

**MEMORANDUM OF UNDERSTANDING FOR
EXCLUSIVE RIGHT TO EVALUATE PROPERTY**

THIS MEMORANDUM OF UNDERSTANDING FOR EXCLUSIVE RIGHT TO EVALUATE PROPERTY (hereinafter, the "**MOU**") is made and entered into effective the ____ day of April, 2015, ("**Effective Date**") by and between the Greater Boise Auditorium District, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-public corporation (the "**District**") and KC Gardner Company, L.C., a Utah limited liability company ("**Gardner**") (collectively the "**Parties**").

RECITALS

A. District and Gardner entered into that Amended and Restated Master Development Agreement for the construction of an expansion of the Boise Centre, on November 20, 2014 (the "**MDA**").

B. Pursuant to the MDA, upon the completion of the Centre Facilities and Meeting Room Facilities, as defined therein (collectively, the "**Expansion Facilities**") the District will purchase the Centre Facilities from Gardner and either purchase or lease the Meeting Room Facilities from Gardner, through affiliates controlled by Gardner that have assumed Gardner's duties and rights under the MDA.

C. The District owns certain real property bounded by 13th Street, Front Street, 11th Street and Myrtle Street, commonly known as "**Parcel B**", which consists of approximately five (5) acres and is more particularly described in Exhibit A.

D. The District and Gardner have had preliminary discussion regarding the possible exchange and/or cash sale of Parcel B as partial payment for the purchase of the Expansion Facilities under the MDA.

E. The District and Gardner acknowledge that with the expansion of the Boise Centre there is a need for a nationally flagged convention hotel in downtown Boise and that Parcel B is a logical location for such a facility due to its proximity to the Boise Centre, the Connector and other new improvements being constructed in Downtown Boise.

F. Before the Parties can undertake such an exchange, it is necessary for Gardner to investigate and evaluate Parcel B to determine the feasibility of development of Parcel B, identify possible uses and tenants for Parcel B, and to evaluate the impact such an exchange would have on the existing financing for the development of the Expansion Facilities.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Exclusive Right to Evaluate Property. The District hereby grants Gardner the exclusive right to evaluate Parcel B for its development potential and to evaluate a potential exchange of property as part of the District's acquisition of the Expansion Facilities ("**Evaluation Right**"). The Evaluation Right shall continue for a period of six (6) months ("**Evaluation Period**"), commencing upon the Effective Date. During the Evaluation Period, the District shall not entertain or undertake any other measures or efforts to market, sell, or develop Parcel B.

The District hereby authorizes Gardner Company, at its sole expense, to (a) undertake a physical investigation of Parcel B, including but not limited to performance of various environmental and geotechnical investigations of the condition of the property; (b) undertake preliminary design and evaluation of possible uses for Parcel B; (c) market Parcel B to potential users for the property and enter into negotiations with potential tenants for Parcel B, representing that Gardner Company has the right to evaluate development of Parcel B and to acquire Parcel B as part of an exchange as payment for the Expansion Facilities; (d) obtain a current commitment for title insurance covering Parcel B; and (e) undertake such additional investigation and evaluation of Parcel B, including meeting with the City of Boise, Ada County Highway District, Idaho Transportation Department and Capital City Development Corporation regarding issues related to the design and approval of future development of Parcel B.

2. License for Entry. The District understands that during the Evaluation Period, Gardner will evaluate the possible development of Parcel B for various commercial purposes. Subject to the rights of existing tenants of Parcel B, The Car Park, ESI and Lamar Advertising, the District grants to Gardner a license to enter upon Parcel B for all purposes reasonably related to a full and adequate determination of the suitability of Parcel B for such purposes, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits. The District shall cooperate with and authorize Gardner to undertake environmental and geotechnical evaluations of Parcel B. The District shall coordinate with the present users of Parcel B to permit Gardner, upon reasonable notice to undertake such tests as are required by Gardner to facilitate such evaluation. Gardner shall use reasonable efforts to avoid impacting the use of Parcel B by the current tenants and will repair all damage to Parcel B caused by any investigations or testing performed by Gardner or its agents.

