
DEVELOPMENT AGREEMENT

between

THE CITY OF MADISON, WISCONSIN,

and

JDS DEVELOPMENT, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), dated as of July 15, 2015, is made by and between the CITY OF MADISON, a Wisconsin municipal corporation (the “City”) and JDS DEVELOPMENT, LLC, a Wisconsin limited liability company (the “Developer”).

RECITALS

WHEREAS, the City owns certain real property more fully described on Exhibit A as the “City Parcel” and the “Utility Parcel” (collectively, the “Property”);

WHEREAS, the City, the City’s Community Development Authority (the “CDA”) and the Developer desire to cooperate in the development of the Property as a public-private partnership in accordance with the terms of this Agreement; and

WHEREAS, this Agreement provides the basic terms and conditions upon which the parties will undertake the development of the Property and it is anticipated that additional details, terms and conditions will be resolved with respect to the design and implementation of the development project, all of which will be set forth in the Amended and Restated Development Agreement to be agreed upon by the parties as set forth herein.

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 intend to develop the Property in accordance with this Agreement and will cooperate with one another in connection therewith.

Section 1.2. Project Description. The development of the Property contemplated by this Agreement consists of two primary components: (1) the “Private Development” and (2) the “Public Development” (collectively, the “Project”), with each primary component comprised of several sub-components (each, a “Project Element”), as generally described below:

(a) **Private Development.** The Private Development consists of the following three Project Elements:

(1) an office and retail component comprising approximately 315,500 gross square feet of floor area in a building to be constructed by the Developer on Block 88 (the “Block 88 Office Building”);

(2) a hotel component having a goal of 250 guest rooms within approximately 141,000 gross square feet of floor area in a building to be constructed by the Developer on Block 105 (the “Hotel”), with the final room count subject to completion of design development documents, completion of a market and feasibility analysis to be prepared by the Developer and reviewed by the City and final determination of the parking program; and

(3) an office and retail component (and/or other commercial or residential use as may be approved) within approximately 110,000 gross square feet of floor area in a building to be constructed by the Developer on Block 105 (the “Block 105 Future Expansion”).

(b) Public Development. The Public Development consists of the following two Project Elements, which will be constructed and paid for by the City:

(1) a parking component with approximately 650 structured parking stalls (the “Private Ramp”), to be constructed by the City primarily on Block 105 and leased to the Developer for operation by the Developer in connection with the Block 88 Office Building, the Hotel and the Block 105 Future Expansion, as more fully set forth in the Parking Lease (defined in Section 6.2 below); and

(2) a parking component with approximately 600 structured parking stalls (the “Public Ramp”), to be constructed by the City primarily on Block 105 for operation as public parking, together with a Bike Center (as further defined in Section 5.1 (a) below) (the Private Ramp and the Public Ramp are collectively referred to herein as the “Parking Structure”).

Section 1.3. Nature of Agreement. This Agreement establishes the basic terms and conditions upon which the parties will undertake the Project. The Agreement will be amended, supplemented or replaced pursuant to an agreement (the “Amended and Restated Development Agreement”), to be executed on or before the Real Estate Closing. Except as may be mutually agreed in the Amended and Restated Development Agreement, the terms and conditions in this Agreement will continue in force and effect.

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 2.1. Real Estate Purchase; Closing. The Developer shall purchase the Property from the City and the City shall sell the Property to the Developer pursuant to the terms of a real estate purchase agreement (the “Purchase Agreement”), the form of which shall be agreed to by the parties and which will be included as an exhibit to the Amended and Restated Development Agreement. The consummation of the purchase and sale of the Property pursuant to the terms of the Purchase Agreement (the “Real Estate Closing”) shall occur on or before September 15, 2015, unless otherwise agreed to by the parties. The Purchase Agreement shall contain a provision by which the City is entitled to reacquire title to the Property at fair market value, as determined by the appraisal set forth in Section 2.2 below, in the event the Project Commencement Closing (defined in Section 3.1 below) does not occur as contemplated in this Agreement.

Section 2.2. Purchase Price. The purchase price to be paid by the Developer for the Property at the Real Estate Closing shall be the fair market value of the Property, which is anticipated to be Fifteen Million and No/100 Dollars (\$15,000,000.00) (the “Purchase Price”), subject to an appraisal to be obtained by the Developer. The Purchase Price will be allocated between the City Parcel and the Utility Parcel as determined by the City in the exercise of its reasonable discretion.

Section 2.3. Real Estate Holding Company. To facilitate the overall development of the Project, the Developer may, prior to the Real Estate Closing, assign its rights under the Purchase Agreement to an entity to be formed by the Developer (the "Holding Company") pursuant to an agreement between Developer and Holding Company (the "Assignment Agreement"), the form of which shall be subject to the City's approval, which shall not be unreasonably withheld. The Assignment Agreement will require the Holding Company to (i) perform such actions to effectuate the transactions and perform the obligations and covenants contemplated by the Purchase Agreement, and (ii) cooperate with the Developer to effectuate the development of the Property according to the terms of this Agreement, including execution of the master lease contemplated in Section 2.7 below. At the Real Estate Closing, the City shall convey the Property to the Holding Company and the Holding Company shall deliver the Purchase Price to the City, all in accordance with this Agreement and the Purchase Agreement.

Section 2.4. Interim City Ground Lease. Upon the Holding Company's acquisition of the Property at the Real Estate Closing, the Holding Company and the City shall execute a ground lease in a form to be agreed upon by the parties (the "City Ground Lease") prior to the Real Estate Closing, pursuant to which the Holding Company will (i) lease the City Parcel back to the City for continued operation of the Madison Municipal Building by the City and (ii) lease the Utility Parcel back to the City for continued operation of the Government East Parking Structure. The City Ground Lease shall serve only as an interim measure pending the Project Commencement Closing (defined in Section 3.1 below), at which time such lease shall be terminated.

Section 2.5. Certified Survey Map. Subsequent to the effective date of this Agreement and prior to the Project Commencement Closing, the City shall prepare and approve, by resolution of the common council, a two-lot certified survey map (the "CSM") for the purpose of dividing the parcel of land upon which the Madison Municipal Building is situated (the "MMB Parcel") from the portion of the City Parcel required for development of the Project (the "Project Parcel"). The Project Parcel shall include the subterranean area below South Pinckney Street (the "Pinckney Street Subterranean Area") and the resolution to be adopted by the common council approving the CSM shall also satisfy the requirements set forth in Wis. Stat. § 66.0914 (4) for the conveyance of the Pinckney Street Subterranean Area to the Holding Company. A deed from the City to the Holding Company for the Pinckney Street Subterranean Area (the "Subterranean Area Deed") shall be executed by the City and delivered for recording at or prior to the Project Commencement Closing, without additional consideration, immediately prior to the recording of the CSM. The Subterranean Area Deed and the CSM shall be recorded by the Holding Company at the Project Commencement Closing. Upon recording of the CSM, the MMB Parcel and the Project Parcel shall constitute legally separate parcels with separate tax parcel numbers assigned to each.

