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**GROUND LEASE**

This Ground Lease (this "Lease") is entered into as of July 7, 2015, by and between the **City of Menasha**, a Wisconsin municipal corporation ("Lessor") and **Menasha Downtown Development, LLC**, a Wisconsin limited liability company ("Lessee"). Lessor and Lessee may be referred to herein individually as a "Party" or collectively as the "Parties".

**RECITALS**

A. Lessor owns the real property legally described on attached Exhibit A (the "Premises").

B. Lessor and Lessee have entered into that certain Development Agreement dated June \_\_, 2015 ("Development Agreement"), pursuant to which Lessor is required to enter into this Lease with Lessee with respect to the Premises.

C. Lessee desires to enter into a lease of the Premises for the purpose of constructing and operating certain improvements thereon.

D. Lessor desires to enter into a lease with Lessee hereunder for such purpose on the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the rent herein stipulated to be paid and other provisions to be performed, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee do hereby covenant and agree as follows:

**ARTICLE I  
DEMISE OF PREMISES**

Lessor hereby demises and leases the Premises to Lessee, and Lessee hereby takes and leases the Premises from Lessor, for the Term and upon the provisions hereinafter specified.

**ARTICLE II  
CERTAIN DEFINITIONS**

Together with other capitalized words, terms and phrases specifically defined in this Lease and in the Development Agreement, the following capitalized words, terms and phrases shall have the meanings set forth below:

(a) "Additional Rent" means any other payments due from Lessee to Lessor under this Lease other than Rent.

(b) "Assignment" means an assignment to a third party by a party of any or all of its rights and obligations under this Lease.

- (c) “Assignee” means the assignee under an Assignment.
- (d) “Commencement Date” means July 7, 2015.
- (e) “Governmental Authorities” means all federal, state and municipal governments, courts, departments, commissions, boards, and officers having jurisdiction over the Premises, the improvements or the construction thereof, Lessor or Lessee.
- (f) “Governmental Requirements” means all present and future laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the improvements or the Premises or the use of either of them of this Lease and all building permits and other licenses and approvals required by the appropriate Governmental Authorities in connection with the improvements or this Lease.
- (g) “Lease Year” means a period of twelve (12) consecutive months. The first Lease Year shall commence as of the Commencement Date and shall end the day prior to the first anniversary of such Commencement Date. Each subsequent Lease Year shall commence as of the subsequent anniversary of the Commencement Date.
- (h) “Parking Garage” shall have the meaning set forth in the Development Agreement.
- (i) “Rent” means all amounts payable by Lessee to Lessor for the use of the Premises under this Lease.
- (j) “Term” means the duration of this Lease. The Term shall commence on the Commencement Date and end on the termination of the Tax Incremental District as defined in the Development Agreement, unless sooner terminated in accordance with the terms of this Lease.

### **ARTICLE III TERM**

Subject to the provisions hereof, Lessee shall have and hold the Premises for the Term.

### **ARTICLE IV RENT**

Lessee shall pay rent (“Rent”) to Lessor during the Term of this Lease in the amount of One Dollar (\$1.00) per year, payable in advance on the Commencement Date and thereafter on the first day of each Lease Year during the Term. Lessee shall pay Additional Rent as provided elsewhere in this Lease.

**ARTICLE V  
NET LEASE**

This Lease shall be a net lease, meaning that, subject to the terms of the Development Agreement, Lessee shall pay all utilities and other expenses relating to the ownership and operation of the Premises and improvements during the Term, including without limitation, all charges for water, sewer, utility or communication services which accrue against the Premises and improvements during the Term hereof. Any such amounts paid by Lessor shall be Additional Rent and shall be reimbursed by Lessee upon Lessor providing Lessee with a copy of the paid bills for such expenses. Lessee shall maintain the Premises, and all improvements constructed thereon, in accordance with industry standards, which shall include regular maintenance and inspections, as set forth in the Development Agreement. Any real or personal property tax not attributed to the value of the Building (as defined in the Development Agreement) paid by Lessee during any Lease Year, shall be subject to the provisions set forth in the Development Agreement.

**ARTICLE VI  
DEVELOPMENT OF THE PREMISES**

**Section 6.1. Scope of Development.** Lessee intends to improve the Premises by constructing a Parking Garage. Lessor hereby authorizes Lessee to construct such improvements, subject to Lessee receiving all required governmental approvals.

