

RESOLUTION NO. 090, SERIES 2019

**A RESOLUTION DETERMINING TWO PARCELS OF REAL PROPERTY LOCATED AT 2422 W. CHESTNUT STREET AND 2424 W. CHESTNUT STREET AND OWNED BY LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“METRO GOVERNMENT”) AS SURPLUS AND NOT NEEDED FOR A GOVERNMENTAL PURPOSE AND AUTHORIZING THEIR TRANSFER TO THETA OMEGA, INC. (AS AMENDED)**

**SPONSORED BY: COUNCIL MEMBER DONNA PURVIS**

**WHEREAS**, according to KRS Chapter 67C.101, Metro Government may sell or transfer any real property belonging to Metro Government; and

**WHEREAS**, Section 1(A) of Executive Order No. 2, Series 2011 of the Mayor, which adopts Section 2(C) of Executive Order No. 3, Series 2007, provides that Metro Government may convey surplus real estate upon declaration by the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) that such property is no longer needed for the governmental purposes of Metro Government; and

**WHEREAS**, Metro Government issued a solicitation of interest for the property located at 2422 W. Chestnut Street and 2424 W. Chestnut Street, known as the Hampton House (the “Property”), in June 2018; and

**WHEREAS**, Metro Government has entered into a Development Agreement dated July 3, 2019 with Theta Omega, Inc., a Kentucky non-profit corporation, who made the highest and best offer for the Property; and

**WHEREAS**, pursuant to the Development Agreement, Theta Omega, Inc. will pay \$50,000 and will assume approximately \$160,000 in necessary repairs to the structure; and

**WHEREAS**, Metro Government has never dedicated by virtue of use, deed, ordinance or any other manner the real property that is the subject of this Resolution to a public or governmental purpose; and


**WHEREAS**, the Chief of Louisville Forward has declared and certified to the Council that the real property that is the subject of this Resolution is surplus to the needs of Metro Government (Exhibit A attached and incorporated herein).

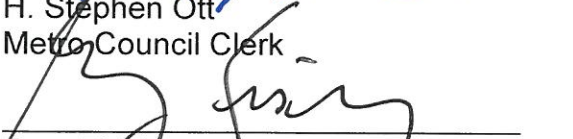
**NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE "COUNCIL") AS FOLLOWS:**

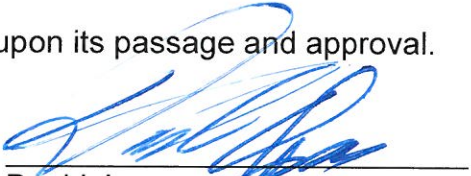
**SECTION I:** The Council hereby declares the real property described in Exhibit A attached hereto as "SURPLUS" and determines that it is not needed to carry out the governmental functions of Metro Government.

**SECTION II:** The Mayor is hereby authorized to transfer the Property named herein in the manner provided according to Section 2 of Executive Order No. 3, Series 2007, and pursuant to the current agreement attached hereto as Exhibit B, without further action by the Council.

**SECTION III:** This Resolution shall take effect upon its passage and approval.

  
\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

  
\_\_\_\_\_  
Greg Fischer  
Mayor

  
\_\_\_\_\_  
David James  
President of the Council

8/26/19  
\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**  
Michael J. O'Connell  
Jefferson County Attorney

BY:   
R-090-19

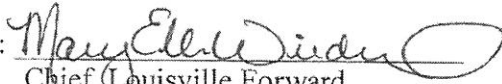
**LOUISVILLE METRO COUNCIL**  
**ADOPTED**  
August 22, 2019

**EXHIBIT A**

The Chief of Louisville Forward has carefully reviewed the Louisville/Jefferson County Metro Government's needs for land or improvements used in the administration of Metro programs and to conduct municipal business. This office has determined that the parcels of real property identified below, which are being scheduled for action by the Louisville/Jefferson County Metro Council, are surplus and not needed or suitable for any specific municipal use:

