DEVELOPMENT AGREEMENT

by and among

THE CITY OF MADISON, WISCONSIN, and

MORTENSON DEVELOPMENT, INC.

EXHIBITS

Exhibit A	Legal Description of the Project Parcel
Exhibit B	Form of Land Use Restriction
Exhibit C	Property Purchase Agreement
Exhibit D	CMA
Exhibit E	Scope Delineation and Preliminary Plans
Exhibit F	Purchase Price Options

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), dated as of this __ day of _____, 2022 (the "Effective Date"), is made by and among the CITY OF MADISON, a Wisconsin municipal corporation (the "City"), and MORTENSON DEVELOPMENT, INC., a Minnesota corporation (the "Developer").

RECITALS

WHEREAS, the City owns certain real property at 415 North Lake Street more fully described on Exhibit A as the "Property";

WHEREAS, the City has selected the Developer to develop a portion of the Property, to be apportioned pursuant to this Agreement (the "Private Development Parcel");

WHEREAS, the City and Developer desire to cooperate in the redevelopment 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 Development" (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 Project Elements to be constructed on the Private Development Parcel:

(1) A housing component (the "Residential Building") comprised of 220-units containing not less than the number of low cost beds meeting the requirements of the land use restriction in Exhibit B (the "Affordable Beds") which component shall be constructed by Developer or its contractors.

(2) Components for the Gray Box Space (defined below) as described in the Approved Plans (defined below)

(b) Parking Ramp. The Parking Ramp Development shall consist of the following Project Elements to be constructed (or work to be completed, as applicable) by the City at its sole cost and expense, except only for reimbursement items identified on Exhibit E, to be reimbursed by Developer to City pursuant Section 2.2(c) of this Agreement:

(1) demolition of the existing parking ramp and other improvements, if any, located on the Property as of the Effective Date;

(2) construction on the City Parcel (as defined below) of the Parking Ramp in accordance with the Approved Plans (as defined below) which will consist of (i) approximately [500] parking stalls, of which [80] stalls will be private parking stalls reserved in perpetuity for the exclusive use of the owner of the Private Development Parcel, and its tenants and permittees without charge, except as described in the Condominium Documents, payable to the City or any subsequent owner of the Parking Ramp pursuant to the terms of a parking easement; and (ii) an intermodal transit station with three (3) stalls for bus parking;

(3) construction of gray box space for the Lake Street liner units and the lobby of the future Residential Building (such space, the "Gray Box Space") completed to the standard set forth on Exhibit E, provided that upon recording of the Condominium Documents, the Gray Box Space shall be a part of the Residential Building; and

(4) completion of all work within and concerning the public right of way located adjacent to the Property to improve traffic circulation and establish sufficient vehicular (including car and bus) ingress and egress to and from the Parking Ramp, including any utility work set forth in the Approved Plans, but excluding any decorative elements, planters, or any other items included within the Residential Building Plans, all of which such elements shall be installed or constructed at the cost of the Developer and subject to maintenance obligations to be addressed in the Condominium Documents.

The scope delineation and preliminary plans for the construction of the Private Development and the Parking Ramp Development are attached to this Agreement as Exhibit E (such preliminary plans, together with revisions or further developments of such plans which are approved by City and Developer are collectively referred to as the "Approved Plans").

ARTICLE II

LEASE AND CONVEYANCE OF THE PROPERTY

Section 2.1. Construction Lease-Back.

(a) City and Developer shall enter into a triple net lease (the "Lease") pursuant to which City shall lease from Developer the portion of the Property on which the Parking Ramp will be constructed (the "City Parcel") for the sole purpose of constructing the Parking Ramp Development. The Lease will include reservations of easements by Developer for the benefit of the Private Development Parcel for utilities, support, access and other purposes as necessary to enable Developer's construction of the Residential Building. The Lease will include the right of City to purchase the City Parcel for One Dollar ($1.00) once (i) a final certificate of occupancy

has been issued for the Parking Ramp, and (ii) the Condominium Documents (as defined below) have been finalized and recorded in the real property records for the Property.

Section 2.2. Real Estate Transfer.

(a) The City shall convey the Property to the Developer, pursuant to the terms of a real estate purchase agreement which includes the material terms attached hereto as Exhibit C (the "Project Parcel Purchase Agreement"). The consummation of the purchase and sale of the Property shall occur pursuant to the terms of the Project Parcel Purchase Agreement and subject to the conditions set forth in Section 3.1 below.

(b) The City and Developer shall cooperate in negotiating necessary documents to create a condominium form of ownership for the Private Development Parcel and City Parcel (the "Condominium Documents") which condominium shall consist of two (2) or more condominium units. This includes the obligation to create a condominium association board, grant necessary easements for support, ingress and egress, utilities, shared facilities, temporary construction, signage and parking, and fairly apportion shared costs.

(c) Upon completion of Parking Ramp Development, execution and recording of the Condominium Documents, and assignment of the City's rights in the construction warranties for the Gray Box Space to Developer, Developer shall reimburse the City for the items outlined on Exhibit E in an amount equal to the actual cost thereof at such time when all actual, final costs have been determined. Six (6) months prior to the estimated date of the financial closing of the financing for the Private Development and the Parking Ramp Development Developer shall establish an estimated cost for the items set forth on Exhibit E to be reimbursed to City by Developer. Developer shall have no obligation to reimburse City any costs in excess of the costs set forth on Exhibit E attached hereto unless such excess cost is documented in one or more change orders executed by City after obtaining the prior written approval of Developer to such change orders.

ARTICLE III

PROJECT FINANCING AND SECURITY

Section 3.1. Closing.

