Legislation Details (With Text)

File #:	52607	**Version:**	3	**Name:**	2ND SUBSTITUTE - A Substitute authorizing (1) the execution of a Purchase and Sale Agreement with Gorman & Company, Inc. or its assigns (“Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street (“the Property”
Type:	Resolution			**Status:**	Passed
File created:	7/24/2018			**In control:**	FINANCE COMMITTEE
On agenda:	8/7/2018			**Final action:**	8/7/2018
Enactment date:	8/10/2018			**Enactment #:**	RES-18-00623

Title: 2ND SUBSTITUTE - A Substitute authorizing (1) the execution of a Purchase and Sale Agreement with Gorman & Company Holdings, Inc. or its assigns (“Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street (“the Property”); and (2) Authorizing the Mayor and City Clerk to execute a development agreement to sell the Property, valued at Six Hundred Eighty Six Thousand Dollars ($686,000) (“Land Value”), to Developer or its assigns for One Dollar ($1.00) and the Land Value financed by the City as a $686,000 loan to Developer (“TIF Loan”).

Sponsors: Marsha A. Rummel

Indexes:

Code sections:

Attachments: 1. Version 1.pdf, 2. Version 2.pdf

Date	Ver.	Action By	Action	Result
8/7/2018	3	COMMON COUNCIL	Adopt	Pass
7/30/2018	3	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
7/24/2018	1	COMMON COUNCIL	Refer	Pass
7/24/2018	1	Economic Development Division	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes a development agreement with Gorman Holdings Inc for property located within TID 37. Under the proposal, the City will provide a loan ($686,000) to the Developer through a land transaction. The loan will be repaid through future increment in the district. Based on current projections TID 37 is currently generating $1.5m in increment annually with $4.5m of unrecovered costs. The district was opened in 2006. This resolution requires no additional appropriation.

Title

2ND SUBSTITUTE - A Substitute authorizing (1) the execution of a Purchase and Sale Agreement with Gorman ~~& Company~~ Holdings, Inc. or its assigns (“Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street (“the Property”); and (2) ~~Authorizing~~ the Mayor and City Clerk to execute a development agreement to sell the Property, valued at Six Hundred Eighty Six Thousand Dollars ($686,000) (“Land Value”), to Developer or its assigns for One Dollar ($1.00) and the Land Value financed by the City as a $686,000 loan to Developer (“TIF Loan”).

Body

WHEREAS, on July 22, 2013, the City of Madison adopted RES 13-00541 authorizing the execution of a Purchase and Sale Agreement (“PSA”) with Gorman ~~and Company~~ Holdings, Inc. for the purchase and

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redevelopment of 2504, 2507 and 2340 East Washington Avenue(“Union Corners”) and amended the 2013 adopted Capital Budget to recognize $6,000,000 in both sales proceed revenues and TIF financial assistance expenditures; and

~~WHEREAS, On October 30, 2013 the City of Madison (the "City") executed a Purchase and Sale Agreement (the "PSA") with Gorman Holdings, Inc. f/k/a Gorman & Company, Inc. (the "Guarantor") for the conveyance and redevelopment of properties owned by the City located at 2504, 2507 and 2340 Winnebago Street, Madison, WI and which may be collectively referred to as the “Union Corners Parcels”), for a mixed-use redevelopment project to be partially financed by a six million dollar ($6,000,000) TIF loan; and~~

~~WHEREAS, to date, Phases 1-4 and 6 of the PSA have been conveyed to the Guarantor or its assigns; and~~

~~WHEREAS, Phase 5 of the PSA is subject to an Option Agreement (the “Option”) dated August 14, 2015 which is set to expire on August 14, 2018, which was to be exercised upon the Guarantor proposing a project with a financing gap of $686,000; and~~

~~WHEREAS, the Guarantor proposes to construct a housing project supported in part by tax credits, but does not meet the requirements of the Option due to a deficiency in gap under the TIF Policy, and the City has agreed to terminate the Option, and provide the land comprising of Phase 5 under the PSA under the terms stated herein; and~~

~~NOW THEREFORE BE IT RESOLVED, the Common Council hereby authorizes the Mayor and City Clerk to terminate the Option, and provide the land comprising of Phase 5 under the PSA in accordance with substantially the following terms and conditions:~~

