

BODY

The City of Madison (the "City") has executed a Letter of Intent with Hovde Properties LLC, or an entity owned or controlled by Hovde Master LLC or its principals (the "Developer"), that outlines the principal terms and conditions for a Purchase and Sale Agreement that will be executed between the parties that will provide the following:

1. The Developer will acquire from the City the City-owned property located at 316 West Dayton Street which is the current location of the Madison Fire Department Administration Building and Fire Station No. 1 for assemblage into the Developer's mixed-use development condominium project (the "Project") located at 305-309 West Johnson Street. The City owned property is identified as "Parcel A", "Parcel B" and "Parcel C" (Fire Station No.1) (collectively, the "MFD Property"), as shown and identified on the attached Exhibit A. The purchase price is supported by an appraisal obtained by the City.
2. The Developer will reconvey to the City, at no cost, Parcel C to enable the City to incorporate Fire Station No. 1 into a condominium unit to be purchased by the City within the Project. The Fire Administration Building will be demolished by the Developer. The Fire Administration offices will relocate to leased space until the Fire Admin Condo Unit as described in Paragraph 3 below is built out.
3. The City will purchase a "grey box" condominium unit (the "Fire Admin Condo Unit") and parking stalls (collectively, the "Fire Parking Condo Unit") within the Project as shown and identified on the attached Exhibit C, for the purpose of providing administrative office and storage space for the Madison Fire Department. The City shall be responsible for the build out of the Fire Admin Condo Unit.

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Madison (the "City") hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City and Hovde Properties LLC, or an entity owned or controlled by Hovde Master LLC or its principals (the "Developer"), for the acquisition by the Developer of the MFD Property, as shown on the attached Exhibit A as Parcels "A", "B" and "C" and legally described on the attached Exhibit B, for assemblage into the Project, the reconveyance by the Developer of Parcel C to the City, and the purchase of the Fire Admin Condo Unit and Fire Parking Condo Unit within the Project, as shown and identified on the attached Exhibit C, for the purpose of providing administrative office and storage space for the Madison Fire Department on the following terms and conditions:

1. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the City or the Developer, as indicated on the signature page.
2. MFD Property Purchase by Developer.
 - a. Description. The Developer shall purchase, and the City shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the MFD Property, including all improvements located thereon and all appurtenances thereto, free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the "Permitted Exceptions" (as defined below).
 - b. Purchase Price. The purchase price for the City's interest in the MFD Property (the "Developer's Purchase Price") shall be One Million Seven Eighty Seven Thousand Eight Hundred Thirty Four Dollars (\$1,787,834) (calculated by multiplying the number of square feet of Parcel A (12,099) and Parcel B (1,389) = 13,488 total square feet total as shown in the ALTA/ACSM survey obtained by the City and provided to the Developer by the City by One Hundred Thirty-two and 55/100 Dollars (\$132.55) per square foot). The Developer's Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided. As a condition of sale, at closing One Hundred Thousand Dollars (\$100,000) of the Purchase Price (the "Environmental Escrow Funds") shall be placed into an Environmental

Escrow as described in Paragraph g.vii. below, to be used by the Developer to pay for any environmental remediation and/or abatement of: (i) asbestos in any building or related improvements located on Parcels A and B; and (ii) petroleum contaminated soils located on Parcels A and B, provided such contamination can be proven to have been caused by one of the four underground storage tanks located on Parcels A and B, and not by the migration of any off-site contamination.