(a) At or before the closing of the sale of the Property by City to Developer pursuant to the Project Parcel Purchase Agreement (the "Closing"), and as a condition to the City's obligation to convey the Property to Developer, Developer and the City shall execute and deliver the following documents, or otherwise obtain necessary approvals as stated here:

(1) A land use restriction applicable to the Affordable Beds and consistent with the terms set forth on Exhibit B, will be required by this document and recorded ("Land Use Restriction").

(2) the Lease.

(3) Evidence of the Private Funding (as defined in Section 3.2(b).

(4) City Budget approval for the year of Closing for completion of the Parking Ramp Development.

(5) A special warranty deed conveying the Property.

(6) All Land use approvals required for development and construction of (i) the Private Development by Developer; and (ii) the Parking Ramp Development by City.

(7) The City shall have caused the creation of a Tax Incremental District (the "TID") inclusive of the Property.

(8) The City and Construction Manager shall have entered into the CMA and the City shall have issued to Construction Manager a notice to proceed with CMA services.

(9) An escrow agreement by and among City, Developer and a title company reasonably selected by Developer ("Title Company") providing for the escrow of sales proceeds at Closing to secure the City's obligation to develop and construct the Parking Ramp Development ("City Work Escrow"), which agreement shall provide for phased release of the escrowed sum as follows:

(i) $500,000 to be released upon completion of utility work,

(ii) $4,000,000 to be released upon completion of foundations,

(iii) all amounts then held in escrow in excess of Six Million Dollars ($6,000,000.00) ("Remaining Escrow Amount") to be released upon completion of the Parking Ramp Development sufficient for construction of the Private Development to commence, such condition of completion to be mutually agreed upon by the Developer and the City on or before January 31, 2023 (the "Release Milestone").

(iv) the balance then held in escrow as follows:

(A) if the Release Milestone is achieved by January 1, 2025 (the "Release Milestone Date"), then the Remaining Escrow Amount shall be released to the City upon completion of the Parking Ramp Development in compliance with the Approved Plans and issuance of a final certificate of occupancy for the Parking Ramp Development;

(B) if the Release Milestone is not achieved by the Release Milestone Date, then the Remaining Escrow Amount shall be released as follows: within sixty (60) days following the date a final certificate of occupancy is issued for the Parking Ramp Development and the Private Development (1) Developer will

notify City and the Title Company of the actual damages incurred by Developer as a result of the City's failure to achieve the Release Milestone by the Release Milestone Date, (2) an amount equal to the damages incurred by Developer shall be released to Developer, and (3) any amount then remaining of the Remaining Escrow Amount shall be released to the City. Subject to the Developer's rights and remedies pursuant to the terms of Section 9.1 of this Agreement, the maximum amount due to Developer pursuant to (2) above shall not exceed the Remaining Escrow Amount.

On or before January 31, 2023, Developer and City shall also agree upon the site access conditions that apply to the City's completion of the Parking Ramp following the Release Milestone Date

Section 3.2. Summary of Funds for Project Development.

(a) The City shall construct the Parking Ramp Development and secure the final certificate of occupancy for the Parking Ramp Development no later than May 1, 2026, provided that if the Private Development has not received a certificate of occupancy by such date for a reason unrelated to the Parking Ramp Development completion, then the date for the final certificate of occupancy for the Parking Ramp Development shall be extended on a day for day basis until the Private Development certificate of occupancy is issued ("Parking Ramp Target Completion Date"). The Parking Ramp Development shall be constructed using $15,000,000 of Tax Incremental Financing from a new TID to be created by the City (the "City Funding"), in addition to the Property purchase price funds in the amount of the Purchase Price (as defined below) to be paid by Developer to City at the Closing, and in addition to other funds secured by the City as necessary to pay the full cost to construct the Parking Ramp Development.

(1) The term "Purchase Price" shall mean the purchase price for the Property as determined by this Section 3.2. On or before December 31, 2022, the City shall deliver written notice to Developer confirming the City's selection of either "Option #A" or "Option #B" as set forth on Exhibit F to this Agreement. If the City's notice confirms selection of "Option #A", or the City fails to deliver written notice its selection by December 31, 2022, then the City shall be deemed to have selected "Option #A", and the Purchase Price for the Property shall be $18,000,000. If the City's notice confirms selection of "Option #B", then the Purchase Price shall be $15,000,000 and the number of Affordable Beds shall be as set forth in the final form of Land Use Restriction and consistent with the terms of "Option #B".

(b) Developer shall be responsible for all other costs of the Private Development and will obtain total debt and equity commitments necessary for completion of the Project Elements of the Private Development (the "Private Funding"). Beginning thirty (30) days before the Closing, within ten days of the City's written notice to Developer, Developer shall provide the City with loan commitments or other documentary evidence in order to ensure sufficient funding exists for the completion of the Private Development.

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"). The City shall be responsible for obtaining all approvals relating to the development and construction of the Parking Ramp Development.

(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 building codes by all Authorities Having Jurisdiction, as defined by those codes, and shall be responsible for obtaining all building permits, licenses, inspections, and approvals with respect to construction of the Private Development and Developer shall pay the normal and customary charges and shall be responsible for obtaining all building permits prior to such construction. Except only for reimbursement items identified on Exhibit E, Developer shall have no responsibility to pay costs to develop or construct the Parking Ramp Development. The City shall comply with all applicable building codes by all Authorities Having Jurisdiction and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Parking Ramp Development.

.

ARTICLE V

CONSTRUCTION OF PROJECT

Section 5.1. Parking Ramp; City Obligations.