Gardner shall indemnify, defend and hold harmless the District from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments,

proceedings and causes of action of any kind whatsoever (collectively, "**Claims**"), resulting from Gardner's exercise of the license granted herein, unless caused by the willful or negligent act or omission of the District, its agents, contractors or employees. Notwithstanding the foregoing, to the extent any Claims arise from or relate to the condition of Parcel B prior to Gardner's exercise of the license granted herein, Gardner's indemnification and other obligations under this section shall not apply. Without limiting the foregoing, Gardner shall not be liable for any Claims or diminution in value arising or resulting from (i) Gardner's discovery of any pre-existing condition (including, without limitation, the existence of "Hazardous Materials" as defined below, in, on, under or about Parcel B, or (ii) any exacerbation of a pre-existing condition in, on, under or about Parcel B, except to the extent, if any, said exacerbation results from the willful or negligent act or omission of Gardner, its agents, contractors or employees.

The term "**Hazardous Materials**" shall collectively refer to underground storage tanks, petroleum and petroleum products, asbestos, PCBs, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any "Environmental Laws." The term "**Environmental Laws**" shall collectively refer to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, The Federal Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act as amended, the Federal Water Pollution Control Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, or any other similar federal, state or local law, rule or regulation respecting Hazardous Materials together with all rules and regulations promulgated thereunder and all amendments thereto.

3. Additional Evaluation Considerations. The District shall cooperate with Gardner to facilitate Gardner's review of the following:

a) To evaluate the existing zoning and other approvals that will be required by the appropriate public or governmental authorities to permit (i) the conveyance of Parcel B to Gardner in accordance with applicable law, and (ii) the development of Parcel B as desired by Gardner ("**Government Approvals**").

b) To review any plat, record of survey, or survey of Parcel B that exists and has confirmed to its satisfaction the legal description of Parcel B.

c) To obtain a current commitment for title insurance covering Parcel B issued by First American Title Insurance Company ("**Title Company**"), for standard coverage ALTA Owner's Policy of Title Insurance ("**Commitment**"), together with a copy of each document listed (i) as an encumbrance upon the title to Parcel B or (ii) as an exception to coverage in the Commitment.

d) To evaluate the actual dimensions and area of Parcel B and confirm its existing legal description.

e) To permit determination that Parcel B is suitable, in Gardner's sole opinion, for Gardner's proposed uses, including, without limitation, a determination by Gardner that vehicular access, utility availability, and the physical condition of the property are such that Gardner's proposed development could be constructed and operated without incurring any extraordinary costs.

f) To obtain soils tests, engineering studies, and environmental surveys, tests and audits which it desires, which shall show Parcel B to be (i) free and clear of all Hazardous Materials (as defined above), and (ii) suitable, in Gardner's sole opinion, for Gardner's proposed use.

f) To undertake preliminary planning efforts to determine the suitability of Parcel B for Gardner's proposed use.

In the event Gardner, at any time, deems any of the considerations set forth herein to be unsatisfactory for its proposed use of Parcel B, Gardner may terminate this MOU by providing the District with written notice of termination of this MOU. Upon the termination of the MOU, Gardner shall deliver to the District all reports or evaluations developed by third parties during the Evaluation Period and all duties, rights, and obligations of the Parties shall terminate without any further liability hereunder.

4. Course of Action by Parties upon Conclusion of Evaluation Period. Prior to the expiration of the Evaluation Period, Gardner Company will submit to the District (i) a development plan for the entirety of Parcel B, which development plan will include as one of its elements a **Convention Hotel** and (ii) documentation required to facilitate an exchange of Parcel B as partial payment for the District's obligations under the MDA ("**Exchange**"), or cash purchase, or some combination of both, for the appraised value of Parcel B as set forth in the Appraisal Report, prepared for the District by Integra Realty Resources, with an effective date of January 25, 2015, File Number 163-2014-028. For purposes hereof a "**Convention Hotel**" shall mean a hotel that meets the following minimum standards: (i) national flagged; (ii) focused service (iii) has at least two hundred (200) guest rooms, expandable to three hundred or more (300+) rooms within the boundaries of Parcel B in a time frame decided by the developer/hotel owner; (iv) is of quality and has amenities similar to or better than an Embassy Suite, Doubletree or Marriot Renaissance convention hotel and (v) does not offer competing convention facilities to the District, but has such meeting and banquet facilities as are generally required by the franchisors identified above for the types of hotels identified above. The Parties acknowledge that if Gardner does not terminate this MOU as set forth in Section 3 above, they will proceed as follows:

a) If Gardner's proposal (i) is for the purchase or Exchange of a fee interest in the entirety of Parcel B; (ii) includes a Convention Hotel; and (iii) provides payment to the District either in cash or exchange value of at least the appraised value of the entirety of Parcel B, then the Parties shall (a) agree to the business terms necessary to proceed to complete the Exchange and/or cash sale, (b)

negotiate and execute such documents as are reasonably required to facilitate the Exchange and/or cash sale of the entirety of Parcel B for the property that the District is acquiring under the MDA, and (c) complete the Exchange and/or sale anticipated hereby.