- c. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the Developer shall purchase Parcel A and Parcel B in “AS-IS, WHERE-IS” condition and “with all faults,” and shall agree that it relied upon no warranties, representations or statements by the City, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided below, the Developer’s closing on the acquisition of Parcel A and Parcel B shall constitute conclusive evidence that the Developer is satisfied with the condition of and title to Parcel A and Parcel B and has waived or satisfied the Developer’s contingencies, as generally described in Paragraph 8 below. The City shall provide the Developer with a copy of all environmental and inspection reports in its possession regarding the MFD Property, including any improvements located thereon. To the extent authorized by law, the City covenants and agrees to indemnify and hold harmless the Developer, its officers, agents, and employees from any and all claims, damages, judgments, losses, reasonable attorneys fees and costs, including fines and penalties, arising out of the Developer’s ownership interest in Parcel C.
- d. Warranties and Representations. The Agreement shall contain standard warranties and representations regarding the City’s ownership and use of the MFD Property and its ability to enter into the Agreement and transfer the MFD Property, subject to unrecorded contracts and easements, notice or knowledge of environmental contamination and/or lawsuits or proceedings affecting the MFD Property and the like. All warranties and representations shall survive the closing.
- e. 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 a 2006 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 MFD 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 the 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 Parcel A and Parcel B only, 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 the Agreement by reason of a valid legal defect in title which the Developer is unwilling to waive, the Agreement shall become null and void.
- f. Removal of Items from MFD Property. Prior to the execution of the Agreement, the parties shall agree in writing to those items that may be removed from the MFD Property by the City. Said items shall be removed by the City, at its sole cost and expense, prior to the demolition of the improvements on the MFD Property.
- g. Closing.
 - i. The closing shall take place through an escrow opened with the Title Company as escrow agent (the “Escrow”), which Escrow shall also include the documents described in Paragraphs 3.a., 3.b., 3.c., 4 and 5.d. The City shall be responsible for preparation of the Escrow Agreement and such agreement shall be acceptable to the City and the

Developer. The Title Company's Escrow fee shall be shared equally between the City and the Developer.

- ii. The consummation of the purchase and sale of the MFD Property and delivery of the Deed to the Title Company for the Escrow shall occur within thirty (30) days after the waiver or satisfaction of the contingencies listed in Paragraphs 8 and 9 at the office of the Title Company, unless the parties agree in writing to another date or place.
- iii. The City agrees to execute and deliver to the Title Company for the Escrow the Deed conveying the MFD Property to the Developer free and clear from all liens and encumbrances, excepting municipal and zoning ordinances and the Permitted Exceptions.
- iv. The City shall pay all recording/filing and transfer fees for such documents as are required to be recorded/filed in order to cause title to the MFD Property to be in the condition called for by the Agreement and shall pay the Wisconsin transfer fee, if any.
- v. All real estate taxes, if any, with respect to the MFD Property shall be prorated between the parties as of the date of closing based upon the latest known assessment and latest known mil rate.
- vi. 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 MFD Property for any work levied or commenced as of the date of closing.
- vii. At closing, the Environmental Escrow Funds shall be placed into an escrow account (the "Environmental Escrow") with the Title Company, which Environmental Escrow shall be used solely for the purpose of reimbursing the Developer for its costs to remediate soils on Parcels A and B that were contaminated by petroleum products leaking from tanks located on Parcels A and B and to abate any asbestos in any building or related improvements located on Parcels A and B. The City, the Developer and the Title Company shall be parties to an Environmental Escrow Agreement. The Developer will obtain bids for the remediation of the contaminated soils and asbestos abatement and shall enter into contracts for such work with the lowest qualified bidder, as determined by the Developer. The Developer shall be entitled to draw on the Environmental Escrow to pay for the cost of soils remediation and asbestos abatement upon delivery to the City of invoices and paid lien waivers confirming that such work has been performed and paid for. Remediation and/or abatement costs in excess of the Environmental Escrow Funds shall be the sole responsibility of the Developer. Any monies remaining in the Environmental Escrow, and all accrued interest thereon shall be released to the City, and the Environmental Escrow Agreement shall automatically terminate upon the disbursement of all the Environmental Escrow Funds.

3. Initial Land Divisions and Cross-Access Easement. The Developer shall be responsible for the preparation of the following items, which will all be placed in Escrow and recorded by the Title Company immediately following the recording of the Deed to the Developer for the MFD Property:

- a. Certified Survey Map. A one (1) lot Certified Survey Map of the entire MFD Property and the Developer's properties located at 305 and 309 West Johnson Street (the "CSM").
- b. Cross-Access Easement. A Declaration of Cross Access Easement (the "Declaration"), reserving for driveway purposes an area within the Certified Survey Map for the benefit of the future owners of the "City Master Condo Unit" and the "Developer Master Condo Unit" described in Paragraph 3.c., for the exclusive use of said owners, their vendors and contractors, as a means of ingress and egress from West Johnson Street to and from said Master Condo Units.

The Declaration shall be subject to the prior review and approval by the City and shall include provisions regarding vehicle clearance and turning radii dimensions, maintenance and repair responsibilities, use, and use restrictions. The Declaration shall be recorded immediately following the recording of the Certified Survey Map and prior to the recording of the Master Condominium Plat described below.