**Section 6.2. Costs of Construction.** The entire cost and expense of constructing any and all improvements to the Premises shall be borne and paid by Lessee, subject to the terms of the Development Agreement. Lessee shall promptly cause any lien that may attach to the Premises as a result of construction of the Parking Garage to be released and shall provide Lessor with written confirmation, in form reasonably acceptable to Lessor, of such release/waiver.

**Section 6.3. Responsibilities of Lessor.**

(a) **Governmental Approvals.** Lessor will assist and cooperate with Lessee in connection with reasonable requests by Lessee to obtain all Governmental Requirements, permits, licenses, variances, or other approvals from any Governmental Authority which may be reasonably necessary for or which will facilitate the development, operation and use of the improvements pursuant to this Lease.

(b) **Easements.** Lessor agrees to join in granting or dedicating such public or private utility company easements as may be reasonably required for the development of the Premises in accordance with this Lease.

**ARTICLE VII  
NO ASSIGNMENT OR SUBLETTING**

Neither Party may assign this Lease or any interest herein, or otherwise sell, lease, transfer or convey any right, title or interest in this Lease without the express written consent of the other Party.

## **ARTICLE VIII INSURANCE**

Unless otherwise specified in this Lease, each party shall, at its sole expense, maintain in effect at all times during the Term, insurance coverage with limits not less than those set forth below with the insurers and under forms of policies set forth below.

- a. *Worker's Compensation and Employers Liability Insurance.* Each party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of its respective employees in accordance with the laws of the State of Wisconsin.
- b. *Commercial General Liability and Automobile Liability Insurance.* Each party shall provide and maintain the following commercial general liability and automobile liability insurance:
  1. Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
    - a. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
    - b. Insurance Service Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)
  2. Each party shall maintain limits no less than the following:
    - a. General Liability. One million dollars (\$1,000,000.00) per occurrence (\$2,000,000.00 general aggregate) for bodily injury, personal injury and property damage.
    - b. Personal and Advertising Injury Limit. One million dollars (\$1,000,000.00)
    - c. Automobile Liability. One million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
    - d. Umbrella Liability. Six million dollars (\$6,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.
- c. *Builder's Risk/Installation Floater/Contractor's Equipment or Property.* Except for the negligent or willful acts of Lessor, the Lessor will not assume responsibility for loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the work being performed by Lessee or its

contractors or subcontractors or are to be built, installed, or erected by Lessee or its contractors or subcontractors.

- d. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. Each party is to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) on the policies to be held by the other party hereunder as respects: liability arising out of activities performed by or on behalf of the policy holder; products and completed operations of the policy holder; premises occupied or used by the policy holder; and vehicles owned, leased, hired or borrowed by the policy holder. The coverage shall contain no special limitations on the scope of protection afforded to the other party. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of the other party.
  2. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage.
  3. Each insurance policy required by this Agreement shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or the policy holder, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the other party.
  4. All of the insurance shall be provided on policy forms and through companies licensed to do business in the State of Wisconsin.
- e. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the other party.

*Evidences of Insurance.* Prior to execution of the Agreement, each party shall provide to the other party a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Lease. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

## **ARTICLE IX USE OF THE PREMISES**

**Section 9.1. Private Use.** Subject to the provisions on Section 9.2 below, Lessor covenants that Lessee may peaceably and quietly enjoy the Premises and may use the Premises for the construction, operation and maintenance of the Parking Garage and related lawful purposes consistent with the development and use of the Premises as described in the Development Agreement and in accordance with Article VI hereof. During Normal Business Hours, the Premises and Parking Garage shall be utilized solely for Lessee and its tenants and invitees. "Normal Business Hours" shall be initially defined as the period commencing at 7:00

am and extending to 5:00 pm every week day, but Lessee shall have the right to extend or modify such time period upon delivery of written notice to Lessor.

**Section 9.2. Public Use.** During the Term of this Lease, consistent with the terms of the Development Agreement, Lessee shall allow Lessor to operate the ground floor of the Parking Garage to be constructed on the Premises as public parking outside of Normal Business Hours. During Normal Business Hours, Lessee shall cause its insurance to be primary. Lessor shall cause its insurance to be primary for the time period outside of Normal Business Hours. Nothing herein shall be construed as a waiver with regard to statutory protections and limitations afforded to Lessor as a municipal entity.

