
DEVELOPMENT AGREEMENT

by and among

THE CITY OF MADISON, WISCONSIN,

and

GARVER FEED MILL, LLC.

EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Garver Building Purchase Term Sheet
- Exhibit C Draft CSM
- Exhibit D Lot 1 Ground Lease Term Sheet
- Exhibit E Lot 2 Ground Lease Term Sheet
- Exhibit F Cold Storage Lease Term Sheet
- Exhibit G City Financing Term Sheet
- Exhibit H WEDC Grant Contract

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), dated as of _____, 2017 (the “Effective Date”), is made by and among the CITY OF MADISON, a Wisconsin municipal corporation (the “City”), and GARVER FEED MILL, LLC, an Illinois limited liability company (the “Developer”).

RECITALS

WHEREAS, the City owns certain real property together with improvements thereon as more fully described on Exhibit A as the “Property”; and

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

WHEREAS, the parties hereby desire to enter into this Agreement to set forth the following terms and conditions related to the development of the Property.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEVELOPMENT OF THE PROJECT

Section 1.1. Development. The City and the 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 three primary components: (1) the “Garver Building” and associated work being done on Lot 1 (the “Lot 1 Component”) and (2) the “Microlodges” and associated work being done on Lot 2 (the “Lot 2 Component”) and (3) the “Cold Storage Building” (collectively, the “Project”; each a “Project Element”). Each Project Element is more specifically described as follows:

(a) The Lot 1 Component will be comprised of a redevelopment of the fifty eight thousand nine hundred (58,900) square foot building to include multi-tenant office space, food production and processing and other approved uses, as described by the Zoning Text in Section 4.1 below.

(b) The Lot 2 Component will be comprised of up to fifty microlodges functioning as a hospitality operation for transient guests for those uses as approved in the Zoning Text as described in Section 4.1 below.

(c) The Cold Storage Building will be comprised of a ten thousand five hundred sixty (10,560) square foot building that will be shared by the Developer and the City under a lease arrangement described in Section 2.4(b).

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 2.1. Real Estate Holding Company. To facilitate the overall development of the Project, the Developer may enter into master leases or otherwise assign its rights and obligations related to the Project to an affiliated entity or entities to be formed by the Developer (the "Holding Company") as set forth in the Ground Leases, as defined in Section 2.4, and City Financing Term Sheet, as defined Section 3.3(a). In the event a Holding Company is formed, the Holding Company, and its assigns, will assume the responsibilities of this Agreement and the terms, conditions, covenants and obligations set forth herein.

Section 2.2. Real Estate Purchase. Developer shall purchase the Garver Building from the City and the City shall sell the Garver Building to Developer pursuant to the terms of a real estate purchase agreement in substantially the form attached hereto as Exhibit B (the "Garver Building Purchase Agreement"). The consummation of the purchase and sale of the Garver Building pursuant to the terms of the Garver Building Purchase Agreement shall occur concurrent with the Project Commencement Closing (defined in Section 3.1 below), unless otherwise agreed to by the parties.

Section 2.3. Certified Survey Map. Subsequent to the effective date of this Agreement and prior to the Lot 1 Project Commencement Closing, the City shall prepare and approve, by resolution of the Common Council, a certified survey map (the "CSM") with no less than three lots. One lot will contain the Garver Building and the Cold Storage Building ("Lot 1"); another lot will contain the Microlodges ("Lot 2"); and any other lots or outlots will be held for use by the City (collectively referred to as "Lot 3"). The CSM shall be executed by the City and delivered for recording at the Project Commencement Closing, and appears substantially in the form of the attached Exhibit C.

Section 2.4. Real Estate Leases.

(a) The City shall lease to Developer and Developer shall lease from the City Lot 1 and Lot 2 via two (2) ground leases (together the "Ground Leases"). The consummation of the Lot 1 Ground Lease and the Lot 2 Ground Lease, each as further described below, shall occur concurrently and respectively with the Lot 1 Project Commencement Closing and the Lot 2 Project Commencement Closing (defined in Section 3.1 and 3.2 below), unless otherwise agreed to by the parties.

(1) Lot 1 will be leased under one ground lease, the terms of which are substantially contained in the attached Exhibit D (the "Lot 1 Ground Lease").

(2) Lot 2 will be leased under one ground lease, the terms of which are substantially contained in the attached Exhibit E (the "Lot 2 Ground Lease")

(b) The Developer shall lease to the City and the City shall lease from the Developer a portion of the Cold Storage Building to be constructed as a grey box in accordance with City's

specifications, for delivery by the Developer, for use by the City under a lease, the terms of which are substantially contained in the attached Exhibit F (the “Cold Storage Lease”).

Section 2.5. Real Estate Access. In order for the Developer to access Lot 1 and Lot 2 and in order to construct necessary utilities to the Project, and in order for the City to have access to the Cold Storage Building and the City owned building on Lot 3 commonly referred to as the “Cottage”, the Developer and City agree to the following:

(a) The City shall provide a private common access and utility easement to the Developer (the “Developer Access Easement”) across Lot 3 (and Lot 2 until Lot 2 Project Commencement Closing) for access to Lot 1 and Lot 2. The form and terms of the Developer Access Easement and any reserved access rights for the City in the Ground Leases shall be mutually agreeable to the City and Developer. However, the Developer shall agree to perform all maintenance for the Developer Access Easement within the easement area.

(b) The City shall reserve the right to access the Cold Storage Building, the Cottage, and for public use of a path around the Project for pedestrians and bicyclists, within the Ground Leases. The Developer shall agree to perform all maintenance within these areas, except for the maintenance obligations that will be the responsibility of the City as it relates to the Cold Storage Building sidewalks and doorways, the Olbrich path to access its mulching operation.

ARTICLE III

PROJECT FINANCING AND CONSTRUCTION

Section 3.1. Closing. The closing of the financing and entitlement phase of the Lot 1 Component of the Project (the “Lot 1 Project Commencement Closing”) shall take place at a date, time and location mutually acceptable to the parties but no later than September 29, 2017 (the “LOT 1 Project Commencement Closing Deadline”), except as may otherwise be agreed to in writing by the parties.

Section 3.2. The closing of the financing and entitlement phase of the Lot 2 Component of the Project (the “Lot 2 Project Commencement Closing”) shall take place at a date, time and location mutually acceptable to the parties but no later than June 30, 2018 (the “LOT 2 Project Commencement Closing Deadline”), except as may otherwise be agreed to in writing by the parties.

Section 3.3. Sources and Uses of Funds for Lot 1. The City shall provide funding for the redevelopment of the Garver Building in the amounts and for the purposes set forth in this Section 3.3, which amounts shall be committed to the Project at the Project Commencement Closing.

(a) Grant to Project. The sum of One Million Eight Hundred Twenty Five Thousand Dollars (\$1,825,000) (the “City Financing”) minus any funds used in advance of Project Commencement Closing for stabilization work on the Garver Building, will be provided by the City to an affiliate of the Developer to be used by Developer’s affiliate as a source of leverage to

the transaction investment fund as required by the New Market Tax Credit Program (“NMTC”) and are to be used for the redevelopment of the Garver Building. The terms of the City Financing are more fully described in the City Financing Term Sheet attached as Exhibit G.

(b) Tax Credits. It is understood that the Developer will use NMTC in the amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000) and State of Wisconsin and Federal Historic Tax Credits in the amount of Three Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000) (together, the “Tax Credits”) in addition to private debt and equity. The City agrees to cooperate with Developer in complying with the requirements of the Tax Credits, but all costs related to use of such financing and closing will be borne by Developer.

(c) Wisconsin Economic Development Corporation Idle Industrial Sites Grant – The City has received an Idle Industrial Sites Grant in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000) (the “Grant”) from the Wisconsin Economic Development Corporation (“WEDC”) which will be used as a source of leverage to the transaction investment fund. The City, WEDC and Developer will enter into a contract (the “Grant Contract”) describing the terms and conditions under which the City shall disburse the Grant Funds in connection with a Flow of Funds Memorandum entered into pursuant to a New Markets Tax Credit (“NMTC”) financing transaction. Pursuant to the NMTC financing transaction, an amount equal to the Grant Funds (the “Disbursement Funds”) shall be placed in a disbursing account in the name of the Developer (the “Disbursing Account”). Subject to Recipient’s compliance with the conditions of Section 2 below, the City shall authorize release of the Disbursement Funds from the Disbursement Account to Recipient the Developer in accordance with the terms of the Idle Sites Grant. The Developer shall assist the City with the completion of the required semi-annual reports, as required in the Grant Contract.

(d) Excess Costs. Except with respect to the costs of City as described in Article VIII hereof, any funds required for completion of the Project beyond those stated above will be paid for by the Developer.

Section 3.4. Project Development.

