

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into as of June 22, 2018 by and between **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 **THE LOUISVILLE URBAN LEAGUE, INC.**, a Kentucky non-profit corporation, with its principal office at 1535 W. Broadway, Louisville, Kentucky 40203 ("Developer").

### RECITALS

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

**WHEREAS**, Metro owns property located at 3029 W. Muhammad Ali Boulevard, known as Heritage West, as more particularly described on Exhibit A to this Agreement (the "Property"); and

**WHEREAS**, Metro issued a solicitation of interest in March 2017, 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 for a state of the art multi-sports complex anchored by an indoor track and field facility designed to host a variety of sporting events, retail space and parking (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, increase property values, employment and tourism;

**WHEREAS**, because of the importance of the Project to the economic vitality of Metro, Metro agrees to provide support to Developer in accordance with the terms of this Agreement;

**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 (except for the Project Grant to be provided to Developer pursuant to Section 2.02 and except as otherwise set forth in this Agreement), to construct the Project on the Property in accordance with the terms

and conditions of this Agreement. The Project shall consist of a state of the art multi-sports complex anchored by an indoor track and field facility designed to host a variety of sporting events, retail space and parking. No part of the Project shall be leased or used by massage parlors, pawn shops, bingo halls, flea markets or any establishment requiring an adult entertainment licenses to be issued by Metro.

**Section 1.02. Public Access.** Metro and Developer acknowledge and agree that the Project must be prioritized for revenue-generating events, but that this Project is also an amenity to be enjoyed by the public. Developer and Metro will enter into a letter agreement on the subject of public access once the Project is constructed and Developer is able to determine how best to balance revenue generating events with opportunities for public access, and what areas of the Project are most suited for such opportunities. This letter agreement shall be entered into no later than six (6) months following the Project’s first revenue-generating event.

**Section 1.03. Design.** The Project shall be substantially similar to the plans attached hereto as Exhibit B (“Concept Design Plan”). The Concept Design Plan shall include at a minimum the following elements:

- A. A state of the art indoor track facility with at least 4,000 seats for viewing competitions and constructed in a manner to be eligible to host USA Track & Field and National Collegiate Athletic Association events (the “Indoor Track Facility”)
- B. Outdoor track with athletic fields.
- C. Retail/office space
- D. Sufficient parking for the above uses

**Section 1.04. 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:

<b><u>Action Item</u></b>	<b><u>Date</u></b>
(i) Parties agree to final scope of predevelopment costs as described in Section 2.04	30 days from the date of this Agreement
(ii) Developer applies for Tourism Development Incentives	45 days from the date of this Agreement
(iii) Developer submit plans sufficient to obtain zoning Approvals for the indoor track facility, parking and	120 days from the date of this Agreement

office/retail

- |  |  |
|--|--|
| (iv) Obtain all permits required to commence Construction of the Indoor Track Facility and parking | 180 days from the date of zoning approval              |
| (v) Provide proof of financing for Indoor Track Facility and parking                               | December 31, 2018                                      |
| (vi) Commence construction of the Indoor Track Facility and parking                                | 90 days from permit issuance                           |
| (vii) Substantial completion of the Indoor Track Facility and parking                              | December 31, 2020                                      |
| (viii) Letter agreement executed documenting public access opportunities                           | Six months following the first revenue-producing event |

**C.** Developer is responsible for raising at least \$20 million in funds for the Project (the “Developer’s Funds”), and will use best efforts to achieve the following goals related to project finance:

- (i) Identify and make application for or receive preliminary commitments for at least 10% of the Developer’s Funds by August 1, 2018
- (ii) Identify and make application for or receive preliminary commitments for at least 25% of the Developer’s Funds by October 1, 2018
- (iii) Identify and make application for or receive preliminary commitments at least 50% of the Developer’s Funds by November 1, 2018
- (iv) Identify and make application for or receive preliminary commitments for 100% of the Developer’s Funds by December 31, 2018
- (v) Firm proof of financing before the commencement of construction.

**D.** 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 Project Area 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 1.05. Design and Approval.**

A. Developer shall obtain Metro's approval for any material changes to the Concept Design Plan ("Amended Plan") and Developer shall submit the Amended 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.