- c. Master Condominium Plat. A two (2)-unit condominium plat (hereinafter, "Master Condominium Plat") comprised of: (1) Parcel C, which shall include all subterranean and air space rights (hereinafter, "City Master Condo Unit"); and (2) the remaining lands within the CSM, which shall also include all subterranean and air space rights (hereinafter, "Developer Master Condo Unit"). The Developer shall also be responsible for the preparation and recording of the necessary condominium documents to create the Master Condominium, including, but not limited to, the condominium plat, declaration, bylaws and rules and regulations adopted pursuant to the declaration or bylaws (collectively, the "Master Condominium Documents"). There shall be no Common Elements within the Master Condominium. The Master Condominium Documents shall specifically allow for cross connectivity between the City Master Condo Unit and the Developer Master Condo Unit. The Master Condominium Documents shall be subject to the prior review and approval by the City. The cost of preparing and recording (as appropriate) the Master Condominium Documents shall be repaid by the City as a component of the purchase price of the Fire Admin Condo Unit Purchase Price, as provided in Paragraph 6.b. The parties agree that such costs shall not exceed Ten Thousand Dollars (\$10,000). Such costs and expenses are referred to herein as "City Direct Costs".
 - d. Construction Easement. The City shall grant the Developer an easement (the "Construction Easement") which will permit the foundation for the Project's construction crane to encroach into the City Master Condo Unit and will permit the use of a portion of the air space above the City Master Condo Unit and the adjacent public street rights of way for construction crane purposes. The Construction Easement shall require that the Developer provide commercial general liability insurance, including contractual liability, with a limit of no less than One Million Dollars (\$1,000,000) per occurrence. The Developer shall also provide umbrella liability insurance with a minimum limit of Five Million Dollars (\$5,000,000) per occurrence. Both policies shall name the City of Madison, its officers, officials, agents and employees as additional insured and apply on a per project basis. As evidence for these coverages, the Developer shall furnish to the City a certificate of insurance on a form provided by the City. In addition, the Developer and its contractor(s) shall indemnify, defend and hold harmless the City from any claim or suit arising from the use of the Construction Easement. Upon completion of the Project, the construction crane shall be removed by the Developer and the foundation shall be removed to below grade and the area disturbed by said use and removal shall be restored at the Developer's sole cost. Additionally, the Construction Easement shall contain additional provisions regarding construction and staging activities for the Project. The specific location of the Construction Easement shall be agreed to by the parties and is generally depicted on attached Exhibit E. The City agrees to grant the Construction Easement at no cost to the Developer.
4. Developer Conveyance to City of City Master Condo Unit. The Developer shall convey the City Master Condo Unit to the City by Condominium Deed. Such deed shall be placed in Escrow and shall be recorded by the Title Company immediately following the recording of the Master Condominium Plat. The City shall pay all recording/filing and transfer fees relating to such conveyance. The purchase price of the City Master Condo Unit shall be One Dollar (\$1).
 5. Development of the Project.
 - a. Description. The Developer shall develop the Developer Master Condo Unit as the Project, consisting of approximately 255 residential rental units, approximately 30,244 square feet of

retail/commercial/office space, approximately 30,118 square feet of the Fire Admin Condo Unit, and approximately 324 parking stalls.

