unit; (d) identify all common areas and allocate the costs and responsibilities for each such area; (e) identify any easements or licenses to be granted; and (f) provide no voting rights on

any issue that effects only an individual owner's unit. The Buyer shall submit an initial draft of the Condominium Documents to the Seller's attorneys no more than sixty (60) days after the Effective Date, with comments to be received back from Seller no more than twenty (20) days thereafter.

The Buyer's Contingency Period may be extended upon written agreement of the parties.

7. Title Insurance. No later than fifteen (15) days after the Effective Date, Seller shall furnish and deliver to Buyer for examination an ALTA commitment for marketable title insurance on the Property issued by a responsible title insurance company, licensed by the State of Wisconsin, committing said title insurance company to issue title insurance to the Property by an owner's standard form ALTA policy (Form B) in the amount of the full Purchase Price, showing all liens, encumbrances and other matters of record, together with legible copies of all documents that appear as exceptions to title. Buyer shall have until the end of the Due Diligence Period to deliver to Seller written notice of objection to the condition of title. If Buyer fails to timely deliver such notice, then Buyer shall be deemed to have approved of the condition of title as shown by such commitment. Exceptions to title approved by Buyer hereunder shall be deemed to be Permitted Exceptions. If, within thirty (30) days following delivery of Buyer's notice of objection, Seller is unable to cure such defects, Buyer shall have the option either to:

- (a) Terminate this Agreement, in which case this Agreement shall be null and void, and Buyer shall be entitled to the expeditious return of its earnest money; or
- (b) Waive any defects of title and perform pursuant to the terms of this Agreement, notwithstanding any defects in title.

Buyer shall have the right to obtain an updated title commitment prior to Closing. If the updated title commitment shows any additional exceptions to title (other than the Permitted Exceptions), Buyer may provide Seller with written notice of objection to the condition of title prior to Closing, and Seller shall cure such defect within five (5) days of receiving written notice (and the Closing Date shall be extended by the same) or else Buyer may terminate the Agreement and receive a full refund of its earnest money.

All costs of providing such title commitment, and of issuing the title policy pursuant to such commitment, shall be borne by Seller and shall be paid at or before Closing. Seller shall provide a gap endorsement to the title policy, at Seller's expense. Buyer may obtain any other endorsements to the title policy, at Buyer's expense, and Seller agrees to cooperate in providing any information or documents reasonably required by the title company to obtain such endorsements.

8. Closing.
- a. The Closing shall take place at the Title Company within sixty (60) days after the satisfaction or waiver of the Financing Deadline or Approvals Deadline, whichever is later. Notwithstanding the foregoing, Buyer shall have the right, with

approval from the Seller but which approval is solely subject to establishing that Buyer is complying with the terms of this Agreement in good faith, to extend the Closing date by additional periods of up to sixty (60) days each by giving written notice of such extension to Seller, provided however, that Closing shall occur no later than December 31, 2020. Such closing date is referred to herein as the "Closing Date."

At least ten (10) business days prior to the Closing Date, the Seller shall cause the Condominium Documents (in their final approved form) to be fully executed and submitted for recording to the Dane County Register of Deeds.

- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mil rate.
- e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property for any work commenced as of the date of Closing.

9. Survival of Warranties and Representations Indemnification. Any warranty, representation or agreement herein contained shall survive the Closing, and Seller shall indemnify Buyer from and against any and all costs, expenses, liabilities and damages, including attorney's fees, arising out of the breach of any such warranty, representation or agreement by Seller.

EXHIBIT C

FORM OF GUARANTY

THIS CORPORATE GUARANTY is made as of this ____ day of _____ 20__, by Stone House Development, Inc. (the “Guarantor”) pursuant to the terms of that certain Purchase and Sale Agreement entered between Block 88, LLC, a Wisconsin limited liability company (“Buyer”) and the City of Madison, a Wisconsin municipal corporation (“Seller”) on ____ (the “Purchase and Sale Agreement” or “Agreement”).

All defined terms shall have the meaning given to them in the Agreement unless otherwise defined herein.

W I T N E S S E T H:

Buyer, has or will receive from the Seller a zero interest payment deferral of One Million Dollars (\$1,000,000) (the “Deferred Payment”). In connection with the Deferred Payment, Buyer has executed, made and delivered a Note payable to the order of the Seller (collectively, the “Note”). This Note, all renewals, extensions, refinances or modifications thereof, and any substitute Notes are referred to herein as the “Note”. Based on sound business judgment, Guarantor deems it in Guarantor’s best interest to execute and deliver to the Seller the Guaranty because, among other considerations, Guarantor is an affiliate of Buyer, and Guarantor expects to derive valuable benefits as a result of the Loan.

NOW, THEREFORE, in consideration of the above and other valuable consideration, receipt and sufficiency of which are acknowledged, Guarantor agrees as follows:

Section 1. Nature of Guaranty. This is a guaranty of payment. Guarantor unconditionally and irrevocably guarantees to the Seller the full, prompt and unconditional payment, when due, of the Deferred Payment, and any and all reasonable attorneys’ fees, costs and expenses paid or incurred by the Seller in connection with enforcing its rights under this Guaranty, regardless of whether such collection is from Buyer or Guarantor.