(a) Design. The Developer shall prepare and submit detailed plans and specifications for the Project for review and approval by the City.

(b) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Project, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any filing or other development fees.

(c) Construction. Except as stated in Section 3.3 above, the Developer shall be solely responsible for the total cost and expense for the construction of the Project. The Developer shall comply with all applicable City, State, and Federal building codes, historic preservation requirements, and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Private Development and the Developers shall pay the

normal and customary City charges and shall be responsible for obtaining all building permits prior to such construction.

(d) Reversion. The Developer shall have two (2) years from the date of Lot 1 Project Commencement Closing to redevelop the Garver Building and obtain a Certificate of Occupancy. If the Developer has not obtained a Certificate of Occupancy within two (2) years from the date of sale, ownership of the Garver Building shall revert back to the Seller at no cost to the City (the “Reversion”). The Reversion shall not be effective if delays in receiving the certificate of occupancy are due to: (i) the City’s failure to issue the Certificate of Occupancy despite timely submissions by Developer or (ii) force majeure. The Developer shall not be entitled to any damages or compensation in the event of a reversion herein.

ARTICLE IV

LAND USE APPROVALS; PERMITTING

Section 4.1. Land Use Approvals.

(a) Applications. It is understood by the parties that the Developer has submitted application materials required under the City of Madison municipal code for zoning, urban design, landmarks, and any other municipal land use and development approvals required in order to undertake the Project (collectively, the “Land Use Approvals”).

(b) Planned Development. On July 19, 2016, the Common Council of the City of Madison adopted Ordinance 16-00065 (Legistar File #43343) approving the Developer’s Planned Development (“PD”) zoning district, comprised of a General Development Plan and Specific Implementation Plan consisting of detailed plans and a “Zoning Text ” to guide development of the site. The Common Council approval is subject to those conditions set forth by the City which shall be satisfied prior to final approval and recording of the PD at the Dane County Register of Deeds Office and the issuance of permits for demolition or new construction.

(c) City Cooperation. The City will reasonably cooperate with and assist the Developers in applying for and processing the applications for Land Use Approvals in connection with the Project Land Use Approvals as required by Section 5.1(d).

ARTICLE V

CONDITIONS PRECEDENT TO PROJECT COMMENCEMENT

Section 5.1. Conditions Precedent Lot 1. The parties’ respective obligations to complete the financing and entitlement phase of development and undertake the Project related to Lot 1 as contemplated by this Agreement are conditioned on timely satisfaction of each of the following conditions (collectively, the “Lot 1 Conditions Precedent”) at or prior to the Lot 1 Project Commencement Closing Deadline:

(a) Approval by the City Council of the CSM for the Property.

(b) Delivery of the fully-executed CSM, to be recorded by the parties at or before the Lot 1 Project Commencement Closing, as set forth in Section 3.1.

(c) Approval within the City's capital budget of all of the funds required of the City under this Agreement.

(d) Receipt of all Land Use Approvals necessary to construct the Lot 1 Component of the Project, as set forth in Section 4.1.

(e) Delivery of the fully-executed deed conveying the Garver Building to the Developer, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 3.1.

(f) Delivery of the fully-executed Lot 1 Ground Lease, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 3.1.

(g) The issuance of a leasehold title policy for Lot 1 and an owner's policy for the Garver Building, as applicable, each for the benefit of the Developer and its lender subject only to the Permitted Exceptions and zoning.

(h) Evidence of sufficient private debt and equity to finance the remainder of the Lot 1 Component of the Project.

(i) Delivery of a fully executed Access Easement agreement that identifies all access easements on the Property.

Section 5.2. Conditions Precedent Lot 2. In addition to the conditions set forth in Section 5.1 above, parties' respective obligations to complete the financing and entitlement phase of development and undertake the Project related to the Lot 2 Component as contemplated by this Agreement are conditioned on timely satisfaction of each of the following conditions (collectively, the "Conditions Precedent") at or prior to the Lot 2 Project Commencement Closing Deadline:

(a) Receipt of all Land Use Approvals necessary to construct the Lot 2 Component of the Project, as set forth in Section 4.1.

(b) Delivery of the fully-executed Lot 2 Ground Lease, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 3.2.

(e) The issuance of a leasehold title policy for the Lot 2, for the benefit of the Developer and its lender subject only to the Permitted Exceptions and zoning.

(f) Evidence of sufficient private debt and equity to finance the remainder the Lot 2 Component of the Project.

ARTICLE VI

INDEMNIFICATION AND INSURANCE

Section 6.1. Indemnification Covenants. Indemnification clauses incorporated into any contracts resulting from this Agreement will be subject to review and approval by the City's Risk Manager and City Attorney. In accordance with City of Madison Administrative Procedure Memorandum 1-1, the City cannot agree to indemnify any party without approval of the Common Council.

Section 6.2. Insurance. The parties shall purchase and maintain such insurance coverages as may be required by the parties' respective lenders and risk managers and as the parties otherwise agree is necessary to adequately protect the parties' respective interests in the Project. The insurance policies and provisions to be set forth in the documents contemplated by this Agreement to be executed and delivered as part of the Project Commencement Closing and shall be subject to the review and approval of the City's Risk Manager and the Developers.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7.1. 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 no pending, nor to the best of the City's knowledge 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 7.2. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company organized and validly existing under the laws of Wisconsin.

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

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

ARTICLE VIII ENVIRONMENTAL REMEDIATION

Section 8.1. Except for Developer's excavation, capping and dumping material on site, and other construction activity specifically related to the construction of the Project, the City will pay for all expenses and costs, supervise the work, and expeditiously cause to be performed the remediation work necessary to be done to receive a "case closure" for the Property from the Wisconsin Department of Natural Resources ("WDNR") under Wis. Admin. Code ch. NR 726 (the "Case Closure"). The City acknowledges and agrees that there may be unknown environmental conditions on Lot 1 and Lot 2, however the City's obligations to obtain the "case closure" hereunder shall nonetheless remain. In the event the "case closure" has ongoing monitoring or other conditions, the City will bear the cost and responsibility to comply with such conditions, it being agreed however, that Developer will develop the Project in accordance with approved plans and shall not affirmatively do any other act that will void or alter the Case Closure obtained by the City. In order to achieve the Case Closure determination from WDNR, the City agrees to the following:

(a) Request information from WDNR as to any testing that may be necessary in addition to the testing the City has previously performed.

(b) Apply for "case closure" with the WDNR in conjunction with the development of the Project pursuant to a remediation plan to be drafted by the City and Developer, the cost of such work to be borne by the City.

(c) Together with Developer, (and in such a manner that will not adversely affect Developer's ability to complete its Project in accordance with the approved Project plans), develop a "Material Management Plan", as described below, to address residual contamination and submit to WDNR for approval. City and Developer agree that any necessary capping on Lot 1 and Lot 2 which are part of the Developer's approved plan and outlined in the Material Management Plan is being done in conjunction with the Project, and, therefore, the cost for such capping on Lot 1 and Lot 2 shall be borne by Developer. It is understood by the parties that such capping includes, but may not be limited to, asphalt, or twelve inches of topsoil.

Together with Developer, develop and implement a Material Management Plan which will outline how contaminated material will be moved, stored and disposed during development of the Project, with a goal of avoiding offsite disposal, provided however, if offsite disposal and capping of contaminated material and industrial waste shall be required, the City shall be responsible for the costs thereof. Notwithstanding the foregoing, the City shall not be responsible for any costs associated with uncontaminated soil excavated on the Property, or uncontaminated

debris found in the soil. For the purpose of this section, “uncontaminated debris” shall mean, by way of example - but without limiting the generality of the term - concrete, asphalt, railroad ties and construction/demolition materials found in the soil that appears through a visual or other appropriate method of inspection not to be contaminated. The parties shall cooperate in determining whether material is reusable or contaminated. Material that is deemed non-reusable and non-contaminated shall be disposed of at the expense of the Developer.

- (e) Diligently work to obtain the “case closure” for Lot 1 and Lot 2.

Section 8.2. Notwithstanding anything to the contrary in this Agreement or the Ground Leases, the parties agree as follows:

For both Lot 1 and Lot 2, after the City’s receipt of a “case closure,” Developer agrees that in the event Developer does work or performs additional construction activities (other than as are performed pursuant to the approved Project plans,) and such activities have an adverse effect on the “case closure” determination, Developer shall thereafter comply with WDNR requirements related to the Project and be solely liable for the environmental remediation required that was caused by such activities on the Project. In the event Lot 2 does not close on or before June 30, 2018, the City’s obligation related to this Section 8 shall terminate with respect to Lot 2, except that the City shall continue to work to receive “case closure” on Lot 2 without regard to the Lot 2 Component, it being agreed the City will be responsible for any necessary capping of Lot 2 to obtain “case closure” without contribution from the Developer.