- b. Demolition. The Developer shall be responsible for the demolition of all buildings and improvements (including removal of asphalt and concrete surfaces) within the Developer Master Condo Unit.
- c. Environmental Remediation. The Developer shall be responsible for and pay for the remediation of any environmental contamination within Parcel A and Parcel B, regardless of the fact that such Parcels are included in the Developer Master Condo Unit, subject to the Environmental Escrow.
- d. Project Condominium Documents. The Developer shall be responsible for the preparation of the necessary condominium documents to create the Project, including, but not limited to, the condominium plat, declaration, bylaws and rules and regulations adopted pursuant to the declaration or bylaws (collectively, the "Project Condominium Documents"). The cost of preparing the Project Condominium Documents shall be a soft cost of the Project. The "Common Elements" shall be defined in the Project Condominium Documents and shall include, but not be limited to, the structural components of the Project, the land, public exit corridors, entrance vestibules, public and service elevators, lavatories in public areas, driveways and loading docks, storage areas and similar items, except to the extent any of the foregoing are used by only one party. The "Limited Common Elements" defined in the Project Condominium Documents shall specifically include, but not be limited to, those areas necessary for equipment, cabling and wiring associated with the City's first responder telecommunications equipment operating from within the "Fire Admin Condo Unit," as defined in Paragraph 5.f., except to the extent any area is used exclusively by the City in which case it will be part of the Fire Admin Condo Unit and not a Limited Common Element. The City and the Developer shall agree on the terms of the Project Condominium Documents prior to December 15, 2012, or as such other date as agreed to in writing by the parties, and the Project Condominium Documents shall then be placed in Escrow and shall be recorded by the Title Company immediately following the recording of the Condominium Deed for the City Master Condo Unit. The Project Condominium Documents shall provide that expenses pertaining to the Common Elements shall be prorated on a square footage basis or as otherwise agreed to by the parties.
- e. Non-interference. Notwithstanding the provisions of Paragraph 5.d., the Project Condominium Documents shall specifically provide that prior to authorizing the installation of any telecommunications equipment upon the rooftop of the Project Condominium, the Developer, or its successor-in-interest, shall require that the applicant obtain and provide to the City a copy of an interference study demonstrating that such equipment shall in no way interfere with the City's first responder communications equipment operating from within the Fire Admin Condo Unit.
- f. Construction of Fire Admin Condo Unit. As part of the Project, the Developer shall construct a 30,118 square foot "grey box" condominium unit, consisting of approximately 201 square feet on the basement level; 2,600 square feet on the ground level (first floor), 2,894 square feet on the mezzanine level, and approximately 24,423 square feet on the second floor of the Project Condominium, as depicted on attached Exhibit F, for the relocation and expansion of the Madison Fire Department Administrative offices. Such condominium unit, together with an undivided interest in the Common Elements, is hereinafter collectively referred to as the "Fire Admin Condo Unit." The Developer shall be responsible for completing the construction of the Fire Admin Condo Unit substantially in accordance with plans and "grey box" specifications agreed to by the parties prior to the execution of the Agreement. The Developer shall ensure that the construction of the Fire Admin Condo Unit shall be substantially completed no later than twenty (20) months after the receipt of all required approvals from municipal authorities having jurisdiction; provided, however, that the time period shall be subject to extension as a result of force majeure events. "Force Majeure" shall be defined as any events, actions or omissions

which are outside of the reasonable control of the Developer including, but not limited to: extremely severe weather or natural disasters; Acts of God or war; lawsuits or other actions commenced by third parties which have the effect of delaying, stopping or materially modifying the Project; strikes, lockouts, picketing (legal or illegal) or riots; fire or other casualty; unavailability of fuel, power, supplies or materials; the passage or application or limitation of any law, regulation, ordinance or order by any government authority which has the effect of preventing commencement of construction; or delays in deliveries. The Developer shall pay to the City the sum of One Million Dollars (\$1,000,000) if the Fire Admin Condo Unit is not substantially completed in accordance with the plans and grey box specifications on or before the date set forth in this paragraph; provided, however, that (i) the completion date shall be extended in a reasonable manner (but no less than one (1) day for each day of delay) for each Force Majeure event, and (ii) in the event the Force Majeure event causes a delay which exceeds one (1) year in duration or results in cost increases which exceed ten percent (10%) of the Project costs, no payment shall be due. This sum shall be considered and treated not as a penalty but as fixed, agreed and liquidated damages due the City from the Developer by reason of inconvenience to the public and the City, added costs of rent and other operating costs for alternative office space, site selection and acquisition costs, and design, engineering and public construction costs for a new permanent location for fire administration office space. The Developer agrees to pay the liquidated damages to the City within thirty (30) days of the City's demand for payment. Upon completion, the Developer shall provide the City with a certification from the Project's architect demonstrating that the Fire Admin Condo Unit has been constructed substantially in accordance with the approved plans and grey box specifications.

- g. Signage. The City shall be permitted to install on the exterior of the Project signage identifying the Fire Admin Condo Unit. The City and the Developer shall agree on the location and size of the signage. The signage shall be required to be in compliance with all applicable City zoning codes and ordinances. The City shall pay the cost of the installation and maintenance of the signage.
- h. Cooperation. The Agreement shall also provide that the City and Developer each will at any time, or from time to time upon written request, sign and deliver such other documents as may be reasonably requested, necessary or appropriate to give full effect to the terms of the Agreement, which documents may be approved by the City of Madison Common Council.