(a) The Parking Ramp Development will be designed in accordance with a contract with Eppstein Uhen Architects, with the final design determined by the City and approved by Developer.

(b) The City shall enter into a public works contract with a contractor of the City's selection pursuant to a statutory bidding process for construction of the Parking Ramp Development. With the sole exception of reimbursement items identified on Exhibit E, the City shall be responsible for all of the design and capital costs, including without limitation, all the initial construction costs, of the Parking Ramp Development, at the City's sole expense. The City

shall at all times use diligent, good faith efforts to prosecute the development and construction of the Parking Ramp Development.

(c) The City shall enter into an agency construction management agreement (the "CMA") with M. A. Mortenson Construction ("Construction Manager") which will include the services set forth in the attached Exhibit D. Developer shall have the right to participate in City meetings, request City plans, specifications, receive copies of third party reports conducted or received by the City, and other similar materials related to the Parking Ramp Development, and at its option Developer may conduct its own testing and inspections on the Parking Ramp Development upon notice to the City during the Parking Ramp construction.

(d) The City shall open and continuously operate the Parking Ramp pursuant to the Lease and the Condominium Documents.

(e) The City at its sole cost and expense shall provide, or secure from third parties as necessary, all necessary tieback, flashing, crane swing and similar easements required for the construction of the Project.

(f) The City shall promptly take all actions required to remove, contain, cleanup, dispose of and remediate any toxic or hazardous substance, material or waste or any pollutant or contaminant (collectively, "Hazardous Materials") located upon, under or affecting the Property as required by and in compliance with any present or future federal, state or local laws, ordinances, codes, regulations, rules, policies and orders, relating to the protection, preservation, conservation or regulation of the environment. The City shall promptly notify Developer upon the discovery of any Hazardous Materials and shall promptly provide Developer with copies of all notices, complaints, correspondence, reports, findings, or documents relating thereto, and keep Developer informed of all actions the City takes in performance of its obligations pursuant to this Section 5.1(f). The City shall indemnify, defend and hold harmless Developer, and Developer's officers, partners, employees, contractors and agents, against all claims, losses, damages or liabilities relating to the presence of Hazardous Materials on the Property or the actions of the City, or its employees, contractors, representatives or agents in performance of the City's obligations pursuant to this Section 5.1(f). The terms and conditions of this Section 5.1(f) shall survive Closing, completion of the Project, and the termination of this Agreement.

Section 5.2. Private Development; Developer Obligations.

(a) Design. Developer (i) shall 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, and (iii) shall be solely responsible for the total cost and expense for the construction of 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) Special Provisions. The Private Development design and construction shall be LEED Silver certified by the United States Green Building Council. All costs of design and construction and approvals required for such certification shall be borne by the Developer.

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 Parking Ramp.

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.

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 targeted business enterprises to compete for any subcontracts entered into pursuant to this contract.

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, 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, including those coverages required by the Condominium Documents, with respect to the Project Elements to be owned by each of them.

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) 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 corporation organized and validly existing under the laws of the State of Minnesota, and is authorized to do business in 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 Developer's performance of 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.

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 ninety (90) 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 the defaulting party cures its default and continues 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 (including, without limitation, in the case of Developer, drawing upon the City Work Escrow), 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; provided, however, in no event shall either party be liable to the other for consequential or punitive damages.

The non-defaulting party may elect to take no such action, so long as an event of default has not been cured within said ninety (90) day period. No notice of such election by the non-defaulting party shall be required. Notwithstanding the foregoing, if after the Closing the City fails to use diligent, commercially reasonable efforts to prosecute construction of the Parking Ramp Development, and such failure is not cured within thirty (30) days after Developer's delivery of written notice, (i) Developer shall have the right, but not the obligation, to take over and complete the construction of the Parking Ramp Development, (ii) the City shall reimburse Developer all costs and expenses, including attorneys' fees, incurred by Developer in taking over and completing construction of the Parking Ramp Development, and (iii) Developer shall have the right draw upon the City Work Escrow to pay such costs and expenses. No term of this Agreement shall be construed or interpreted as requiring to Developer to remedy any act, omission or failure of the City or to obligate Developer to develop or construct the Parking Ramp Development. If Developer chooses to complete the Parking Ramp Development, and without limiting the obligation for the City to pay expenses described above, the City shall at Developer's option exercised by delivery of written notice quit claim and relinquish the City's rights to the Parking Ramp Development. For avoidance of doubt, no term of this Section 9.1 shall limit, modify or impair the rights of Developer with respect to the City Work Escrow, and in the event Developer draws on the City Work Escrow, City shall promptly deposit in the City Work Escrow an amount equal to the amount drawn by Developer.

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 various agreements referenced above shall become part of this Agreement upon written agreement by the parties, regardless of an amending document. Notwithstanding the foregoing, any other changes to this Agreement, including but not limited to extending any deadlines, may only be done 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.

Section 10.3. **Conflict of Interests.** No official or employee of the City directly working on this Agreement shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official, or employee of any party to this Agreement shall be personally liable to any other party, or any of their respective successors in interest, in the event of any default or breach by a party to this Agreement for any amount which may become due to any other party on any obligations under the terms of this Agreement, except in the case of willful misconduct.

Section 10.4. Restrictions on Use. In accordance with applicable law, the Developer shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Private Development, or any part thereof. This provision shall survive the termination of this Agreement.

Section 10.5. Broker's Commission. The parties acknowledge that no broker's commission or finder's fee is payable with regard to this transaction. Each party agrees to indemnify and hold the other harmless from and against all liability, claims, demands, damages, or costs of any kind arising from or connected with any broker's commission or finder's fee or other charge claimed to be due any person arising from the indemnifying party's conduct with respect to this transaction.

