



Legislation Details (With Text)

File #:	54388	Version:	1	Name:	Authorizing the execution of a lease with Madison Freewheel Bicycle Co. at 216 S. Pinckney Street for the operation of the Madison Bicycle Center on Block 88.
Type:	Resolution	Status:			Passed
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Enactment date:	3/1/2019	Enactment #:			RES-19-00157
Title:	Authorizing an execution of a lease with Madison Freewheel Bicycle Co. at 216 S. Pinckney Street for the operation of the Madison Bicycle Center on Block 88. (4th AD)				
Sponsors:	Michael E. Verveer				
Indexes:					
Code sections:					
Attachments:	1. Exhibit A.pdf, 2. Exhibit B City Improvements.pdf, 3. Exhibit C Tenant Improvements.pdf, 4. Exhibit D Bike Center route to trash room.pdf				

Date	Ver.	Action By	Action	Result
2/26/2019	1	COMMON COUNCIL	Adopt	Pass
2/13/2019	1	TRANSPORTATION COMMISSION	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	
2/11/2019	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
2/5/2019	1	COMMON COUNCIL	Referred	
2/5/2019	1	FINANCE COMMITTEE	Refer	
1/23/2019	1	TRANSPORTATION COMMISSION	Refer	
1/14/2019	1	Planning Division	Referred for Introduction	

Fiscal Note

The 2017 Adopted Capital Budget (Engineering - Ped/Bike, Page 377) included \$1.0 million for the construction of a Bicycle Center at the new Government East parking garage as part of the Judge Doyle Square project. Those funds will also be used to purchase and install equipment and infrastructure required for the functioning and operation of the Center.

Resolution ID 48791 selected Freewheel Bicycle Co. as the operator of Madison Bicycle Center. This resolution authorizes the execution of a lease with Madison Freewheel Bicycle Co. at 216 S. Pinckney Street for the operation of the Madison Bicycle Center on Block 88.

Since Freewheel Bicycle Co. is responsible for ongoing operation and maintenance costs, there would be no additional impact to City Operating Budgets. The City is responsible for maintaining at its cost, structural, mechanical, electrical, plumbing, fire alarm, and fire sprinkler systems and exterior doors. The City Parking Division will maintain the systems and structural components that are shared with the public parking facilities, and City Engineering shall be responsible for the cost and maintenance of exterior doors, structures, and systems of the Bike Center that are not located within the above or below grade parking structures. Future City Parking Division and City Engineering Capital Budgets will reflect any future capital repair needs.

Title

Authorizing an execution of a lease with Madison Freewheel Bicycle Co. at 216 S. Pinckney Street for the operation of the Madison Bicycle Center on Block 88. (4th AD)

Body

WHEREAS, on November 1, 2016, the Common Council ("CC") adopted RES-16-00835 (File No. 44813) approving the issuance of a Request for Proposals ("RFP") to solicit an operator for the Madison Bicycle Center ("Bike Center") on Block 88 as a component of the public development portion of the Judge Doyle Square project; and

WHEREAS, on December 16, 2016, the City did not receive any proposals to operate the Bike Center in response to the City's RFP, and subsequently the City entered into discussions with potential operators that had expressed an interest in the project but had not responded to the RFP; and

WHEREAS, on May 2, 2017 the Common Council approved the design of the public parking facility and Bike Center on Block 88; and

WHEREAS on September 5, 2017, the Common Council approved Contract No. 7952 for the construction of the Judge Doyle Square public garage and core and shell for the Bike Center; and

WHEREAS, the City of Madison prepared plans and specifications for the public garage and Bike Center, issued plans for the construction of the public garage and Bike Center, and awarded the construction to JP Cullen Construction, the low bidder, on September 5, 2017, for which construction started in October 2017; and

WHEREAS, on November 21, 2017, the CC adopted RES-17-00903 (File No. 48791) accepting the Judge Doyle City Staff Team Report, and selecting the Madison Freewheel Bicycle Co. as the operator for the Bike Center in the Judge Doyle Square project on Block 88-subject to the negotiation of a final contract; and

WHEREAS, when the City's development partner could not move forward with the podium element of the Judge Doyle Square project, the CC authorized that the podium be built by the City on June 5, 2018 via RES-18-00403 (File No. 51484) amending the 2018 Capital Budget to design and construct the above grade parking, commercial space and transfer slab (collectively the "Podium") on Block 88 as public development components of the Judge Doyle Square project; and