Section 2.6. City's Reacquisition of the MMB Parcel. Immediately subsequent to the recording of the CSM at the Project Commencement Closing, the Developer shall cause the Holding Company to quit claim all right title and interest in and to the MMB Parcel to the City free and clear of all liens and encumbrances except any that were existing immediately prior to the Real Estate Closing.

Section 2.7. Condominium Declaration. Subsequent to the Real Estate Closing and prior to the Project Commencement Closing, the Developer and the Holding Company shall prepare a condominium declaration, plat and association documents (collectively, the “Condominium Documents”) for the purpose of subjecting the fee interest in the Project Parcel to the condominium form of ownership, pursuant to the Wisconsin Condominium Act. The condominium to be established by the Condominium Documents (the “Condominium”) is anticipated to be a five-unit condominium consisting of units (each, a “Unit”) within which the five Project Elements will be constructed: (i) the Block 88 Office Building Unit, the Hotel Unit, the Block 105 Future Expansion Unit (these three Units, collectively the “Private Units”) and (ii) the Private Ramp Unit and the Public Ramp Unit (these two units, collectively, the “Public Units”). The Condominium Documents will establish a condominium association for the purpose of managing and maintaining the common areas of the Condominium. Common area expenses for the Condominium shall be assessed and paid by Unit owners pursuant to the terms and conditions of the Condominium Documents. The form of the Condominium Documents shall be subject to the City’s review and approval prior to the Project Commencement Closing. The Developer shall cause the Holding Company to record the Condominium Documents at the Project Commencement Closing.

Section 2.8. Conveyance of Public Units. At the Project Commencement Closing, the City Ground Lease shall be terminated and the Developer shall cause the Holding Company to convey the Public Ramp Unit and the Private Ramp Unit to the CDA by deed. Following completion of construction of the Parking Structure by the CDA, the CDA shall convey the Public Ramp Unit to the City and shall lease the Private Ramp Unit to the Developer pursuant to the Parking Lease.

Section 2.9. Master Lease to Developer. At the Project Commencement Closing, subsequent to the recording of the Condominium Documents, the Holding Company shall master lease the Private Units to the Developer to facilitate the Developer’s construction of the Private Development in accordance with the terms of this Agreement. The form of such master ground lease shall be subject to the City’s approval, which shall not be unreasonably withheld.

ARTICLE III

PROJECT FINANCING

Section 3.1. Closing. The closing of the financing and entitlement phase of development (the “Project Commencement Closing”) shall take place at a date, time and location mutually acceptable to the parties no later than December 4, 2015 (the “Project Commencement Closing Deadline”), except as may otherwise be agreed to in writing by the parties.

Section 3.2. Source of Funds. All of the public funds for the Project contemplated in this Agreement shall be legally obligated by the City (as described in Section 3.3 below) at the Project Commencement Closing for disbursement pursuant to a mutually acceptable disbursing agreement (the “Disbursing Agreement”). This Agreement and the Disbursing Agreement shall legally obligate the City to release funds in 2015 and 2016 according to a cash flow schedule to be agreed to by the parties, with an absolute obligation that all such funds shall be disbursed into escrow pursuant to the Disbursing Agreement no later than the December 2016 from

Tax Increment District No. 25 (“TID 25”). The City funds required under this Agreement shall be drawn from a variety of sources, such as TID 25, the proceeds of the sale of the Property, the existing cash reserves of the City’s parking utility, future revenues, general obligation borrowing or other sources. The Developer shall contribute total debt and equity to the Project in the aggregate amount of not less than One Hundred Thirty Million and No/100 Dollars (\$130,000,000.00) (the “Private Funding”).

Section 3.3. Sources and Uses of Public Funds. The City shall provide funding for the Project in the amounts and for the purposes set forth in this Section 3.3, which amounts shall be committed to the Project prior to the Project Commencement Closing and will be disbursed to pay for the cost of constructing the Project pursuant to the Disbursing Agreement.

(a) Parking Utility Reserves. The sum of Eighteen Million and no/100 Dollars (\$18,000,000.00), drawn from the cash reserves of the City’s parking utility, including proceeds from the sale of the Utility Parcel, to be used for construction of the Parking Structure.

(b) Fleet Parking Costs. The sum of One Million Three Hundred Thousand Dollars and no/100 Dollars (\$1,300,000.00) to pay for the cost of constructing forty (40) above-grade structured parking spaces within the Public Ramp Unit for vehicles in the City’s fleet.

(c) Bike Center. The sum of One Million Dollars and no/100 Dollars (\$1,000,000.00) to pay for the cost of constructing the Bike Center within the Public Ramp Unit.

(d) Property Sale Proceeds. The Purchase Price proceeds from the sale of the Property, less the sum of One Million Sixty-three Thousand Dollars (\$1,063,000), which will be disbursed to the City’s general fund, with an amount equal to the net proceeds being granted to the Developer to pay for a portion of the cost of constructing the Block 88 Office Building.

(e) TID 25 Contribution to Parking. The sum of Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00), drawn from TID 25, to be used for construction of the Parking Structure (the “Parking-TIF”).

(f) TID 25 Jobs TIF. The sum of Twelve Million and no/100 Dollars (\$12,000,000.00), drawn from TID 25, to be made available for construction of tenant improvements and other costs associated with the construction of the Block 88 Office Building (the “Jobs-TIF”).

Section 3.4. TIF Application and Review. The Developer shall prepare an application for the Jobs-TIF, as well as such information as may be necessary for determining the use and application of the Parking-TIF as described above, which shall be submitted to the City’s TIF coordinator for review no later than July 31, 2015. The City’s obligation to provide the Jobs-TIF and the Parking-TIF is subject to approval of the TIF application by the City of Madison Common Council and an amendment to the Project Plan for TID 25 by the Joint Review Board and the City of Madison Common Council.

Section 3.5. TIF Guarantees.

(a) Jobs-TIF Guarantee. At the Project Commencement Closing, the Developer and Exact Corporation (“Exact”) shall provide the City with a two-stage corporate guarantee (the “Jobs-TIF Guarantee”) as security for the Twelve Million and no/100 Dollars (\$12,000,000.00) Jobs-TIF to be disbursed to Exact for tenant improvements and other costs associated with the construction of the Block 88 Office Building, as follows:

(i) For the first stage of the Jobs-TIF Guaranty, Exact shall guarantee that: (1) as of the date Exact takes occupancy of the Block 88 Office Building (“Exact’s Initial Occupancy Date”, Exact will have retained and/or created within the City of Madison not less than three hundred (300) living wage jobs; and (2) by no later than January 1, 2019, Exact will employ no less than four hundred (400) employees in living wage jobs at the Block 88 Office Building (“Minimum Job Requirement”). Each job retained or created will be valued at Thirty Thousand and no/100 Dollars (\$30,000.00) based on the City’s provision of \$12.0 million in the form of a jobs-based TIF loan (\$12.0 million divided by 400 jobs = \$30,000 per job). In the event the number of jobs created and/or retained does not meet or exceed the agreed upon number at the deadline for each stage of the Minimum Job Requirement, Exact will have six (6) months from each deadline to cure the shortfall and meet the minimum number of jobs required. If any deficiency exists following the cure period, Exact will make a penalty payment to the City in an amount equal to the sum of Thirty Thousand and no/100 Dollars (\$30,000.00) multiplied by the number of deficient jobs (such amount, a “Shortfall Guarantee Payment”). Any penalty payments made by Exact will be deducted from the total amount of the guarantee to be provided by the Developer as part of the second-stage guarantee set forth below. Finally, the Exact Lease (as defined in Section 7.1(a)(vi) below) shall include a relocation clause imposing a financial penalty on Exact in the event Exact were to terminate its lease and relocate its operations from the Block 88 Office Building (the “Relocation Penalty”), which Relocation Penalty shall be incorporated as part of the second stage of the Jobs-TIF Guaranty, as set forth in the following paragraph.