WHEREAS on October 21, 2014 the City of Madison adopted RES 14-00762, the First Amendment to the PSA, extending the expiration date and changing the phasing of the land sale to Developer from four to six phases; and

WHEREAS on June 16, 2015 the City of Madison adopted RES 15-00524, the Second Amendment to the PSA, agreeing sell Phases 1 through 4 of the Property, valued at $5,000,000 to Developer for $1.00, provided Developer demonstrate a gap greater than or equal to $5,000,000 and authorizing an Option to purchase Phases 5 and 6 to Developer; and

WHEREAS on July 7, 2015 the City of Madison adopted RES 15-00575 authorizing the sale of Phases 1 through 4 of the, valued at $5,000,000, to Developer for $1.00 and financing the value in the form of a $5,000,000 TIF loan to Developer to be repaid by tax increments generated by the project on said phases; and

WHEREAS on March 15, 2016 the City of Madison adopted RES-16-00195 terminating Developer’s option rights to acquire Phase 6 and allowing the City until December 31, 2016 to sell said property to any new buyer; and

WHEREAS on July 19, 2016 the City adopted RES-16-00534 authorizing a Purchase and Sale Agreement to sell Phase 6 to Red Caboose Child Care Center, Inc. for $825,000 for the development of a day care center; and

WHEREAS Developer informed the City of its desire to purchase Phase 5 and subsequently submitted a TIF Application dated January 10, 2018 and its amendment dated July 25, 2018; and

WHEREAS due to significant change between the development program assumptions made in the original PSA for Phases 1 through 4 authorized in 2013, the sale of Phase 6 to Red Caboose and the proposed Phase 5 project, staff negotiated a PSA solely for Phase 5 redevelopment; and

WHEREAS TIF staff concludes that a gap exists in the proposed Phase 5 project such that a sale of Phase 5 land, valued at $686,000, may be made to Developer for $1.00 and said value in land repaid through a TIF loan to Developer in the amount of $686,000, recovered by tax increment and Developer guaranty payments.

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the Mayor and City Clerk to enter into a Purchase and Sale Agreement with ~~Gorman and Company, Inc~~. Gorman Holdings, Inc., or its assigns for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street (the "Property") under the following terms and conditions:

1. Property. The Seller shall sell and convey to the Buyer by Special Warranty Deed (the "Deed"), fee simple ownership of property owned by the Seller located at 2507 Winnebago Street, Madison, WI (the "Property"), as legally described on the attached Exhibit A, including all improvements located thereon and all appurtenances thereto. The Property will be developed in accordance with that certain TIF Loan Agreement, as defined below, and as approved by the City of Madison Common Council related to the Property (the "Project").

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

3. Personal Property. The transaction contemplated by this Agreement does not include any personal property.

4. Acquisition and Development of Property. The Seller shall convey the Property to the Buyer for One Dollar ($1.00) (the "Purchase Price"), subject to execution and recording of a TIF Loan Agreement between Buyer, or an affiliate thereof, and Seller in the amount of Six Hundred Eighty Six Thousand Dollars ($686,000) (the "TIF Loan"), and completion of all conditions for closing the TIF Loan Agreement, and the conditions of this Agreement.

5. Title Insurance. The Seller shall provide to the Buyer at the Seller's expense within fourteen (14) days of the Effective Date a commitment from Chicago Title Insurance Company, issued through Preferred Title, LLC (the "Title Company") as agent, to issue an ALTA Owner's Title Insurance Policy in the amount of the TIF Loan upon the recording of proper documents. 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 subject to no liens and encumbrances other than those that would not materially and adversely affect development of the Project, and further subject only to liens which will be paid out of the proceeds of the closing and to any standard title insurance exceptions acceptable to the Buyer. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to the end of the Buyer's Contingency Period. 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 remove the objections, the Buyer shall then have the option, exercisable within thirty (30) days of the Buyer's delivery of its original notice of objection to title, to either (a) terminate the Agreement by delivery of written notice to the Seller, in which case the Agreement shall be null and void, or (b) waive such objections to title. The Buyer's failure to timely deliver written notice of termination under Section (a) of the preceding sentence shall be deemed to be waiver of the Buyer's objections to title. At Closing, the Seller shall also cause the Title Company to issue a gap endorsement. Between the effective date of the commitment and Closing, the Seller shall not place any additional encumbrances against the Property (except for such encumbrances that the Seller shall remove at such Closing).