Section 2. Guarantor’s Liability. Guarantor’s liability shall be effective immediately upon any default by Buyer in the payment of the Deferred Payment, following all applicable notice and cure periods.

Section 4. Waiver by Guarantor. The Guarantor waives:

- (a) notice of acceptance of this Guaranty by the Seller;
- (b) notice of presentment, demand for payment, notice of default or nonpayment, protest and notice of dishonor of any of the Obligations;
- (c) notice of any payment to the Seller of the Deferred Payment; and
- (d) all other demands and notices of every kind in connection with this Guaranty or the Deferred Payment.

Section 5. Unconditional Payment. If any payment received by the Seller hereunder shall be deemed by a court of competent jurisdiction to have been a voidable preference under any bankruptcy, insolvency, or other debtor relief law, then the obligation to make such payment shall survive any cancellation or satisfaction of the Note and shall not be discharged or satisfied with any prior payment thereof or cancellation of the Note, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof, and such payment shall be immediately due and payable. While the Deferred Payment is outstanding, Guarantor agrees not to assert against Buyer any right or claim to indemnification, reimbursement, contribution or payment for or with respect to any and all amounts which Guarantor may pay to the Seller.

Section 6. No Impairment. Guarantor further agrees that the validity of this Guaranty and liability of Guarantor hereunder shall not be affected or impaired by any act of the Seller, including, but not limited to, the Seller's:

- (a) extension, in whole or in part, by renewal or otherwise, of the time for the payment of the Deferred Payment or the performance of any term or condition of any transaction in connection with the Deferred Payment;
- (b) release, surrender, exchange, modification, impairment or extension of the period of duration, or the time for performance or payment, or any collateral securing the Deferred Payment;
- (c) settlement, compromise, release, surrender, modification or impairment and enforcement and exercise, or failure to or refusal to enforce or exercise, any claims, rights, or remedies of any kind and nature against the Buyer, or any other party presently or hereafter liable for the Deferred Payment; and
- (d) subordination of the Deferred Payment, or any part, to any other indebtedness now or hereafter owing by the Buyer to anyone.

Section 7. Guarantor's Representations. Guarantor hereby represents, warrants and agrees, that to its knowledge:

- (a) no event has occurred, nor will any event occur upon the making and execution of this Guaranty or the compliance with its terms, or upon the consummation of the transaction herein contemplated, which either by itself or with the lapse of time, or the giving of notice or both, would give any creditor of Guarantor the right to accelerate the maturity of any indebtedness of the Guarantor, which would materially adversely affect Guarantor's ability to perform its obligations under this Guaranty;
- (b) Guarantor is not in default nor does Guarantor anticipate default under any lease, agreement or instrument, or any law, rule, regulation, order, writ, injunction, decree, determination or award, noncompliance with which would materially adversely affect Guarantor's ability to perform its obligations under this Guaranty;
- (c) Guarantor has no outstanding unpaid tax liabilities (except for taxes which are currently accruing, but are not delinquent), and no tax deficiencies have been proposed or assessed against the Guarantor;
- (d) Guarantor is not a party to any litigation or administrative proceeding, nor is Guarantor aware of any threatened litigation or administrative proceeding which in either case

would, if adversely determined, cause any material adverse change in Guarantor's ability to perform its obligations under this Agreement;

- (e) no information, exhibit or report furnished by the Guarantor to the Seller in connection with the negotiation or execution of the Note or Guaranty contained any material misstatement of fact as of the date when made, or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading as of the date when made.

Section 8. Acknowledgements by Guarantor. Guarantor acknowledges and agrees that the Seller has not made any representations or warranties with respect to the enforceability of the Note against Buyer, or as to Buyer's financial condition. Guarantor hereby acknowledges having received and reviewed a true copy of the Note. Guarantor further acknowledges and agrees that Guarantor has independently determined the financial condition of Buyer.

Section 9. Guarantor's Additional Covenants. Guarantor covenants that so long as the Deferred Payment remains outstanding and unless otherwise waived or consented to in writing by the Seller, the Guarantor shall:

- (a) promptly notify the Seller of the occurrence of any event which would create a material adverse change in the Guarantor's assets or financial condition; and
- (b) pay and discharge, when due, all of Guarantor's taxes, assessments and other liabilities, except when the payment thereof is being contested in good faith by appropriate legal procedures which will avoid foreclosure of liens securing such items, and with adequate reserves provided therefor.

Section 10. Modification. No modification of any provision of this Guaranty will be binding upon the Seller except as expressly set forth in a writing duly signed by and delivered on behalf of the Seller.

Section 11. Time is of the Essence. Time is of the essence with respect to all payment provisions of this Guaranty.

Section 12. Binding Effect. This Guaranty benefits the Seller, its successors and assigns, and binds Guarantor, his or her personal representatives, as applicable.

Section 13. Severability. In the event any provision of this Guaranty is determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, this Guaranty and such provision shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty, which shall remain in full force and effect.

Section 14. Governing Law. This Guaranty shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

GUARANTOR:
STONE HOUSE DEVELOPMENT, INC.

By: _____
Helen H. Bradbury, President