**ARTICLE X  
NOTICES**

Any notice given in connection with this Lease shall be in writing and may be given in any one of the following ways:

- (a) By personal delivery.
- (b) By delivery by an express mail service.
- (c) By mailing via first class United States mail, postage prepaid, addressed to the last known address of the recipient.

Notice by mailing in the first class United States mails as described shall be deemed given upon mailing. All other forms of notice shall be effective upon receipt. Until further notice, notices by mail shall be addressed as follows:

If to Lessor:                   City of Menasha  
  Attention: Mayor  
  140 Main Street  
  Menasha, WI 54952

With a copy to:                City Attorney  
  City of Menasha  
  140 Main Street  
  Menasha, WI 54952

If to Lessee:                    Menasha Downtown Development, LLC  
  Attn: John J. Hogerty II  
  1 Neenah Center, Suite 700  
  Neenah, WI 54956-3053

**ARTICLE XI  
FORCE MAJEURE**

If Lessee is in default under this Lease for any reason and the default is caused by labor disputes, fire or other unavoidable casualties, unusual delay in deliveries, abnormal adverse weather conditions or any other causes beyond the reasonable control of Lessee, Lessee shall be allowed a reasonable extension of time meet its obligations under this Lease to account for the delay caused by any of the named events.

## **ARTICLE XII MISCELLANEOUS**

**Section 11.1. Assignment.** This Lease is binding upon the Parties and their respective representatives, successors and assigns. Consistent with Article VII above, neither party may assign this Lease or any interest therein without the advance written consent of the other party. Lessee shall not underlet the Premises, or any part thereof, or any right or privilege appurtenant thereto without the advance written consent of the Lessor. Nothing in this Section 11.1 or otherwise shall restrict Lessee from permitting tenants and invitees of tenants to use the Premises and Parking Garage.

**Section 11.2. Compliance with Laws.** Lessee agrees to comply with and conform to all present and future laws, ordinances, and regulations of the federal, state, county and local government in the use of the Premises and the exercise of its rights under this Lease. This includes all applicable federal, state and local environmental laws, ordinances and regulations, together with common law requirements (collectively "Environmental Laws"), which relate to discharge, emissions, waste, nuisance, pollution control, hazardous or toxic substances and other environmental matters during the term during the entire term of this Lease. Lessee shall deliver to Lessor Material Safety Data Sheets describing all Hazardous Substances stored, used or disposed of on the Premises and shall keep such information current. Lessee shall indemnify and hold Lessor harmless from any liability, claim or injury, including reasonable attorney fees and the costs of any required or necessary repair, clean-up, remediation or detoxification, arising out of (1) the use, handling, storage, disposal or release of any Hazardous Substances by the Lessees, its agents and employees and any tenant, customer or invitee on, under or about the Premises, or (2) an actual or alleged violation of Environmental Laws in connection with the occupancy of the Premises by the Lessee or the operation of the Lessee's business during the term of this Lease. Lessor shall also indemnify the Lessee for any liability, claim or injury, including reasonable attorneys' fees, the Lessee incurs with regard to any environmental damage or violation of Environmental Laws which occurred prior to the commencement of this Lease. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

**Section 11.3. Reserved.**

**Section 11.4. Right of Entry.** Lessor shall have the right to enter the Premises at all reasonable times for the purpose of verifying compliance with the terms and conditions of this Lease. In exercising its rights under this Section 11.4, Lessor shall not interfere with or unreasonably disrupt the business operations of Lessee and its tenants and invitees.

**Section 11.5. Abandonment.** Lessee agrees not to permanently abandon the Premises at any time during the Term. Should Lessee permanently abandon the Premises or be dispossessed

by process of law or otherwise, such abandonment or dispossession shall be a breach of the Lease, and in addition to any other rights which the Lessor may have, the Lessor may remove any personal property belonging to Lessee which remains on the Premises and store and dispose of the same, such removal, storage and disposal to be at the expense of the Lessee. For the avoidance of doubt, a temporary cessation of use of the Parking Garage by Lessee and/or its tenants and invitees, including for periods during which the Building is vacated by one or more tenants, shall not be deemed abandonment hereunder.

**Section 11.6. No Third Party Beneficiary.** Except as otherwise set forth herein, nothing contained in this Lease, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

**Section 11.7. Independent Contractor.** The parties are acting as independent contractors and nothing in this Lease is intended to create or be construed or interpreted as creating a partnership, joint venture, or any such mutual relationship between the parties. Except as otherwise set forth herein, each party shall be responsible for its own separate debts, liabilities and other obligations.