6. Fire Admin Condo Unit Purchase by City.

- a. Description. The City shall purchase and the Developer shall sell and convey by Condominium Deed fee simple ownership of the Fire Admin Condo Unit
- b. Purchase Price. The purchase price of the Fire Admin Condo Unit (the "Fire Admin Condo Unit Purchase Price") shall be the sum of (i) One Hundred Forty-eight and 83/100 Dollars (\$148.83) per square foot which amount may be adjusted based on the guaranteed maximum price contract for construction of the Project and includes "Soft Costs" as defined below) multiplied by the number of square feet with the Fire Admin Condo Unit as determined by the Condominium Plat, plus (ii) the City Direct Costs. The term "Soft Costs" is defined as: architectural, design, engineering, insurance, title, legal, developer fee, and financing costs. Soft Costs shall be calculated by multiplying (a) the total Soft Costs by (b) a fraction, the numerator of which shall be the square feet in the Fire Admin Condo Unit and denominator of which shall be the square feet in the Project (excluding parking areas), as determined by the Project Condominium Plat, (c) reduced by the cost savings inuring to the City as calculated below. The Fire Admin Condo Unit Purchase Price is subject to the Developer entering into a guaranteed maximum price contract for construction of the Project with cost-savings sharing mechanisms (limited to the Fire Admin Condo Unit) and open bidding parameters acceptable to the City and the Developer. The Fire Admin Condo Unit Purchase Price shall be reduced by any cost-savings, calculated based on the ratio that the square footage area of the Fire Admin Condo Unit bears to the square

footage area of the Project, excluding any parking condominium units. Prior to closing, the Developer shall provide to the City: a copy of its guaranteed maximum price construction contract, and all amendments thereto; copies of all applications for payment of construction costs to its lender(s); and evidence of disbursement from the lender(s) for such construction costs. The Fire Admin Condo Unit Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

- c. Title Insurance. The Developer shall provide to the City, at the Developer's expense, within thirty (30) days prior to the closing of the Fire Admin Condo Unit a commitment from the Title Company to issue a 2006 ALTA Owner's Title Insurance Policy in the amount of the Fire Admin Condo Unit Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Fire Admin Condo Unit as of a date no more than fifteen (15) days before such title proof is provided to the City, to be in the condition called for in the Agreement, and further subject only to the Condominium Documents, liens which will be paid out of the proceeds of the closing and any exceptions acceptable to the City ("Permitted Exceptions"). To the extent the City has previously reviewed and not objected to any title matters, such matters shall be Permitted Exceptions for the purpose of this Paragraph 6.c. The City shall notify the Developer of any valid objection to title, in writing within thirty (30) days of its receipt of such commitment. The Developer shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections.
- d. Closing.
- i. The consummation of the purchase and sale of the Fire Admin Condo Unit and delivery of the Condominium Deed to the City shall occur within ten (10) days after the Architect for the Project certifies that the Fire Admin Condo Unit is constructed substantially in accordance with the approved plans and "grey box" specifications, in accordance with Paragraph 5.f., at the office of the Title Company, unless the parties agree in writing to another date or place.
 - ii. The Developer agrees to execute and deliver to the City at closing the Condominium Deed conveying the Fire Admin Condo Unit to the City free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances, the Condominium Documents and the Permitted Exceptions.
 - iii. The City shall pay all recording/filing fees, except that the Developer shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Fire Admin Condo Unit to be in the condition called for by the Agreement and shall pay the Wisconsin Transfer Fee, if any.
 - iv. All real estate taxes with respect to the Fire Admin Condo Unit shall be prorated between the parties as of the date of closing based upon the latest known assessment and latest known mil rate.
 - v. Any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Project for any work levied or commenced as of the date of closing shall constitute a Soft Cost of the Project
 - vi. The Developer shall have a right of first refusal at any time the City desires to sell all or any portion of the Fire Admin Condo Unit or the City Master Condo Unit. The City shall have a right of first refusal to lease or purchase approximately 5,820 additional square feet of either office or residential space on the second floor of the structure in which the Fire Admin Condo Unit is located, as shown on attached Exhibit D. The parties agree to execute and record an agreement(s) setting forth their respective first refusal rights.