WHEREAS, on November 20, 2018, the CC adopted RES-18-00792 (File No. 53580) approving plans and specifications (Podium Contract 8290) for the Podium on Block 88, and authorizing the City Engineer to advertise and receive bids for the project; and

WHEREAS, Madison Freewheel Bicycle Co's financial statements currently do not comply with the Capitalization Requirements outlined in paragraph 20.b below; and

WHEREAS, for the past several years, Madison Freewheel Bicycle Co. ("Tenant"), a nonprofit bicycle education and advocacy group has shared retail space with Bike Right, Inc. ("Bike Right"), which is a bicycle repair shop that covered a majority of the expenses, such as rent, tools, etc.; and

WHEREAS, Tenant is in the process of negotiating the purchase of Bike Right, and making it a wholly-owned subsidiary by the end of July 2019 with the intent to have unified financials and operate the business along the lines of a worker-owned cooperative instead of a sole proprietorship with the same staff; and

WHEREAS, based on Tenant's financial situation, the City is requiring additional financial due diligence requirements to be completed as a condition to the City executing a Lease with Madison Freewheel Bicycle Co. to the City's satisfaction: (i) Tenant needs to provide the City by February 18, 2019 evidence that it

complies with the Capitalization Requirements in paragraph 20.b hereof; and (ii) Tenant needs to send the City Bike Rights' 2017 and 2018 balance sheets and income statements; and (iii) Tenant acquires Bike Right by July 31, 2019 and provides the City with it post acquisition bank statement and balance sheet. Collectively the above terms per (i) through (iii) are defined as the Financial Due Diligence Terms.

NOW THEREFORE BE IT RESOLVED that the Common Council authorizes the Mayor and City Clerk to execute and record a lease ("Lease") with Madison Freewheel Bicycle Co. (the "Tenant") to operate the Bike Center on Block 88, on substantially the following terms and conditions:

1. Lessor: City of Madison ("City").
2. Tenant: Madison Freewheel Bicycle Co. ("Tenant").
3. Property. The Madison Bicycle Center (the "Bike Center") will be situated in the above-grade parking, commercial space, common areas and transfer slab collectively known as the Podium ("Building") to be built on the property located at 216 S. Pinckney Street, Madison, Wisconsin ("Property").
4. Leased Premises. Lessor hereby leases to Tenant the Bike Center plus the Retail Area, which collectively equals the "Premises" described as follows: consisting of approximately 3,015 rentable square feet of the Building at the Property. The floor plan, ceiling plan, elevations and isometrics of the Premises are depicted in the attached Exhibit A.

City's general contractor shall demise, prepare and deliver the Premises to the following condition as further described in the attached scope of work defined by LVDA ("City Improvements") per Exhibit B.

- a) Meters for electric and water;
- b) Bathrooms/shower rooms and related plumbing;
- c) Heating/cooling with delivery systems;
- d) Lighting per reflected ceiling plan which is part of Exhibit A;
- e) Ceiling is unpainted underside of precast planks;
- f) Electrical switches and outlets;
- g) Fire and life safety system will be coordinated with Podium's system;
- h) Demising walls to separate the Bike Center area from the Retail Area;
- i) Bike Center sign and any related electrical connections and mounting points for the exterior sign situated above the main entrance;
- j) Doors and hardware;
- k) Sealed concrete slab floor;

The above-referenced City Improvements will remain the City's property at the end of the Base Lease Term or any extensions.

5. Tenant Improvements. Tenant will pay for the "Tenant Improvements" that are further defined in Exhibit C as well as the following costs:
 - a) Any accent lighting in the Retail Area;
 - b) Architectural plans and permits for Tenant's Improvements in the Retail Area;
 - c) Any network/data drop connectivity and gear to run Tenant's internal systems;
 - d) Any fiber and telephone lines (if necessary) depending on Tenant's internet provider.

Any subsequent changes requested by Tenant to the floor plan or fixtures during Base Lease Term or extension terms shall require written approval by the City.

At the end of the Base Lease Term or Option Periods as defined below, any fixed Tenant Improvements

to the Premises shall remain on site.