<u>Property Address</u>	<u>Parcel ID</u>	<u>Deed Book/Page</u>	<u>Assessed Value</u>
2422 W. Chestnut Street	001B00440000	5116/0759	\$5,600
2424 W. Chestnut Street	001B00430000	11267/317	\$4,500

**Appraised Value of the Property: \$235,000**

By:   
Chief, Louisville Forward

**EXHIBIT B**

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of July 3, 2019 by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth St., Suite 600, Louisville, Kentucky 40202 ("Metro"), and (ii) **THETA OMEGA, INC.**, a Kentucky non-profit corporation, with its principal office at P.O. Box 3011, Louisville, Kentucky 40201 ("Developer").

### RECITALS

**WHEREAS**, Metro desires to promote and encourage the revitalization of the Russell neighborhood; and

**WHEREAS**, Metro owns property located at 2422 and 2424 W. Chestnut Street, known as the Hampton House, as more particularly described on Exhibit A to this Agreement (the "Property"); and

**WHEREAS**, Metro issued a solicitation of interest in June, 2018, soliciting proposals for the redevelopment of the Property (the "SOI"); and

**WHEREAS**, Developer submitted one of the responses to the SOI, which proposed to redevelop the Property by renovating and restoring the Hampton House for use as a headquarters for Developer, leased meeting space for Omega Psi Phi Fraternity, Inc., Theta Omega Chapter, office/meeting space for the Men of Quality Mentoring Initiative, provide after school tutoring, and a Summer Leadership Academy for middle and high school males of color, and to provide a center for youth and residents for community engagement (collectively, the "Project"); and

**WHEREAS**, Developer's response was ultimately recommended for further negotiation; and

**WHEREAS**, Metro has determined that it is in the best interests of Metro that Developer develop and construct the Project and that the development of the Project shall be in the furtherance of the public purposes of Metro in that the Project, when completed, will enhance the economic vitality of Metro Louisville and increase property values, educational opportunities and employment;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

### **ARTICLE I** **COVENANTS AND UNDERTAKINGS OF DEVELOPER**

**Section 1.01. Construction of Project.** Developer agrees, at its sole expense, to construct the Project on the Property in accordance with the terms and conditions of this Agreement.

**Section 1.02. Schedule and Construction: Term of this Agreement.**

A. Developer acknowledges that time is of the essence and agrees to adhere to the schedule set forth in subsection B. of this Section (the "Schedule"). So long as Developer is in substantial compliance with the Schedule and subject to delays caused by force majeure or Administrative Delays as provided in Section 3.06, this Agreement shall remain in effect.

B. Developer shall use its best efforts to comply with the following Schedule:

<u>Action Item</u>	<u>Date</u>
(i) Developer submit plans sufficient to obtain approvals for the project	60 days from the date of this Agreement
(ii) Obtain all permits required to commence Construction of the Project	180 days from the date of approval of conditional use permit
(iii) Provide proof of financing for Project	At Closing
(iv) Commence construction of the Project	90 days from permit issuance
(v) Substantial completion of the Project	One (1) year from the date of this Agreement

C. All construction at the Project shall be completed in a good and workmanlike manner. Developer shall verify that all construction on the Project shall be in accordance with the plans and renderings prepared pursuant to Article I of this Agreement.

E. Any provision of the Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of force majeure as provided in Section 3.06, or another cause which Metro and Developer agree is reasonably justifiable, the date of completion of construction shall be extended by Metro as provided in Section 3.06.

F. Metro, its agents and employees, shall be granted a right of entry upon the Property during construction during normal business hours after prior notice to enable Metro to inspect the construction of the Project through the course of construction, although Metro shall have no obligation to do so.



**Section 1.04. Design and Approval.**

A. The Project contemplates renovations to the existing building on the Property, and does not contemplate new construction (the "Plan").