**Section 11.8. Interpretation.** This Lease shall be construed and interpreted under the laws of the State of Wisconsin.

**Section 11.9. No Waiver.** The failure to exercise or delay in exercising any right, power or remedy hereunder on the part of a party shall not operate as a waiver, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of any other right, power or remedy. An express waiver shall only affect the event or default to which it applied and shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

**Section 11.10. Surrender.** Lessee shall surrender possession of the Premises upon the expiration or termination of this Lease and return the Premises in as good condition as that existing at the time of entering upon the same except: i) reasonable and ordinary wear and tear and damage by the elements, and ii) the development, construction and improvements that Lessee is permitted to perform hereunder. For the avoidance of doubt, nothing herein shall obligate Lessee to deconstruct or remove the Parking Garage and related improvements upon the termination or expiration of this Lease.

**Section 11.11. Counterparts.** This Lease may be executed in one or more counterparts. Facsimile and/or PDF electronic format signatures shall have the same force and effect as original ink signatures.

**Section 11.12. Entire Agreement.** This Lease contains the entire agreement between the Parties relating to its subject and shall not be amended or terminated orally. If any provision of this Lease is declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect.

**Section 11.13. Indemnification by Lessee.** To the fullest extent allowable by law, Lessee hereby indemnifies and shall defend and hold harmless the Lessor, its elected and appointed officials, officers, employees and authorized representatives and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to, by reason of any breach of the terms of this Lease by Lessee. Lessee's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the Lessor, its elected and appointed officials, officers, employees or authorized representatives. This indemnity provision shall survive the termination or expiration of this Agreement.

**Section 11.14. Indemnification by Lessor.** To the fullest extent allowable by law, Lessor hereby indemnifies and shall defend and hold harmless the Lessee, its members, officers, employees and authorized representatives and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature and in any manner directly or indirectly caused, occasioned, or contributed to or claimed to be caused, occasioned, or contributed to, by reason of any breach of the terms of this Lease by Lessor. Lessor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the fault, negligence, or willful misconduct of the Lessee, its members, officers, employees or authorized representatives. This indemnity provision shall survive the termination or expiration of this Agreement.

**Section 11.15. General Provisions Relating to Indemnitees.** The respective indemnification obligations under Section 11.13 and 11.14 above shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the indemnifying party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefits acts. Each party's respective obligation to indemnify the other party shall not be restricted to insurance proceeds, if any received by the indemnifying party, its elected and appointed officials, members, officers, employees or authorized representatives.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first written above.

**LESSOR:  
CITY OF MENASHA**

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

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

**LESSEE:**  
**MENASHA DOWNTOWN DEVELOPMENT, LLC**  
By: MDD Management, LLC

By: \_\_\_\_\_  
John J. Hogerty, II, Member

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## EXHIBIT A

### Legal Description

Part of lots 5, 6, 7, 8, 9, 10 and 11, Block 43, Original Plat of the Town of Menasha and a part of Broad Street Right of Way, located in part of the Southeast  $\frac{1}{4}$  of Section 15, Township 20 North, Range 17 East, City of Menasha, Winnebago County, Wisconsin, described as follows:

Commencing at the South  $\frac{1}{4}$  corner of Section 15, Township 20 North, Range 17 East; thence S  $89^{\circ}46'12''$ E along the South line of the Southeast  $\frac{1}{4}$  of said Section 15, 1428.10 feet; thence N  $00^{\circ}22'26''$ E along the East Line of Milwaukee Street and the Southerly extension thereof, 176.24 feet; thence S  $89^{\circ}34'34''$ E along the East line of Milwaukee Street, 4.00 feet; thence N  $00^{\circ}22'26''$ E along the East line of Milwaukee Street, 139.91 feet to the Northwest corner of Block 43, Original Plat of the Town of Menasha; thence S  $89^{\circ}35'06''$ E along the North line of said Block 43, also being the South line of Broad Street, 120.60 feet; thence N  $00^{\circ}34'04''$ E, 17.79 feet to the point of beginning, (POB) of the parcel to be described; thence S  $89^{\circ}25'56''$ E, 302.67 feet; thence S  $00^{\circ}34'04''$ W, 124.67 feet; thence N  $89^{\circ}25'56''$ W, 302.67 feet; thence N  $00^{\circ}34'04''$ E, 124.67 feet to the point of beginning.

Containing: 37,732 Square Feet, 0.866 Acres.