ARTICLE IX EVENTS OF DEFAULT

Section 9.1. Notice and Opportunity to Cure. Whenever any party to this Agreement alleges a default by the other, the party alleging the default shall provide written notice to the other specifying the nature of the default and the actions necessary to cure the default. Subject to Unavoidable Delays, if the alleged default is not cured within thirty (30) days after the defaulting party’s receipt of such notice, the non-defaulting party may take any one or more of the actions set forth below:

- (a) The non-defaulting party may suspend its performance under this Agreement until it receives assurances from the defaulting party that the defaulting party will cure its default and continue its performance under this Agreement.

- (b) The non-defaulting party may cancel and terminate this Agreement.

- (c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the defaulting party, including any actions to collect any payments due under this Agreement or to pursue any claims for monetary damages at law or to enforce performance and observance of any obligation, agreement, or covenant to the defaulting party under this Agreement.

The non-defaulting party may elect to take no such action, notwithstanding an Event of Default not having been cured within said thirty (30) day period, if the defaulting party provides the non-defaulting party with written assurances satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible. No notice of such election by the non-defaulting party shall be required.

Section 9.2. No Remedy Exclusive. No remedy hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right accruing upon any default shall impair any such right or shall be construed to be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient.

Section 9.3. No Implied Waiver. In the event any agreement 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.

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 Project, the parties will amend this Agreement and Exhibits to incorporate additional details, terms and conditions and the various agreements referenced above may be appended as exhibits to this Agreement. The parties may amend this Agreement, including but not limited to extending any deadlines, only by a written document agreed to by the parties, and in conformity with Section 10.2 below. Any material changes to this Agreement or any Exhibit will be subject to the approval of the Common Council. From time to time, certain agreements will be separately approved by Common Council. Such agreements, as approved, will be incorporated into this document.

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 member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, 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 member, 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. The Developers 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 Project, or any part thereof.

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 facsimile, delivered by a recognized overnight carrier, or delivered personally to the following addresses:

If to Developer:

Garver Feed Mill, LLC
1030 W. Chicago Ave., #300
Chicago, IL, 606042
Attn: David L. Baum

With Copy to:

Baum Revision, LLC
1030 W. Chicago Ave., #300
Chicago, IL, 606042
Attn: Legal Department

If to City:

City of Madison
Attn: Manager, Office of Real Estate Services
P.O. Box 2983
Madison, WI 53703
Phone: 608-267-4933

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.

ARTICLE XI

CITY CONTRACTING REQUIREMENTS

Section 11.1. Accessibility Accommodations. The Developer agrees to ensure the Project will be accessible to persons with physical disabilities, and that the Project is in compliance with Section 39.05 of the Madison General Ordinances and the Americans with Disabilities Act, where applicable.

Section 11.2. Non-Discrimination. In the performance of its development and construction of the Project, 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 11.3. Workforce Utilization. Developer agrees that, within thirty (30) days prior to Project Commencement Closing, Developers will provide to the City of Madison Affirmative Action Department certain workforce utilization statistics, 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 Developers, within one year after the date on which the form was required to be provided, Developers 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.

Developers further agree that, for at least twelve (12) months after the effective date of this Agreement, 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 Developers are to be considered. The notice will include a job description, classification, qualifications, and

application procedures and deadlines. Developers agree to interview and consider candidates referred by the Affirmative Action Department if the candidate meets the minimum qualification standards established by the Developers, and if the referral is timely. A referral is timely if it is received by Developers on or before the date stated in the notice.

Section 11.4. Affirmative Action. As used in this Section 11.4, 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.

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 twenty-five thousand dollars (\$25,000), 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. Declare the Developer ineligible for further City contracts until the Affirmative Action requirements are met.
2. 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 five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Developer in the manner described above. The preceding sentence shall not be construed to prohibit a prime Developer from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

(This article is not applicable)

Article IX

The Developer shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article.)

Section 11.5. Living Wage. Developer agrees to pay all employees employed by Developer in the performance of this Agreement, whether on a full-time or a part-time basis, a base wage of not less than the City minimum hourly wage as required by Sec. 4.20, MGO.

Section 11.6. Equal Benefits. For the duration of this Agreement, the Developer agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of Sec. 39.07, MGO. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(a) **Cash Equivalent.** If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, the Developer is unable to provide the benefit, the Developer shall provide the employee with the cash equivalent of the benefit.

(b) **Proof of Domestic Partner Status.** The Developer may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

(c) Notice Posting, Compliance. The Developer shall post a notice informing all employees of the equal benefit requirements of this Agreement, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

(d) Subcontractors (Financial Assistance Only). This requirement also applies to employees of subcontractors hired by the Private Development General Contractor who expend at least twenty (20) hours a week at the project site funded by City financial assistance.

Section 11.7. Notification of Position Openings. The Developer agrees to notify the State of Wisconsin Department of Workforce Development and the local workforce development board established under 29 USC 2832 of any positions to be filled in Dane County, as required by Sec. 66.1105(6c), Wis. Stats.

Section 11.8. 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 Public Development Closing and the Private Development Closing, as applicable. 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 Project 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 11.9. 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 11.10. 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 11.11. 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 contractor is exempt from this section for the position(s) in question.

ARTICLE XII

TERMINATION OF AGREEMENT

Section 12.1. Termination. This Agreement shall terminate upon the following:

- (a) In the event all of the Conditions Precedent for Lot 1 are not satisfied on or before the Lot 1 Project Commencement Closing Deadline, the City shall have the option to terminate this Agreement upon written notice to the Developer, unless the parties agree in writing to extend such date.

(b) In the event all of the Lot 2 Conditions Precedent are not satisfied on or before the Lot 2 Project Commencement Closing Deadline, the City shall have the option to terminate this Agreement with respect to Lot 2 only, unless the parties agree in writing to extend such date.

(c) In the event closing on the Lot 1 Ground Lease is not complete by September 29, 2017, then this Agreement shall terminate on that date for the Lot 1 Component -.

(d) In the event closing on the Lot 2 Ground Lease is not complete by June 30, 2018 then the provisions of this Agreement applicable to Lot 2 shall terminate on that date for the Lot 2 Component.

(e) Casualty. If, after the Effective Date but prior to the Lot 1 Closing Date, the Garver Building is destroyed by any fire, storm, accident or other casualty (“Casualty”) (excluding routine wear and tear), City shall notify Developer in writing of such Casualty promptly after obtaining knowledge thereof. In the event of a Casualty, Developer and City shall work in good faith to address the extent of the Casualty, it being acknowledged that the Developer shall have the option to rebuild the Garver Building if it so elects. Notwithstanding the foregoing, if the Developer determines the Garver Building cannot be salvaged, the parties shall elect to terminate this Agreement in its entirety by giving written notice to other party no later than thirty (30) days after the giving of City’s notice.

Section 12.2. Expiration. If not terminated pursuant to Section 12.1 above, this Agreement shall terminate upon the date upon which a Certificate of Occupancy is issued for the Garver Building and the Cold Storage Building, and the Microlodges have been completed, but 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 12.3. Effect of Termination. Upon termination of this Agreement pursuant to this Article XII, this Agreement shall be null and void and, except for obligations that expressly survive termination, neither party 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.

(Signatures begin on next page.)

CITY OF MADISON, WISCONSIN,
a municipal corporation

By: _____
Paul R. Soglin
Mayor

By: _____
Maribeth Witzel-Behl
City Clerk

APPROVED:

APPROVED AS TO FORM:

David P. Schmiedicke
Finance Director

Michael P. May, City Attorney

The execution of this Agreement by City officials was authorized by Enactment No. _____,
File No. _____, adopted _____, 2016.

GARVER FEED MILL, LLC.

By: _____
David Baum, Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 and 2 of Certified Survey Map No. 2030, and unplatted lands in the NE1/4 of the SW1/4, and the NW1/4 of the SE1/4, and the SW1/4 of the SE1/4, of Section 5, T7N R10E as recorded as Document number 1471090 in the Dane County Register of Deeds October 23, 1975 at page 197.