(ii) For the second stage of the Jobs-TIF Guaranty, the Developer shall provide a corporate guarantee in the amount of Twelve Million and no/100 Dollars (\$12,000,000.00) (the “Relocation Guarantee”) (subject to reduction for any Shortfall Guarantee Payment made by Exact as set forth in the preceding paragraph). The Relocation Guarantee shall be reduced annually by One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00) until the amount of the Relocation Guarantee is reduced to zero, with the first such reduction occurring on the first anniversary of Exact’s Initial Commencement Date. If the Relocation Penalty is triggered at any time when the Developer’s Job-Based Guarantee is in effect, the Developer shall pay to the City an amount equal to the amount of the Developer’s Job-Based Guarantee then in effect. Notwithstanding the foregoing, the Developer’s obligation to make payment to the City as contemplated under this paragraph is contingent upon and limited by the actual amount collected by the Developer from Exact under the Relocation Penalty.

The Jobs-TIF Guarantee will be fully satisfied and released on the earlier to occur of (i) the date the Developer makes the Relocation Guarantee payment to the City (subject to

collection from Exact as set forth above), or (ii) the date the Relocation Guarantee is reduced to zero.

Finally, as a condition to receipt of the Jobs-TIF, Exact will (a) commit to support diverse hiring through their existing relationship with the Urban League of Greater Madison according to a memorandum of understanding if a form to be agreed upon between Exact and the City (the “Hiring Diversity MOU”) prior to the Project Commencement Closing; and (b) prepare a transportation demand management plan (the “Exact TDM Plan”) that will be submitted for the City’s review and approval prior to the Project Commencement Closing.

(b) Parking-TIF Guarantee. At the Project Commencement Closing, the Developer shall provide the City with a two-tier guarantee (the “Parking-TIF Guarantee”) as security for the Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00) Parking-TIF to be disbursed by the City for construction of the Private Ramp. Each tier of the Parking-TIF Guarantee makes reference to the TIF Increment Projections prepared by the City and attached hereto as Exhibit B (the “Increment Schedule”). The Parking-TIF Guarantee is as follows:

(i) For the first tier of the Parking-TIF Guaranty, which secures the first Ten Million and no/100 Dollars (\$10,000,000.00) of the Parking-TIF (the “Collateral Assignment Guarantee”), the Developer shall collaterally assign to the City all of the Parking Income (defined in Section 6.5 below). In the event that (1) the actual tax increment generated by the Project through 2032 is less than the projected amount shown on the Increment Schedule as of the same year, or (2) the Developer fails to satisfy the net worth covenant described in the following paragraph, the City shall have the right, power and authority to declare the collateral assignment of the Parking Income to be unconditional and absolute, and thereby succeed fully to all of the Developer’s right, title and interest in, and to the Parking Income until such time as the collateral assignment is terminated as set forth below. Notwithstanding the foregoing, the Developer shall have the right to cure any increment shortfall that would otherwise trigger the collateral assignment of the Parking Income by paying the shortfall amount directly to the City. Any payments made hereunder, less the amounts already payable under the Section 6.5 participation payment to be made pursuant to the Parking Lease are to be considered as increment created by the Project.

(ii) For the second tier of the Parking-TIF Guaranty, which secures the remaining portion of the Parking-TIF, the Developer shall provide the City with a corporate guarantee in the amount of Ten Million Eight Hundred Thousand and no/100 Dollars (\$10,800,000.00) (the “Developer’s Corporate Parking Guarantee”). The Developer’s Corporate Parking Guarantee shall provide that: (i) over the course of 27 years (the “TID Lifespan”), the Project will generate the tax increment shown on the Increment Schedule; and (ii) at all times during the term of the Parking-TIF Guarantee, the Developer shall maintain a net worth of not less than Six Million Eight Hundred Thousand and no/100 Dollars (\$6,800,000.00). Each year during the TID Lifespan, the City will calculate any shortfall or excess in actual annual tax increment generated by the Project as compared to the projected amount for such year shown on the Increment Schedule and will carry forward any shortfall or excess on a cumulative basis. If, at the end of the 27th year of the TID Lifespan, the City’s accounting indicates a shortfall in the

cumulative actual tax increment generated by the Project as compared to the cumulative projected tax increment shown on the Increment Schedule, the Developer shall pay to the City the amount of such shortfall, up to a maximum of Ten Million Eight Hundred Thousand and no/100 Dollars (\$10,800,000.00), provided however, the Terminal Payment (defined in Section 6.5 below) shall be credited toward any required shortfall payment. The Developer's obligations under the Parking-TIF Guarantee will be secured by a subordinate mortgage on the Developer's interest in the Project in the stated amount of Six Million Eight Hundred Thousand and no/100 Dollars (\$6,800,000.00), provided that the City will not exercise its rights under the subordinate mortgage unless the Developer is in default under any loan agreement with any senior mortgage lender and any senior mortgage lender exercises its rights under the first mortgage.

The Parking-TIF Guarantee, including the Developer's collateral assignment of Parking Income and the Developer's Corporate Parking Guarantee, will be fully satisfied and released on the date that the amount of the actual tax increment generated by the Project, plus the amount of any Parking Income collected by the City under the collateral assignment, plus the amount of any payment made by the developer under the Developer's Corporate Parking Guarantee, equals or exceeds Twenty Million Eight Hundred Thousand and no/100 Dollars (\$20,800,000.00). Notwithstanding anything to the contrary set forth elsewhere in this Agreement, title to the Private Parking Unit shall remain vested in the CDA, and the Developer shall have no right to acquire such interest from the CDA, until the Parking-TIF Guarantee is fully satisfied and released.

ARTICLE IV

LAND USE APPROVALS; PERMITTING

Section 4.1. Land Use Approvals.

(a) Applications. Following the Effective Date of this Agreement and prior to the Project Commencement Closing, the Developer shall submit the appropriate application materials as required under the City of Madison municipal code for zoning, urban design and any other municipal land use and development approvals required in order to undertake the Project (collectively, the "Land Use Approvals"). A master schedule for development of the Project, including the schedule for the pursuit of the Land Use Approvals, is attached hereto as Exhibit C (the "Master Development Schedule"). All applications for Land Use Approvals shall be reviewed in accordance with the ordinances of the City of Madison, provided, however, without in any way limiting the generality of the foregoing, the City and the Developer shall each diligently and in good faith attempt to follow the Master Development Schedule.