Section 10.6. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.7. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, transmitted by email, delivered by a recognized overnight carrier, or delivered personally to the following addresses or at such other addresses as either party may notify the other of in writing; provided that any notice transmitted by email shall also be sent by recognized overnight carrier for delivery the next business day:

If to Developer: Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, MN 55402
Attention: Robert J. Solfelt
Email: Bob.Solfelt@mortenson.com

With a copy to: Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, MN 55402
Attention: Stacey Braybrook
Email: Stacey.Braybrook@mortenson.com

And to: Blue Vista Student Housing Acquisitions, LLC
353 North Clark Street, Suite 730
Chicago, IL 60654
Attention: Brian Minnehan
Email: bminnehan@bluevistallc.com

If to City:	City of Madison Attn: Manager, Office of Real Estate Services 215 Martin Luther King, Jr. Blvd., Suite 300 Madison, WI 53703 Phone: 608-267-8722
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 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. Assignment. City acknowledges that Developer and its partners or affiliates intend to form a single-purpose limited liability company ("New LLC") that will take fee

simple title to the Property and/or take assignment of Developer's rights under the Lease. Upon notice to the City, Developer shall have the right to assign its rights and obligations under this Agreement to the New LLC or to Blue Vista Student Housing Acquisitions, LLC or its affiliate, provided that such permitted assignee assumes such rights and obligations in writing.

Section 10.14. 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 Parking Ramp 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.[1]

ARTICLE XI

TERMINATION OF AGREEMENT

Section 11.1. Termination. This Agreement shall terminate upon the election of either party in writing (except as otherwise provided below) upon earlier of the following:

(a) In the event the conditions set forth in Section 3.1(a) are not satisfied, each party shall have the option to terminate this Agreement following proper Notice.

(b) Except as provided under Section 3.1(a)(9), December 31, 2024 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 10.1 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 X, 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.

[1] NTD: Terms and conditions remain subject to construction company review, as part of its review of Article VI.

(Signatures begin on next page.)

CITY OF MADISON, WISCONSIN,
a municipal corporation

By:_____
Satya Rhodes-Conway
Mayor

By:_____
Maribeth Witzel-Behl
City Clerk

APPROVED:

_____
David P. Schmiedicke
Finance Director

APPROVED AS TO FORM:

_____
Michael R. Haas, City Attorney

The execution of this Agreement by City officials was authorized by Enactment No. _____, File No. _____, adopted _____, 2022.

[Signatures Continue on Following Page]

DEVELOPER:

MORTENSON DEVELOPMENT, INC.,
a Minnesota corporation

By:___
Name:_
Its:____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot 5 through 10, Block 8, University Addition Plat, except that portion of Lot 5 described as follows:

Beginning at the northwest corner of said Lot 5, thence East, 42.5 feet along the north line of said Lot 5; thence South, 12.5 feet along a line parallel to the west line of said Lot 5; thence West, 25.0 feet to a point of curve; thence on a curve to the left, convex to the northwest, having a radius of 17.5 feet to a point of tangency with the west line of said Lot 5, said point being 30.0 feet south of the northwest corner of said Lot 5; thence North, 30.0 feet to the point of beginning.

EXHIBIT B

Land Use Restriction

1. Term. The Term of this LURA shall be thirty (30) years from the the date of issuance of the certificate of occupancy for the Building, or that portion of the Building containing the Low-Cost Beds (as defined below), unless sooner terminated as provided herein.

2. Affordability. Owner shall provide not less than X beds, such amount as determined by the City's election or deemed election pursuant to Section 3.2(a)(1) of the Agreement (the ***"Low-Cost Beds"***). The Low-Cost Beds shall be leased to Eligible Students (defined below), at a lease rate that is X percent (X%), such amount as determined by the City's election or deemed election pursuant to Section 3.2(a)(1) of the Agreement, less (the ***"Student Discount"***) than the market rate charged for a bed in a comparable bed in the Building. For avoidance of doubt, the Student Discount shall only apply to the amount charged for renting a bed in the Building, and not to other fees, costs, charges required to be paid pursuant to a rental agreement, including but not limited to rental application fees, parking fees, default rates or damages. Except for the Student Discount rental rate, the Eligible Student's leases shall include the same terms and conditions as those set forth in the market rate leases including, without limitation, the same right to relocate to another bed in another dwelling unit (whether in the unit described above or in another unit), but at the rental rate of the Student Discount. It is the intent of the parties that Eligible Students will be treated the same as the students with market rate leases except for the Student Discount. If an Eligible Student relocates to a bed in a unit other than the above described units, such student shall still count toward the Low-Cost Beds requirement. If, during any Lease Year (defined below), Owner fails to rent all of the Low-Cost Beds to Eligible Students because an insufficient number of Eligible Students who otherwise meet the leasing requirements have sought to rent the Low-Cost Beds ("***Insufficient Demand***"), and Owner has otherwise complied with the terms and conditions of this LURA, then Owner shall be deemed to have satisfied the Low-Cost Bed requirement at the Building, and shall be permitted to rent the remaining Low-Cost Beds to non-Eligible Students without application of the Student Discount during such Lease Year. For purposes of this LURA, "Lease Year" shall mean the period commencing at the beginning of the first full academic year following issuance of a permanent certificate of occupancy for each of the Residential Building and the Parking Ramp.