EXHIBIT B

GARVER BUILDING PURCHASE TERM SHEET

1. Property. The Buyer shall purchase, and the City (the “Seller”) shall sell and convey by Quit Claim Deed (the “Deed”) to the Developer (the “Buyer”), fee simple ownership of Garver Building exclusive of the land (the “Property”).
2. Purchase Price. The total purchase price for the Seller’s interest in the Property (the “Purchase Price”) shall be One Dollar (\$1.00), receipt of which is hereby acknowledged.
3. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the Buyer shall purchase the Garver Building in “AS-IS, WHERE-IS” condition and “with all faults,” and shall agree that it relied upon no warranties, representations or statements by the Seller, its agents or employees, in entering into this Agreement or in closing the transaction described herein. Except as provided below, the Buyer’s closing on the acquisition of the Garver Building shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer’s Contingencies.
4. Tri Party Agreement. Buyer, Seller, and Buyer’s Lender (the “Lender”) shall enter into a tri-party agreement (the “Tri-Party Agreement”) which shall provide, among other things, that the Seller will provide the Lender with: (a) written notice of any alleged default under this Agreement by Buyer; and (b) the opportunity to cure such default within the time periods provided for cure by Buyer in this Agreement (but not less than thirty (30) days), measured from the time notice is given to Lender. The Tri-Party Agreement shall also provide that, in addition to Lender’s cure rights described hereinabove, the Lender shall have ninety days to take over the redevelopment of the Property, complete such construction, and obtain a Certificate of Occupancy. Seller’s right of reversion shall be expressly subject to Lender’s right to complete Buyer’s obligations hereunder within a reasonable period of time, Seller shall agree to accept cure by the Lender as that of by Buyer under this Agreement and will not exercise any right or remedy under this Agreement for a default by Buyer.
5. Title Insurance. The Seller shall provide to the Buyer, at the Seller’s expense, within thirty (30) days prior to closing a commitment from a mutually agreeable title company (the “Title Company”) to issue an ALTA Owner’s Title Insurance Policy in an amount reasonably acceptable to Buyer upon the recording of proper documents, together with extended coverage and a gap endorsement and an ALTA Leasehold Title Insurance Policy in an amount reasonably acceptable to Buyer. 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 Buyer, 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 acceptable to the Buyer (“Permitted Exceptions”). The Buyer shall notify the Seller of any objection to title, in writing, prior to closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out this

Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Agreement shall be void.

6. Closing.

- a. The closing shall occur no later than September 29, 2017, unless otherwise agreed to by the parties. The Seller agrees to execute and deliver to the Buyer at closing the Deed allowing the Title Company to insure that title to the Property is good and indefeasible, and conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and any Buyer approved State and Federal restrictions that may impact the Building Improvement.
- b. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by this Agreement.
- c. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.
- d. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.

EXHIBIT C - DRAFT CSM

Dane County Certified Survey Map No.

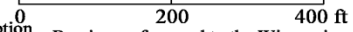
Lots 1 and 2 of Certified Survey Map No. 2030, and unplatted lands in the NE1/4 of the SW1/4, and the NW1/4 of the SE1/4, and the SW1/4 of the SE1/4, of Section 5, T7N R10E, in the City of Madison, Dane County, WI



INDEX

- Pg 1 Boundary
 - Pg 2 Fair Oaks Detail & Legal Description
 - Pg 3 Building Detail
 - Pg 4-5 Easements & Restrictions
 - Pg 6-7 Point Table
 - Pg 8-11 Dimensions
 - Pg 12 Certificates
- LOT AREA TABLE (values more or less):
- Lot 1 240,256 sq ft, 5.5155 acres
 - Lot 2 218,301 sq ft, 5.0115 acres
 - Lot 3 550,651 sq ft, 12.6412 acres
 - Outlot 1 20,841 sq ft, 0.4784 acres
 - Outlot 2 6,474 sq ft, 0.1486 acres
 - Fair Oaks 4,135 sq ft, 0.0949 acres
 - Total 1,040,658 sq ft, 23.8902 acres

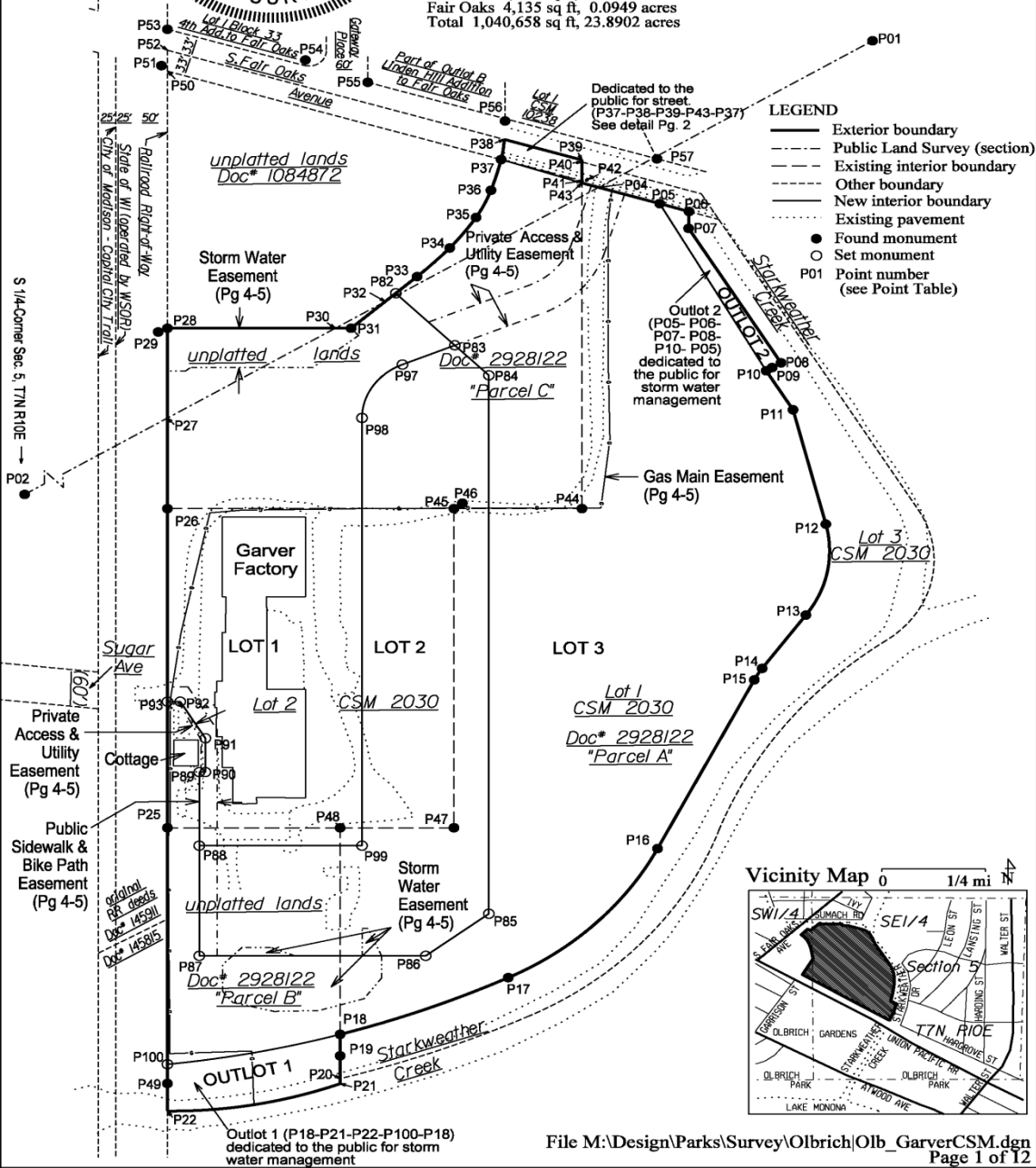
Graphical Scale



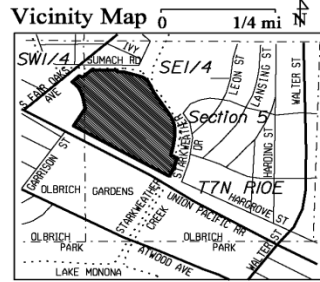
Bearings referenced to the Wisconsin Coordinate Reference Systems, Dane Zone, NAD 83(2007) Datum.

PREPARED FOR:
City of Madison, WI Parks Div.
210 MLK Jr Blvd., Rm 104
Madison, WI 53703

PREPARED BY:
Dan Rodman, PLS 2793
City of Madison, WI Parks Div.



- ### LEGEND
- Exterior boundary
 - - - Public Land Survey (section)
 - - - Existing interior boundary
 - - - Other boundary
 - New interior boundary
 - ⋯ Existing pavement
 - Found monument
 - Set monument
 - P01 Point number (see Point Table)



Dane County Certified Survey Map No.