b) If Gardner's proposal (i) is for the development of the entirety of Parcel B, but does not provide for an immediate acquisition or exchange of the entirety of Parcel B (e.g. provisions for lease or other interest in a portion of Parcel B); (ii) includes a Convention Hotel; and (iii) provides payment to the District, in exchange or otherwise, of at least the appraised value of the entirety of Parcel B, the District agrees to negotiate in good faith with Gardner in connection with the proposal.

c) Gardner and the District shall negotiate in good faith to develop the documents necessary to proceed as set forth above in either Section 4(a) or 4(b), and to proceed to closing of the transaction anticipated under either Section 4(a) or 4(b). If the parties proceed pursuant to Section 4(a), and closing does not occur by January 1, 2016, then either party may terminate this MOU upon thirty (30) days prior notice to the other. Notwithstanding the foregoing, the parties recognize and acknowledge that facilitating an exchange will necessitate the involvement and input from the existing construction lender financing the construction of the Expansion Facilities and that the time for finalizing the agreement on such exchange and closing of such exchange shall be extended as required for such additional time as is required by the construction lender. Gardner and the District shall reasonably cooperate to facilitate closing of the anticipated transaction and to extend the period for closing as reasonably necessary as required by the existing construction lender as part of an exchange. Alternatively, if the parties proceed pursuant to Section 4(b), and closing does not occur by January 1, 2016, then either party may terminate this MOU upon thirty (30) days prior notice to the other. Upon receipt of such notice of termination from the District, however, Gardner may elect to proceed to closing under Section 4(a) prior to the expiration of the notice period set forth in the District's notice of termination. In the event of termination of this MOU, Gardner shall deliver to the District all reports or evaluations developed by third parties during the Evaluation Period, and all duties, rights and obligations of the Parties shall terminate without any further liability hereunder.

d) If the Gardner proposal does not satisfy the requirements of the District as set forth above in Section 4(a) or 4(b), the District may terminate this MOU and Gardner shall deliver to the District all reports or evaluations developed by third parties during the Evaluation Period, and all duties, rights and obligations of the Parties shall terminate without any further liability hereunder.

5. Notices. Any notice, demand, request, invoice, bill or other instrument which may be or is required to be given under this MOU shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall

be in writing unless oral notice is expressly permitted by this MOU and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

GARDNER:

K.C. GARDNER COMPANY, L.C.
101 S. Capitol Blvd. Suite 1200
Boise, Idaho 83702
Attention: Thomas Ahlquist

THE DISTRICT:

GREATER BOISE AUDITORIUM DISTRICT
850 W. Front Street
Boise, ID 83702
Attention: Pat Rice

With copy to:

Kimberly Maloney, Esq.
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, ID 83701

6. Default. No party shall be deemed to be in default under this MOU except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this MOU, unless such party, prior to expiration of said thirty (30) day period, has rectified the particulars specified in said notice of default. Upon the occurrence of any default, the non-defaulting party shall have all rights and remedies available to it at law or in equity. In addition to the remedies set forth in this MOU, each party shall have all other remedies provided by law or equity to the same extent as if fully set forth herein word for word. No remedy available to any party shall exclude any other remedy available to such party under the MOU or under law or equity. All remedies shall be cumulative.

7. Brokerage. District and Gardner hereby acknowledge, represent and warrant to each other that no commissions are payable by District or Gardner to any other broker or finder in connection with this MOU or the transaction contemplated herein, and District and Gardner agree to indemnify, defend, save and hold each other harmless from and against the payment of any commissions or fees or claims for commissions or fees by virtue of any acts or actions undertaken by them, respectively; it being expressly agreed that the foregoing agreement of indemnification shall expressly survive the termination of this MOU.