(b) Planned Development. The City and the Developer acknowledge and agree that the Project Parcel must be rezoned to the Planned Development District under section 28.098 of the Madison General Ordinances in order to accommodate the Project. As part of the Land Use Approvals, the Developer shall seek approval of a General Development Plan ("GDP") pursuant to section 28.098(5)(c) of the Madison General Ordinance. The City and Developer further acknowledge that each Project Element shall be subject to the City's review and approval as part of a Specific Implementation Plan ("SIP"), pursuant to section 28.098(5)(e) of the Madison

General Ordinances, provided, however, nothing shall preclude Developer from combining one or more Project Elements into a single SIP application.

(c) City Cooperation. The City will reasonably cooperate with and assist the Developer in applying for and processing the applications for Land Use Approvals in connection with the Parking Structure.

Section 4.2. Building and Construction Permits; Fees. The Developer shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits with respect to construction of the Project. The Developer shall pay the normal and customary City charges and shall be responsible for obtaining all building permits prior to construction.

ARTICLE V

CONSTRUCTION OF PROJECT

Section 5.1. Parking Structure

(a) Design. Following the effective date of this Agreement and prior to the Project Commencement Closing, the Developer shall prepare detailed plans and specifications for the Parking Structure for review and approval of the City and the CDA. The program for the Parking Structure shall include a Bike Center consistent with criteria established in the Request for Proposals for Judge Doyle Square issued by the City (the "Bike Center").

(b) Pre-development Costs. The City acknowledges that the Developer was selected by the City to pursue development of the Project at the City's invitation. In that role, the Developer has provided and will continue to provide valuable assistance to the City in the planning and design of the Parking Structure that comprises the Public Development component of the Project. The City has allocated funding in the City's 2015 capital budget for the planning and design of the public portion of the Parking Structure. Funding for the private portion of the Parking Structure will be included as part of the City's 2016 capital budget, subject to approval by the Common Council. Pursuant to the Disbursing Agreement to be executed by the Parties at the Project Commencement Closing, the City shall reimburse the Developer for the actual costs incurred by the Developer in the planning and design of the Parking Structure, including, without limitation, architectural, engineering, planning and design fees and other related professional fees.

In the event this Agreement is terminated pursuant to Section 14.3 below, the City shall nonetheless be obligated to promptly reimburse the Developer for the actual costs incurred by the Developer in planning and designing the public portion of the Parking Structure. The maximum amount that may be due from the City in the event of termination shall be capped at the amounts set forth on the attached Exhibit D. The obligations set forth in this Section 5.1(b) shall survive termination of this Agreement.

(c) Bidding. The City and/or the CDA shall publicly advertise, bid and contract for the construction of the Parking Structure in accordance with applicable Wisconsin law governing such public construction, under the supervision of the Developer pursuant to the Construction

Administration Agreement. Statutory bid bonds, performance bonds and payment bonds shall be required for the Parking Structure in a form, and from sureties, approved by the City and/or the CDA. The City and/or the CDA, with assistance from the Developer, shall prepare all public bidding documents, contracts and bonds. All contracts for construction of the Parking Structure shall be awarded by the City and/or the CDA to the lowest responsible bidder (the “Parking Structure Construction Contracts”).

(d) Construction. The City and/or the CDA shall be responsible, at its sole cost and expense, for the construction of the Parking Structure in accordance with plans and specifications approved pursuant to Section 5.1(a), provided, however, the City and/or the CDA shall enter into an agreement with the Developer (the Construction Administration Agreement”), the form of which shall be agreed upon by the City and/or the CDA and the Developer prior to the Project Commencement Closing, pursuant to which the Developer shall administer the Parking Structure Contracts in coordination with the development of the overall Project.

(e) Commencement. Commencement of the Parking Structure, beginning with demolition of the “Annex” to the Madison Municipal Building, shall take place immediately following the Project Commencement Closing.

(f) Completion. Subject to Unavoidable Delays, the City and/or the CDA shall cause the Parking Structure to be completed no later than June 1, 2017 (the “Parking Structure Completion Date.” Construction of the Parking Structure will be performed in accordance with this Agreement, the Parking Structure Construction Contracts, the Construction Administration Agreement and the generally accepted standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar construction work at the time and in the locality where the work is performed and will be free of defects. As used in this Agreement, the term “Unavoidable Delays” means delays which are the direct result of strikes or other labor troubles, unforeseeable and unavoidable casualties to the Project, governmental actions, judicial action commenced by third parties, the implementation of an environmental agency-approved work plan for remediation, or severe weather, acts of God, fire or other casualty.

Section 5.2. Block 88 Office Building.

(a) Design. Following the effective date of this Agreement and prior to the Project Commencement Closing, the Developer shall prepare detailed plans and specifications for the Block 88 Office Building and shall submit such plans and specifications for review and approval by the City as set forth in Article IV above.

(b) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Block 88 Office Building, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any, filing or other development fees.

(c) Bidding. No portion of the Block 88 Office Building shall be construed as “public construction” and, as such, the Developer shall not be required to comply with

Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Block 88 Office Building.

(d) Construction. The Developer shall be solely responsible for the construction of the Block 88 Office Building in accordance with plans and specifications approved pursuant to Article IV above.

(e) Targeted Business Participation. The Developer shall commit to an agreement governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) with a goal of having not less than five percent (5%) of all construction contracts for the Block 88 Office Building, as measured by overall contract value, will be awarded to targeted businesses.

(f) Commencement. Commencement of construction of the Block 88 Office Building shall take place no later than January 1, 2016.

(g) Completion. Subject to Unavoidable Delays, the Block 88 Office Building shall be completed no later than July 1, 2017, as evidenced by the issuance of a certificate of occupancy by the City.

Section 5.3. Hotel.

(a) Design. Following the effective date of this Agreement and prior to the Project Commencement Closing, the Developer will prepare general plans and specifications for the Hotel, which will be submitted to the City for review and approval as part of the GDP contemplated in Article IV above.

(b) City Council Approval. The plans for the Hotel advanced by the Developer will address or incorporate the following concepts, all of which will be subject to review and approval by resolution of the City Council prior to the Project Commencement Closing:

(1) *Style, Size and Location*. An urban mixed-use style hotel consisting of approximately 141,000 gross square feet of floor area in a building to be constructed on the south half of Block 105.

(2) *Room Count*. The Hotel will have a goal of 250 hotel rooms, with the final room count subject to completion of design development documents, completion of a market and feasibility analysis to be prepared by the Developer and reviewed by the City and final determination of the parking program.

(3) *Brand*. Selection of a hotel franchise company offering an appropriate and credible brand for the Hotel with a national sales force and reservation system.

(4) *Operator*. Selection of an experienced hotel operator by the Developer, which selection will be reviewed in advance with the City.

(5) *Room Block Agreement*. A room block agreement to support the Monona Terrace Community and Convention Center.