B. Developer shall obtain Metro's approval for any material changes to the Plan ("Amended Plan") and Developer shall submit the Plan to the Planning Commission, Board of Zoning Adjustment or other administrative body to the extent such changes require additional approvals. Developer shall also provide Metro's Develop Louisville staff with final architectural renderings ("Project Renderings") and shall receive approval of such Project Renderings from Metro prior to seeking construction approvals. Metro, exclusive of the time needed for any review required by an administrative body, shall have a period of not more than ten (10) business days from Metro's receipt of the Amended Plan and Project Renderings to review and approve or disapprove the Amended Plan or Project Renderings. Metro shall not unreasonably withhold, delay or condition such approval. If Metro requires changes to the Amended Plan or Project Renderings, Developer shall have 10 business days or a reasonable amount of time, depending on the comments received, from Developer's receipt of any such requested changes to make such changes and return the revised Amended Plan or Project Renderings to Metro, and Metro shall then have 10 business days to again approve or disapprove the revised Amended Plan or Project Renderings, not including the time required for any required administrative body review. Upon obtaining Metro's approval of, as applicable, the Amended Plan or Project Renderings, Developer shall prepare the final construction plans (the "Construction Plans") which will be substantially in compliance with, as applicable, the Amended Plan and Project Renderings. Before obtaining the necessary permits to begin construction of the Project, Developer shall provide Metro's Office of Construction Review or its successor with a copy of the Construction Plans for review for conformance with, as applicable, the Amended Plan and Project Renderings, the Kentucky Building Code, and any other applicable state or local codes and regulations governing building construction.

C. Except as otherwise provided herein, all Amended Plans, Project Renderings, Construction Plans, Future Preliminary Plans, and Future Renderings (collectively, the "Work") are and shall remain the sole and exclusive property of Developer, and by entering into this Agreement, Metro is not acquiring any license, property right, or other legal or equitable interest in the Work and Metro may not copy, distribute or use the Work in any way without the express written consent of Developer unless such copying, distribution or use is required for the completion or advancement of activities related to Project completion or finance.

**Section 1.05. Operation and Maintenance of Project.** Upon completion of the Project, Developer agrees to comply with the provisions of this Section 1.05. Developer recognizes and acknowledges that the manner in which the Project is used and operated is critical to Metro by reason of the impact that the Project will have. In order to give Metro assurance as to the manner in which the Project will be used and operated, Developer covenants and agrees that, at no cost to Metro, it shall develop and manage the Project in a first-class manner, including (a) keeping the

Property, its exterior and all furniture, fixtures, HVAC systems, equipment and other personal property in good repair and condition, (b) complying with all laws, ordinances, regulations and codes applicable to Developer's operations; and (c) obtaining and maintaining, or causing others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the businesses located in the Project.

**Section 1.06. Codes.** The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations.

**Section 1.07. Employment Regulations: Affirmative Action.** Developer, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national, origin, sexual orientation or disability. At all times during the construction of the Project, Developer shall take affirmative action to ensure that its employees and the employees of its contractors and subcontractors are treated fairly during employment, without regard to their sex, race, creed, color or national origin. This requirement shall apply to, but not be limited to, the following: employment; promotion; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

**Section 1.08. Mechanics' and Materialmen's Liens.** Developer will keep the Project free and clear of all mechanics' and materialmen's liens and other liens on account of work done for Developer or persons claiming under Developer. Should any such lien be filed against the Property, Developer shall immediately pay, bond over, or otherwise remove such lien. Should Developer elect to dispute the amount required to release such lien or the quality of service provided by the contractor who placed the lien, Developer shall have the right to provide a bond against such lien in form and content acceptable to Metro.

**Section 1.09. Non-Discrimination.** Upon completion of the Project and as applicable, Developer agrees to not discriminate on the basis of race, sex, creed, disability, sexual orientation or national origin, in the sale lease, rental use or occupancy of the commercial units on the Property.

**Section 1.10. Insurance.** Developer shall provide all insurance as required by Metro's Risk Management Department as is more particularly described on Exhibit C, attached hereto and made a part hereof.

**Section 1.11. Security.** Developer agrees to furnish reasonable and customary security for the construction work site, or sites, located on the Property during the construction phase.