6. No Representations and Warranties; AS-IS Condition. The Seller makes the following representations and warranties, each of which is material and is relied upon by the Buyer and is deemed restated as of the Closing unless otherwise noted below:

   a. Good Title. The Seller has, and will have, as of the Closing, good and marketable title to the

Property. The Property shall be, on the Closing, free and clear from all liens and encumbrances excepting the following: municipal and zoning ordinances and the "Permitted Exceptions."

b. Authority. The Seller has complete power and authority to sell, transfer and convey the Property to the Buyer, and that persons signing below on behalf of the Seller have the authority to execute this Agreement on behalf of the Seller.

c. Voluntary Party Liability Exemption. The Seller warrants that as of the Closing, a Voluntary Party Liability Exemption certificate of completion has been issued for the Property.

d. Environmental. The Seller has no notice or knowledge of new environmental contamination occurring during the Seller's period of ownership, other than contamination disclosed in the documents provided pursuant to Section 8.

In all other respects, the Buyer shall purchase the Property in “AS-IS, WHERE-IS” condition and “with all faults”, and agrees that it is relying upon no warranties, representations or statements by the Seller, or any other persons for the Seller, in entering into the Agreement or in closing the transaction described herein. The Buyer’s closing on the acquisition of the Property 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 Contingencies” set forth in Section 9. In closing and completing the transaction, the Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of the Seller or its agents or employees, other than those set forth in this Section 6.

7. Environmental Remediation. Provided the Buyer has elected to proceed with the purchase of the Property following review of the Buyer’s contingencies pursuant to Section 9, the Seller shall have no further responsibility for the remediation of any environmental contamination on the Property, except for the correction of any condition that violates the Seller's warranties under Section 6 regarding the environmental condition of the Property.

8. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller’s expense and send to the Buyer one set of copies of all environmental studies, reports, surveys, permits, applications and remediation plans or assessments of the Property and all studies, reports, correspondence between the Seller or with any regulatory authority, the Voluntary Party Liability Exemption certificate of completion, the Final Case Closure Letter for Phase 4, plans or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Property, in the Seller’s possession or control.

9. Buyer Contingencies. The Buyer shall have one hundred eighty (180) days from the Effective Date, subject to extension as provided herein (as extended, the “Buyer Contingency Period”), to satisfy or waive the contingencies set forth below relative to the Property, or to otherwise terminate the Agreement if any contingency is unacceptable, in the Buyer’s sole discretion. The Seller and the Buyer shall agree that the Property is being offered to the Buyer on an "all or nothing" basis, and that if the Buyer cancels the Agreement because of the failure of any contingency to be met, then the entire Agreement shall be null and void. The contingencies are:

a. Land Use Approvals. The Buyer securing all land use approvals for the development of the Property. Such approvals may include, but not be limited to: approval of a PUD, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to complete the Project (the “Land Use Contingency”).

b. Project Financing. The Buyer securing financing acceptable for development of the Project.

c. Inspections. The Buyer obtaining various inspections of the Property and agreeing to accept the Property in "as-is" condition (except for the warranties and representations described in Section 6). The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Property and/or a Phase 1 or 2 environmental assessment of the Property. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements thereon. If the Buyer objects to any matters relating to the condition of the Property and any improvements thereon and the Seller is unwilling to cure the Buyer's objections, the Buyer shall have the right to terminate the entire Agreement.

d. Survey and Title. The Buyer's reviewing and agreeing to accept the condition of title to the Property as revealed by the title commitment and surveys to be delivered to the Buyer under Sections 5, 10 and 11.

e. Environmental Review. The Buyer's reviewing and approving the documents to be delivered to the Buyers under Section 8.

f. TIF Loan Documents. The Buyer and the Seller reaching agreement on the form of the Loan Agreement, Note, Mortgage, and the Corporate Guaranty and all other documents evidencing or securing the TIF Loan.

Provided that the Buyer has used diligent efforts to satisfy all contingencies during the Buyer Contingency Period, and, despite such efforts, has not yet satisfied the contingencies set forth in 9.a. or 9.b., the Buyer, acting unilaterally, may extend the Buyer Contingency Period for an additional ninety (90) days by delivery of written notice to the Seller prior to expiration of the Buyer Contingency Period.

10. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the Title Company providing the title insurance described in Section 6. The survey would show the location of all exceptions shown by the title commitment that are capable of being shown on a survey.

11. Access to Property. The Buyer and its authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer shall repair all damages caused by its inspections, at their cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection. The Buyer shall provide the Seller with copies of all reports and/or studies resulting from any assessments or inspections of the Property performed by the Buyer or its authorized agents and contractors.

12. Indemnification. During the Seller's ownership of the Property (or any portion thereof), the Buyer and each of its authorized agents, engineers, consultants and contractors shall, prior to entry upon the Property or any portion thereof owned by the Seller, execute and deliver to the Seller a permit in a form acceptable to the City Attorney. The Buyer shall be liable to and shall agree to indemnify, defend and hold harmless the Seller, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the Seller or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to the Property, including loss of use thereof, to the extent arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer and/or its authorized

agents, engineers, consultants and contractors, and all of their and the Buyer's officers, agents, employees, assigns, guests, invitees, licensees, contractors or subcontractors, in the performance of any inspections or testing of the Property. Negligence on the part of the Seller and its officials, officers, agents or employees shall not eliminate the indemnification obligations stated in the preceding sentence. The provisions of this paragraph shall survive termination of this Agreement.

13. Insurance. The Buyer and the Buyer's authorized agents and contractors performing any inspections or testing of the Property shall be required to carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted from time to time by the Seller's Risk Manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name the Seller as an additional insured. As evidence of this coverage, the Buyer and its authorized agents and contractors shall furnish to the Seller a certificate of insurance on a form provided by the Seller prior to entering on the Property to perform any inspections or testing as provided herein.

14. Closing.

a. Closing for the conveyance of the Property shall occur within thirty (30) days after the Buyer's satisfaction or waiver of the contingencies as provided in Section 9 above, at the office of the Title Company, unless the parties agree in writing to another date or place.

b. The Seller shall execute and deliver to the Buyer at closing the Deed to the Property free and clear from all liens and encumbrances, and the exceptions approved by the Buyer, or to which the Buyer has waived objection, under Sections 5 and 10.

c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.

d. All real estate taxes, if any, with respect to the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the real estate taxes for the year of closing, if known; otherwise, based on the real estate taxes for the year preceding closing.

e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.

f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.

g. The Buyer shall pay one-half, and the Seller shall pay the other half of any closing escrow fees charged by the Title Company to facilitate closing. All other closing costs shall be prorated between the Buyer and the Seller as is customary for commercial real estate transactions in the City of Madison, Wisconsin.

h. The Option Agreement dated August 14, 2015, evidenced by the Memorandum of Option to Purchase dated August 14, 2015 and recorded in the Dane County Register of Deeds as Document number 5176971 on August 17, 2015, shall be terminated and the parties shall proceed upon the terms of this Agreement and the TIF Loan Agreement as defined herein.

15. Condemnation. If the Property, or any portion thereof, is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, the Seller shall notify the Buyer in writing of the threat, condemnation or conveyance

within five (5) business days of its occurrence. The Buyer shall, within ten (10) days of the notice, have the option of (a) proceeding with the Closing or (b) terminating this Agreement.

16. Notices. All notices required or permitted to be given hereunder shall be given by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served, to the Buyer and the Seller at the following addresses:

SELLER: Office of Real Estate Services

Attention: Manager

City of Madison

215 Martin Luther King, Jr. Blvd.

P.O. Box 2983

Madison, WI 53701-2983

BUYER: Gary Gorman
Gorman & Company, Inc.
200 North Main Street
Oregon, WI 53575

All notices shall be deemed received either when actually received or three (3) days after deposit (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered). Either party may change the above addresses by written notice to the other.

17. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance.

18. Entire Agreement. This Agreement contains the entire agreement between the Seller and the Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Agreement may be amended only by a further written document signed by each of the parties.

19. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

20. Captions. The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.

21. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.

22. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.

23. Time of the Essence. Time is of the essence regarding a parties' performance by any contingency deadlines or

other dates and deadlines described in this Agreement.

BE IT FURTHER RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's TIF loan to developer demonstrates the potential to eliminate blighting conditions and encourage a wide range of housing options.