3. Eligibility. UW's Office of Financial Aid (***"UWOFA"***) and Owner shall agree on a Memorandum of Understanding (***"MOU"***) which shall be attached to the LURA as **Attachment 1**, with Owner to apply UWOFA's guidelines for determining eligibility based on household income, or other criteria (the ***"Eligible Students"***). Owner shall be deemed to have complied with this section by accepting Eligible Students referred to the Owner by UWOFA on a first-come, first-served basis until all Low-Cost Beds are leased (or until a determination of Insufficient Demand), and Owner shall have no obligation to (i) verify the eligibility of students referred by UWOFA, or (ii) to locate or lease to Eligible Students other than those referred to Owner by UWOFA at any time that UWFOA is providing the services described in the MOU. In the event UWOFA stops providing such service, Owner shall comply with the same UWOFA rules for eligibility at its own expense. In the event that Owner is unable to satisfy its obligation to provide

the Student Discount as a result of a failure of Owner to use good faith efforts to satisfy its obligation, Owner may be required to add the deficient number of Low-Cost Beds to the number of Low-Cost Beds required for the next lease year as more fully set forth in the MOU. Eligible Students must meet the Building's rental application requirements applicable to all tenants with the exception of providing a [parental] guaranty of the rental agreement and meeting any income requirement.

4. Compliance. Owner shall provide a report to City each June during the Term certifying the number of leases to Eligible Students (***"Lease Certification"***). The City shall have the right, but not the obligation, to audit the Lease Certification in a commercially reasonable manner as it chooses (the ***"Audit"***), but with the understanding that the City shall not create public records of student names as a result of during the Audit.

5. [Intentionally omitted.]

6. Termination. This LURA shall automatically terminate if at any time and for any reason Owner decides not to proceed with developing the Building. Additionally, the City may terminate this LURA with thirty (30) days' written notice in accordance with Section 10 below. Upon Owner's request, City shall deliver within ten (10) days evidence of termination of this LURA in form acceptable to Owner and sufficient for recording in the real property records for the Building.

7. [Intentionally omitted.]

8. Meet and Confer. Whenever, during the term of the LURA, in advance of exercise of remedies pursuant to this LURA, any disagreement or dispute arises between the parties as to the interpretation of this LURA, or any rights or obligations arising hereunder, such matters shall be resolved, whenever possible, by meeting and conferring. The Owner shall produce, at the City's reasonable request, documents related to Eligible Students and Low-Cost Beds, as necessary to verify Owner's performance of its obligations under this LURA. Any party may request such a meeting by giving notice to the other; in which case such other party shall make itself available within seven (7) business days thereafter. If such matters cannot be so resolved within no more than ten (10) business days after the giving of such notice to confer, either party may proceed under any applicable remedy at law or in equity.

9. Opportunity to Cure. In the event Owner defaults in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of sixty (60) days after written notice thereof to Owner, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Owner, including expressly the specific enforcement hereof. The City shall extend the cure period if the City determines, in its sole discretion, that the Owner has begun to cure the default and diligently pursues such cure, or, without further written notice to the Owner, declare the Owner in default. The cure period shall in no event be extended more than ninety (90) days.

10. Notices. Any notice, consent, waiver, request or other communication required or provided to be given under this LURA 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 LURA.

If to City: City of Madison
Office of Real Estate Services
Economic Development Division
PO Box 2983
Madison, WI 53703
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 Owner:

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.

11. Application of Funds. Any funds received by the City pursuant to this LURA, shall be applied toward programs supporting housing initiatives, in the City's discretion.

12. Miscellaneous.

A. Modification. No modification of any provision of this LURA will be binding upon the parties except as expressly set forth in a writing.

B. Time is of the Essence. Time is of the essence with respect to all payment provisions of this LURA.

C. Binding Effect. This LURA benefits the City, its successors and assigns, and binds Owner, its successors and assigns.

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

E. Governing Law. This LURA shall be interpreted, construed, and enforced according to the laws of the State of Wisconsin.

F. Counterparts. This LURA may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this LURA may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this LURA may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this LURA may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this LURA, fully executed, shall be as valid as an original.

G. Third Party Rights. This LURA is intended to be solely between the parties hereto. No part of this LURA shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

EXHIBIT C

Purchase and Sale Agreement Material Terms

1. Property. The Developer shall purchase, and the City shall sell and convey by Special Warranty Deed (the "Deed"), fee simple ownership of the Property described below including all improvements located thereon and all appurtenances thereto, free and clear from all liens and encumbrances, excepting the "Permitted Exceptions" as defined in Paragraph __.
Lot 5 through 10, Block 8, University Addition Plat, except that portion of Lot 5 described as follows:
Beginning at the northwest corner of said Lot 5, thence East, 42.5 feet along the north line of said Lot 5; thence South, 12.5 feet along a line parallel to the west line of said Lot 5; thence West, 25.0 feet to a point of curve; thence on a curve to the left, convex to the northwest, having a radius of 17.5 feet to a point of tangency with the west line of said Lot 5, said point being 30.0 feet south of the northwest corner of said Lot 5; thence North, 30.0 feet to the point of beginning.

2. Effective Date. The "Effective Date" shall be the later date of execution of this Agreement by the City or the Developer, as indicated on the signature page.

3. Purchase Price. The purchase price for the Property is _____ subject to subject to the adjustments and prorations herein provided.

4. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Purchase Agreement term, the City will reproduce at its expense and send, either electronically or by hard copy, to the Developer, copies of any and all environmental studies, reports, permits, applications and remediation plans or assessments of the Property.