(6) *Targeted Business Participation.* An agreement governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) with a goal of having not less than five percent (5%) of all construction contracts for the Hotel, as measured by overall contract value, will be awarded to targeted businesses.

(7) *Labor Agreements.* (i) the form of a project labor agreement for construction of the Hotel and (ii) a labor peace agreement concerning the operation of the Hotel on terms consistent with the labor peace agreement required by the City in connection with the development of the Hilton Madison Monona Terrace hotel, subject to review and approval by the Developer, the Hotel operator and the City.

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

(d) Bidding. No portion of the Hotel shall be construed as “public construction” and, as such, the Developer shall not be required to comply with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Hotel.

(e) Construction. The Developer shall be solely responsible for the construction of the Hotel in accordance with plans and specifications approved pursuant to Article IV above and by resolution of the Common Council approved pursuant to Section 5.3 (b) above.

(f) Commencement. Provided that the CDA’s construction of the Parking Structure has been completed, commencement of construction of the Hotel shall take place no later than May 1, 2017.

(g) Completion. Subject to Unavoidable Delays, the Hotel shall be completed no later than eighteen months following commencement, as evidenced by the issuance of a certificate of occupancy by the City.

Section 5.4. Block 105 Future Expansion.

(a) Design. The GDP to be prepared by the Developer pursuant to Section 4.1(b) above shall establish the general parameters for the development of the Block 105 Future Expansion, which may include, without limitation, additional office space for Exact or another office tenant, additional hotel capacity, or a residential use.

(b) Pre-development Costs. The Developer shall be solely responsible for all pre-development costs associated with the Block 105 Future Expansion, including, without limitation, architectural, engineering, planning and design fees; legal, accounting and other professional fees; and any, filing or other development fees.

(c) Bidding. No portion of the Block 105 Future Expansion shall be construed as “public construction” and, as such, the Developer shall not be required to comply with

Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, with respect to the Block 88 Office Building.

(d) Construction. The Developer shall be solely responsible for the construction of the Block 105 Future Expansion in accordance with plans and specifications approved pursuant to Article IV above.

(e) Targeted Business Participation. The Developer shall commit to an agreement governing the participation of local businesses, minority business enterprises (MBE), women business enterprises (WBE) and disadvantaged business enterprises (DBE) with a goal of having not less than five percent (5%) of all construction contracts for the Block 105 Future Expansion, as measured by overall contract value, will be awarded to targeted businesses.

(f) Commencement. Commencement of construction of the Block 105 Future Expansion shall take place at a time reasonably determined by Developer based upon market conditions.

(g) Completion. Subject to Unavoidable Delays, the Block 105 Future Expansion shall be completed no later than twenty-four months following commencement, as evidenced by the issuance of a certificate of occupancy by the City.

Section 5.5. Reacquisition by the City for Failure to Timely Commence Construction of the Hotel. The parties intend that the Hotel will be completed according to the schedule set forth in this Article V and the Developer shall use commercially reasonable efforts to do so. Notwithstanding the foregoing, however, the parties acknowledge and agree that the Developer's ability to undertake the construction of the Hotel is subject to market conditions. Accordingly, the parties acknowledge and agree that the Amended and Restated Development Agreement shall set forth terms and conditions mutually acceptable to the parties providing for the City's reacquisition of the Hotel Unit in the event the Developer does not timely commence construction of the Hotel. The terms and conditions of the City's reacquisition provisions to be set forth in the Amended and Restated Development Agreement shall also provide (i) a reasonable grace period for the commencement of the construction obligations to account for unfavorable market conditions or other Unavoidable Delay and (ii) the amount to be paid in connection with the City's exercise of the reacquisition right and (iii) a mechanism for adjustment of the Parking-TIF Guarantee to account for any reacquisition by the City.

In the event market conditions do not permit construction of the Hotel according to the schedule set forth in this Article V, as determined by the Developer in the exercise of Developer's sole discretion, Developer shall be permitted to extend the applicable commencement date(s) by up to twelve (12) months, upon delivery of written notice to the City. In the event Developer does not commence construction of the Hotel within the timeframe for commencement, as may be extended, the City may, at its option, elect to reacquire the Hotel Unit by delivery of written notice to the Developer. If the City elects to exercise this reacquisition option, the Developer shall cause the Holding Company to reconvey the Hotel Unit to the City by special warranty deed, free and clear of all liens and encumbrances except any that were existing immediately prior to the Project Commencement Closing. The price to be paid by the City for such re-conveyance shall be an amount equal to the fair market value of the Unit(s)

being reacquired by the City as determined by an independent appraiser jointly selected by the parties who shall be a member of the American Institute of Real Estate Appraisers licensed by the State of Wisconsin as a Certified General Appraiser, with the effective date of the appraisal being the date this reacquisition option is exercised. The terms and conditions of the City's reacquisition provisions to be set forth in the Amended and Restated Development Agreement shall also provide a mechanism for adjusting the Parking-TIF Guarantee to account for any reacquisition by the City.

ARTICLE VI

PARKING LEASE

Section 6.1. Parking Lease. Upon completion of the Parking Structure, the Developer and the CDA shall enter into a parking lease agreement for the Private Ramp (the "Parking Lease"), the form of which shall be agreed upon by the City, the CDA, and the Developer prior to the Real Estate Closing. On or before September 1, 2015, the parties shall agree on a term sheet setting forth the principal terms and conditions to be incorporated within the Parking Lease, including, without limitation, revenue generation and use of the Private Parking by tenants of the Project and others on commercially reasonable terms. The term of the Parking Lease shall be 27 years and the Developer shall pay the CDA annual base rent of Forty Thousand and no/100 Dollars (\$40,000.00) throughout the term.

Section 6.2. Operation and Maintenance. The Parking Lease shall provide that the Developer is responsible for the cost of annual operation, management and routine maintenance of the Private Ramp and is entitled to all parking revenues during the lease term, subject to the Collateral Assignment Guarantee in Section 3.5(b)(i) and the participation payment referenced in Section 6.5 below to be set forth in the Parking Lease. The Developer shall create a reserve fund for structural repairs and improvements of a capital nature to the Private Ramp and the deposits into the reserve fund will be an expense before calculating net income for the Private Ramp.

Section 6.3. Parking Management During Peak Periods. The parties will negotiate in good faith for inclusion with the Parking Lease a mutually-acceptable provision pursuant to which the City will use its best efforts and cooperate in good faith with the Developer to permit a certain number of parking spaces within the Public Ramp to be available on a reserved basis for the use of the Project's tenants, occupants, employees, guests and invitees during certain peak periods of operation.

Section 6.4. Right of First Refusal. The parties will negotiate in good faith for inclusion with the Parking Lease a mutually-acceptable provision pursuant to which the Developer shall have a right of first refusal on any blocks of spaces in the Public Ramp that the City may wish to make available to any third parties on a long-term basis (e.g. for a year or longer) along with an option to acquire any stalls in the Public Ramp that may become available during the lease term in the event the City constructs or secures other stalls for public use in the downtown and no longer desires to maintain all 600 stalls within the Public Ramp.

