

**DEVELOPMENT AND GRANT AGREEMENT
(Conference Center)**

THIS DEVELOPMENT AND GRANT AGREEMENT (“**Agreement**”) is made as of _____, 2016, between the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA (“**IDA**”), and SVCC, LLC¹, a Delaware limited liability company (“**Developer**”).

RECITALS:

WHEREAS, pursuant to that certain Deed of Lease (Shenandoah Valley Conference Center) dated _____, 2016 (“**Lease**”), by and between James Madison University (“**JMU**”), as lessor, and Developer, as lessee, JMU leased to Developer certain real property located in the City of Harrisonburg, Virginia (the “**Leased Premises**”);

WHEREAS, the Lease contemplates the development and construction on the Leased Premises of a conference center (“**Conference Center**”) to be operated in coordination with a hotel to be located on the site adjacent to the Leased Premises (the “**Hotel**”), which Conference Center shall include certain educational and training facilities for use by JMU. The Hotel will support JMU and the community at large by providing quality lodging facilities for families and other visitors to JMU, and the Conference Center will support JMU and the community at large by providing a first class venue for conferences, events and programs, including those affiliated with JMU;

WHEREAS, JMU has made a determination that the construction of the Hotel and Conference Center will promote JMU’s educational and charitable purposes;

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, James Madison University Foundation, Inc., a Virginia Corporation (“**JMUF**”), whose charitable purpose is to support the educational and charitable purposes of JMU, at the request of JMU, has agreed to provide funding for certain costs of developing and constructing the Conference Center, in consideration of the benefit JMU and the community at large will derive from the Hotel and Conference Center;

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 in accordance therewith, IDA has entered into that certain Development Agreement with JMUF (the “**JMUF Development Agreement**”) and a Note, pursuant to which JMUF shall advance funds (the “**JMUF Loan**”) to the IDA for the financing of the development

¹ Same dpM entity (S-corp) that is the ground lessee under the Conference Center Lease.

and construction of the Conference Center, which funds the IDA shall advance to Developer pursuant to the terms and conditions of this Agreement;

WHEREAS, the Lease, the JMUF Development Agreement and this Agreement are based on commercially reasonable terms, and both the JMUF Loan and the IDA Advances (defined below) are in the minimum amount necessary to make the development and construction of the Conference Center feasible; and

WHEREAS, Developer shall develop and construct the Conference Center pursuant to the terms and conditions of this Agreement.

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:

I. INTERPRETATION.

1.1 **Definitions.** For purposes of this Agreement, the following terms shall have the meanings indicated:

Affiliate: means (a) any Entity five percent (5%) or more of the beneficial ownership of which is owned by the Entity in question, (b) any Entity which owns more than five percent (5%) of the beneficial interest of the Entity in question, or (c) any Entity which managerially controls, or is managerially controlled by, or is under common managerial control with, the Entity in question.

Approved Budget: as defined in Section 2.1.

Conference Center: as defined in the recitals hereof.

Construction Contract: the construction contract and general conditions entered into by Developer with respect to the Hotel and Conference Center.

Cost Approval Date: as defined in Section 3.2.1.

Developer: as defined in the preamble hereof.

dpM Managed Entity: an Entity which (directly or indirectly) is controlled or managed by dpM Partners, LLC, an Affiliate of Developer, or any principal of dpM Partners, LLC.

Entity: any person, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust or other business entity or organization.

Hotel: as defined in the recitals hereof.

IDA: as defined in the preamble hereof.

IDA Advances: means the amounts advanced by IDA to Developer pursuant to this Agreement, not to exceed in the aggregate the Maximum Amount.

JMU: as defined in the recitals hereof.

JMUF: as defined in the recitals hereof.

JMUF Loan: as defined in the recitals hereof.

Lease: as defined in the recitals hereof.

Leased Premises: as defined in the recitals hereof.

Maximum Amount: Ten Million Nine Hundred Seventy Four Thousand Eight Hundred Ninety-Five and 00/100 Dollars (\$10,974,895.00).

Mortgage: means any deed of trust, mortgage, security agreement or other instrument in the nature thereof at any time and from time to time constituting a lien upon the leasehold estate of Developer created by the Lease.

Mortgagee: means the holder or, collectively, the holders of the note(s) or other obligations secured by a Mortgage.

MOU: means that certain Memorandum of Understanding dated as of December 15, 2014 (including all exhibits thereto), as the same has been and may be further amended or otherwise modified from time to time, by and among the City Council of the City of Harrisonburg, Virginia, IDA, JMU, JMUF and Developer.