5. Title Insurance. The City shall provide to the Developer, at the City's expense, within ten (10) days of the Effective Date a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Developer's Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property as of a date no more than fifteen (15) days before such title proof is provided to the Developer, to be in the condition called for in this Agreement, and further subject only to liens which will be paid out of the proceeds of the closing and to any exceptions accepted in writing by the Developer ("Permitted Exceptions"). The Developer shall notify the City of any valid objection to title relative to the Property, in writing, within thirty (30) days of its actual receipt of the title commitment. The City shall have a reasonable time, but not exceeding fifteen (15) days after receipt of such objection, to remove the objection(s) and closing shall be extended as necessary for this purpose. Should the City be unable or unwilling to carry out this Agreement by reason of a valid legal defect in title which the Developer is unwilling to waive, this Agreement shall become null and void.

6. Closing.

   a. The City agrees to execute and deliver to Developer at closing the Deed conveying The Property to Developer free and clear from all liens and encumbrances, excepting the following: municipal and zoning ordinances and agreements entered under them; recorded easements for the distribution of utility and municipal services; recorded building and use restrictions and covenants, and any other encumbrances accepted by Developer pursuant to its review of title as described in Paragraph 9 above.

b. Developer shall pay all recording/filing fees except that the City 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 this Agreement.

c. The City 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 as of the date of closing.

EXHIBIT D

CONSTRUCTION MANAGEMENT AGREEMENT

A. Predevelopment

- Construction Manager, in an advisory role to the City, will review the design of the Parking Ramp and make recommendations where appropriate to coordinate with the Private Development.

B. Budget Estimating

- Construction Manager will review the budget estimates provided by the City for the Parking Ramp to ensure scope alignment with the Private Development.

C. Preconstruction Consulting

- Preconstruction Consulting Services will include attending major Public Development Design Team meetings and provide constructability reviews to assist the Architect and Engineers to complete the design documents during the Preconstruction Phase.

- The Construction Manager shall review the structural elements (grid spacing, loads, geometry, ramps, circulation, etc.) within the Parking Ramp required to support the Private Development and shall suggest changes as appropriate.

- The Construction Manager shall review the locations of the mechanical, plumbing, vertical circulation and electrical items that will be within the Parking Ramp and are required to serve the Private Development. The Construction Manager shall review the Parking Ramp plans at various stages of completion and shall suggest modifications as appropriate.

- The Construction Manager shall review the design of the interface between the Parking Ramp and Private Development at ground level as it relates to the Private Development's footprint and entrances/exits.

- Construction Manager will review on a monthly basis the Schedule update provided by the General Contractor for the Parking Ramp.

D. Construction

- Attend major Parking Ramp team meetings in Madison, WI for the Parking Ramp and conduct field visits, as needed.

- Assist with resolving any design or coordination issues during the construction phase which could have impact on the Parking Ramp and Private Development cost or schedule.

- Monitor the General Contractor's on site Construction activities for the Parking Ramp.

- City shall at City's sole cost and expense cause standard practice inspections of the Parking Garage to be performed related to the quality of the Parking Garage construction. Construction Manager shall have the right to review all results of such inspections, including all reports generated therefrom.

E. Fee

- Construction Manager shall provide a proposal to the City for Construction Management Services and resources anticipated. City shall pay Construction Manager a fee as mutually agreed by the Construction Manager and the City on or before January 31, 2023 for construction management services.

F. Miscellaneous

- Notwithstanding anything to the contrary in the foregoing, the City shall have the final authority to approve, and shall be the signatory to, all contracts related to the Parking Ramp, and in the event that any item listed in this Exhibit D as one of the Construction Manager Services is worded in such a way that such services, as described, would conflict with the laws of the State of Wisconsin or the City of Madison General Ordinances, the subject language shall be interpreted so as to be in compliance with the relevant statutes and ordinances, but in no case shall such conflict result in a termination of said Construction Manager Services.

EXHIBIT E

Scope Delineation and Preliminary Plans

[See attached.]

LEGEND

Represent the extent of work area that is covered by the agreement with the City of Madison for the State Street Campus Garage Mixed-Use project, located at 415 N Lake Street, Madison WI.

Represent the extent of work area that is covered by the agreement with M. A. Mortenson Company for the Theory Madison Student Housing project, located at 415 N Lake Street, Madison WI.

2022_ 0928

Agreement Scope Responsibility				Design Responsibility	
Item No.	Item Description	City of Madison	M.A. Mortenson	In EUA Scope	By Others
General Notes					
G(1)	The housing component will be certified as LEED Silver. The parking component will be Park Smart certified.	X			X
G(2)	EUA will coordinate with the city of Madison Arts Administrator to incorporate the cities Percent for Art program requirements.	X			X
Project Site					
S(1)	Site survey	X			X
S(2)	Environmental investigation	X			X
S(3)	CSM	X			X
S(4)	Geotechnical investigation	X			X
S(5)	Demolition of existing building, site pavement, curb & gutter, and all related items within site perimeter, including spoils removal off site. EUA will provide a site demolition plan for zoning approval. Spoils removal to be coordinated by others.	X		X	X
S(6)	Documentation and monitoring (protection / mitigation) as required) of existing surrounding structures and construction easements with neighboring properties	X			X
S(7)	All new utilities and infrastructure as needed sized for the entire development (including / not	X		X	