6. Base Rent: "Base rent" shall be \$1.00 per year during the Base Lease Term as described in the below paragraph.
7. Security Deposit: The Tenant shall pay the City Two thousand five hundred dollars (\$2,500) as a security deposit within five days of executing the Lease.
8. Base Lease Term. The initial term of the Lease shall be for a three (3) years (the "Base Lease Term") commencing on upon issuance of the certificate of occupancy from the City of Madison for the Premises (the "Commencement Date"), and ending three fiscal years thereafter, unless extended by City as hereinafter provided.
9. Option to Renew. If, at the end of the Base Lease Term of this Lease, the Tenant is not in default under the terms and conditions of the Lease, then the Tenant shall have the right to extend the Base Lease Term for two (2) consecutive five (5) year terms, respectively the First Option Period and Second Option Period (together the "Option Periods"). Together, the Base Lease Term, and, if exercised, the Option Periods is defined as the "Lease Term".

The rental rates for the Option Periods, if exercised by Tenant and approved by the City, will be determined after the City's review of the Tenant's audited financial statements and tax statements ("Tenant's Financial Statements") for each year of the Base Lease Term or First Option Period. City will deliver a written rental rate proposal or denial to Tenant after reviewing the Tenant's Financial Statements, within 30 days after receipt of the Tenant's Financial Statements.

The Tenant's Financial Statements need to be provided to the City prior to executing the Lease, and when Tenant provides written notice ("Notice") of its desire to extend the Lease. Notice to the City must be in writing two hundred seventy (270) days in advance of the expiration of the Base Lease Term or First Option Period. All Notices under this paragraph shall be given as specified in the Lease.

In the event Tenant's performance under this Lease or as operator of the Bike Center is unsatisfactory, as determined in the City's sole discretion, then the City will provide written notice to Tenant denying any option(s) to renew the Lease.

10. Use. Tenant will operate a Bike Center and Retail Area in the Premises as described below:

The Bike Center shall contain the following elements at all times, and operated by the Tenant in the following manner:

- a) Secured, indoor parking for no less than 118 bicycles.
- b) Bike Center members shall be able to access the bicycle parking area 24 hours/day with a pass card reader or similar access system as described in Exhibit C.
- c) Membership shall be managed and accounted for by the Tenant. All Members will be expected to sign a waiver of liability and code of conduct form.
- d) Membership revenue and expenses shall be the property and liability of the Tenant. Accounts and pricing of memberships will be subject to annual review by the City. The City and Tenant will negotiate the terms relating to membership during the lease negotiations.
- e) The initial minimum economic terms relating to 2019 membership are as follows, which may be subject to change after receipt of feedback per the survey the Tenant is conducting per the

Marketing Plan as described below. Any change in rates are subject to the City's written approval:

Monthly Pass: \$30
Annual Pass: \$250
Day Pass: \$7

- f) Three showers/changing areas and 118 lockers: Showers and lockers for personal items shall be provided for members of the Bike Center only.
- g) A bicycle wash station for cleaning dirt, salt, and road debris from bicycles.
- h) In the entrance vestibule, the Tenant shall install and maintain:
 - 1. A Vending Machine that sells basic bicycling supplies and accessories such as tubes, tire levels, locks, lights, water bottles etc; and
 - 2. Bicycling information regarding bicycle routes, paths, bicycle rental etc., must be publicly available in an Information Kiosk Exhibit C.
- i) A self-service bicycle maintenance station in the Bike Center that contains a bicycle-stand, basic secured tools, and a pump shall be made available to cyclists. Non-members shall have access to the bicycle maintenance station during staffed Bike Center Hours as follows:

Tenant shall staff the Bike Center and Retail Area in peak seasons (spring, summer and fall) then limited hours in winter as follows (collectively the "Bike Center Hours"):

All year round: Monday-Friday: 8 a.m. to 7 p.m.

Weekend hours (excluding winter defined as December and January): Saturday and Sunday 10 a.m. to 4 p.m.
- j) Two restrooms that are available to members 24 hours/day. The restroom without the shower will be available to the public during staffed Bike Center Hours.
- k) A Retail Area that:
 - 1. Has on-site bicycle mechanics with the ability to offer repair and tune-up services to Bike Center members and the public.
 - 2. Contains a retail bicycle shop selling bicycles, parts and accessories.
 - 3. From time to time, Tenant shall hold classes to include topics such as basic maintenance, bicycle safety, touring and winter riding.
 - 4. From time to time, Tenant may host alcohol free social functions for members. If the Tenant rents out the Premise to an entity that will be serving alcohol for an event, then said entity or the caterer it engages needs to comply with City alcohol licensing laws.