Notice: as defined in Section 6.3.

Payment Request: as defined in Section 3.2.1.

Project: the design, development and construction of the Conference Center.

Project Costs: as defined in Section 3.1.

1.2 **Captions.** Captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

1.3 **Gender; Number; Including.** The use of any gender in this Agreement shall refer to all genders, and the use of the singular shall refer to the plural, as the context may require. The term “including” and variants thereof shall mean “including without limitation.”

1.4 **Not Construed Against Drafter.** IDA and Developer, 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.

1.5 **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.

1.6 **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.

1.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflicts of law principles.

II. DEVELOPMENT OBLIGATIONS.

In consideration of the IDA Advances to be advanced by IDA pursuant to the terms and conditions of this Agreement, Developer agrees to develop and construct the Project as set forth in this Article II.

2.1 **Budget.** Attached hereto as Exhibit A is the budget for the development of the Project (“**Approved Budget**”), which has been approved by JMUF. In consultation with the architect, general contractor and other consultants for the Project, Developer may revise and update from time to time the Approved Budget based upon the Construction Contract and such other information as may then be available to Developer.

2.2 **Design and Construction of the Project.** Developer shall coordinate the design of the Conference Center by the architect, and the construction of the Conference Center by the general contractor, all in accordance with the requirements of the Lease.

III. PAYMENT OF COSTS.

3.1 **Project Cost Advances.** IDA shall advance to Developer the amount necessary to pay all costs of the Project (“**Project Costs**”), provided that IDA shall have no obligation to advance any amounts in excess of the Maximum Amount and the amount actually received by the IDA from JMUF, and all costs of the Project in excess of the Maximum Amount shall be borne by Developer. The parties acknowledge and agree that Developer shall have the right from time to time to reallocate costs within the Approved Budget among any line items therein. Amounts advanced by IDA to Developer pursuant to this Agreement shall constitute a grant, and Developer shall have no obligation to repay IDA for any such amounts, provided that Developer acknowledges that the JMUF Loan (which is the source of funds for the IDA Advances) shall be repaid out of Project Tax Receipts (as defined and set forth in the City Support Agreement (Exhibit D to the

MOU) and in accordance with the resolution of the Harrisonburg City Council adopted October 14, 2014 (as such resolution may be amended)) generated by the Conference Center and the Hotel.

3.2 **Payment of Costs.** Subject to the limitation set forth in Section 3.1, IDA shall remit the Project Costs to Developer as follows:

3.2.1. 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. Pursuant to the terms and conditions of the Lease, the 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.

3.2.2 No later than five (5) business days following receipt by the IDA of funds provided by JMUF pursuant to a Payment Request, IDA shall advance to Developer an amount equal to funds received from JMUF for the 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, the 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 the 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.

3.3 **Tax Treatment.** IDA acknowledges that Developer has advised IDA that Developer will treat all IDA Advances as a non-shareholder contribution to capital under Section 118 of the Internal Revenue Code of 1986 (as amended).

IV. DEFAULT AND TERMINATION.

4.1 **Events of Default.** Each of the following shall constitute an “Event of Default” on the part of Developer or IDA, as applicable:

4.1.1 Such party shall fail 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; or

4.1.2 Such party shall fail to perform any obligation under this Agreement (other than as described in Section 4.1.1) 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.

4.2 **Remedies.** Upon 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.

4.3 **Termination.** Upon any termination of the Lease, this Agreement shall forthwith cease and terminate. Other than as set forth in the preceding sentence and in Section 4.2 hereof, IDA shall have no right to terminate this Agreement prior to completion by Developer of the Conference Center and the advance to Developer of the IDA Advances in the sum of the Maximum Amount.

4.4 **Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.

4.5 **Term.** The term of this Agreement shall commence on the date this Agreement is executed by IDA and Developer and shall continue until the date when Developer has received all fees and expenses that are payable to Developer pursuant to this Agreement, unless this Agreement is otherwise terminated in accordance with its terms.

V. MORTGAGEE PROTECTIONS

5.1 **Mortgages.** At any time and from time to time during the term hereof, Developer shall have the right to grant one or more Mortgages in accordance with the Lease. In connection therewith, Developer may collaterally assign this Agreement to the Mortgagee under such Mortgage.

5.2 **Registration of Mortgage.** If any Mortgagee shall have delivered to IDA a written notice stating the existence of a Mortgage and setting forth the name and address of such Mortgagee, IDA thereafter shall give to such Mortgagee a copy of each Notice of default which IDA shall have given to Developer, such copy to be addressed to such Mortgagee at the address last furnished to IDA as provided hereinabove.

5.3 Performance by Mortgagee of Developer's Obligations. IDA will accept performance by any Mortgagee, receiver designated by such Mortgagee or purchaser at foreclosure of any term, covenant or condition of Developer's part to be performed hereunder, with the same force and effect as though timely performed by Developer if performed within the periods described in Subsection 5.3.1 or 5.3.2.

5.3.1 As to any payment of money, within thirty (30) days after Notice to such Mortgagee of such default.

5.3.2 As to all other defaults, within sixty (60) days after such Notice to such Mortgagee, provided, however, IDA will accept performance by such Mortgagee after such sixty (60)-day period if such Mortgagee has commenced to cure such default within sixty (60) days after such Notice and is diligently and continuously proceeding therewith; provided, however, in the event the nature of such cure requires that such Mortgagee exercise its rights and remedies under its Mortgage in order to effect same, the aforesaid sixty (60)-day period shall be extended for such time as is reasonably necessary to afford such Mortgagee the opportunity to commence and prosecute such cure, so long as such Mortgagee proceeds promptly and with due diligence in pursuing its rights and remedies under such Mortgage and thereafter prosecutes said cure with all due diligence.

5.4 Mortgage Remedies. IDA shall not exercise IDA's right to terminate this Agreement as provided in Article 4 during the time that any Mortgagee has the right to cure any default by Developer and/or perform Developer's obligations hereunder pursuant to Section 5.3 hereof.

5.5 No Surrender or Modification without Notice. Notwithstanding anything to the contrary contained herein, IDA and Developer mutually covenant and agree that so long as there exists any unpaid Mortgage, this Agreement shall not be modified, amended or altered and IDA shall not accept a cancellation of this Agreement from Developer prior to the expiration or sooner termination hereof, without the prior approval of the Mortgagee.

5.6 Modification Required by Mortgagee. IDA shall make such modifications to the Agreement as may be reasonably required by any Mortgagee, provided such modifications (i) do not increase the obligations or diminish the rights and privileges of IDA under this Agreement and (ii) are not inconsistent with any and all laws, ordinances, rules, orders and regulations imposed by any governmental or quasi-governmental authority and binding on IDA.

VI. MISCELLANEOUS.

6.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of IDA and Developer and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:

6.1.1 Developer shall not assign its rights or obligations under this Agreement without the prior written approval of IDA unless the assignee is (i) dpM

Partners or a dpM Managed Entity, (ii) a Mortgagee (either through foreclosure, deed in lieu of foreclosure, or other exercise of remedies pursuant to a Mortgage) or an Affiliate of a Mortgagee, or (iii) the purchaser pursuant to foreclosure, deed in lieu of foreclosure, or other exercise of remedies pursuant to a Mortgage.

6.1.2 IDA shall not assign its rights or obligations under this Agreement to any Entity other than JMUF without the prior written approval of Developer.

6.2 **Amendments.** This Agreement may be modified or amended, and the provisions of this Agreement may be waived, only by a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.

6.3 **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.

6.3.1. Each Notice to Developer shall be addressed as follows:

Developer:

c/o dpM Partners, LLC
9108 Gaither Road
Gaithersburg, MD 20877
Attention: Paul Gladd
T: (301) 527-0990
F: (301) 527-0991
E-mail: pgladd@dmpartners.com

copy:

Arnold & Porter

601 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Attention: Michael D. Goodwin, Esq.
T:: 202/942-5999
F : 202/942-5000
E-mail : michael.goodwin@aporter.com

6.3.2. 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:

Industrial Development Authority
of the City of Harrisonburg, Virginia
Attention: Chris Brown
T: _____
F: _____
E-mail: chris.brown@harrisonburgva.gov

6.4 **Entire Agreement.** This Agreement constitutes the entire agreement between IDA and Developer with respect to the subject matter hereof, and supersedes any and all oral discussions, agreements or understandings, provided that the parties acknowledge the effectiveness of the MOU as of the date hereof.

[signatures on following page]

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

IDA:

INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF
HARRISONBURG, VIRGINIA

By: _____
Name: _____
Title: _____

DEVELOPER:

SVCC, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

APPROVED BUDGET

[to be attached]