	limited to Water, Sanitary / Storm Sewer, Gas, Telecom, Electric) (shared responsibility between EUA, Civil Designer and City)				
S(8)	Utility line disconnection / demolition / relocation, as needed. Civil designer will coordinate items as part of the site plan submittal and review process.	X			X
S(9)	All work in the right of way (ROW) including new street scape – landscape, hardscape, lighting, furnishings, bike share, etc. needed for complete streetscape. (Shared responsibility between EUA/Civil Designer and City)	X		X	
S(10)	Patching / Replacement of paving and sidewalk within Right of Way as needed (shared responsibility between EUA/Civil Designer and City)	X		X	
P-1 Lower-Level parking					
P-1(1)	Structural foundation system designed to carry the building live and dead loads for the entire development, including drainage systems, if required	X		X	
P-1(2)	Set up and maintain any / all required concrete management, erosion control, SWPPP, dewatering plans, stormwater management and / or parking ramp water proofing systems	X		X	
P-1(3)	Earth retention as needed, designed by a third party under an agreement with the city.	X			X
P-1(4)	Any required below grade permanent stormwater	X		X	

	management systems; water proofing or below grade dewatering systems.				
P-1(5)	Site Access Control – temporary fence enclosure, signage / fence wrap, concrete barriers, etc. The city will be responsible during City construction scope. M.A. Mortenson will assume the site access control once City is complete with City construction scope.	X	X		X
P-1(6)	All utilities sized for the entire development (per apartment building drawings) including temporary utilities during construction. City to size the following services for the entire development: water, natural gas, storm, sanitary, electric, telecom to be provided to a mutually agreed upon demarcation point on the ground floor. City shall provide a shaft through the top of the parking podium to accommodate utilities. Mortensons will be responsible for pulling the services from the ground floor demarcation points through the shaft to the housing component.	X		X	
P-1(7)	All foundation walls, building structural support / columns, vertical elevator and stair shafts, shear walls, etc.	X		X	
P-1(8)	Slab on grade concrete parking slab and ramps	X		X	
P-1(9)	Post Tension concrete P1 parking slab and ramps	X		X	
P-1(10)	Stairs in north and south stair shafts	X		X	
P-1(11)	Stairs in the two central stair shafts (constructed as garage	X		X	

	scope / reimbursed by housing owner). Required due to constructability.				
P-1(12)	Elevators in the north and south elevator shafts. The cities elevator consultant will be providing construction documentation for these elevators. EUA will incorporate their documents into the Final construction Documents.	X		X	X
P-1(13)	Elevators in the two central elevator shafts		X	X	
P-1(14)	MEP, Low Voltage and fire protection systems	X		X EOR	
P-1(15)	Guardrails	X		X	
P-1(16)	Concrete slab membrane and striping	X		X	
P-1(17)	Signage (Code required, directional, wayfinding, exterior)	X			X
P-1(18)	EV Charging stations	X		X	
P1 Ground Floor					
P1(1)	All concrete foundation walls, building columns, vertical elevator and stair shafts, shear walls, etc. designed to carry the building live and dead loads for the entire development	X		X	
P1(2)	Post Tension concrete P2 parking slab and ramps	X		X	
P1(3)	Stairs in north and south stair shafts	X		X	
P1(4)	Stairs in the two central stair shafts (constructed as garage scope / reimbursed by housing owner). Required due to constructability.	X		X	
P1(5)	Elevators in the north and south elevator shafts	X		X	X
P1(6)	Elevators in the two central elevator shafts		X	X	
P1(7)	Provide a “grey box” for the residential common space with 2-hour rated CMU walls	X		X	

	at perimeter between parking and common space. City shall provide a pathway to the gray box to accommodate all utilities. Mortensons will be responsible for pulling the services to the gray box.Po				
P1(8)	Buildout the “Grey box” common space area.		X	X	
P1(9)	Buildout the bus terminal area	X		X	
P1(10)	Provide complete exterior wall assemblies on all exterior building facades.	X		X	
P1(11)	MEP, Low Voltage and fire protection systems sized for the entire development and extended to the top of the P6 transfer slab.	X		X EOR	
P1(12)	Guardrails	X		X	
P1(13)	Concrete slab membrane and striping; traffic controls and booths.	X		X	
P1(14)	Signage	X			X
P1(15)	Bike racks	X		X	
P1(16)	Loading dock, trash compactor, recycling		X		X
P1(17)	Generator, sized for the entire development. City to provide generator for entire project. Housing component to be sized for code minimum requirements. It is anticipated that the only additional load on the generator resulting exclusively from the housing component is the fire pump. M.A. Mortenson will be responsible for cost premiums associated with upsizing the generator to accommodate the fire pump.	X		X	
P2 Parking					
P2(1)	All concrete foundation walls, building columns,	X		X	

	vertical elevator and stair shafts, sheer walls, etc. design to carry the building live and dead loads for the entire development				
P2(2)	Post Tension concrete parking slab and ramps	X		X	
P2(3)	Provide post tension concrete transfer slab between levels P6 and 4. Slab to be engineered for all live and dead loads for the plaza, and the entire housing development above	X		X	
P2(4)	Post tension bridge connections to the Frances parking deck	X		X	
P2(5)	Stairs in north and south stair shafts	X		X	
P2(6)	Stairs in the two central stair shafts.	X		X	
P2(7)	Elevators in the north and south elevator shafts	X			X
P2(8)	Elevators in the two central elevator shafts		X	X	
P2(9)	Provide complete exterior wall assemblies on all exterior building facades.	X		X	
P2(10)	MEP, Low Voltage and fire protection systems sized for the entire development and extended to the top of the P6 transfer slab, including bus ventilation.	X		X EOR	
P2(11)	Guardrails	X		X	
P2(12)	Concrete slab membrane and striping and traffic controls.	X		X	
P2(13)	Signage	X			X
P3 through P6 Parking					
P3(1)	All concrete foundation walls, building columns, vertical elevator and stair shafts, sheer walls, etc. design to carry the building live and dead loads for the entire development	X		X	

