

**THIS DEVELOPMENT AGREEMENT (“Agreement”)** is made as of May \_\_\_\_, 2016, between JAMES MADISON UNIVERSITY FOUNDATION, INC., a Virginia corporation (“**JMUF**”), and the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA (“**IDA**”).

**RECITALS:**

**WHEREAS**, the Memorandum of Understanding (“**MOU**”), and as modified by the Amendment to Memorandum of Understanding (“**Amendment to MOU**”) and Restated and Second Amendment to Memorandum of Understanding (“**Restated MOU**”), by and between the City Council of the City of Harrisonburg, Virginia (“**City**”), the IDA, James Madison University (“**JMU**”), and dpM Partners, LLC or its assigns (“**Developer**”) contemplates the development and construction on JMU property of a conference center (“**Conference Center**”) to be operated in coordination with a hotel (the “**Hotel**”) to be located on the site adjacent to the Conference Center, which Conference Center shall include certain educational and training facilities dedicated to JMU academic use;

**WHEREAS**, the Hotel will support JMU by providing quality lodging facilities for families and other visitors to JMU, and the Conference Center will support JMU by providing a first class venue for conferences, events and programs, including those affiliated with JMU;

**WHEREAS**, through and with the Hotel and Conference Center, it is the intention of JMU to significantly advance the educational and training opportunities for its students, particularly in the university’s Hospitality and Sport and Recreation Management programs, to expand opportunities for academic, cultural, and professional training programs, to provide campus facilities for use by students, alumni, faculty, visitors, and the community, to increase the exposure of the university to greater number of outside groups, and to enhance the visibility and reputation of JMU;

**WHEREAS**, the construction of brand new innovative laboratory and training space in the Conference Center will provide for rich, invaluable, real-world educational experience in hotel management, conference management, and restaurant management, as well as providing varied opportunities for collaboration among JMU students, faculty, the Developer, and other retailers and restaurants in the Facilities;

**WHEREAS**, the Hotel and Conference Center will allow departments and offices, as well as organizations outside of JMU, to conduct training programs and professional development conferences, and attract and host seminars, conferences, speakers, and programs that could not otherwise be held at JMU;

**WHEREAS**, JMU has made a determination that the construction of the Hotel and Conference Center will substantially promote JMU’s educational and charitable purposes and will provide significant public benefits;

**WHEREAS**, the private sources of debt and equity are insufficient to pay all costs of developing and constructing the Hotel and Conference Center, and without additional funding sources the Hotel and Conference Center would not proceed;

**WHEREAS**, JMUF, whose charitable purpose is to support the educational and charitable purposes of JMU, at the request of JMU, has agreed to provide funding of certain costs of developing and constructing the Conference Center, in consideration of the benefit JMU will derive from the Hotel and Conference Center;

**WHEREAS**, this Agreement is based on commercially reasonable terms, and the funding to be provided by JMUF hereunder is in the minimum amount necessary to make the development and construction of the Conference Center feasible;

**WHEREAS**, pursuant to the Support Agreement (“**Support Agreement**”) dated October 14, 2014 (Exhibit D to the MOU), the City has entered into a Moral Obligation (as defined in such Support Agreement) to appropriate to the IDA certain incremental tax revenues (“**Project Tax Receipts**”) generated by the Hotel and Conference Center, which the IDA shall remit to JMUF as repayment of the funding provided by JMUF, which, based on several market and feasibility studies prepared relating to the Project, JMUF anticipates will be sufficient to reimburse JMUF for the funding supplied by JMUF pursuant to this Agreement, together with reasonable interest thereon, as well as recovery of its advances relating to the Project; and

**WHEREAS**, pursuant to Virginia Code § 15.2-4905(7), the IDA has the authority to issue notes and other obligations for the purpose of carrying out any of its powers, including the power to provide financing for facilities for commercial enterprises; and

**WHEREAS**, the IDA and the Developer have entered into a Development and Grant Agreement (“**Grant Agreement**”) for the construction of the Conference Center.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** For the purposes of this Agreement, the term “**JMUF Loan**” shall have the same meaning as set forth in the Restated MOU and the term “**JMUF Advances**” shall have the same meaning as “**Foundation Advances**” ascribed in the MOU and the Amendments to the MOU. Likewise, terms used herein that are defined in the MOU and the Amendments to the MOU shall have the same meaning as ascribed in the MOU and the Amendments to the MOU.