Section 6.5. Purchase by the Developer. At the end of the 27-year term of the Lease, the CDA shall convey to the Developer fee title to the Private Ramp. As consideration for the

conveyance: (i) the Parking Lease shall contain participation agreement with the CDA whereby the CDA shall be entitled to receive twenty percent (20%) of the Parking Income throughout the lease term; and (ii) the Developer shall pay to the CDA the lump sum of Four Million and 00/100 Dollars (\$4,000,000.00) at the end of the lease term (the "Terminal Payment"). For purposes of this section, "Parking Income" shall be defined in the Parking Lease.

Section 6.6. Subleasing. The Developer shall be expressly permitted, without the consent the CDA, to sublease or grant licenses or other occupancy rights to the Private Ramp in accordance with the Parking Lease provided such subleases or licenses are on commercially reasonable terms, including, without limitation, the payment of rent (taking into account the base rent payment to CDA contemplated in Section 6.1 above and the 20% participation payment related to the Parking Income made by the Developer under Section 6.5 above) as determined by the Developer in the exercise of the Developer's reasonable discretion. The Parking Lease shall provide the CDA with a reasonable right to audit the Developer's management of the parking spaces within the Private Ramp.

Section 6.7. Memorandum of Parking Lease. A memorandum of the Parking Lease shall be recorded in the Dane County Register of Deeds office, and any sublessee shall be permitted to record a memorandum of such sublease in the Dane County Register of Deeds office.

ARTICLE VII

CONDITIONS PRECEDENT TO PROJECT COMMENCEMENT

Section 7.1. Conditions Precedent. The parties' respective obligations to complete the financing and entitlement phase of development and undertake the Project contemplated by this Agreement are conditioned on timely satisfaction of each of conditions precedent set forth in this Article VII (the "Conditions Precedent").

(a) Conditions to the Real Estate Closing. The following items shall be satisfied at or prior to the Real Estate Closing Deadline:

- i. Review of the following information by the Common Council as set forth in Resolution # RES-15-00598, adopted July 7, 2015:
 - A. Completed TIF application;
 - B. TIF Gap Analysis with the Financial Term Sheet;
 - C. Analysis of potential impacts on the parking utility of 650 additional parking stalls if public parking is allowed in leased area during "off hours;"
 - D. Analysis of impact on parking utility and city budget from 17-month loss of revenue from Government East parking structure;

- E. Evidence of the viability of a 1:4 or 1:5 car/room ratio for the proposed hotel as used in other "shared parking" environments;
- F. Clarification of the type of financial instrument and terms of the city's \$12M investment in jobs TIF;
- G. Clarification of the type of financial instrument for the \$12M/12 year jobs guarantee offered by Exact Science;
- H. Clarification of reporting and oversight mechanism for ensuring compliance with jobs TIF terms;
- I. Clarification on whether or not Exact Sciences will guarantee the lease of the entire space, and if so, what type of financial instrument will be used for the guarantee; and
- J. Report by real estate attorney consulting with the city on how optimal protections of the city's interests in the 1031 tax credit land swap.
- ii. Preparation of a mutually acceptable Purchase Agreement within thirty (30) days following the effective date of this Agreement, as set forth in Section 2.1.
- iii. Delivery of the TIF Application to the City no later than July 31, 2015.
- iv. Approval by the Common Council of a resolution approving the basic terms and conditions of the Parking-TIF and the Jobs-TIF.
- v. Execution by the City and the Developer of the Amended and Restated Development Agreement in the final form as approved by the parties.
- vi. Acquisition of the Property by the Holding Company, as set forth in Section 2.3.
- vii. Preparation of a mutually acceptable Interim City Ground Lease, to be executed by the parties at the Real Estate Closing, as set forth in Section 2.4.
- viii. Receipt by the Developer (with a copy provided to the City) of a commitment for the Private Debt Funding, as required under Section 3.3, as evidenced by a written statement from the lender(s) stating the Developer has demonstrated the financial capacity to invest the equity required for the Project and the amount of the construction loan proceeds to be disbursed at closing by the lender(s).
- ix. Execution of a lease agreement between the Developer and Exact for not less than 175,000 square feet of net leasable area within the Block 88 Office Building on a term of not less than fifteen (15) years (the "Exact Lease"). The Developer shall provide the City Attorney a reasonable opportunity to review the Exact Lease prior to the Real Estate Closing for the purpose of confirming that the lease satisfies this Subparagraph (vi) and the requirements under Section 3.5(a)(ii) above.

x. Approval by the Common Council of the room count for the Hotel development set forth in Section 5.3(b)(2) and the preliminary layout of the Parking Structure.

(b) Conditions to the Project Commencement Closing. The following items shall be satisfied at or prior to the Project Commencement Closing Deadline:

i. Approval by the City Council of the CSM and the resolution for conveyance of the Pinckney Street Subterranean Area, as set forth in Section 2.5.

ii. Delivery of the fully-executed CSM and Subterranean Area Deed by the City, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.5.

iii. Delivery of the fully-executed deed reconveying the MMB Parcel to the City, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.5.

iv. Preparation of a mutually acceptable set of Condominium Documents, to be executed and recorded by the parties at the Project Commencement Closing, as set forth in Section 2.7.

v. Delivery of the fully-executed deed conveying the Public Units to the City, to be recorded by the parties at the Project Commencement Closing, as set forth in Section 2.8.

vi. Delivery of a fully-executed master lease agreement between the Developer and the Holding Company for the Private Units, as set forth in Section 2.9.

vii. Approval within the City's 2016 capital budget providing for all of the funds required of the City under this Agreement.

viii. Preparation of a mutually acceptable Disbursing Agreement, to be executed by the parties at the Project Commencement Closing, as set forth in Section 3.1.

ix. Approval of an amendment to the Project Plan for TID 25 by the Joint Review Board and the City of Madison Common Council.

x. Preparation of a mutually acceptable Hiring Diversity MOU, to be executed by Exact and the City at the Project Commencement Closing, as set forth in Section 3.5 (a).

xi. Delivery to the City by Exact of an acceptable transportation demand management plan prior to the Project Commencement Closing, as set forth in Section 3.5 (a).

xii. Delivery by Exact Corporation of the fully-executed Jobs-TIF Guarantee required under Section 3.6 (a).

- xiii. Delivery by the Developer of the fully-executed Parking-TIF Guarantee required under Section 3.6 (b).
- xiv. Approval of the GDP for the Project.
- xv. Approval of an SIP for the Parking Structure and the Block 88 Office Building.
- xvi. Receipt of all other Land Use Approvals necessary to initiate the Project.
- xvii. Approval by the City of the plans and specifications for the Parking Structure, including the Bike Center, as set forth in Section 5.1 (a).
- xviii. Payment by the City of its proportionate share of the pre-development costs pursuant to Section 5.1(b).
- xix. Preparation of a mutually acceptable Construction Administration Agreement, to be executed by the parties at the Project Commencement Closing, as set forth in Section 5.1 (d).
- xx. Approval by the Common Council of each element of the Hotel development set forth in Section 5.3(b).
- xxi. Preparation of a mutually acceptable Parking Lease, to be executed by the parties at the Project Commencement Closing, commencing upon substantial completion of the Parking Structure, as set forth in Section 6.1.
- xxii. Inclusion of a mutually acceptable Parking Income participation provision in the Parking Lease, as set forth in Section 6.5.
- xxiii. Issuance of the insurance coverages required under Article VIII.
- xxiv. Authorization of any approvals that may be required by the CDA in order to undertake the Project.