11. Tenant's Responsibilities. Tenant is responsible at its cost for the repair and replacement of its Tenant Improvements, and the following items in the Premises: Aurora Keyscan system; access cards to the Aurora Key Scan system; exterior and interior signs; light fixtures-replacement of light bulbs and

ballasts; all plumbing fixtures and accessories (e.g. toilets; urinals; sinks; faucets; shower heads; drinking fountain; bicycle wash station etc.); unclogging toilets, sinks, sanitary sewer lateral and drains; running toilets; ExacQ security camera system; bicycle racks; lockers; bicycle repair station and tools; folding security doors; damage to interior or exterior walls and related work; any stains to the floors and cracks and personal property taxes.

In the event Tenant or any of its customers/members, employees, agents, invitees, contractors or licensees, damage the Premises or City Improvements, then Tenant shall be responsible for the repair or replacement of the improvement.

The City may conduct periodic inspections of Tenant's maintenance obligations hereunder. As such, the City shall have the right to access the Premises 24 hours per day, 7 days per week.

12. Operating Expenses. As of the Commencement Date, Tenant will be responsible for these operating costs related to the Premises: all electricity; heating and air conditioning utilities; water; landfill; sewer; storm water and urban forestry service; telephone lines* ; internet and data charges; special assessments; licenses; commercial liability; worker's compensation; employer's liability, umbrella and property insurance premiums; and snow removal outside of the Premises' entrance.

* The City will pay the operating cost of the phone line required for the fire alarm system only.

In addition, Tenant shall engage and pay for a third party company to operate and maintain the following: the Aurora Keyscan system and ExacQ security system, as described in Exhibit C; interior and exterior window washing; and exterior signs.

The City needs to review a copy of these contracts and approve the scope of work in writing before the Tenant executes the contracts. The Tenant shall get a certificate of insurance from these operators naming the City as additional insured, before executing said contracts. The certificate of insurance forms need to be sent to the City, and kept active during the term of the operating contracts.

13. Janitorial/Trash. Tenant shall be responsible at its cost to keep the Premises clean and attractive at all times. Showers, bathrooms, changing areas and floors are to be cleaned daily. Tenant also shall keep the interior and exterior windows cleaned as needed or at a minimum on a quarterly basis.

Tenant is responsible for all waste and recycling removal on a daily basis or more frequently as needed, at its cost. Tenant shall either: (i) haul the trash off site at its cost. (ii) contract with a third party waste disposal company at its cost to have a trash bin placed in the garage per Exhibit D. Tenant can ask to share the cost of this trash bin service with any future tenants in the Building. Tenant shall transport its garbage and recycling materials per Exhibit D to the bin location within the garage.

14. Lessor's Responsibilities. Except as described above in the above paragraphs 11-12, the City will maintain at its cost the following relating to the Premises: foundation; ceiling; sub-flooring (except for any stains or cracks caused by Tenant); exterior doors; fire alarm system; fire sprinkler system; electrical system; plumbing system; windows and structural portions of the Premises (except interior walls); heating, ventilation and air conditioning system serving the Premises in good condition and repair and condition and make any repairs/replacements relating thereto, except for repairs required thereto by reason of the acts or omission of Tenant, Tenant's employees, agents, invitees, licensees or contractors.

Tenant shall give the City written notice of the necessity for repairs/replacements coming to the attention of Tenant, following which the City shall have a reasonable time to undertake and complete such repairs. For the purposes of maintaining the Premises per this paragraph, the City reserves the right to enter the Premises 24 hours per day, 7 days per week to make any necessary repairs/replacements.