**Section 1.12. Reporting.** Developer agrees to provide Metro regular reports, no less than monthly, detailing its activities with respect to the Project and its progress towards meeting the milestones established by the Schedule and the Developer's Funds beginning three months after the execution of this Agreement and ending on the date of the completion of the renovations on the Property by the Developer.



**Section 1.13. Project Budget.** Prior to commencing construction of the Project, Developer shall submit to Metro a reasonably detailed budget/analysis for the restoration and fit out of all buildings and components for the Project, adequately detailed to enable Metro to determine if the budget is reasonable and sufficient to enable that the Project shall be completed in accordance with the terms of this Agreement.

**Section 1.14. Developer Financing.** Before beginning construction of the Project, Developer shall furnish to Metro written evidence of firm financing commitments sufficient to complete the Project.

**Section 1.15. Indemnification.** Developer agrees to indemnify and hold Metro and its officers, employees and agents ("Metro Parties") harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liability, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable and actual attorneys' fees) imposed upon or incurred by the Metro Parties as a result of or in connection with any of the following:

A. Any misrepresentation or breach of warranty made by Developer in this Agreement or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

B. The breach of or default in the performance of any covenant, agreement or obligation to be performed by Developer pursuant to this Agreement or any agreement or instrument executed by it in connection herewith or pursuant thereto, or

C. Any claim, damage, loss or expenses, attributable to personal injury or to destruction or loss of use of property, including, but not limited to, liability expenses or damages (determined to have been caused by Developer and not pre-existing or caused by the negligent act or omission of the Metro Parties), that is attributable to or results from the presence or release of any Hazardous Materials or that arises from the negligent or intentional act or omission of Developer or its agents, contractors, employees, licensee, or invitees, in carrying out its obligations under this Agreement. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any applicable federal, state or local governmental agency or authority. The term "Hazardous Materials" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iv) identified as a "hazardous waste" pursuant to Section 1004 of the Federal Resource and Recovery Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response and Liability Act ("CERCLA") (42 USC Section 9601) or (vi) defined as a "pollutant" or contaminant" pursuant to Section 101(33) of CERCLA.

**Section 1.16. Environmental Testing and Remediation.** Developer, at its expense, shall be solely responsible for performing any environmental testing to determine whether hazardous materials are present in, on, or under the Property and, at its expense, to conduct any remedial measures or management of the hazardous materials disclosed by the environmental testing as may

be required by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet or other local, state or federal agency (the "Remedial Measures"). Metro shall cooperate with, and assist, Developer in any negotiations with the Cabinet concerning Remedial Measures and agrees to use its best efforts to enable Developer to expeditiously obtain all necessary approvals from the Cabinet. Notwithstanding the foregoing, Developer and Metro agree to split the cost of a phase I environmental report, prepared by an engineer reasonably satisfactory to both Developer and Metro, for the Property.

**Section 1.17. Additional Representations and Covenants of Developer.** Developer represents and covenants as follows:

- A. Developer is a Kentucky non-profit corporation, duly formed and validly existing under the laws of the Commonwealth of Kentucky with the power and authority to enter into this Agreement.
- B. Developer is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.
- C. The execution of this Agreement, and the construction of the Project by Developer will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Developer.
- D. There are no actions, suits or proceedings pending or threatened against Developer which would, if adversely determined, affect Developer's ability to enter into this Agreement or construct the development in accordance with this Agreement.

## **ARTICLE II**

### **COVENANTS AND UNDERTAKINGS OF METRO**

**Section 2.01. Sale of Property, Purchase Price.** Subject to the satisfaction of the conditions set forth in Section 2.05, Metro agrees to convey the Property to Developer for Fifty Thousand Dollars and Zero Cents (\$50,000.00) (the "Purchase Price") in an "as is" condition by a special warranty deed (the "Deed").