B. 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 1.06. Labor Requirements.** Developer shall make good faith efforts to satisfy the following goals during construction of the Project, consistent with Louisville Metro Code of Ordinances (LMCO) 37.75:



A. A measurable and documented goal of at least 20% minority participation, including minorities and certified minority owned businesses, for all contractors employed on the Project.

B. A measurable and documented goal of at least 5% women participation, including females and certified female owned businesses, for contractors employed on the Project.

C. A measurable and documented goal that at least 75% of the Project jobs are given to residents of the entire county or all counties within the Louisville MSA.

**Section 1.07. Operation and Maintenance of Project.** Upon completion of the Project, Developer agrees to comply with the provisions of this Section 1.07. 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) making reasonable efforts to market, or cause others to market, the Project by appropriate promotions and advertising of a first-class nature; (b) keeping the Property, its exterior and all furniture, fixtures, HVAC systems, equipment and other personal property in good repair and condition, (c) complying with all laws, ordinances, regulations and codes applicable to Developer's operations; (d) 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, (e) using commercially reasonable efforts to cause each tenant of the property to comply with that the operational standards set forth in this (a) through (d) of this Section.

**Section 1.08. Codes.** The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations.

**Section 1.09. 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 1.10. 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 1.11. 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 1.12. 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 1.13. Security.** Developer agrees to furnish reasonable and customary security for the construction work site, or sites, located on the Property during the construction phase. Metro agrees to support Developer's security efforts with appropriate LMPD support.

**Section 1.14. 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 opening of the Indoor Track Facility.

**Section 1.15. Project Budget.** Prior to commencing construction of the Indoor Track Facility and parking, Developer shall submit to Metro a reasonably detailed budget/analysis for construction and fit out of all buildings and components for the Indoor Track Facility and parking, adequately detailed to enable Metro to determine if the budget is reasonable and sufficient to enable that the Indoor Track Facility and parking shall be constructed in accordance with the terms of this Agreement.

**Section 1.16. Developer Financing.** Before beginning construction of the Indoor Track Facility and parking for the Project, Developer shall furnish to Metro written evidence of firm financing commitments sufficient to complete the Indoor Track Facility and parking before beginning construction.

**Section 1.17. 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 1.18. 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.

**Section 1.19. 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. Developer Representation.** Developer represents that it would not enter into this Agreement to construct the Project but for the commitment of Metro to provide financial and other incentives to the Project, as provided in this Agreement, to induce Developer to undertake the Project pursuant to this Agreement.

**Section 2.02. 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 \$1.00 (the "Purchase Price") in an "as is" condition by a special warranty deed (the "Deed").

**Section 2.03. Project Grant.** In order to induce Developer to construct the Project, Metro agrees to pay to Developer the sum of ten million dollars (\$10,000,000.00) to be used by Developer solely for purposes of constructing the Project, including construction and fit out costs ("Project Grant"). The Project Grant is subject to the appropriation of sufficient funds by the Louisville/Jefferson County Metro Council ("Metro Council"). The Project Grant shall be payable once the Developer has commenced construction of the Indoor Track Facility, except as specified in Section 2.04, pursuant to the following procedure:

Developer shall submit a draw request to Metro, signed by Developer's general contractor and approved by Developer and accompanied by such supporting documentation as may be required by Metro, including but not limited to invoices evidencing the work that is the subject of the draw and all required mechanic's lien waivers and releases. Metro shall have thirty (30) days after the receipt of each draw request to either pay the amount requested, or partial payment of the undisputed amount with a response identifying with reasonable specificity the objections Metro has to the draw request. In the event any such objections are noted, then the parties shall promptly meet to resolve such issues.

**Section 2.04. Pre-Construction Costs.** Developer must complete a variety of pre-construction activities in order to comply with the terms of this Development Agreement and to complete the Project (the "Activities"). Metro is interested in supporting these Activities with a total of up to \$2,400,000. Developer agrees to provide Metro with a specific list of costs, including amounts, for all Activities necessary to complete the Project. