

## Memorandum of Understanding

This will constitute a Memorandum of Understanding between the City Council of the City of Harrisonburg, Virginia (the "City"), the Industrial Development Authority of the City of Harrisonburg, Virginia (the "IDA"), James Madison University (the "Landlord/ JMU"), dpM Partners, LLC or its assigns ("Developer"), and the James Madison University Foundation, Inc. (the "Foundation") collectively referred to herein as the "Parties" regarding the development, ownership and financing of a 205-room hotel (the "Hotel") and conference center (the "Conference Center") in Harrisonburg, Virginia on the northwest corner of the campus of JMU on the following terms and conditions:

**Project.** Proposed development of a 205-room independent Hotel ("Hotel Madison") and Conference Center ("The Shenandoah Valley Conference Center") located on South Main Street between the streets of MLK Way/Historic Cantrell Avenue and Grace Street.

**Property.** The land (the "Land") is currently owned by JMU and will be leased (the "Ground Lease") to the Hotel Owner (defined below) for the purpose of entering into development agreements (the "Development Agreements") with the Developer to cause the Hotel and Conference Center (collectively, the "Project") to be constructed and privately operated over the 50 year initial term (the "Term") of the Ground Lease with the Landlord.

**Ownership.** The Hotel will be 100% owned by a special purpose limited liability company ("Hotel Owner, LLC"). dpM Partners, LLC will be the Managing Member of the Hotel Owner, LLC. The Conference Center will be owned by the Foundation and leased (via the Subleaseback, defined below) to the Hotel Owner, LLC for the Term of the Ground Lease at a cost of \$1 per year.

**Ground Lease.** JMU will lease the Property to the Hotel Owner for \$1 per year for an initial Term of 50 years conditioned on the development of the Project. JMU approves of subleasing a portion of the Land to the Foundation for the purpose of constructing the Conference Center (the "Sublease"). JMU also approves of the Foundation leasing the fully constructed Conference Center to the Hotel Owner, LLC for the Term of the Ground Lease for \$1 per year (the "Subleaseback"). See Exhibit A for a summary of the terms of the Ground Lease and Sublease and Subleaseback.

**Anticipated Development Costs.** Based on preliminary cost estimating done by Developer and its consultants, Developer has informed the Parties that the design, development and construction costs of the Conference Center will be approximately \$10,000,000. Attached hereto as Exhibit B is a budget prepared by Developer outlining the anticipated costs ("Anticipated Development Budget"). The Parties understand that the Anticipated Development Budget is based on estimates only and that those costs may vary as the Project evolves. The Parties agree that they will work together to prepare a final development budget, which shall be mutually acceptable to the Parties, and which shall include all approved development costs for the Conference Center ("Approved Development Costs"). The Foundation will engage Developer to coordinate the design, development and construction of the Conference Center pursuant to the Development Agreement.

**Approved Predevelopment Costs.** Upon execution of this Memorandum of Understanding, the appropriate Parties agree to execute the attached Predevelopment Agreement for the purpose of sharing in the cost of some of the Approved Development Costs. See Exhibit C for the Predevelopment Agreement.

**Operating Projections.** Developer has provided the Parties a ten year income and expense

projection for the Project (Operating Projections) and has provided a third party feasibility report supporting these Operating Projections.

**Phase I Environmental Report.** A Phase I Environmental Assessment will be prepared and approved by the Parties and appropriate lenders. The associated costs will become an Approved Development Cost.

**Survey.** A survey of the Land ("Survey") will be prepared and approved by the Parties and appropriate lenders. The associated costs will become an Approved Development Cost.

**Funding.** Funding for the Project will come from the following sources:

1. Private equity from the Hotel Owner, LLC;
2. Foundation funding of the development of the Conference Center ("Foundation Funding")
3. Proceeds from investments by New Market Tax Credit investor
4. Construction loan proceeds

**Foundation Funding.** At Closing, the City shall provide the Foundation with the appropriate Moral Obligation Support Agreement (the "Support Agreement") to enable the Foundation to borrow the required amount (the "Foundation Loan") (currently estimated at \$10 million) to complete the construction of the Conference Center. Upon execution of this Memorandum of Understanding, the appropriate parties agree to execute the attached Support Agreement for the purpose of helping the Foundation secure the funding required to build the Conference Center. See Exhibit D for the Support Agreement. Upon execution of this Memorandum of Understanding, the Foundation shall use reasonable efforts to secure the Foundation Loan under terms mutually acceptable to the parties. Nevertheless, the Foundation shall have no obligation to enter into or pursue the Foundation Loan, if it determines that the Conference Center will be unaffordable. Affordability will be a function of the likely construction cost and the terms tentatively offered by the Foundation's lender.

**Proceeds from New Market Tax Credit Investor.** Upon execution of this Memorandum of Understanding, the Developer shall use its best efforts to secure the New Market Tax Credit Investor. The Parties acknowledge that time is of the essence to secure the required allocation of New Market Tax Credits from the Federally sponsored program.

**Construction/Mini-Perm Loan.** Upon execution of this Memorandum of Understanding, the Developer will take the lead in securing the Construction Loan.

**Definitive Agreements.** Subsequent to the execution of this Memorandum of Understanding, the Parties will use their best efforts to execute definitive agreements pertaining to all aspects of the transaction.

**Legal Fees.** All reasonable legal expenses incurred by the Developer related to the negotiation and closing of the transaction will be included as Approved Development Costs. The City, IDA, JMU and the Foundation will be required to fund its own legal and consulting costs.

**Parking.** Adequate parking for the Project will be provided by JMU in the parking structure to be built by JMU adjacent to the Project.

**Widening of South Main Street.** The Parties agree to work in good faith to enable the City to build and pay for the widening of South Main Street and Martin Luther King, Jr. Way (the "Widening Project") in accordance with the City's Conceptual Plan and JMU will provide the City with the required Right of way. The Parties agree to complete the Widening Project by the

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opening of the Hotel and Conference Center.

Closing. The date on which it is anticipated that construction can commence on the Project (the "Closing"). It is anticipated that the Closing between the Parties will occur on or around SEPTEMBER 30, 2015. The terms of this Agreement are subject to satisfactory completion of the following conditions:

- 1) Approval by the Parties of the Approved Development Costs;
- 2) Approval by the Parties of the Development Agreement, the Ground Lease, the Sublease and the Subleaseback;
- 3) Receipt of all required approvals from the City of Harrisonburg to construct the Project; Approval of the title insurance policy on the Property;
- 4) Satisfactory Phase I Environmental Report for the Property;
- 5) Satisfactory Survey of the Property

*PPEA: The University is currently considering the details of this project under a Public/Private Education Facilities and Infrastructure Act of 2002 procurement protocol. All future actions by the University relating to this project are subject to the successful completion of regulatory activities required by the PPEA process.*

Agreed and Accepted

Red Boyd Date: 10/15/14

MAYOR OF THE CITY COUNCIL OF HARRISONBURG, VIRGINIA

Agreed and Accepted

[Signature] Date: 11/21/14

CHAIRMAN OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VA

Agreed and Accepted

Thomas H. Schaeffer Date: 12-15-2014

PRESIDENT OF THE JAMES MADISON UNIVERSITY FOUNDATION, INC.

Agreed and Accepted

Paul M. [Signature] Date: 12/16/14

SVP OF FINANCE OF JAMES MADISON UNIVERSITY - ~~MANAGING MEMBER OF DPM PARTNERS, LLC~~

Agreed and Accepted

Charles W. [Signature] Date: 12-15-2014

~~MANAGING MEMBER OF DPM PARTNERS, LLC~~  
SVP ADMINISTRATION + FINANCE, JAMES MADISON UNIVERSITY

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Exhibit A

Harrisonburg/JMU Hotel and Conference Center

Summary of Ground Lease and Sublease Terms

**Lessor:** James Madison University

**Lessee:** Single purpose entity controlled by dpM Partners, LLC.

**Sub-Lessee:** James Madison University Foundation, Inc.

**Demised Premises:** The land will be located on Main Street between Martin Luther King, Jr. Way and East Grace Street. Lessor is responsible for the abatement and removal of all existing structures within 60 days of Closing.

**Term:** Fifty (50) years from the opening date of the hotel, plus an optional 25 year extension

**Rent:** \$1/year nominal rent

**Operating Expenses:** Lessee to pay all costs of operating Demised Premises, including insurance, taxes, maintenance and repairs

**Improvements:** The Lessee and Sub-Lessee to construct on the Demised Premises a hotel consisting of 205 keys and related common areas and facilities, including the associated Conference Center

**Use:** Demised Premises to be used solely for operation of hotel and conference center and ancillary uses

**Maintenance:** ~~Solely~~ Lessee, at its cost, to maintain the improvements in good condition and repair

**Unsubordinated Fee:** Lessor to have no obligation to grant a lien on Lessor's title in connection with mortgage financing obtained by Lessee

**Mortgagee Protections:** Lease to include standard mortgagee protections as required for construction and permanent financing of Lessee's interest under the Lease

**Insurance:** Lessee, at its cost, to maintain property and commercial general liability insurance in accordance with industry standards for comparable properties

**Reversion:** Upon expiration of Term, plus applicable extension, or earlier termination of Lease, title to all improvements to revert to Lessor

~~Solely~~ Lessee, at its cost, to maintain the improvements in good condition and repair  
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Omit

**Exhibit B**

**Shenandoah Valley Conference Center  
Anticipated Development Budget**

Building and Improvements	\$ 6,910,000
Soft Costs	\$ 1,070,000
Furnishings, Fixtures & Equipment	\$ 1,150,000
Operations Costs	<u>\$ 870,000</u>
Total	<u><u>\$ 10,000,000</u></u>

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**EXHIBIT C**

**Predevelopment Agreement**

THIS PREDEVELOPMENT AGREEMENT is made as of this day of September, 2014 between THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "City"); the JAMES MADISON UNIVERSITY FOUNDATION, INC. (the "Foundation"); ~~JAMES MADISON UNIVERSITY ("JMU")~~; and dpM Partners, LLC a Maryland limited liability company ("Developer").

**RECITALS**

The parties to this Agreement have agreed to the basic business terms for the development and funding of a conference center and associated 205-room hotel at the location of a site owned by JMU which fronts South Main Street and is bordered on the north by MLK Way/Historic Cantrell Avenue and on the south by Grace Street (the "Project"). The Developer has undertaken design and other predevelopment activity, and the City and the Foundation have agreed to share certain costs upon conditions set forth herein.

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**AGREEMENT**

In consideration of these premises and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The terms contained in the Memo of Understanding which this Agreement is attached to as an exhibit set forth the basic terms of the development, ownership and financing of the Project, and are hereby ratified and affirmed, subject to mutual agreement on definitive documents consistent with those terms.
2. Developer agrees that it will perform the following predevelopment services:
  - (a) Prepare and submit to the City and the Foundation a preliminary plan for the development and construction of the Project, including:
    - (i) A facilities program and design criteria which shall include recommendations with respect to the scope, design and nature of the facilities and related amenities to be included in the Project;
    - (ii) A proposed site plan;
    - (iii) Proposed schematic design concepts;
    - (iv) Utilities studies;
    - (v) Environmental assessments;
    - (vi) Such structural engineering, site and soil studies, analysis of environmental remediation and other analysis as may be necessary and appropriate to prepare for construction of the Project.
  - (b) Prepare and submit to the City and the Foundation a construction budget for the Project, with breakdowns of line items consistent with breakdowns typically utilized in hotel construction.
  - (c) Prepare and submit to the City and the Foundation an outline of proposed financing terms for private debt for the Project, and make application for such debt financing to local banks or such other financial institutions.
3. Master Development Agreement. The Developer, JMU, City and the Foundation shall negotiate in good faith a Master Development Agreement with respect to the Project.
4. Cost and Expenses. The following is a list of predevelopment expense categories which is approved by the parties:

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Architectural & Engineering

Environmental & Testing

Surveys

Legal & Title

Miscellaneous Expense

All predevelopment costs and expenses in the foregoing categories shall be shared one-third by the City, one-third by the Developer and one-third by the Foundation until the closing of the public and private financing, and thereafter as shall be provided in the Master Development Agreement. In no event, however, (i) shall the City's share of such predevelopment costs and expenses exceed \$150,000, (ii) shall the Foundation's share of such predevelopment costs and expenses exceed \$150,000, or (iii) shall the Developer be obligated pursuant to this Agreement to expend amounts that would result in the Developer's share of such predevelopment costs and expenses exceeding \$150,000. The Developer shall apply to the City and the Foundation for reimbursement by documents that describe the cost and expense incurred, supported by paid invoices or receipts and such documentation as the City and the Foundation may reasonably require. Payment shall be made by the City and the Foundation within twenty (20) days after full documentation is presented to the City and the Foundation. The parties intend that all parties will be fully reimbursed for these predevelopment expenses at closing out of Project public and/or private financing.

5. Term; Termination. This Agreement shall be effective upon execution by all parties and shall extend thereafter until the first to occur of the closing of Project financing or 180 days after the date of this Agreement (or such later date as the parties may mutually determine).
6. Assignment of Surveys, Plans, etc. The Developer hereby assigns to the City and the Foundation the Developer's rights in and to all surveys, plans, engineering and architectural studies, consultant's reports and other work product obtained by the Developer with respect to the Project (the "Studies"), such assignment to be effective only in the event that this Agreement terminates prior to execution of the Master Development Agreement. Should this Agreement terminate for any reason before the Master Development Agreement is fully executed and delivered, the Developer shall deliver all Studies to the City and the Foundation. The Developer shall use commercially reasonable efforts to obtain from all architects, engineers, surveyors and consultants such consents as may be required, if any, to permit such assignment and delivery. This provision shall survive termination of the Agreement.

*PPEA: The University is currently considering the details of this project under a Public/Private Education Facilities and Infrastructure Act of 2002 procurement protocol. All future actions by the University relating to this project are subject to the successful completion of regulatory activities required by the PPEA process.*

WITNESS the following signatures and seals as of the date first above written.

THE CITY OF HARRISONBURG, VIRGINIA

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

Mayor

*(Handwritten initials)*  
TMS  
PMS

JAMES MADISON UNIVERSITY

By: \_\_\_\_\_  
SVP of Finance J

JAMES MADISON UNIVERSITY FOUNDATION, INC

By: *Thomas H. Schaeffer*  
President

DPM PARTNERS, LLC

By: *Paul M. Glad*  
Managing Member



EXHIBIT D  
CITY SUPPORT AGREEMENT

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THIS SUPPORT AGREEMENT is made as of the 14<sup>th</sup> day of OCTOBER, 2014, by and among the CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA (the "Council"), acting as the governing body of the City of Harrisonburg, Virginia (the "City"), the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF HARRISONBURG, VIRGINIA (the "IDA"), and JAMES MADISON UNIVERSITY FOUNDATION, INC. (the "Foundation"). This Agreement has also been executed by the TREASURER OF THE CITY OF HARRISONBURG for the sole purpose of indicating assent to paragraph three.

RECITALS

WHEREAS, the Council has determined that the further development of the City's tax base may require the use of economic incentives to attract certain business and commercial investment in the City; and

WHEREAS, the Council by Resolution dated OCTOBER 14<sup>th</sup>, 2014, has identified a geographic area that is within walking distance of Court Square and the heart of the City's downtown business center, and uniquely positioned for commercial development and construction of new or expanded facilities (as described in the Resolution, the "Development Area"); and

WHEREAS, dpM Partners, LLC ("dpM") has submitted to the City and the Foundation a proposal for the development of a hotel and conference center (the "Project") in downtown Harrisonburg on land owned by James Madison University ("JMU") and;

WHEREAS, the Council desires to encourage such substantial capital investment in the Development Area in order for the City to obtain a large-scale venue and facilities unlike any other facilities in the City (or otherwise situated along the I-81 corridor north of Roanoke) that will accommodate sizable groups for multiple activities, including conferences, workshops, festivals and exhibitions, among others; and

WHEREAS, dpM is responsible for securing financing for the development of the proposed 205-room hotel (the "Hotel"), and has proposed that the Foundation provide financing in the estimated amount of \$10,000,000 for the construction of the proposed conference center (the "Conference Center").

WHEREAS, the Foundation is a not for profit organization recognized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC"), and has public charity status under Section 509 of the IRC (the "Foundation"). The Foundation will endeavor to obtain the estimated \$10,000,000 financing for the construction of the Conference Center pursuant to a development agreement by and between the Foundation, dpM, and JMU; and

WHEREAS, the Council, recognizing the economic benefit which will be generated by the Project, adopted on OCTOBER 14, 2014 a resolution authorizing the execution of this agreement providing for a non-binding obligation of the Council to appropriate certain "Project Tax Receipts" (as defined below) to the Foundation through the IDA; and

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**WHEREAS**, the IDA adopted on [date], a resolution authorizing the execution of this agreement providing for such payments to the Foundation as described herein with respect to the Conference Center; and

**WHEREAS**, the animating purposes for economic incentives by the City in connection with the Development Area from time to time are the significant public benefits that shall be derived from (i) promoting a strong, viable economy in the City, and in particular, boosting existing businesses and stimulating substantial commercial development in the City's downtown area, (ii) increasing the City's sources of tax revenues, and (iii) providing additional employment opportunities for the citizens of the City; and

**WHEREAS**, the City has undertaken significant due diligence over a period of several months and engaged Hotel & Leisure Advisors, LLC to conduct a market study (the "Independent Study") and provide and describe financial projections related specifically to the Project; and

**WHEREAS**, without the realization of the Project, the City would continue to have limited economic expectations for the Development Area; and

**WHEREAS**, pursuant to Section 15.2-953 of the Code of Virginia, 1950, as amended (the "Virginia Code"), the City is authorized to make gifts, donations and appropriations of money from time to time to the Industrial Development Authority of City of Harrisonburg, Virginia (the "Authority") for the purpose of promoting economic development; and

**WHEREAS**, the Council duly established the Authority on April 24, 1973, with all such powers as granted under the Industrial Development and Revenue Bond Act as set forth in Chapter 49 of Title 15.2 of the Virginia Code; and

**WHEREAS**, pursuant to Section 15.2-4905 of the Virginia Code, the Authority may accept contributions, grants and other financial assistance from the City in order to make grants for the furtherance of economic development, among other things; and

**WHEREAS**, based on the findings in the Independent Study, among other animating reasons as set forth herein, the Council now desires to enter into this Support Agreement to ensure the construction of the Conference Center and the economic benefits to the City flowing therefrom.

#### **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. For purposes of this Agreement, the following terms shall have the meanings ascribed:

(a) "*Foundation Loan*" shall mean the amortized loan undertaken by the Foundation for the Conference Center, including any renewals or refinancings thereof, whether or not at the same financial institution. (The term does not include a temporary, interest-only construction loan.) The City must consent to any Foundation Loan, but such consent shall not be unreasonably withheld.

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(b) "*Foundation Advances*" shall mean certain costs incurred by the Foundation, specifically, (i) the portion of the annual debt service on the Foundation Loan which, in any given year, is not covered by the IDA's annual payment under paragraph five, (ii) the Foundation's interest costs incurred for any construction loan, if the parties are unsuccessful at having such costs "rolled up" into the Foundation Loan and paid from the Foundation Loan proceeds and (iii) simple interest on the foregoing advances at the annual rate equal to the average rate of return realized by the Foundation on all of its investments for the three (3) calendar years prior to the date such interest is paid, provided, however, that in no event shall the interest paid by the City to the Foundation for such Foundation Advancements be less than four percent (4%) or greater than eight percent (8%) per annum. The exact formula for determining the interest rate to be paid on Foundation Advancements is set forth on Exhibit 1 this Support Agreement.

(c) "*Moral Obligation*" shall mean a promise without the force of law and which creates no legal obligations, but is nevertheless intended to be relied upon by the promisee and induce the promisee to take certain action.

(d) "*Project Tax Receipts*" shall mean receipts of the City for lodging or occupancy taxes, property taxes, meals taxes, sales taxes, excise taxes, and business, professional, and occupational license taxes or fees derived directly from the Project, businesses operating there, and transactions occurring there. Excluded from the definition of Project Tax Receipts are utility taxes and fees assessed by the City for services provided, such as building permits fees.

2. The Foundation, agrees to work in good faith to secure all necessary funds, and if it succeeds in securing such financing, to advance all costs associated with the construction of the Conference Center.

3. Beginning on the September 1 after the City of Harrisonburg has issued a Certificate of Occupancy for both the Hotel and the Conference Center, and on every September 1 thereafter, the Treasurer will calculate the Project Tax Receipts for the preceding fiscal year and report the total to the City and to the Foundation in a manner consistent with § 58.1-3 of the Code of Virginia.

4. The City issues its solemn Moral Obligation to the Foundation that from time to time each year depending on the Foundation Loan repayment schedule but no later than December 1 of each year, it will appropriate to the IDA the Project Tax Receipts as reported by the Treasurer.

5. The IDA issues its solemn Moral Obligation to the Foundation that within 30 days of receiving an appropriation from Council of Project Tax Receipts, but no later than on or before December 31 of each year, it will pay to the Foundation the Project Tax Receipts as appropriated by the City.

6. Payments made by the IDA shall be applied to Foundation Advancements first and then to the Foundation Loan.

7. This Agreement shall remain in full force and effect for twenty-one (21) years from the date of the Certificate of Occupancy for the Conference Center and the Certificate of Occupancy for the Hotel (or the latter thereof). In the event the Foundation Loan and Foundation Advancements are not paid in full by such date, Council (i) recommends that its successor on such date enter into an appropriate extension of this Support Agreement to ensure that the Foundation is reimbursed for the

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full amount of the Foundation Loan and Foundation Advancements, and (ii) declares that the failure to do so would violate fundamental principles of fairness.

8. The Council hereby undertakes a non-binding obligation to appropriate an amount equal to the Project Tax Receipts from time to time pursuant to the terms of this Support Agreement, to the fullest degree and in such manner as is consistent with the Constitution and laws of the Commonwealth of Virginia. The Council, while recognizing that it is not empowered to make any binding commitment to make such appropriations in future fiscal years, hereby states its intent, to make such appropriations in future fiscal years, and hereby recommends that future City Councils do likewise.

9. Nothing herein contained is or shall be deemed to be a lending of the credit of the City to the IDA, the Foundation, or to any other person, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit for the taxing power of the City, nor shall anything herein contained legally bind or obligate the Council to appropriate funds for the purposes described herein.

10. The City shall have the right to terminate this Support Agreement upon 10 days' written notice to the Foundation if (i) either the Hotel or the Conference Center ceases operation (or is not open to the general public) for twenty-four (24) consecutive months, or (ii) if the Foundation files for protection under the United States Bankruptcy Code or is otherwise adjudged insolvent. For purposes of clause (i) above, the City shall have no right to terminate if JMU or the Foundation contract with a third party for the operation of the Project within the 24-month period, and the third party commences such operations within 150 days after the expiration of the 24-month period.

Further, the City shall have the right to terminate this Support Agreement if JMU operates the Project itself and denies that it is liable for any taxes associated with the Project.

11. Any notices or requests required to be given hereunder shall be deemed given if sent by registered or certified mail, postage prepaid, addressed:

(i) if to the City or the IDA, to the Harrisonburg City Municipal Building, Harrisonburg, Virginia 22801, Attention: City Manager;

(ii) if to the Foundation, to Thomas H. Schaeffer, President, James Madison University Foundation, Inc., 1320 South Main Street, MSC 8501, Harrisonburg, Virginia 22807.

Any party may designate any other address for notices or requests by giving notice.

12. The City and the IDA agree that the Foundation may (i) assign this Agreement (including all its rights and obligations) to a wholly owned limited liability company which would undertake the Foundation's role in the Project, (ii) pledge this Agreement as security for any loan related to the Project. The City and the IDA will give such further assurances to allow the Foundation to take the actions specified in this paragraph. Further, should the maker of the Foundation Loan require payments

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more frequently than annually, the parties will negotiate in good faith to apply the principles set forth herein to any such payment schedule.

IN WITNESS WHEREOF, the parties hereto have each caused this Support Agreement to be executed in their respective names as of the date first above written.

CITY COUNCIL OF HARRISONBURG, VIRGINIA

By: Ped Boyd  
Mayor

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF HARRISONBURG, VIRGINIA

By: [Signature]  
Chairman

[Signature]  
TREASURER, CITY OF HARRISONBURG  
(For paragraph three only.)

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

JAMES MADISON UNIVERSITY FOUNDATION, INC.

By: Thomas H. Schreffler  
President

CERTIFICATE OF CITY ATTORNEY

I, G. Chris Brown, am the duly appointed City Attorney for the City of Harrisonburg. I opine to the Foundation that the foregoing Support Agreement has been properly authorized by the Harrisonburg City Council and the Harrisonburg Industrial Development Authority, and further, that the agreement is enforceable according to its terms.

GCB

## EXHIBIT 1

On or before September 1 after the City of Harrisonburg has issued a Certificate of Occupancy for the Hotel and Conference Center, and on or before each September 1 thereafter until the Foundation Loan and Foundation Advancements are paid in full or until the City Support Agreements is terminated, whichever occurs first, the Foundation shall provide to the Harrisonburg City Manager the number representing the Foundation's average rate of return on all of the Foundation's investments for the period consisting of the three (3) calendar years prior to the date of the Certificate of Occupancy. The Foundation also shall provide to the Harrisonburg City Manager a copy of the Foundation's annual and quarterly Performance Report on Endowment Portfolio for each of those three calendar years. The annual and quarterly reports shall be the same as prepared by the Foundation's financial advisors and submitted to the Foundation's Board of Directors. The Foundation shall also provide to the City Manager any additional documentation requested by the City Manager to validate the rate of return on investment submitted by the Foundation.

The calculation of the average rate of return on investment (ROI) for each rolling three year period shall be calculated as follows:

$CY1\ ROI + CY2\ ROI + CY3\ ROI / 3 = \text{Interest Rate.}$

In the event the Interest Rate in any year is less than 4% it shall be deemed 4% for such year. In the event the Interest Rate in any year is more than 8% it shall be deemed 8% for such year.