7. Fire Parking Condo Unit Purchase by City.

- a. Description. The City shall purchase and the Developer shall sell and convey by Condominium Deed fee simple ownership of a twenty-five (25) parking stall condominium unit within the Project, together with an undivided interest in the Common Elements (collectively, the "Fire Parking Condo Unit"). Said parking stalls shall be contiguous and shall be located at a mutually agreeable location within the Project.
- b. Purchase Price. The purchase price of the Fire Parking Condo Unit (the "Fire Parking Condo Unit Purchase Price") shall be (i) Six Hundred Twenty-five Thousand One Hundred Dollars (\$625,100) (calculated by multiplying the number of parking stalls (25) comprising the Fire Parking Condo Unit by Twenty-five Thousand Five Hundred Thirty-nine Dollars (\$25,004) per parking stall), reduced by any cost savings inuring to the City as calculated below, plus (ii) any City Direct Cost relating to the Fire Parking Condo Unit. The cost of the Fire Parking Condo Unit is subject to the Developer entering into a guaranteed maximum price contract for construction of the Project with cost-savings sharing mechanisms (limited to the Fire Parking Condo Unit) and open bidding parameters acceptable to the City and the Developer. The Fire Parking Condo Unit Purchase Price shall be reduced by any cost-savings, calculated based on the ratio that the number of individual parking stalls of the Fire Parking Condo Unit bears to the total number of all individual parking stalls within the Project. To the extent the City requires accommodations specific to the Fire Parking Condo Unit (for example, additional key cards, limitations on access, signage, gates) the cost of such accommodations shall be a City Direct Cost. The Fire Parking Condo Unit Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.
- c. Title Insurance. The Developer shall provide to the City, at the Developer's expense, within thirty (30) days prior to the closing of the Fire Parking Condo Unit a commitment from the Title Company to issue a 2006 ALTA Owner's Title Insurance Policy in the amount of the Fire Parking Condo Unit Purchase Price upon the recording of proper documents (including, without limitation, the recordable Condominium Documents), together with a gap endorsement. The commitment shall show title to the Fire Parking Condo Unit as of a date no more than fifteen (15) days before such title proof is provided to the City, to be in the condition called for in the Agreement, and further subject only to the Condominium Documents, liens which will be paid out of the proceeds of the closing and any exceptions acceptable to the City ("Permitted Exceptions"). To the extent the City has previously reviewed and not objected to any title matters, such matters shall be Permitted Exceptions for the purpose of this Paragraph 7. The City shall notify the Developer of any valid objection to title, in writing within thirty (30) days of its receipt of such title commitment. The Developer shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections.
- d. Closing.
 - i. The consummation of the purchase and sale of the Fire Parking Condo Unit and delivery of the Condominium Deed to the City shall occur simultaneously with the closing on the Fire Admin Condo Unit at the office of the Title Company, unless the parties agree in writing to another date or place.
 - ii. The Developer agrees to execute and deliver to the City at closing the Condominium Deed conveying the Fire Parking Condo Unit to the City free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances, the Condominium Documents and the Permitted Exceptions.
 - iii. The Developer shall provide to the City at closing a certification from the Project's architect demonstrating that the Fire Parking Condo Unit has been constructed substantially in accordance with the approved plans and specifications.

- iv. The City shall pay all recording/filing fees, except that the Developer shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Fire Parking Condo Unit to be in the condition called for by the Agreement and shall pay the Wisconsin Transfer Fee, if any.
 - v. All real estate taxes with respect to the Fire Parking Condo Unit shall be prorated between the parties as of the date of closing based upon the latest known assessment and latest known mil rate.
 - vi. Any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Project for any work commenced as of the date of closing shall be a Soft Cost of the Project.
 - vii. The Developer shall have a right of first refusal at any time the City desires to sell all or any portion of the Fire Parking Condo Unit. The parties agree to execute and record an agreement setting forth this first refusal right.
8. Developer Contingencies. The Developer shall have one hundred twenty (120) days from the Effective Date (the "Developer's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the Developer's contingencies cannot be completed despite the Developer's best efforts:
- a. Land Use Approvals. The Developer securing all land use approvals for the construction of the Project. Such approvals may include, but not be limited to: approval of a one (1) lot certified survey map, approval of a Planned Unit Development/Specific Implementation Plan, issuance of a demolition permit for the demolition of existing structures, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary or required to complete the Project.
 - b. Project Financing. The Developer securing financing acceptable to the Developer for the construction of the Project including, but not limited to, Tax Incremental Financing Assistance.
 - c. Inspections and Testing. The Developer obtaining various inspections and testing of Parcel A and Parcel B. The Developer, at its sole expense, may obtain an inspection of all buildings and related improvements located on Parcel A and Parcel B, a Phase 1 and/or 2 environmental site assessment of Parcel A and Parcel B, and related testing, soils testing and any other inspections or testing deemed necessary by the Developer. In no event shall the City be required to cure any matter to which the Developer objects relating to the condition of Parcel A or Parcel B or any improvements located thereon.
 - d. Parking Spaces During Construction. The Developer securing no less than forty (40) parking spaces at an alternative location(s) for use during the period of Project construction until such time that an occupancy permit has been issued for the Project parking stalls, at a cost not to exceed One Hundred Twenty-five Dollars (\$125) per stall per month.
 - e. Construction Easement. The Developer obtaining the Construction Easement referenced in Paragraph 3.d.