Lots 1 and 2 of Certified Survey Map No. 2030, and unplatted lands in the NE1/4 of the SW1/4, and the NW1/4 of the SE1/4, and the SW1/4 of the SE1/4, of Section 5, T7N R10E, in the City of Madison, Dane County, WI



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LOT AREA TABLE (values more or less):

Lot 1	240,256 sq ft,	5.5155 acres
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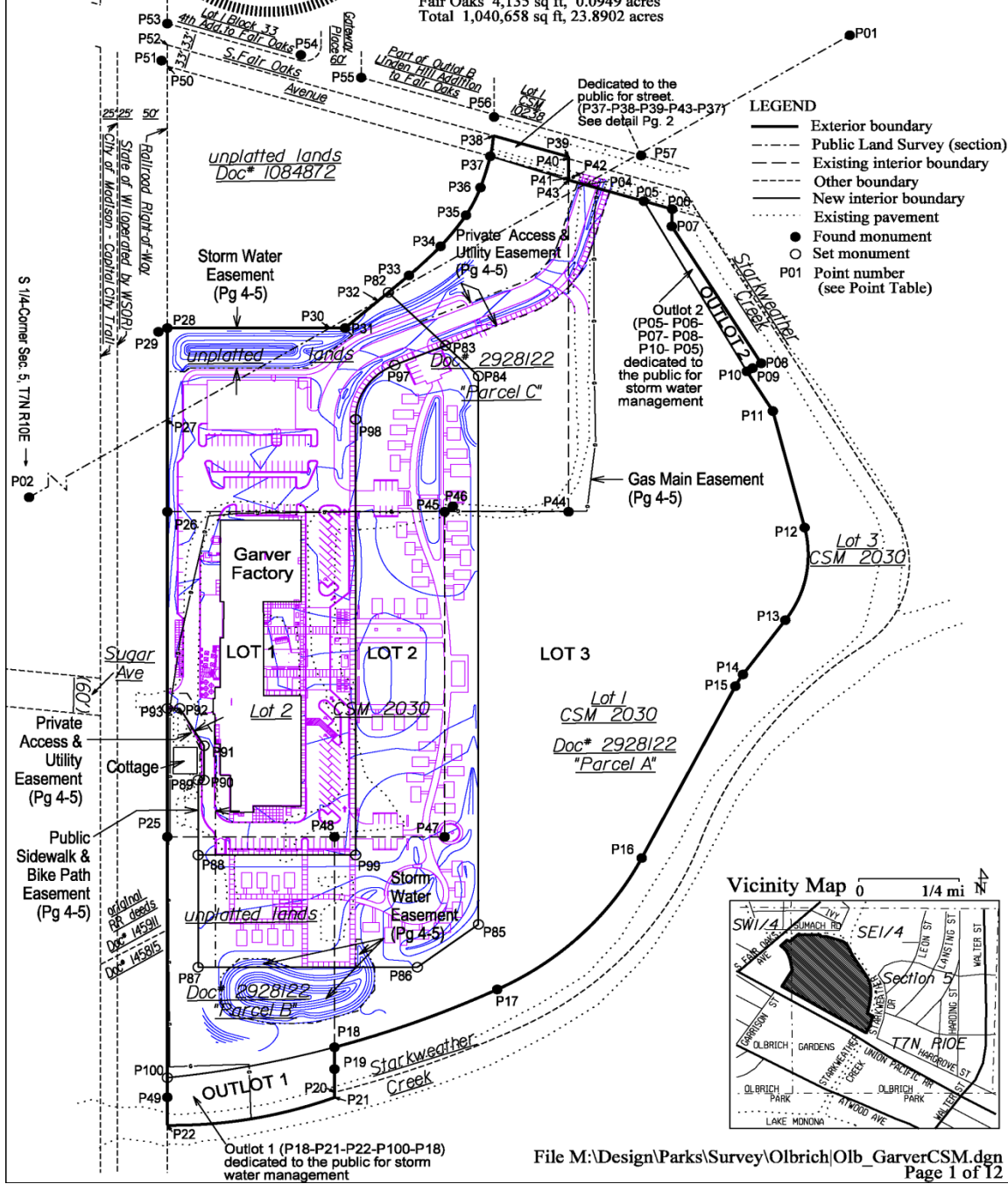
Graphical Scale

0 200 400 ft

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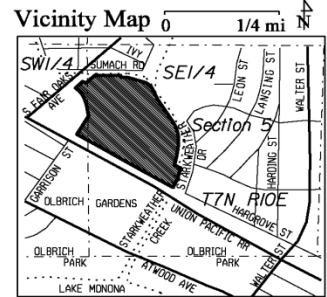


EXHIBIT D

LOT 1 GROUND LEASE TERM SHEET

1. Leased Land. Lot 1 as represented on the Draft CSM included on Exhibit C of the Development Agreement.
2. Term. This Ground Lease shall be effective and binding on the parties as of the date hereof (the “Effective Date”) and the Term shall be for a period of ninety-eight (98) years from the Effective Date, subject to early termination pursuant to the terms of this Ground Lease.
3. Rent and Rent Adjustments
 - a. For the period from the Effective Date through the end of Lease Year one (1) through the end of Lease Year twelve (12), the Lessee shall pay the City \$1,000 per year, payable in advance on the first day of each Lease Year. Rent for any partial Lease Year shall be prorated.
 - b. Beginning on the thirteenth (13th) year anniversary of the Effective Date, the Lessee shall pay the City annual rent of \$7,000 per year payable in advance on the first day of each Lease Year. Rent for any partial Lease Year shall be prorated.
 - c. Beginning in year fourteen (14), the annual rent under each lease shall increase over the prior year’s rent by two percent (2%).
 - d. Notwithstanding the foregoing, in the event any real estate tax is imposed on Lot 2, the Lessee shall be required to pay such taxes.
4. Real Estate Taxes.
 - a. The Lessee is responsible for any general real estate taxes that may be levied on the Property.
 - b. Special Assessments. The Lessee shall pay, before delinquency, any and all special assessments that accrue to the Leased Land.
 - c. Personal Property Taxes. The Lessee shall pay, before delinquency, all personal property taxes assessed against any fixtures, furnishings, or other of the Lessee’s personal property of any kind owned, installed or used in or on the Leased Land.
5. Use and Restrictions on Use of Leased Land. The Leased Land shall be used in accordance with the proposal accepted by the City on April 21, 2015 (RES-15-00334, ID #37723) and such additional uses as otherwise expanded and approved by the City pursuant to the adopted zoning text.
6. Historic Preservation. In all actions relating to the Leased Land, the Lessee shall comply with all applicable provisions of Chapter 41 of the Madison General Ordinances related to Historic Preservation. In addition, the following provisions are agreed to as related to the preservation of the historic character and quality of the Garver Building:

- a. The Lessee agrees that any alterations that may affect the architectural or historical integrity of the Leased Land must have the prior written approval of the City. The Lessee shall not construct, demolish, alter, or remodel any portion of the Leased Land, including any structures, buildings, or objects thereon that are not named herein as specific exclusions. The Lessee shall not construct any new building or structure on or move any existing building or structure to the Leased Land, or erect fences or signs on the Leased Land, or disturb the ground surface of the Leased Land, without the express written approval of the City.
- b. The Lessee agrees to give access to the interior and exterior of the premises to the City, its personal representatives, successors, or assigns of purposes of monitoring the Lessee's compliance with the historic preservation provisions of Chapter 41 of the Madison General Ordinances upon reasonable verbal or written notice, subject to the rights of Lessee's tenants. Nothing in this instrument shall require the City to conduct regular or irregular on-site inspections of the Leased Land.
- c. The Lessee agrees that the failure of the City to exercise any right or remedy granted under this instrument, or to conduct on-site inspections of the Leased Land, shall not have the effect of waiving or limiting the exercise of any right or remedy or the use of such right or remedy at any other time.
- d. The Lessee agrees that, in the event of a violation of any of the historic preservation provisions of Chapter 41 of the Madison General Ordinances, and in addition to any remedy now or hereafter provided by law, the City may, following reasonable notice to the Lessee, institute suit to enjoin said violation or to require specific performance and/or the restoration of those portions of the Leased Land that were affected.
- e. The Lessee shall indemnify and hold the City and its successors and assigns harmless for any liability, costs, attorney's fees, judgments, or expenses to the City, or any officer, employee, agent, or independent contractor of the City, resulting from actions or claims of any nature by third parties arising from defaults under the historic preservation provisions of Chapter 41 of the Madison General Ordinances by the Lessee, or arising out of the conveyance, possession, or exercise rights under the historic preservation provisions of Chapter 41 of the Madison General Ordinances, excepting any such matters arising solely from the negligence of the City, and that it shall not be considered negligence on the part of the City should the City conduct neither regular nor irregular on-site inspections of the Leased Land.
- f. The Lessee agrees that the City may, at its discretion, without prior notice to the Lessee, convey and assign all or part of the City's rights and responsibilities contained herein to a third party.
- g. The Lessee agrees that the City, at its discretion, shall have the right to install a plaque of suitable design at a point easily visible by the public, from a public way, which plaque shall give information regarding the property determined appropriate

by the City and that the Leased Land is subject to a preservation covenant held by the City.