2. **Funding.** The IDA shall issue a Note in the amount of Ten Million Nine Hundred Seventy Four Thousand Eight Hundred Ninety-Five and 00/100 Dollars (\$10,974,895.00) (“**JMUF Loan**”) from JMUF; provided that JMUF shall have no obligation to advance any amounts in excess of the JMUF Loan; and provided that JMUF obtains funding of the JMUF Loan from its lender, in whole or in part.

3. **Use of Funds.** The JMUF Loan is being issued on the condition that these funds be used for and solely related to the cost of development and construction of the Conference Center (“**Project**”), which costs include those itemized in Exhibit B to the Amendment to the MOU. Attached hereto as Exhibit A is the final budget for the development of the Project (“**Approved Budget**”), which has been approved by JMUF and Developer. Any changes to Exhibit A must be approved by JMUF, Harrisonburg City Council, and Developer.

4. **Application of Loan Proceeds.** Subject to the limitations set forth herein, JMUF shall remit the JMUF Loan for the Project to the IDA as follows:

a. On a monthly basis, the Developer shall provide JMUF with a request for payment that includes the following information (each a “**Payment Request**”): (i) the total amount of all costs of the Project (“**Project Costs**”) incurred in the preceding calendar month (or calendar months in the case of the first Payment Request), in reasonable detail, (ii) lien waivers for all hard costs included in Project Costs funded through the preceding calendar month(s), and (iii) reasonable substantiation of such Project costs (including invoices and copies of the General Contractor’s monthly draw request with all backup materials). If JMUF or its lender disputes or objects to any Project Costs included in such Payment Request, JMUF shall advise the Developer in writing prior to the date that is fifteen (15) days after its receipt of the Payment Request (“**Cost Approval Date**”), stating its objections in reasonable detail. JMUF and Developer, each acting reasonably and in good faith, shall endeavor to resolve such disputes or objections to any Payment Request. Developer shall provide JMUF and/ or its lender with any reasonable additional information or documentation and/or opportunity for inspection of the Project required to receive funding from JMUF’s lender.

b. No later than (5) days following the Cost Approval Date, JMUF shall advance to the IDA an amount equal to all of the Project Costs set forth in such Payment Request that have not been disputed by JMUF in accordance with subparagraph a, provided that such payment is funded by JMUF’s lender, with written approval(s) by the lender and JMUF for the IDA to grant such amount to Developer in satisfaction of such Payment Request. The IDA shall be entitled to rely on JMUF as to the amount of and the authority for the Payment Request. The IDA shall have no liability to JMUF, Developer, or any third party so long as the IDA grants the amount set forth in the Payment Request and for which funding has been received from JMUF for the Conference Center. JMUF and Developer agree to indemnify, defend and hold harmless the IDA as to any claim or cause of action resulting from the IDA’s compliance with this paragraph and this Agreement.

c. The loan proceeds shall be applied solely and exclusively to payment of the Payment Request.

d. The following are conditions precedent to all loan advances or Payment Request: i) there shall not have occurred a Default or Event of Default; ii) JMUF has received such funds from its lender; and ii) a copy of all grading, building, and other permits required in connection with the commencement and prosecution of the construction of the Project, unless previously submitted.

5. **Moral Obligation.** Pursuant to and in accordance with the Support Agreement and the Restated MOU and as payment hereunder, the IDA shall pay to JMUF the Project Tax Receipts until the JMUF Loan and the JMUF Advances incurred by JMUF relating to the Project are paid in full as long as the Support Agreement remains in full force and effect.

6. **Credits.** All payments of Project Tax Receipts by the IDA to JMUF under this Agreement shall be made and applied in accordance with the MOU, the Amendments to the MOU, the Restated MOU, the Support Agreement, and the Resolution adopted by the Harrisonburg City Council on October 14, 2014, and each payment shall apply as a credit first to the JMU Advances and then to the JMUF Loan.

7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of IDA and JMUF and their respective successors and assigns. JMUF shall have the right to assign its right to receive the Project Tax Receipts.