ARTICLE VIII

INSURANCE

Section 8.1. Insurance. The parties shall purchase and maintain such insurance coverages as may be required by the parties' respective lenders or as the parties otherwise agree are necessary to adequately protect the parties' respective interests in the Project, which coverages shall be set forth in the Amended and Restated Development Agreement.

ARTICLE IX

TRANSFER AND ASSIGNMENT LIMITATIONS

Section 9.1. Transfer and Assignment Limitations. The Developer agrees that, following the Real Estate Closing and prior to the Project Commencement Closing, the Developer will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other form of or with respect to this Agreement or the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of the City, which approval shall not be unreasonably withheld.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Section 10.1. 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. 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, as contemplated at Wis. Stat. § 62.09(10)(f).

(b) The City has no knowledge as to the presence of hazardous substances as the same are described in the regulations promulgated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and/or in the environmental laws of the State in, on or under the Property except as expressly set forth in environmental reports submitted to the Developer. With respect to the Project, the City of Madison is aware of no facts the existence of which would cause it to be in violation of any state, local or federal environmental law, regulation or review procedure, or which would give any person a valid claim under the environmental laws of the State.

(c) There is not pending, nor to the best of the City's knowledge after due inquiry is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforceability of this Agreement.

(d) The City shall indemnify, defend and hold the Developer harmless for, from and against any and all claims, demands, liabilities, costs, expenses, damages and losses, cause or causes of action and suit or suits of any nature whatsoever arising solely out of the ownership and/or operation of the City Parcel by the City as a result of any acts, events or omissions existing or occurring during the City's ownership of the City Parcel and prior to the Real Estate Closing and for any breach of any representation, warranty or covenant made by City under this Agreement.

Section 10.2. 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 the State.

(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.

(d) The Developer shall indemnify, defend and hold the City harmless for, from and against any and all claims, demands, liabilities, costs, expenses, damages and losses, cause or causes of action and suit or suits of any nature whatsoever arising solely out of any breach of any representation, warranty or covenant made by the Developer under this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1. Indemnification Covenants. The parties shall cause the Amended and Restated Development Agreement to contain such indemnification provisions as the parties agree are necessary to adequately protect the parties' respective interests in the Project, which indemnification covenants shall be set forth in the Amended and Restated Development Agreement.

ARTICLE XII

EVENTS OF DEFAULT

Section 12.1. 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. 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 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 12.2. 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 12.3. 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 to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE XIII

ADDITIONAL PROVISIONS

Section 13.1. 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 to incorporate additional details, terms and conditions and the various agreements referenced above shall be appended as exhibits to this Agreement.

Section 13.2. 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 and determination, decision, selection, consent,

approval, acceptance, adoption, satisfaction or other action that may be necessary to fully implement the terms of this Agreement.

Section 13.3. Conflict of Interests. No member, official, or employee of either City Party 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 either City Party shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by either City Party for any amount which may become due to the Developer on any obligations under the terms of this Agreement, except in the case of willful misconduct.

Section 13.4. Restrictions on Use. The Developer shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

Section 13.5. Provisions Not Merged With Assignment. Notwithstanding any provision of law or court decision to the contrary, none of the provisions of this Agreement are intended to or shall be merged by reason of any assignment or conveyance transferring any interest in the Condominium Property and any such assignment or conveyance shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 13.6. 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 13.7. 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 13.8. 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 the Developer:	JDS Development, LLC Attn: Robert P. Dunn 33 East Main Street, Suite 500 Madison, WI 53703 Phone: 608-274-7447 Fax: 608-274-7442
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With a copy to:	Michael, Best & Friedrich, LLP
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Attn: Michael S. Green
One South Pinckney Street, Suite 700
Madison, WI 53703
Phone: 608-257-7482
Fax: 608-283-2275

If to the City of Madison: City of Madison
Attn.: Manager, Office of Real Estate Services
215 Martin Luther King, Jr. Blvd., Room 312
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 13.9. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 13.10. 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 either City Party, and no such other party shall have standing to complain of either City Party's exercise of, or alleged failure to exercise, its rights and obligations, or of either City Party's performance or alleged lack thereof, under this Agreement.

Section 13.11. Litigation. Each City Party and the Developer will reasonably cooperate with one another with respect to any litigation commenced by third parties in connection with this Agreement.

Section 13.12. Mortgagees Not Obligated To Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to those which are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any holder which obtains title to any Unit as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to any Unit or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to complete the construction.

Section 13.13. 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 13.14. Non-Discrimination. In the performance of its obligations hereunder, the 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, political beliefs or student status. The 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 or national origin.

Section 13.15. Workforce Utilization. The parties agree that the Amended and Restated Development Agreement shall include such workforce utilization provisions as are required by City ordinance or established City policy with respect to private development projects receiving financial support from the City.

Section 13.16. Affirmative Action. The parties agree that the Amended and Restated Development Agreement shall include such affirmative action provisions as are required by City ordinance or established City policy with respect to private development projects receiving financial support from the City.

Section 13.17. Prevailing Wages. The parties agree that the Amended and Restated Development Agreement shall include such prevailing wage provisions as are required by City ordinance or established City policy with respect to private development projects receiving financial support from the City.

Section 13.18. Living Wage. The Developer agrees to pay all employees employed by the 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 section 4.20 of the Madison General Ordinances.

Section 13.19. 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 13.20. Exclusivity. During the term of this Agreement, the Developer shall have the exclusive right to negotiate with the City concerning the acquisition and development of the Property and the City agrees that it shall not directly or indirectly solicit or entertain any other proposals for the acquisition and development of the Property during the term of this Agreement.

Section 13.21. 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 either the Real Estate Closing or the Project Commencement Closing. Each party covenants and agrees to exercise good faith in seeking to satisfy such contingencies. The 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 City's 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.

ARTICLE XIV

TERMINATION OF AGREEMENT

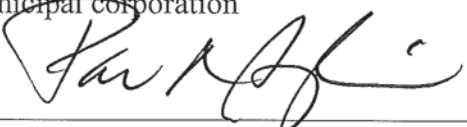
Section 14.1. Termination. In the event all of the Conditions Precedent to the Real Estate Closing are not satisfied on or before September 15, 2015, this Agreement shall automatically terminate.

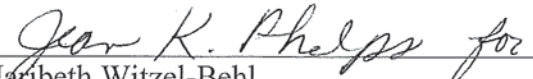
Section 14.2. Expiration. If not terminated pursuant to Section 14.1 above, this Agreement shall terminate upon the date all of the parties' other respective obligations hereunder are satisfied, but no such termination shall terminate any indemnification or other rights or remedies arising hereunder due to any default which occurred and was continuing prior to such termination.