15. Signage. The Premises shall be named and signed "Madison Bicycle Center". A Madison Bicycle Center sign will be placed outside the main entrance to the Premises. Additional interior signing can be added such as "Operated by Madison Freewheel Bicycle Co.". All signage must be approved by the City in writing, and comply with the City of Madison Sign Ordinance. Tenant shall pay the cost to maintain any signage. No signage can be placed on the Premises' windows.
16. Marketing. Tenant shall present to the City a comprehensive marketing plan of the Bike Center to include details on social media, its own web-site, and pamphlet information available in downtown Madison locations (the "Marketing Plan") before the Lease is signed by the parties. The City shall review and approve the Marketing Plan in writing. The Marketing Plan will be attached to the Lease as Exhibit E.
17. Tenant Reporting. Tenant shall provide the City with quarterly membership sale and usage reports of Bike Center.
18. Assignment of Lease. The Lease shall not be assigned or sublet without the City's written approval.
19. Relationship of Parties. It is agreed that Tenant is the lessee of the City and, in its operation of the Madison Bicycle Center, is an independent contractor and not an employee or representative of the City, and that any persons who Tenant utilizes and provides for services under this Lease are employees of Tenant and are not employees of the City. In addition, it is agreed that by granting Tenant the right to use the Premises for the purposes set forth herein, that the City is not granting Tenant the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Tenant arising from this Lease. The Parties both acknowledge that this Lease does not create a dealership under Wis. Stat. Ch. 135.
20. Performance Standards. In the event Tenant's performance under the Lease or as operator of the Bike Center is unsatisfactory, as determined in the City's sole discretion, then the City will provide written notice to Tenant denying any option(s) to extend the Lease, in addition to any other remedies available under the City's Remedies section of the Lease or available at law. The Performance Standards are as follows:
 - a) Corporate Status. Tenant shall remain in good standing with the State of Wisconsin Department of Financial Institutions;
 - b) Capitalization Requirements. Tenant shall maintain an operating reserve of \$10,000 per year, and an approved line of credit for \$10,000 during the Lease Term. A separate bank account shall be set up by Tenant for the Bike Center (the "BC Bank Account"). Tenant shall submit its BC Bank Account financial statements to the City each fiscal lease year during Base Lease Term or any extensions demonstrating it is in compliance with the above reserve and credit figures.
 - c) Compliance. The Tenant shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City of Madison, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Premises. The Tenant may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Tenant agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

- d) Non-Discrimination. In the performance of its obligations under this Lease, the Tenant agrees not to discriminate against any employee, membership applicant or customer because of race, religion, marital status, age, color, sex, disability, 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. The Tenant further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
- e) Accessibility. The Premises shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinance 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Tenant.
- f) Weapons Prohibition. Tenant shall install a sign on the Premises' interior door banning all weapons.
- g) Membership Goals. Tenant to provide City in its Marketing Plan monthly membership sale goals for the first year. This Marketing Plan shall be updated each year, and sent to the City two months prior to the end of the fiscal year.
- h) Reporting. Tenant shall provide the City with quarterly membership sale and usage reports of Bike Center.
- i) Implementing the Marketing Plan. On the Commencement Date, Tenant shall have the following tools operational and will maintain these internet sites (separate from Freewheel's internet sites) during the Base Lease Term or extensions:
1. Bike Center website.
 2. Bike Center Social media accounts-Facebook, Instagram and Twitter.
- At the end of the Lease Term, the Bike Center's web site and social media accounts shall become the property of the City. Tenant allows the City to link the Bike Center on its web site. In addition, the Tenant shall have a Bike Center pamphlet to hand out to prospective members. Tenant shall comply with any rules adopted by the City's Information Technology Department in performing under this paragraph.
- j) Property Covenants, Conditions and Restrictions. Tenant shall abide to any forthcoming covenants, conditions and restrictions recorded on the Property.
- k) Building Rules and Regulations. Tenant, its vendors and contractors are to abide by all Building rules & regulations listed below (collectively the "Rules and Regulations"):
1. Tenant shall not obstruct any sidewalks, halls, passages, exits entrances, elevators, or stairways of the Building. The City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities.
 2. Tenant shall not use or keep in the Premises any kerosene, gasoline, or inflammable or combustible fluid or material other than those limited quantities necessary for the

operation or maintenance of office or retail equipment.

3. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, do or permit anything to be done in the Premises which materially obstructs, materially interferes, or materially injures City or other tenants, nor shall Tenant bring into or keep in or about the Premises any birds or animals, except seeing eye dogs or certified service animals when accompanied by their masters.
4. Tenant shall not use any method of heating or air conditioning other than that supplied by City.
5. City reserves the right to prevent access to the Building in case of invasion, riot, earthquake or other emergency by closing the doors or by other appropriate action.
6. The toilet rooms, toilets, urinals, washbowls and other plumbing apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind shall be thrown therein.
7. City reserves the right to exclude or expel from the Building any person who, in City's judgment is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations.
8. Tenant shall not place in any City trash receptacle any of its trash.
9. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by City and that are consistent with the Lease or any governmental agency.
10. City shall enforce the Rules and Regulations in a non-discriminatory manner. If City agrees to less burdensome or more favorable rules and regulations for the benefit of any other tenant, these Rules and Regulations shall be automatically amended to include any such less burdensome or more favorable rules and regulations.
11. These Rules and Regulations are in addition to the terms, covenants and conditions of the Lease for use of Premises in the Building. In the event these Rules and Regulations conflict with any provision of the Lease, the Lease shall control.
12. Smoking is prohibited throughout the interior and exterior of the Property. Violators will be ticketed and/or removed from the Property.
13. Alcoholic Beverages. Tenant shall not use, serve, drink, sell or keep on the Premises alcoholic beverages of any kind whatsoever.
14. Sidewalks/Right of Way. Tenant shall not use the sidewalks to keep or sell merchandise.
15. City reserves the right to make reasonable additions and modification to the Rules and Regulations.
16. No window coverings are allowed.
17. No signs are allowed on the windows of the Premises.

- l) Bankruptcy. Any of the below actions shall be a default:
 - 1. The filing by Tenant of a voluntary petition in bankruptcy;
 - 2. The institution of proceedings in bankruptcy against Tenant and the adjudication of Tenant as bankrupt pursuant to such proceedings;
 - 3. The taking by a court of competent jurisdiction of Tenant's assets pursuant to proceedings brought under the provisions of any federal or state reorganization act;
 - 4. The appointment of a receiver of Tenant's assets;
 - 5. The divestiture of Tenant's estate herein by other operation of law.
- m) Abandonment of Premises. Tenant shall not abandon the Premises.
- n) Nuisance. Tenant shall not permit the Premises to become a Chronic Nuisance Premises, as that term is defined in Madison General Ordinances 25.09.

21. City's Remedies. If any default by Tenant shall continue uncured after thirty (30) days written notice of default from City to Tenant, City has the following remedies, in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative.

- a) Termination of Lease. City may at City's election terminate this Lease by giving Tenant notice of termination. On the giving of the notice, all further obligations of City under this Lease shall terminate, Tenant shall surrender and vacate the Premises in a broom clean condition, and City may reenter and take possession of the Premises and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to City or from any claim for damages previously accrued or then accruing against Tenant.
- b) Termination of Possession. City may at City's election terminate Tenant's right to possession only, without terminating the Lease, following a breach of the Lease by Tenant. Upon termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately and possession thereof to City, and Tenant hereby grants to City the immediate right to enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof with or without process of law, and to repossess the Premises as City's former estate and to expel or remove Tenant and any others who may be occupying or within the Premises, without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom, without such entry and possession terminating the Lease or releasing Tenant from Tenant's obligation to pay the rent and to fulfill all other of Tenant's obligations under this lease for the full term of this Lease. Notwithstanding any remedial action taken hereunder by City short of termination, including reletting the Premises to a substitute Tenant, City may at any time thereafter elect to terminate this Lease for any previous default.
- c) Storage. City may at City's election store Tenant's personal property and trade fixtures for the account and at the cost of Tenant.

Diligent Efforts. Notwithstanding anything to the contrary in this section, in the event of Tenant's default is not a health or safety violation and cannot, because of the nature of the default, be cured within the thirty (30) days after City's notice thereof, then Tenant shall be deemed to be complying with such notice if, promptly upon receipt of such notice, Tenant 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.

City may Perform. City shall have the right at any time, after ten (10) days' notice to Tenant (or in case of emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment or perform any act required of Tenant under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall obligate City to make any payment or perform any act required of the Tenant, and this exercise of the right to so do shall not constitute a release of any obligation or a waiver of any default. All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed to City by Tenant as Additional Rent.

22. Brokerage Costs. The City is not responsible for any brokerage costs in connection with the Lease.

BE IT RESOLVED that Tenant needs to comply with the Financial Due Diligence Terms in order for the City to sign the Lease.

BE IT FURTHER RESOLVED that the Common Council authorizes the Mayor and City Clerk to execute such documents as are necessary to carry out the intent of this resolution in a form authorized by the City Attorney.