8. **Events of Default.** Each of the following shall constitute an "Event of Default" on the part of JMUF or IDA, as applicable:

a. Either party fails to pay any monetary amount under this Agreement as and when the same is due and payable, and such failure shall continue uncured for twenty (20) days after such party receives written notice of such failure from the other party;

b. Either party fails to perform any obligation under this Agreement (other than as described in paragraph 8.a.) as and when the same is required, and such failure shall continue uncured for sixty (60) days after such party receives written notice of such failure from the other party, provided that if such failure is not reasonably susceptible of cure within such sixty (60) day period, then such sixty (60) day period shall be extended so long as the defaulting party initiates efforts to cure within the initial sixty (60) day period and thereafter diligently pursues completion of such cure;

c. The Developer fails to construct the Project in accordance with the Grant Agreement and Lease;

d. Any of the JMUF Loan funds are used for or applied to any payment other than the Conference Center.

9. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party shall have the following rights and remedies: (i) to terminate this Agreement by notice to the defaulting party, and/or (ii) to pursue such other rights and remedies as may be available under applicable law.

10. **Termination.** Upon any termination of the Grant Agreement or Lease, this Agreement shall forthwith cease and terminate. Other than as set forth in the preceding sentence and in paragraph 8 hereof, IDA shall have no right to terminate this Agreement prior to completion by Developer of the Conference Center and the advance to IDA the sum of the JMUF Loan.

11. **Notices.** Any notice, consent, approval, agreement, certification, request, invoice, bill, demand, statement, acceptance, or other communication hereunder (“**Notice**”) shall be in writing and shall be deemed to have been properly given or served by (i) the deposit of such with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided or (ii) receipt from a nationally recognized commercial courier or delivery service having a verifiable means of receipt. Each Notice shall be effective upon being *deposited*, in the case of service through the United States Postal Service, or *received* in the case of service through a courier or delivery service. The time period in which a response to any such Notice must be given or any action taken with respect thereto, however, shall commence to run from the date of receipt on the return receipt of the Notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. In the event that registered or certified mail is not being accepted for prompt delivery, each Notice may then be served by personal service addressed as hereinafter provided. By giving to the other party at least ten (10) days’ Notice thereof, any party shall have the right from time to time during the term hereof to change the address thereof and to specify any other address within the United States of America for the delivery of Notice.

a. Each Notice to JMUF shall be addressed as follows:

Foundation:

James Madison University Foundation, Inc.  
Attn: Thomas H. Schaeffer, CEO  
1320 South Main St. – MSC 8501  
Harrisonburg, VA 22807  
T: 540-568-3185  
F: 540-432-0373  
E-mail: schaeft@jmu.edu

copy:

Litten & Sipe LLP  
Attention: Melisa G. Michelsen, Esq.  
410 Neff Ave.  
Harrisonburg, VA 22801  
T: 540-434-5353  
F: 540-434-6069  
E-mail : mgm@littensipe.com

b. Each Notice to IDA shall be addressed as follows:

IDA:

Industrial Development Authority  
of the City of Harrisonburg, Virginia  
c/o \_\_\_\_\_  
\_\_\_\_\_

Harrisonburg, Virginia \_\_\_\_\_  
Attention: \_\_\_\_\_  
T: \_\_\_\_\_  
F: \_\_\_\_\_  
E-mail: \_\_\_\_\_

copy: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
T: \_\_\_\_\_  
F: \_\_\_\_\_  
E-mail: \_\_\_\_\_

12. **Not Construed Against Drafter.** JMUF and IDA, and their respective legal counsel, have fully participated in the preparation and negotiation of this Agreement, and accordingly waive any rule of construction that this Agreement be construed against its drafter.

13. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be severable and the remainder of this Agreement shall continue in full force and effect.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute one and the same instrument.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

16. **Attorney's Fees.** Each party shall bear its own costs and expenses, including attorney's fees, in the event of litigation or enforcement of this Agreement.

**IN WITNESS WHEREOF,** JMUF and the IDA have executed this Agreement as of the date first written above.

**JAMES MADISON UNIVERSITY  
FOUNDATION, INC.,**  
a Virginia corporation

By: \_\_\_\_\_  
Name: Thomas H. Schaeffer  
Title: Chief Executive Officer

and

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF HARRISONBURG, VIRGINIA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Chairman

**EXHIBIT A**  
**APPROVED BUDGET**

[to be attached]