**Section 2.02. Entry on Properties.** Developer and its respective officers, employees, engineers, surveyors and other agents and assigns (each a "Developer Party"), shall have, and are hereby granted by Metro, the right to enter upon the Property from time to time upon reasonable notice with prior approval to Metro and shall have the right of ingress and egress over, through and from the Property, for the purpose of inspecting, testing, making surveys, and making such other reasonable observations and inspections of the Property as are deemed necessary or appropriate by Developer ("Investigations"), and upon execution of this Agreement, Metro shall provide Developer with access to the Property when and as necessary for Developer to conduct all necessary due diligence. All Investigations shall be done in a manner that causes the least possible disturbance to Metro's possession. During the course of the Investigations, Developer Party shall not permit or create any unsafe or dangerous condition on the Property. Developer shall

compensate Metro for any damage to the Property caused by the Investigation if Developer fails to close under this Agreement.

**Section 2.03. Conditional Use Permit.** Metro, as the property owner, shall assist Developer in obtaining a conditional use permit allowing for the use of the Property as a private non-profit club, consistent with the uses contemplated by the Project.

**Section 2.04. Additional Representations, Covenants and Agreements of Metro.** Metro represents and covenants as follows:

A. Metro is a Kentucky consolidated local government established pursuant to KRS 67C and possesses the requisite authority to enter into this Agreement.

B. Metro has not made any untrue statement of a material fact or failed to state a material fact in this Agreement or any schedule, exhibit, document or certificate delivered in accordance with the terms hereof.

C. Metro agrees to use reasonable efforts to assist Developer in coordinating the work of various governmental entities and utilities with respect to servicing and permitting the Project and use of the Property.

**Section 2.05. Closing.**

A. Subject to the satisfaction of the closing conditions set forth in this Section 2.06, the sale of the Property (the "Closing") shall be established by a written notice from Developer to Metro delivered not less than one (1) week prior to the proposed Closing. The Closing shall be held at 444 South Fifth Street, Sixth Floor, Louisville, Kentucky, or at such other place as is mutually agreed to by Developer and Metro.

B. At the Closing Metro shall convey the Property to Developer by the Deed free and clear of all liens and encumbrances except for the Permitted Encumbrances as described in the Deed. Metro also agrees that the scaffolding, which is owned by Metro, currently supporting the front porch of the Property, will remain at no cost to Developer.

C. Metro shall pay the transfer tax, if any, on the conveyance of the Property. Developer shall pay the recording fees imposed for recording the Deed. All utilities and other operating expenses associated with the Property shall be borne by Metro through the date of Closing. Each party shall bear its own legal and other expenses associated with the transaction.

**Section 2.06. Conditions to Closing.**

A. **Metro Conditions.** Metro shall not be required to close on the sale of the Property unless the following conditions have been met or waived by Metro in whole or in part before the Closing:

1. Developer shall furnish written evidence reasonably acceptable to Metro that financial and/or other institutions are prepared to extend sufficient capital to construct the Project. This can consist of a term sheet or comparable document for financing the Project either through equity financing (including, but not limited to the procurement of tax credits or a grant), a construction loan (in a usual and customary form) from a financial institution, or a combination of equity and debt satisfactory to Metro.

2. The Concept Design Plan and the Project Renderings for the Project shall be completed and approved by Metro as provided in Article I.

3. The representations and warranties of Developer set forth herein shall be true and correct as of the Closing.

4. Developer shall demonstrate to Metro's reasonable satisfaction that the Project's pre-development approvals, as provided in Section 1.02 have been completed.

**B. Developer Conditions.** Developer shall not be required to close on the sale of the Property unless the following conditions have been met or waived by Developer in whole or in part before the Closing:

1. The representations and warranties of Metro set forth herein shall be true and correct as of the Closing Date.

2. The Property shall not be threatened or materially adversely affected in any way as a result of earthquake, disaster, labor dispute, any action by the United States or any other governmental authority, riot, civil disturbance, uprising, activity or armed forces or act of God or enemy.

3. Metro Council shall have approved a surplus resolution of the Property to Developer for the Purchase Price;

4. Developer shall have obtained, at its sole expense, a title commitment from a title insurance company showing that the Property is owned by Metro in fee simple unencumbered insurable market title except for Permitted Encumbrances and such other exceptions reasonably acceptable to Developer. The following items shall be deemed to be permitted title exceptions (hereinafter referred to as the "Permitted Encumbrances"):

a. All ad valorem property taxes and assessments on the Property, if any, not yet due and payable;

b. Matters shown on a survey which would not materially and adversely affect Developer's use and enjoyment of the Property for the purpose intended by the Project;

c. Easements, restrictions and stipulations that appear of public record as of the date of this Agreement and that would not materially and adversely affect Developer's use and enjoyment of the Property for the purpose intended by the Project; and

d. Such other matters as are acceptable to Developer in its sole and absolute discretion.

5. A conditional use permit allowing for the use of a private non-profit club on the Property shall have been approved.

6. Developer shall have received a phase 1 environmental report, showing the environmental condition of the Property to be free of hazardous substances and otherwise acceptable to Developer.

7. If applicable, Developer shall have obtained a letter of eligibility and preliminary approval of a property management plan from the Commonwealth of Kentucky for its development and use of the Property.

### **ARTICLE III MISCELLANEOUS**

**Section 3.01. Provisions not Merged with Deed and Other Agreements.** This Agreement shall not terminate upon the execution of the Deed required by this Agreement, and the provisions of this Agreement shall not be deemed to be merged into the Deed.

**Section 3.02 Governing Law.** This Agreement, the construction thereof and the rights and obligations of the parties hereunder shall be governed in all respects by the laws of the Commonwealth of Kentucky.

**Section 3.03. Right of First Negotiation.** The parties agree that Metro shall retain a one-time right of first negotiation on the Property for a period of ten (10) years after the date that Developer has been issued a certificate of occupancy with respect to the Property (the "Term"). During the Term, before Developer could sell the Property to a third party, Developer would offer the Property to Metro, and Metro would have 10 days to decide whether to negotiate an agreement. If Metro decides to negotiate such an agreement, the parties shall commence good faith negotiations exclusively with each other for a period not to exceed 90 days. If the parties fail to reach an agreement within that period, Developer shall be free to enter into an agreement with a third party on terms (considered as a whole) no more favorable to the third party than Metro offered to Developer.

**Section 3.03. Severability.** Each and every provision hereof, including Articles, Section, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

**Section 3.04. Section Headings and Captions.** The Section headings and captions in this Agreement are for convenience of reference only and shall not affect the construction of the terms and provisions hereof.

**Section 3.05. Time of the Essence; Mutual Extension; Diligent Performance.** Time is of the essence with respect to the duties and obligations imposed on the parties hereto. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of Metro and Developer. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement or performance thereof.



**Section 3.06. Force Majeure and Administrative Delays.** In the event that Developer shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials which could not have been reasonably anticipated and avoided by Developer, failure of power, riots, insurrection, war or the act, failure to act or default of the other party, including delays in financing, then performance of such act shall be extended for a period equivalent to the period of such delay. In the event that Developer shall be hindered in or prevented from the performance of any act required hereunder by reasons of delay in administrative or governmental approvals, including those related to environmental approvals, zoning approvals, construction plan approvals or similar requirements (collectively, the "Administrative Delays"), then performance of such act shall be extended for a period equivalent to the period of such delay.

**Section 3.07. Notices.** Whenever a notice is required or permitted to be given to a party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail, certified or registered mail return receipt requested, postage prepaid, addressed to the parties, or to such other address or to such other persons as any party shall have requested by notice to the other(s) pursuant to this Section, as follows:

If to Developer:       Theta Omega, Inc.  
                              P.O. Box 3011  
                              Louisville, KY 40201  
                              Attn: Audwin Helton

Copy to:                David Tandy  
                              Bingham Greenebaum Doll LLP  
                              3500 PNC Tower, 101 South Fifth Street  
                              Louisville, KY 40202