- h. The Lessee shall take reasonable measures for the duration of the term of this preservation covenant to protect and maintain the visibility of any such plaque as may be installed, it being agreed that the location of the plaque shall be in a place approved by the Developer and in the event that the plaque is lost, stolen or damaged during the Term, the City shall be responsible for the cost to replace the plaque.
7. Parking. The Lessee shall have the right to park twelve (12) vehicles in parking spaces constructed by the Lessor (the "City Spaces") in accordance with the below. Three of the City Spaces shall have a sign restricting parking to City staff twenty-four hours a day, seven days a week (the "Signed Spaces"). Nine additional unsigned City Spaces shall be available between the hours of 6 a.m. and 6 p.m., Monday through Friday (the "Daytime Spaces"). In the event there is inadequate parking to accommodate the Daytime Spaces, the City reserves the right to place restricted parking signs in the parking lot, in parking spaces of the City's choosing, in order to ensure the City's ability to use the City Spaces.
8. City Access – City shall have access across Lot 1 for the purpose of accessing the Cold Storage Building on for no cost. Maintenance shall be at the cost of the Developer. Final terms to be agreed upon between the parties.
9. Ownership of Garver Building and Surrender. During the term hereof, the Building Improvements and any and all other improvements shall be and remain the property of the Lessee. Upon the expiration or earlier termination of this Ground Lease, the Garver Building shall be repurchased to be determined by independently hired appraisers, further described in the Ground Lease. The Cold Storage Building and all other improvements shall become the property of the City at no cost, and the Lessee shall surrender same to the City in good condition and repair, normal wear and tear and damage by fire or other casualty excepted.
10. Environmental. City and Developer shall enter into mutually acceptable environmental remediation provisions as provided in the Development Agreement.
11. Subordination. All liens recorded against the property will be subordinated to the ground lease.
12. Reversion. See Section 3.4 of the Development Agreement.

EXHIBIT E

LOT 2 GROUND LEASE TERM SHEET

1. Leased Land. Lot 2 as represented on the draft CSM included on Exhibit C of the Development Agreement.
2. Term. This Ground Lease shall be effective and binding on the parties as of the date hereof (the “Effective Date”) and the Term shall be for a period of ninety-eight (98) years from the Effective Date, subject to early termination pursuant to the terms of this Ground Lease.
3. Rent and Rent Adjustments.
 - a. For the period from the Effective Date through the end of Lease Year twelve (12), the Lessee shall pay the City \$2,500 per year, payable in advance on the first day of each Lease Year. Rent for any partial Lease Year shall be prorated.
 - b. Beginning on the thirteenth (13th) year anniversary of the Effective Date, the Lessee shall pay the City annual rent of \$15,000 per year, payable in advance on the first day of each Lease Year. Rent for any partial Lease Year shall be prorated.
 - c. Beginning in year fourteen (14), the annual rent under each lease shall increase over the prior year’s rent by two percent (2%).
 - d. Notwithstanding the foregoing, in the event any real estate tax is imposed on Lot 2, the Lessee shall be required to pay such taxes.
4. Taxes.
 - a. The Lessee will be responsible for any real estate taxes levied on the Property.
 - b. Special Assessments. The Lessee shall pay, before delinquency, any and all special assessments that accrue to the Leased Land.
 - c. Personal Property Taxes. The Lessee shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any income earned ground leasehold interest of the Lessee or any fixtures, furnishings, or other of the Lessee’s personal property of any kind owned, installed or used in or on the Leased Land, including the Garver Building.
5. Use and Restrictions on Use of Leased Land. The Leased Land shall be used in accordance with the proposal accepted by the City on April 21, 2015 (RES-15-00334, ID #37723) and such additional uses as otherwise expanded and approved by the City pursuant to the adopted zoning text.
6. Historic Preservation. In all actions relating to the Leased Land, the Lessee shall comply with all applicable provisions Chapter 41 of the Madison General Ordinances related to Historic Preservation. In addition, the following provisions are agreed to as related to the preservation of the historic character and quality of the Garver Building:

- a. The Lessee agrees that any alterations that may affect the architectural or historical integrity of the Leased Land must have the prior written approval of the City. The Lessee shall not construct, demolish, alter, or remodel any portion of the Leased Land, including any structures, buildings, or objects thereon that are not named herein as specific exclusions. The Lessee shall not construct any new building or structure on or move any existing building or structure to the Leased Land, or erect fences or signs on the Leased Land, or disturb the ground surface of the Leased Land, without the express written approval of the City.
- b. The Lessee agrees to give access to the interior and exterior of the premises to the City, its personal representatives, successors, or assigns of purposes of monitoring the Lessee's compliance with the historic preservation provisions of Chapter 41 of the Madison General Ordinances upon reasonable verbal or written notice, subject to the rights of Lessee's tenants. Nothing in this instrument shall require the City to conduct regular or irregular on-site inspections of the Leased Land.
- c. The Lessee agrees that the failure of the City to exercise any right or remedy granted under this instrument, or to conduct on-site inspections of the Leased Land, shall not have the effect of waiving or limiting the exercise of any right or remedy or the use of such right or remedy at any other time.
- d. The Lessee agrees that, in the event of a violation of any of the historic preservation provisions of Chapter 41 of the Madison General Ordinances, and in addition to any remedy now or hereafter provided by law, the City may, following reasonable notice to the Lessee, institute suit to enjoin said violation or to require specific performance and/or the restoration of those portions of the Leased Land that were affected.
- e. The Lessee shall indemnify and hold the City and its successors and assigns harmless for any liability, costs, attorney's fees, judgments, or expenses to the City, or any officer, employee, agent, or independent contractor of the City, resulting from actions or claims of any nature by third parties arising from defaults under the historic preservation provisions of Chapter 41 of the Madison General Ordinances by the Lessee, or arising out of the conveyance, possession, or exercise rights under the historic preservation provisions of Chapter 41 of the Madison General Ordinances, excepting any such matters arising solely from the negligence of the City, and that it shall not be considered negligence on the part of the City should the City conduct neither regular nor irregular on-site inspections of the Leased Land.
- f. The Lessee agrees that the City may, at its discretion, without prior notice to the Lessee, convey and assign all or part of the City's rights and responsibilities contained herein to a third party.

The Lessee agrees that the City, at its discretion, shall have the right to install a plaque of suitable design at a point easily visible by the public, from a public way, which plaque shall give information regarding the property determined appropriate by the City and that the Leased Land is subject to a preservation covenant held by the City. The Lessee shall

take reasonable measures for the duration of the term of this preservation covenant to protect and maintain the visibility of any such plaque as may be installed.

7. Environmental. City and Developer shall enter into mutually acceptable environmental remediation provisions as provided in the Development Agreement.
8. Subordination. This Ground Lease shall not be subordinated to any mortgage or any other lien or encumbrance which may now or hereafter affect Lessee's interest in the Leased Land.
9. City Access – City shall have access across Lot 2 for the purpose of accessing the Cold Storage Building on for no cost. Maintenance shall be at the cost of the Developer. Final terms to be agreed upon between the parties.
10. Ownership of Microlodges and Surrender. During the term hereof, the Microlodges and any and all other improvements shall be and remain the property of the Lessee. Upon the expiration or earlier termination of this Ground Lease, the Lessee shall remove all improvements from the Leased Land. If the Lessee leaves any improvements on the Leased Land, the City shall have the right to dispose of said property, at the cost of the Lessee, thirty (30) days after the Lessee vacates or abandon the Leased Land.
11. Reversion. See Section 3.4 of the Development Agreement.

EXHIBIT F

COLD STORAGE LEASE TERM SHEET

1. Leased Premises. Lessor hereby leases to City that certain portion of the Building, consisting of approximately 8,460 square feet and depicted on attached Exhibit B (“Leased Premises”).
2. Term. The “Lease Term” shall be for a period of ninety-eight (98) years, commencing on the date of issuance of a certificate of occupancy for the Leased Premises (“Lease Commencement Date”), subject to early termination pursuant to the terms of this Lease.
3. Rent. Subject to the rent adjustment provision set forth below, the City shall pay to the Lessor a base rent (“Rent”) for the Leased Premises in the amount of \$1 per annum.
4. Use. The City will occupy and use the Leased Premises for the storage of equipment and vehicle maintenance, related to the City of Madison Park Department and Olbrich Botanical Gardens. For the purposes of this section, vehicle maintenance is generally oil changes, tire rotations and other basic vehicle maintenance (but expressly excluding hazardous activities, including, by way of example and not limitation, the storage of gasoline or spray painting vehicles. City shall, at City’s sole cost, be responsible for any additional construction, operating and maintenance expenses, related to the specific use and operation of the Building for vehicle maintenance.
5. Lessor’s Responsibilities:
 - a. Except as otherwise provided in Section 5 (e) and Paragraph 6 below, Lessor shall be solely responsible for and promptly pay all operating and maintenance expenses relating to the Building including, but not limited to,; taxes; assessments; exterior lighting fixtures; exterior painting; utility charges (subject to the provisions of Paragraph 6 of this Lease), including electricity for exterior lighting; exterior window washing (subject to the provisions of Paragraph 6 of this Lease); snow and ice removal (subject to the provisions of Paragraph 6 of this Lease); garbage removal (subject to the provisions of Paragraph 6 of this Lease); life/fire safety equipment-fire alarm and sprinkler; fire and extended coverage insurance premiums for the Building (not the City’s personal property) , and Lessor’s administration costs.
 - b. Except as otherwise provided in Section 5 (e) and Paragraph 6 below , Lessor shall at all times, and at Lessor’s sole cost, keep and maintain the Building (including, but not limited to, the exterior of the Leased Premises, the Mechanical Room, and the Common Wall) in good order and condition, including, but not limited to, the following, if applicable: mechanical, electrical, plumbing; window frames and plate glass of windows (subject to the

provisions of Paragraph 6 of this Lease);, sidewalks and entryways; driveways; foundations; roof; concrete floors; structural portions of the walls; all doors; fixtures; and shall make any repairs/replacements required thereto. The term "repair" shall include replacements or renewals when necessary, and all such "repairs" shall be equal in quality and class to the original work. Lessor shall, at Lessor's sole cost, be responsible for any replacements required as a result of Lessor's negligence in maintaining the Building as required herein.