8. Applicable Law. The laws of the State of Idaho shall govern the interpretation and enforcement of this MOU.

9. Not a Partnership. The provisions of this MOU are not intended to create, nor shall they in any way be interpreted or construed to create, a joint

venture, partnership, or any other similar relationship between the Parties. This MOU affords Gardner the exclusive right to evaluate Parcel B and to market it to potential tenants during the Evaluation Period. Future conveyance of Parcel B and its development shall necessitate the Parties entering into a formal agreement regarding the purchase and/or exchange and conveyance of Parcel B.

10. No Third Party Beneficiary Rights. Except as specifically provided herein, nothing shall create, or be interpreted to create, privity or any other contractual relationship between any persons or entities other than the District and Gardner. Except as provided herein there are no third-party beneficiaries to this MOU. Nothing contained herein shall create or give to third parties any claim or right of action against the District or Gardner, except as specifically provided herein.

11. Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall constitute covenants running with the land and shall be binding upon, and inure to the benefit of the heirs, personal representatives, successors and assigns of the Parties hereto. In the event of any sale or conveyance of a party's interest in its Parcel, said party shall remain liable to the other party for the performance of said party's obligations hereunder.

12. Modification. This MOU shall not be modified without the written agreement of all of the Parties hereto.

13. Captions and Headings. The captions and headings in this MOU are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

14. Entire Agreement. This MOU contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this MOU shall be construed as a whole and not strictly for or against any party.

15. Time for Performance. Time is of the essence of this MOU.

16. Time Period Computation. All time periods in this MOU shall be deemed to refer to calendar days unless the time period specifically references business days.

17. Construction. In construing the provisions of this MOU and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

18. No Waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of

the terms, covenants, conditions or agreements contained herein by the same or any other party hereto.

19. Attorneys' Fees. If any Party to this MOU is required to initiate or defend litigation in any way connected with this MOU, then prevailing party in such litigation in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to a reasonable attorneys' fee. If any Party to this MOU is required to initiate or defend litigation with a third party because of the violation of any term or provision of this MOU, or obligation of the other party to this MOU, then the party so litigating shall be entitled to reasonable attorneys' fees from the other party to this MOU. Attorneys' fees shall include attorneys' fees on any appeal. In addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and the discovery, travel, and all other necessary costs incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforce-able whether or not such action is prosecuted to judgment.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first set forth above.

GARDNER:

KC GARDNER COMPANY, L.C.
a Utah limited liability company

By: _____

Name: _____

Title: Manager

THE DISTRICT:

Greater Boise Auditorium District
a governmental subdivision of the State of
Idaho

By: _____

Name: Jim Walker

Title: Chairman

EXHIBIT A

Depiction and Description of Parcel B

A parcel of land being a portion of the Northwest Quarter of Section 10, Township 3 North, Range 2 East, Boise Meridian, Boise, Ada County, Idaho, and more particularly described as follows:

BEGINNING at a point marking the Northwest corner of the said Section 10; thence South 08°08'55" West 317.89 feet to a point marking the centerline intersection of North 15th Street and West Front Street, as shown of Record of Survey No. 1349, Broadway-Chinden Alignment; thence along the said centerline of West Front Street South 56°41'58" East 760.62 feet to an iron pin marking the centerline intersection of West Front Street and North 13th Street; thence continuing South 54°47'10" East 50.00 feet to a point; thence leaving the said centerline of West Front Street South 35°12'50" West 40.00 feet to an iron pin on the Southwesterly right-of-way line of said West Front Street, also said point being the REAL POINT OF BEGINNING; thence along the said Southwesterly right-of-way line South 54°47'10" East 654.94 feet to a lead plug and tack in concrete on the Northwesterly right-of-way line of North 11th Street; thence along the said Northwesterly right-of-way line South 09°47'12" East 21.08 feet to a brass cap; thence continuing South 35°34'36" West 327.52 feet to an iron pin; thence continuing South 87°17'01" West 12.39 feet to a brass cap marking a point of beginning of curve on the Northeasterly right-of-way line of West Myrtle Street; thence along the said Northeasterly right-of-way line along a curve to the left 254.67 feet, said curve having a central angle of 13°30'38", a radius of 1080.00 feet and a long chord bearing North 48°01'51" West 254.08 feet to a brass cap marking a point of tangent; thence continuing North 54°47'10" West 415.66 feet to a brass cap on the Southeasterly right-of-way line said North 13th Street; thence along the said Southeasterly right-of-way line North 35°12'34" East 310.15 feet to a brass cap; thence continuing North 80°12'41" East 14.14 feet to the POINT OF BEGINNING.

END OF SCHEDULE A