~~BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorizes to sell Phase 5 to the Guarantor or its assigns for $1 and in accordance with terms stated in this resolution.~~

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk be authorized to execute a development agreement to fund a $686,000 Tax Incremental Finance Loan to Gorman and Company, Inc. and its assigns to assist in the development of the City-owned parcel located at 2507 Winnebago Street within the boundary of TID #37 (Union Corners) under the following terms and conditions:

1. The Project. Developer agrees to develop on the Property all of the following:

   a. Construction of approximately 60 units of affordable housing, and
   b. Not less than approximately 65 underground parking stalls and 11 surface parking stalls.

2. Prior Agreement. The Parties previously entered into an Option Agreement dated August 14, 2015 for the Property (the "Option"). The terms of the Option required that there be a gap in the amount of the land value. The City has agreed to terminate the Option in favor of providing the land in exchange for a guaranty in the amount of the TIF Loan as defined below, which is above the appraised land value.

3. Form of Assistance. TIF assistance shall be provided in the form of land valued at Six Hundred Eighty Six Thousand Dollars ($686,000) sold to Developer or its assigns for One Dollar ($1.00) at closing, and the land value financed as a 0% loan in the amount of Six Hundred Eighty Six Thousand Dollars ($686,000) ("TIF Loan") to be repaid either through increment or a guaranty payment pursuant to Section 5 through tax year 2025 (final payment due in August of 2026).

4. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than $~~15,203~~14,719,000 ("Financing").

   Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing such as commercial pre-leasing requirements, if any.

   Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. The Developer's Equity investment may include a cash contribution from the tenant that will occupy the Project, the Developer's contribution of land, and a deferred developer's fee. In aggregate, Developer's equity investment, as established through financing documents shall not be less than the amount of the TIF Loan at closing.

   In the event of a self-financed Project, evidence includes but is not limited to, sources and uses, cash flows, pro formas, account statements and other documents to establish capacity to finance the Project, and other construction documents and plans establishing preparedness to begin work, in the reasonable discretion of the City.

   After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the total project costs as stated in the TIF Application. The total project costs estimated therein at approximately $15,~~889~~405,000 ("Project Cost"). Upon completion of the Project defined as issuance of a certificate of occupancy for all elements of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing ("Audit"), to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and records related to Project Cost and Financing. In the event that the financing gap for the Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City ("Clawback"):

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The Clawback shall be calculated as follows:

1. "Cost Savings" = $15,~~889~~405,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus $~~15,203~~14,719,000.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 7 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 5 below.

4. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Project shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Gorman Holdings, Inc. (the "Guarantor") pursuant to Section 6. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").

5. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2035. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.

6. Security and Corporate Guaranty. The TIF Loan shall be evidenced by a Note executed by Developer, or its assigns, to the City of Madison in the amount of Six Hundred Eighty Six Thousand Dollars ($686,000) bearing zero percent (0%) interest ("Note"). Developer shall execute a mortgage in favor of the City of Madison securing payment of the TIF Loan ("Mortgage"). The City shall agree, if necessary, to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s). The Guarantor shall execute a corporate guaranty guaranteeing payment of the TIF Loan.

7. Satisfaction and Early Termination. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan. Further, it is agreed that in the event Developer fails to close on tax credits or other financing for the project by October 15, 2018, the City shall be paid the amount of the TIF Loan and the Agreement shall be terminated and mortgage satisfied.

8. 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. The Developer understands that it is obligated to meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

a. The general contractor provide a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
b. A meeting shall take place before loan closing to set affirmative action goals for the project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request.
c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, “Completion” shall mean expenditure of total project costs as described in the TIF Application.

9. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.

10. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.

11. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.

12. Material Changes. At the time of Closing, if any material changes to the size, use or ownership of the Project or Property stated in the TIF Application have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. 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 (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).

13. Project Completion. Developer shall guarantee that the construction of the Project will be completed by March 1, 2020. Project completion shall be evidenced by the issuance of a certificate of occupancy. Failure to complete the Project by said date will require payment under the increment guaranty in Section 6.

14. 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.

15. Title Insurance. At least fifteen (15) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender’s policy in a form to be approved by the City Attorney, which will require, among other things, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.

16. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.

17. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not take possession of the Property, by December 31, 2018.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution all in a form to be approved by the City Attorney.

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