- c. Lessor shall, at Lessor's sole cost, be responsible for any damage resulting from the negligence of Lessor or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors. Notwithstanding the foregoing, City shall be responsible for the cost insuring its contents and for the cost of damage to City's contents or improvements in the Leased Premises which would be covered by properly maintained insurance, and for the cost of repairs/replacements to the Building or Leased Premises caused by the sole negligence of the City or its City employees.
- d. If Lessor fails to perform any of the work described in the above Subparagraphs 5.a. through 5.c., then City at any time, by reason of such default, may elect to correct such default by performing the work ("Default Work"), after providing written notice to Lessor, and shall subsequently bill Lessor for said Default Work. Any amount paid by City for Default Work shall be repaid to City by Lessor upon demand, together with interest thereon, at the rate of twelve percent (12%) per annum.
- e. After a period of Forty (40) years from the Lease Commencement Date, the parties agree that Lessor and City shall thereafter, on the pro-rata occupancy of the Building basis, share in the costs of the insurance, operating, and maintenance expenses relating to the Building, including repairs and replacements to the structure and roof of the Building. The Lessor and City agree to cooperate in negotiating the terms of cost sharing anticipated under this paragraph.
- f. Lessor agrees to carry, or cause to be carried (with a carrier having an A.M. Best rating of A-VIII or better) during the term hereof Commercial General Liability insurance on an occurrence basis ("Lessor's Liability Insurance") on the Building providing coverage of not less than One Million Dollars (\$1,000,000) combined Bodily Injury and Property Damage Liability in separate limits for each of Aggregate, Each Occurrence. Lessor also agrees to carry, during the Lease Term hereof, all risk property insurance ("Lessor's Property Insurance") covering fire and extended coverage, vandalism and malicious mischief, sprinkler leakage and all other perils of direct physical loss or damage insuring the improvements and betterments located in the Building, including the Premises and all appurtenances thereto (excluding City's personal property) for the full replacement value thereof. Lessor, upon request, shall furnish City a certificate of such Lessor's Property Insurance.

6. City's Responsibilities.

- a. Except as covered by Lessor's insurance policy, the City shall, at the City's cost, keep and maintain the interior of the Leased Premises in good order and condition and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. The City shall be responsible for its own garbage removal and for cleaning the Leased Premises and maintenance and repair of any personal property installed within the Leased Premises.
- b. City shall, at City's sole cost, be responsible for the costs of maintaining the windows, garage doors and exterior walk-through doors of the Leased Premises ("City Maintenance Areas"). In the event it is necessary to repair or replace the City Maintenance Areas ("Maintenance Work"), and there is no remaining or applicable warranty from the manufacturer for the materials or from the contractor for the labor relating thereto, City shall be responsible for the cost of such Maintenance Work. The City will undertake this responsibility after the Lessee has determined that the windows, garage doors and exterior walk-through doors of the Leased Premises were originally constructed in accordance with the building plans that were submitted to and approved by the City in accordance with the Development Agreement.
- c. City shall, at City's sole cost, be responsible for snow and ice removal on the sidewalk and entryway leading to and near the City's entrance to the Leased Premises.
- d. City shall give Lessor written notice of the necessity for repairs/replacements to the Building coming to the attention of City, following which Lessor shall have a reasonable time to undertake and complete such repairs. For the purposes of so maintaining the Building, Lessor reserves the right, upon a minimum of twenty-four (24) hours written notice and at times reasonable for City, to enter and inspect the Leased Premises to make any necessary repairs thereto, or at any time in the event of an emergency.
- e. After a period of Forty (40) years from the Lease Commencement Date, the parties agree that Lessor and City shall thereafter, on the pro-rata occupancy of the Building basis, share in the costs of the insurance, operating and maintenance expenses relating to the Building, including repairs and replacements to the structure and roof of the Building. The Lessor and City agree to cooperate in negotiating the terms of cost sharing anticipated under this paragraph.
- f. City, at City's expense, agrees to purchase and maintain in force during its use of the Premises: (i) Commercial General Liability insurance on an occurrence

basis with minimum limits of \$1,000,000 per occurrence (ii) Property insurance to cover the City's personal property; (iii) Worker's Compensation coverage as required by statute; and (iv) Auto Liability with minimum limits of \$1,000,000 per accident. The City will provide Lessor with evidence of such coverage upon request.

The policies referred to in this section shall name Lessor, its lenders, its property manager, and their respective agents and employees as additional insureds; and shall contain the following provisions and endorsements: (i) that such insurance may not be canceled or amended without thirty (30) days' prior written notice to Lessor; (ii) an express waiver of any right of subrogation by the insurance company against Lessor and their respective agents and employees; and (iii) that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Each certificate shall expressly state that the coverage is "primary and non-contributory" on the certificate. Provided that the insurance policies of City will not be invalidated nor will the right of the insured to collect the proceeds payable under such policies be adversely affected by the waiver contained in the following portion of this sentence, City hereby expressly waives all rights of recovery which it might otherwise have against Lessor or its agents, and employees, for loss or damage to person, property or business to the extent that such loss or damage is covered by valid and collectible insurance policies, notwithstanding that such loss or damage may result from negligence of Lessor, or their agents or employees. City shall use its best efforts to obtain from its insurer the right to waive claims as set forth in the preceding sentence without thereby invalidating its insurance or affecting its right to proceeds payable thereunder.

7. Utilities. Lessor shall be solely responsible for and promptly pay all municipal charges accruing to the Building and all utility charges accruing to the Building, including, but not limited to charges for water; gas (if applicable), heat (if applicable), electricity, sewer, stormwater, and any other utility used upon or furnished to the Building. Notwithstanding the foregoing, and effective upon the Lease Commencement Date, City shall be solely responsible for and shall promptly pay all charges for water, sewer, and electricity used upon or furnished to the Leased Premises ("City Utilities"). Prior to the Lease Commencement Date, Lessor shall, at Lessor's sole cost, ensure that all required lines for the City Utilities are stubbed to that portion of the shared wall between the Leased Premises and Lessor's space within the Building ("Common Wall") located within the Building's mechanical room ("Mechanical Room"), which Common Wall and Mechanical Room are depicted on Exhibit B; and Lessor shall, at Lessor's sole cost, ensure that the City Utilities are separately metered and said meters for each of the City Utilities are installed within the Mechanical Room. City shall have the right to access the Mechanical Room through an exterior door, with direct access to the Mechanical Room, at all times upon a minimum of twenty-four (24) hours written notice and at times reasonable to Lessor, or at any time in the event of an emergency.

8. Termination by City: City shall have the right, at City's sole option, to declare this Lease void and terminate the same under any one of the following conditions, which are considered a default hereunder:
- a. By giving Lessor a minimum of thirty (30) days' written notice of termination, upon or after any one of the following events:
 - i. The filing by Lessor of a voluntary petition in bankruptcy.
 - ii. The institution of proceedings in bankruptcy against Lessor and the adjudication of Lessor as bankrupt pursuant to such proceedings.
 - iii. The taking by a court of competent jurisdiction of Lessor's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act.
 - iv. The appointment of a receiver of Lessor's assets.
 - v. The divestiture of Lessor's estate herein by other operation of law.
 - vi. The abandonment by Lessor of the Building.
 - vii. The use of the Building for an illegal purpose.
 - viii. The failure of Lessor to pay when due any monetary sums due pursuant to the terms of this Lease.