P3(2)	Post Tension concrete parking slab and ramps	X		X	
P3(3)	Provide post tension concrete transfer slab between levels P3 and 4. Slab to be engineered for all live and dead loads for the plaza, and the entire housing development above. Including a pool that will installed on top of the slab. Pool will be designed so as not to displace any parking stalls below.	X		X	
P3(4)	Post tension bridge connections to the Frances parking deck at P3	X		X	
P3(5)	Stairs in north and south stair shafts	X		X	
P3(6)	Stairs in the two central stair shafts.		X	X	
P3(7)	Elevators in the north and south elevator shafts	X			X
P3(8)	Elevators in the two central elevator shafts		X	X	
P3(9)	Provide a “grey box” residential unit space on Lake Street with 2-hour rated CMU walls between parking and residential unit space. Provide post tension concrete slabs at loft levels. MEP, Low Voltage and fire protection to be sized and provided for build out of the units by M.A. Mortenson	X		X	
P3(10)	Buildout the “Grey box” residential unit space.		X	X	
P3(11)	Provide complete exterior wall assemblies on all exterior building facades. At City’s option, M.A. Mortenson could complete the exterior wall assemblies on the exterior building facades adjacent to the	X		X	

	housing component on L3-L6, to be reimbursed by the City.				
P3(12)	MEP, Low Voltage and fire protection systems sized for the entire development and extended to the top of the P6 transfer slab.	X		X EOR	
P3(13)	Guardrails	X		X	
P3(14)	Concrete slab membrane and striping and traffic controls.	X		X	
P3(15)	Signage	X			X
Level 4 Plaza and Housing					
L4(1)	Concrete building columns, vertical elevator and stair shafts, sheer walls, etc. design to carry the building live and dead loads for the entire housing development		X	X	
L4(2)	Post Tension concrete slab between housing levels		X	X	
L4(3)	Provide parapet edge around plaza level per the design		X	X	
L4(4)	Waterproof roofing system on top of transfer slab		X	X	
L4(5)	Pool, equipment and raised levels around pool. Areas of paver system over waterproof roofing system		X	X	X Aquatic Design
L4(6)	Stairs in the two central stair shafts.		X	X	
L4(7)	Elevators in the two central elevator shafts		X	X	
L4(8)	Provide complete exterior wall assemblies on all exterior facades above level L4 transfer slab.		X	X	
L4(9)	Complete build out of all residential units, common spaces and support spaces. Interior design		X	X	
L4(10)	MEP, Low Voltage and fire protection systems sized for all residential units, common spaces and support spaces. Connect to utilities that were provided by the city up to		X	X Design/Build	X Trade partner is the EOR

	the top of the L4 transfer slab				
L4(11)	Signage		X		X
Level 5 through 12 Housing					
L5(1)	Concrete building columns, vertical elevator and stair shafts, sheer walls, etc. design to carry the building live and dead loads for the entire housing development		X	X	
L5(2)	Post Tension concrete slab between housing levels		X	X	
L5(3)	Stairs in the two central stair shafts.		X	X	
L5(4)	Elevators in the two central elevator shafts		X	X	
L5(5)	Provide complete exterior wall assemblies on all exterior facades above level L4 transfer slab.		X	X	
L5(6)	Complete build out of all residential units, common spaces and support spaces. Interior design		X	X	
L5(7)	MEP, Low Voltage and fire protection systems sized for all residential units, common spaces and support spaces. Connect to utilities that were provided by the city up to the top of the L4 transfer slab		X	X Design/Build	X Trade partner is the EOR
L5(8)	Signage		X		X
Level R Roof level terrace					
R(1)	Concrete building columns, vertical elevator and stair shafts, sheer walls, etc. design to carry the building live and dead loads for the entire housing development		X	X	
R(2)	Post Tension concrete slab between housing levels		X	X	
R(3)	Provide parapet edge around terrace level per the design		X	X	
R(4)	Waterproof roofing system on top of terrace slab		X	X	

R(5)	Areas of paver system over waterproof roofing system		X	X	
R(6)	Stairs in the two central stair shafts.		X	X	
R(7)	Elevators in the two central elevator shafts		X	X	
R(8)	Provide complete exterior wall assemblies on all exterior facades above level L4 transfer slab.		X	X	
R(9)	Complete build out of all common spaces and support spaces. Interior design		X	X	
R(10)	MEP, Low Voltage and fire protection systems sized for all common spaces and support spaces. Connect to utilities that were provided by the city up to the top of the L4 transfer slab		X	X Design/Build	X Trade partner is the EOR
R(11)	Signage		X		X

EXHIBIT F

Purchase Price Options

Option #A - 15% AVG. DTR	Unit Type	Beds	2022 Rent	DTR	2022 Rent	Disc to UW Aford $914
Affordable Tier #1	2BD/2BA Double Occ.	68	$ 940	10%	$ 846	7%
Affordable Tier #2	2BD/2BA Double Occ.	32	$ 940	25%	$ 705	23%
DTR = Discont to Rent		100		Air Rights Price =		$ 18,000,000

Option #B - 40% AVG. DTR	Unit Type	Beds	2022 Rent	DTR	2022 Rent	Disc to UW Aford $914
Affordable Tier #1	2BD/2BA Double Occ.	36	$ 940	30%	$ 658	28%
Affordable Tier #2	2BD/2BA Double Occ.	36	$ 940	50%	$ 470	49%
DTR = Discont to Rent		72		Air Rights Price =		$ 15,000,000