If to Metro:            Louisville Forward  
                              444 South Fifth Street, Suite 600  
                              Louisville, Kentucky 40202  
                              Attn: Assistant Director

Copy to:                Jefferson County Attorney  
                              531 Court Place, Suite 900  
                              Louisville, Kentucky 40202  
                              Attn: John Wilmes  
                              Phone: 502-574-3348

**Section 3.08. Entirety of Agreement.** This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and all prior agreements and understandings between Metro and Developer are merged herein. The Exhibits to this Agreement constitute a material part hereof and are incorporated by reference herein. This Agreement may not be modified, amended or revoked, except in writing, executed by each of the parties.

**Section 3.09. Brokers and Finders: Fees and Expenses.** Each of the parties hereto represents and warrants to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each party indemnifies and holds the other harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the parties. Each party hereto is indemnified and holds the others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.

**Section 3.10. Successor and Permitted Assigns for the Parties Hereto.** Developer may collaterally assign or pledge its rights under this Agreement, or portions of those rights, as security for loans or guaranties of loans with respect to the Project, without the consent of Metro. Developer may also assign and transfer this Agreement to entities affiliated with Developer through partial common ownership or management that does not result in a change of control (meaning Developer retains 50% or more of the voting power of the affiliated entity), without the consent of Metro; provided, that with respect to actual assignments or transfers (and not collateral assignments or pledges to secure loans), Developer shall notify in writing Metro as to the assignee and as to the portion of the rights assigned or transferred (if less than a full assignment or transfer). Except as permitted in the foregoing sentences, Developer shall not assign or transfer any interests under this Agreement without the prior written consent of Metro.

**Section 3.11. Estoppels.** Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the others, written estoppels from time to time certifying, among other matters, the continued viability of this Agreement, the absence of any defaults hereunder or, if defaults exist, specifying in detail the nature of such defaults), the status of the obligations of the parties each to the other, and such other matters as may reasonably be requested by the party requesting such estoppel certificate(s).

**Section 3.12. No Third Party Beneficiaries; No Partnership or Joint Venture Created.** Nothing contained in this Agreement shall be deemed or construed as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or other association or relationship among Developer and Metro. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successor and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

**Section 3.13. No Abrogation of Legal Requirements.** Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

**Section 3.14. Default.**

A. If Developer materially breaches or defaults on its obligations under the Agreement or any of the documents incorporated herein, or in the reasonable judgment of Metro there has been a substantial decrease in Developer's capacity to complete the Project in accordance with the Schedule and other terms and conditions of this Agreement, as

evidenced by one or more substantial deviations from the Schedule not caused by force majeure or Administrative Delays, Metro may give written notice (with a copy of said notice being given to any lender of Developer) that remedial action must be taken within 30 calendar days. Developer shall correct such breach or default within 30 days after receipt of such written notice. If the default is not reasonably curable within 30 days, then Developer may continue to cure the default or breach so long as Metro is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the 30 day period, then Metro may terminate the Agreement by giving written notice to Developer at least 10 days before the effective date of termination.

In addition to the remedy provided above, if the default of Developer is the failure of Developer to achieve substantial completion of the Project, as evidenced by a certificate of occupancy, Metro, at its sole option, may demand that Developer convey the Property back to Metro for the Purchase Price. Developer's obligation to convey the Property, as outlined in this Section 3.14A, shall be enforceable by specific performance.

**B.** If Metro materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice to Metro that remedial action must be taken within 30 calendar days. Metro shall correct such breach or default within 30 days after Metro's receipt of such written notice. If the default is not reasonably curable within 30 days, then Metro may continue to cure the default or breach so long as Developer is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the 30 day period, then Developer may terminate the Agreement by giving written notice to Metro at least 10 days before the effective date of termination.

In addition, Metro and Developer shall be entitled to any remedy and damages available to it at law or in equity. If this Agreement is terminated, such termination shall not in any way affect any rights set forth in this Agreement that by their terms survive the termination or expiration.

**Section 3.15. Binding Effect.** Each of the parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of the party is duly authorized by the party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms, and (iv) it is the intention of each of the parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

**IN TESTIMONY WHEREOF**, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

[SIGNATURES ON FOLLOWING PAGE]

**METRO:**

**LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT**

Dated: 7/9/19

By: Ellen M. Hosen, Deputy Mayor  
Greg Fischer, Mayor

**DEVELOPER:**

**THETA OMEGA, INC.**

Dated: July 3, 2019

By: [Signature]  
Title: President, Theta Omega, Inc.

**Approved as to form and legality:**

Michael J. O'Connell  
Jefferson County Attorney

By: [Signature]  
Assistant Jefferson County Attorney

**JOHN A. WILKES**  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348

**Exhibit A**

**(Property Description)**

**PARCEL 1 – 2422 West Chestnut Street (PVA Tax Parcel No. 02-001B-0044-0000)**

**Beginning at a point in the South line of Chestnut Street 269 feet 4 inches West of the West line of 24<sup>th</sup> Street (formerly Mercer Street); running thence Westwardly with the South line of Chestnut Street, 67 feet, thence Southwardly at right angles to Chestnut Street 200 feet to an alley 20 feet wide; thence Eastwardly along said alley and parallel to Chestnut Street, 67 feet; thence Northwardly at right angles to said alley 200 feet to the point of beginning.**

**Being the same property acquired by Metro by Commissioner's Deed dated \_\_\_\_\_, 1979, of record in Deed Book 5116, Page 756, in the Office of the Clerk of Jefferson County, Kentucky.**

**PARCEL 2 – 2424 West Chestnut Street (PVA Tax Parcel No. 02-001B-0043-0000)**

**Beginning on the South side of Chestnut Street 336-4/12 feet West of 24<sup>th</sup> Street; running Westwardly along the South side of Chestnut Street, 40 feet and extending back Southwardly of the same width between lines parallel with 24<sup>th</sup> Street, 200 feet to an alley.**

**Being the same property acquired by Metro by Special Warranty Deed dated October 9, 2018, of record in Deed Book 11267, Page 318, in the Office of the Clerk of Jefferson County, Kentucky.**



## Exhibit B

### INSURANCE REQUIREMENTS

#### I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Developer shall indemnify, hold harmless, to the extent permitted by law, and defend Metro, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from Developer's (or Developer's Subcontractors, if any) performance or breach of the Agreement provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the intentional negligent act or omission of Metro, its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

#### II. INSURANCE REQUIREMENTS

Prior to Developer commencing this Agreement, Developer shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. All insurance required under this Agreement must be obtained and copies of policies or certificates thereof shall be submitted to and approved by Metro (who may request review by Metro's Risk Management Division) prior to this Agreement taking effect.

Without limiting Developer's indemnification requirements, it is agreed that Developer shall maintain in force at all times during this Agreement the following policy or policies of insurance covering its operations.

A. The following clauses shall be added to Developer's Commercial General Liability Policy:

1. "Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the Agreement."

B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the Agreement:

1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability

- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

### III. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "B+ VI", unless proper financial information relating to Developer is submitted to and approved by Metro's Risk Management Division.

### IV. MISCELLANEOUS

A. Developer shall procure and maintain insurance policies as described herein and for which Metro shall be furnished Certificates of Insurance upon the execution of the Agreement. The Certificates shall include provisions stating that the policies may not be cancelled or non-renewed, without Metro having been provided at least 30 days written notice. The Certificates shall identify the Agreement to which they apply and shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Metro 30 days before the expiration date.

B. Certificates of Insurance, as required above shall be furnished to:

Louisville/Jefferson County Metro Government  
Finance Department, Risk Management Division  
611 West Jefferson Street  
Louisville, KY 40202

C. Developer shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions of Developer's insurance coverage) in coverage as required above, Developer shall notify Metro's Risk Management Division within two (2) business days. If Developer fails to notify Metro as required by this Agreement, Developer agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by Metro, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.

D. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Developer hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Developer.