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

9. City Contingencies. The City shall have one hundred twenty (120) days from the Effective Date (the "City's Contingency Period") to satisfy or waive the following contingencies or to otherwise terminate the Agreement if any of the City's contingencies cannot be completed despite the City's best efforts.

- a. Inclusion in TID. The City creating a new Tax Incremental Financing District (TID) or amending the boundaries of an existing TID to include the Project.
- b. Capital Budget Authorization. The City obtaining authorization from the Common Council of the City of Madison for: (1) any City financial assistance for the Project including TIF financial assistance; (2) the purchase of and the construction and completion of the interior space improvements within the MFD Condo Unit; (3) the purchase of the Fire Parking Condo Unit; (4) the cost of leasing office space and parking stalls for the temporary relocation the City's Fire Department Administration staff and equipment, including relocation costs; and (5) the costs to rehab the existing Fire Station No. 1 building.
- c. TIF Development Agreement and Funding. The City obtaining authorization from the Common Council of the City of Madison for: (1) a TIF Development Agreement with the Developer; and (2) the borrowing of TIF funding for the Project.

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

10. Miscellaneous.

- a. Cancellation of Project. Provided that the Developer is not in default hereunder, in the event the City determines to not proceed with the sale of the MFD Property and the purchase of the Fire Admin Condo Unit and Fire Parking Condo Unit, the City shall pay the Developer the reasonable out-of-pocket costs and expenses incurred by the Developer relating to the design of the Project to accommodate the Madison Fire Department use. In no event shall such costs exceed Seventy-five Thousand Dollars (\$75,000). All such claimed out-of-pocket costs and expenses shall be evidenced by copies of paid invoices to be provided to the City. Payment of said out-of-pocket expenses shall be paid by the City to the Developer within thirty (30) days of receipt of the paid invoices. This paragraph shall not be applicable if: (a) the City's decision to not proceed is due to a valid defect in title; (b) the City terminates the Agreement pursuant to Paragraph 9; or (c) the Developer terminates the Agreement pursuant to Paragraph 8.

Provided that the City is not in default hereunder, in the event the Developer determines to not proceed with the purchase of the MFD Property, the Developer shall pay fifty percent (50%) of the reasonable out-of-pocket costs and expenses incurred by the City relating to pre-occupancy of the office space to be used for the temporary location of the City's Fire Administration staff and equipment including, but not limited to, the costs of installing tele-data and telecommunication equipment and wiring and tenant improvements incurred by the owner of the building in anticipation of the occupancy of space by the Madison Fire Department. All such claimed out-of-pocket costs and expenses shall be evidenced by copies of paid invoices to be provided to the Developer. Payment of said out-of-pocket expenses shall be paid by the Developer to the City within thirty (30) days of receipt of the paid invoices.

- b. Consultation Regarding Aesthetic Upgrade of Fire Station No. 1. The City shall seek the Developer's input for the upgrade of the exterior appearance of Fire Station No. 1 located on Parcel C.
- c. Remedies. A material failure to perform any obligation under the Agreement is a default which may subject the defaulting party to liability for damages or other legal remedies. If either party defaults, the nondefaulting party may sue for specific performance or actual damages or seek other remedies as may be available in either law or equity.
- d. Exchange Transaction. In the event Developer decides to include all or any part of the property being purchased or sold by it in a 1031 exchange transaction, the City agrees to cooperate in such transaction provided however, that such cooperation shall be at no out-of-pocket cost to the City and provided the City shall not act as an intermediary in the 1031 exchange transaction.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign any and all documents required to complete the transactions contemplated in this resolution.