

## **Restated and Second Amendment to Memorandum of Understanding**

This Restated and Second Amendment to Memorandum of Understanding (“Restated MOU”) is made and entered this \_\_\_ day of May, 2016, by and among the City Council of the City of Harrisonburg, Virginia (“**City**”), the Industrial Development Authority of the City of Harrisonburg (the “**IDA**”), James Madison University (“**JMU**”), the James Madison University Foundation (“**JMUF**”), and dpM Partners, LLC or its assigns (“**Developer**”), collectively referred to as the “**Parties**”.

### **RECITALS:**

A. The Parties have entered into a certain Memorandum of Understanding (“**MOU**”) dated as of December 15, 2014, as modified by Amendment to Memorandum of Understanding dated October 2015, Amendment to the Predevelopment Agreement (Exhibit C to the MOU) dated August 3, 2015, and the Second Amendment to the Predevelopment Agreement (Exhibit C to the MOU) dated October 3, 2015, regarding the development, ownership, and financing of the Hotel and Conference Center on the northwest corner of the campus of JMU.

B. The Parties desire to restate, amend, and update the MOU as more specifically provided herein.

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties do hereby agree as follows:

1. **Ownership**. The Conference Center shall be 100% owned by SVCC, LLC.
2. **Ground Lease**. JMU shall lease the Property to Hotel Madison, LLC for the Hotel and to SVCC, LLC for the Conference Center under the terms and conditions of the respective Deeds of Lease (“Ground Leases”).
3. **Anticipated Development Costs**. Based on further cost estimates done by Developer and its consultants, Developer has informed the Parties that the total cost of the design, development and construction of the Conference Center will be approximately \$10,974,895.
4. **Foundation Funding**. Pursuant to Virginia Code § 15.2-4905(7), the IDA and the JMUF shall enter into a Development Agreement and a Note for the financing and development of the Conference Center pursuant to which JMUF shall advance funds under a drawdown, interest free loan to the IDA for aggregate principal advances not to exceed the amount of Ten Million Nine Hundred Seventy-Four Thousand Eight Hundred Ninety-Five and 00/100 dollars (\$10,974,895.00) (“JMUF” Loan) and the IDA shall issue a nonrecourse, drawdown, amortized Note to JMUF in the principle amount of up to Ten Million Nine Hundred Seventy Four Thousand Eight Hundred Ninety-Five and 00/100 Dollars (\$10,974,895.00) (“**IDA Note**”) payable solely from the appropriations of the Project Tax Receipts from the City, as defined and set forth in the Support Agreement, Exhibit D to the MOU and in accordance with the Resolution of the Harrisonburg City Council adopted October 14, 2014 (including the eligibility requirements set forth therein); 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; and provided that these funds be used for and solely related to the cost of development and construction of the Conference Center, which costs include those itemized in Exhibit B to the Amendment to the MOU (the JMUF Development Agreement and the Note are attached hereto and incorporated herein as Exhibit 1). The Developer and the JMUF agree to equally share any and all legal expenses incurred by the IDA for outside counsel, Botkin Rose PLC, relating to the negotiation and closing of this project, and review and revision of the agreements and notes relating to this Project.

5. **City Support Agreement (Exhibit D to the MOU)**. Paragraph 1 (b) “Foundation Advances” shall be deleted and replaced as follows:

“Foundation Advances” shall mean certain costs incurred by the JMUF, 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 JMUF’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 JMUF 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 JMUF for such Foundation Advancements be less than two percent (2%) or greater than five percent (5%) per annum. The exact formula for determining the interest rate to be paid on Foundation Advancements is set forth on Exhibit 1 to the Support Agreement, which is Exhibit D to the MOU.

(The term “Foundation Advances” are also referred to as JMUF Advances).

6. **Terms**. Each capitalized term used and not otherwise defined herein shall have the meaning to such term in the MOU.

7. **Ratification**. The Parties hereby confirm and ratify the MOU, as amended by the Amendment and this Restated MOU. Except as provided in the Amendment and Restated MOU, the MOU remains in full force and effect and unmodified.

8. **Counterparts**. This Restated MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page. Delivery of an executed counterpart of a signature page to this Second Amendment in electronic (“pdf” or “tif”) format shall be as effective as delivery of an original executed counterpart of this Restated MOU.

**IN WITNESS WHEREOF**, the undersigned Parties have executed this Restated and Second Amendment to the Memorandum of Understanding as of the date first written above.

**CITY OF HARRISONBURG, VIRGINIA**

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

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

Title: Mayor of the City Council

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

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

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

Title: Chairman

**JAMES MADISON UNIVERSITY**

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

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

Title: \_\_\_\_\_

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

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

Name: Thomas H. Schaeffer

Title: Chief Executive Officer

**DPM PARTNERS, LLC**

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

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

Title: \_\_\_\_\_