Section 14.3. Effect of Termination. Upon termination of this Agreement pursuant to this Article XVI, 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 each City Party 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

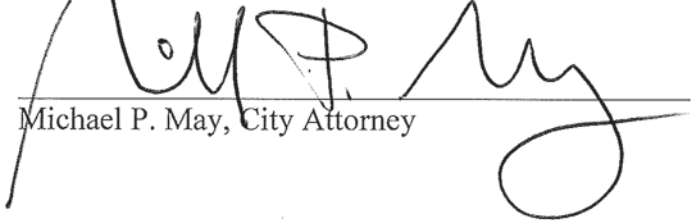
By: 
Paul R. Soglin
Mayor

By: 
Maribeth Witzel-Behl
City Clerk

APPROVED:


David P. Schmiedicke
Finance Director

APPROVED AS TO FORM:


Michael P. May, City Attorney

The execution of this Agreement by City officials was authorized by Enactment No. RES-15-00598, File No. 39071, adopted July 7, 2015.

JDS DEVELOPMENT, LLC


By: 
Robert P. Dunn
Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

City Parcel

Block 88, Madison, according to the original plat thereof, in the City of Madison, Dane County, Wisconsin.

Utility Parcel

Lots 1, 2, 3, 11, 12 and 13, Block 105, Madison, according to the original plat thereof, in the City of Madison, Dane County, Wisconsin.

EXHIBIT B

TIF INCREMENT PROJECTIONS

		Phase I Increment	Phase II Increment	Combined Increment	Cumulative Increment
	2015	-		-	-
	2016	-		-	-
	2017	-		-	-
1	2018	997,172.91		997,172.91	997,172.91
2	2019	1,242,515.07	462,240.90	1,704,755.97	2,701,928.87
3	2020	1,243,452.82	575,969.60	1,819,422.42	4,521,351.29
4	2021	1,244,391.27	576,404.30	1,820,795.57	6,342,146.86
5	2022	1,245,330.44	576,839.32	1,822,169.75	8,164,316.62
6	2023	1,246,270.31	761,502.52	2,007,772.83	10,172,089.45
7	2024	1,247,210.89	1,123,580.97	2,370,791.86	12,542,881.31
8	2025	1,248,152.18	1,124,428.96	2,372,581.14	14,915,462.45
9	2026	1,249,094.18	1,125,277.58	2,374,371.77	17,289,834.22
10	2027	1,250,036.89	1,126,126.85	2,376,163.75	19,665,997.96
11	2028	1,250,980.32	1,126,976.76	2,377,957.08	22,043,955.04
12	2029	1,251,924.45	1,127,827.31	2,379,751.76	24,423,706.80
13	2030	1,252,869.30	1,128,678.50	2,381,547.80	26,805,254.60
14	2031	1,253,814.86	1,129,530.33	2,383,345.19	29,188,599.79
15	2032	1,254,761.14	1,130,382.81	2,385,143.95	31,573,743.74
16	2033	1,255,708.13	1,131,235.92	2,386,944.05	33,960,687.79
17	2034	1,256,655.83	1,132,089.69	2,388,745.52	36,349,433.32
18	2035	1,257,604.25	1,132,944.09	2,390,548.35	38,739,981.66
19	2036	1,258,553.39	1,133,799.15	2,392,352.54	41,132,334.20
20	2037	1,259,503.24	1,134,654.84	2,394,158.08	43,526,492.28
21	2038	1,260,453.81	1,135,511.19	2,395,965.00	45,922,457.28
22	2039	1,261,405.09	1,136,368.18	2,397,773.27	48,320,230.55
23	2040	1,262,357.10	1,137,225.81	2,399,582.91	50,719,813.47
24	2041	1,263,309.82	1,138,084.10	2,401,393.92	53,121,207.38
25	2042	1,264,263.26	1,138,943.03	2,403,206.29	55,524,413.68
26	2043	1,265,217.42	1,139,802.61	2,405,020.03	57,929,433.71
27	2044	1,266,172.30	1,140,662.84	2,406,835.14	60,336,268.85
28	2045	-	1,141,523.71	1,141,523.71	61,477,792.56

EXHIBIT C

MASTER DEVELOPMENT SCHEDULE

Land Use Approvals and Subdivision

- Written Pre-Application Notices for Rezoning June 22, 2015
- Submittal to Landmarks Commission for Rezoning, Demo, CSM July 20, 2015
- Apply for Rezoning & CSM Approval July 22, 2015
- Submit to State Preservation Office July 27, 2015
- Landmarks Advisory Recommendation Aug 3, 2015
- State Preservation Office Approval Aug 27, 2015
- UDC Advisory Recommendation Sept 2, 2015
- Plan Commission Hearing Sept 21, 2015
- Common Council Action on CSM and Rezoning Oct 6, 2015
- Remove Conditions of Approval for Permits Dec 6, 2015

City Financial Participation and Land Sale

- Preliminary Development Agreement to BOE June 29, 2015
- Preliminary Development Agreement to Common Council July 7, 2015
- Review and Approval of the following by BOE and Council Aug 24, 2015
 - Land Sale & Land Lease Agreements
 - Timeline for TIF Plan Amendments
 - Timeline for Creation of a Redevelopment District
 - Amendment to Development Agreement incorporating approved exhibits/agreements
- 2016 Executive Capital Budget to Council Sept 1, 2015
- Sale of Block 88 and 105 to JDS Holding Sept 15, 2015
- Lease back Improvements to City and Parking Utility Sept 15, 2015
 - Lease to Include Reversion Provisions
- Board of Estimates Action on Capital Budget Sept 28, 2015
- Final 2016 Capital Budget Adopted by Council Nov 10-12, 2015
- Review and approval of the following by BOE and Council Nov 2015
 - TIF Agreements including Guaranties
 - Condominium Purchase and Sales Agreements
 - Hotel Operator and Franchise
 - Construction Management Agreement for Parking
- Closing on TIF and Condominium Purchase and Sale Dec 2015

Tax Increment District Approvals

- Proposed financing structure to taxing jurisdictions for discussion July 2015
- Submit TID #25 Project Plan Amendment Sept 1, 2015
- Approval of TID #25 Project Plan Amendment Nov 2015

Construction

- Demolition of MMB Annex Dec 2015
- Commence Construction on Block 88 Dec 2015
- Block 105 Parking Ramp Closes March 2016
- Complete Construction of Block 105 Parking June 2017
- Complete Construction of Exact Sciences on Block 88 July 2017
- Commence Construction of Hotel on Block 105 May 2017
- Future Expansion on Block 105 TBD

EXHIBIT D

SUMMARY OF PARKING STRUCTURE ARCHITECTURE / ENGINEERING FEES

	Total	Portion Attributable to Public Ramp
July	\$190,000	\$91,200
August	\$200,000	\$96,000
September	\$220,000	\$105,600
October	\$240,000	\$115,200
November	\$270,000	\$129,600
December	\$270,000	\$129,600
Total Estimated Costs July - Dec 2015	\$1,390,000	\$667,200

*Note: these are work in place estimates, actual payments will be made a month later than the work done in the months shown.