The termination shall not be effective, if within such thirty (30) day period, the event giving rise to City's right to terminate ceases to exist. In the event of a breach of a term, covenant or condition of this Lease which requires more than the payment of money to cure and which cannot, because of the nature of such default, be cured within said thirty (30) days, then Lessor shall be deemed to be complying with such notice if, promptly upon receipt of such notice, Lessor immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

- b. In the event that Lessor fails to maintain insurance as required by this Lease, City may elect to: (a) immediately terminate this Lease; or (b) purchase or pay for any insurance coverage required by this Lease and charge Lessor the cost of same. Any amount paid by City hereunder shall be repaid by Lessor to City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.

- c. By giving Lessor a minimum of thirty (30) days written notice of termination in the event Lessor defaults in the performance of any term or condition of this Lease other than those as set forth in Subparagraphs 17.a. and 17.b. Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then Lessor shall be deemed to be complying with such notice if, promptly upon receipt of such notice, Lessor immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.
 - d. By giving Lessor a minimum of one hundred eighty (180) days written notice of termination in the event the Leased Premises, at the sole discretion of the City of Madison, are desired for any public use or purpose.
9. Termination by Lessor. The Lessor shall have the right, at its sole option, to declare this Lease void, terminate the same, reenter and take possession of the Leased Premises by giving the City thirty (30) days written notice upon or after any one of the following events, which are considered a default hereunder:
- a. The divestiture of the City's estate herein by other operation of law.
 - b. The abandonment by the City of the Leased Premises.
 - c. The use of the Leased Premises for an illegal purpose.
 - d. Upon lapse or failure of any insurance coverage required by this Lease.
 - e. In the event the City defaults in the performance of any other term or condition of this Lease.

The termination shall not be effective if, within such thirty (30) day period, the event giving rise to the Lessor's right to terminate ceases to exist. In the event of a breach of a term, covenant or condition of this Lease which requires more than the payment of money to cure and which cannot, because of the nature of such default, be cured within said thirty (30) days, then the City shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the City immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

EXHIBIT G

CITY FINANCING TERM SHEET

The purpose of this Term Sheet (the "Term Sheet") is to outline the principal terms and conditions of a Grant to be made by the City of Madison (the "City") to Garver Feed Mill, LLC or its assigns (the "Developer") to assist in the reconstruction and redevelopment of the Garver Feed Mill, per the proposal accepted by the City of Madison Common Council on April 21, 2015 (Res-15-0034, ID #33723) (the "Project") which is sited on Lot 2 of Certified Survey Map 2030 (the "Property"), shown on Exhibit A.

The terms are follows:

1. The Project. Developer agrees to develop or redevelop, as applicable:
 - a. Approximately 60,000 square feet of the existing structure on the Property for commercial use.
 - b. Approximately 10,000 square feet of cold storage to be used by Garver Feed Mill Tenants and partially leased to Olbrich Gardens

2. Form of Assistance. City assistance shall be provided in the form of a zero interest (0%) grant from the City to Developer or its assigns, for up to One Million Eight Hundred Twenty Five Thousand Dollars (\$1,825,000) ("Grant") to partially fund Developer's redevelopment of the Project. Notwithstanding the foregoing, up to \$25,000 of the Grant funds shall be used by the City to pay for stabilization work at the Property prior to the sale and transfer of ownership of the Garver building to the Developer (the "Stabilization Work"), it therefore being agreed that the Grant amount available to the Developer shall be reduced by the amount of funds used for the Stabilization Work, not to exceed \$25,000. The remaining Grant shall be placed into escrow with the title company upon the "Closing Date" which date shall be upon the acquisition of the purchase of the Property, which Closing Date in all events shall be on or before September 29, 2017. The NMTC Investment Fund 99.99% Owner will hold the Grant in escrow and will disburse the Grant on a monthly construction draw basis, with the Grant dollars considered "first in" and first disbursed to the project before other committed sources of construction financing.

3. Budget Authorization. Funding of the Grant is anticipated to occur in the second half of 2017. The Grant is from funding authorized in the adopted 2015 City of Madison Capital Budget and reauthorized in the 2016 and 2017 City of Madison Capital Budget.

4. Evidence of Financing. The Borrower certifies that it is in the process of obtaining all necessary Project financing at the time of execution of this Agreement. The City's Agreement to provide the Borrower with City funds to partially fund this specific local Project is based on the Borrower having submitted documentation demonstrating that all necessary financing and tax credits have been secured, or are in process of being secured, an adequate budget and feasible project schedule have been established, and construction is scheduled to start and be completed as provided herein.

5. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract
6. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.
7. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
8. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
9. Material Changes. Any material changes to the size, use or ownership (by a third party not affiliated with Developer) of the Project or Property shall subject this Grant commitment to reconsideration by the City. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions.
10. Project Completion. Developer shall use all commercially reasonable efforts to complete the construction of the Project by two years after the issuance of construction permits for the Garver building. Project completion shall be evidenced by the issuance of a Certificate of Occupancy.
11. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
12. Title Insurance. At least fifteen (15) days prior to the issuance of the Grant by the City, Developer shall provide a commitment for a title insurance policy of the proper type and amount (i.e. the amount of the Grant) of coverage to the City. The City shall receive a lender's policy or other equivalent policy satisfactory to the City.
13. Closing
 - a. The Agreement shall provide that the "Closing Date" shall occur on such other date agreed to in writing by the parties;

- b. Developer shall pay for all escrow fees charged in connection with the closing;
 - c. Developer shall pay all legal fees and expenses in connection with the preparation and negotiation of the closing documents, with the understanding the necessary documents shall be prepared by the Developer for the City's review.
 - d. Execution of any other reasonable security instruments standard to a New Market Tax Credit financing and as may be used by other financiers associated with this Project, in the reasonable discretion of the City.
14. Automatic Expiration. Subject to Unavoidable Delays, the Grant to Developer shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by Developer's application for construction permits, by December 31, 2017. The term "Unavoidable Delays" means delays which are the direct result of governmental actions.

EXHIBIT H

WEDC GRANT CONTRACT

1. Grant Purpose. This Agreement is for the purpose of providing financial assistance from the City to Garver Feed Mill Lender, LLC (“Recipient”) in the form of a grant in the amount of Five Hundred Thousand Dollars (\$500,000) (the “Grant Funds”) to partially finance the Developer’s environmental remediation and demolition of the Property for the Idle Site Industrial Redevelopment eligible expenses for the project as further described in the application attached as Exhibit C (the “Project”). The City shall disburse the Grant Funds in connection with a Flow of Funds Memorandum entered into pursuant to a New Markets Tax Credit (“NMTC”) financing transaction. Pursuant to the NMTC financing transaction, an amount equal to the Grant Funds (the “Disbursement Funds”) shall be placed in a disbursing account in the name of the Developer (the “Disbursing Account”).

2. Conditions Precedent to Disbursement. The disbursement of the Disbursement Funds is subject to the prior fulfillment of the following terms and condition, as determined by the City:
 - (a) The Developer submitting to City a request for payment of funds in such form as required by City.

 - (b) The Developer submitting to City a report detailing the dollar amount and purpose of the Eligible Project Costs, as that term is defined in the Idle Sites Grant, included in the request for disbursement as well as the dollar amount and purpose of each expenditure that the Developer has contributed to the Project since the date of the previous disbursement of the Disbursement Funds.

 - (c) The Developer submitting to City documentation of the Eligible Project Costs incurred against the Disbursement Funds and Matching Funds, in an amount pro rata with the amount incurred against the Disbursement Funds. Such documentation may include, but not be limited to, purchase orders or invoices.

 - (d) The Recipient must request all Disbursement Funds no later than September 30, 2018.

3. Recipient and the Developer hereby agree to assume the obligations of the City in complying with all obligations of Section 3, 5, 6 and 11 of the Idle Sites Grant and shall assist the City in complying with any other obligations. In carrying out these obligations, the Recipient and the Developer, at their own expense and risk, shall indemnify, defend and hold harmless the City, its officers, agents and employees against any legal proceedings that may be brought against the City, its officers, agents and employees for any claim, demand, cause of action or assessment, and the Recipient and the Developer will satisfy any judgment that may be rendered against any of them in respect to any such claim, demand, cause of action or assessment. The City will promptly notify the Recipient upon its receipt of any such claim, demand, and cause of action or assessment.

4. Provided that the City shall have received funds from WEDC, the City shall disburse the Grand Funds in accordance with the Flow of Funds Memorandum on the date of closing of the NMTC financing transaction.
5. Provided that neither Recipient nor Developer has committed an Event of Default hereunder, the Idle Sites Grant is not subject to repayment.
6. Joint and Several Liability. Developer and Recipient acknowledge that their liability hereunder is joint and several. The City shall have no obligation to exercise any rights under this Agreement against more than one person or entity liable hereunder, and may proceed against one or any number of persons or entities liable hereunder, without proceeding against all or any others.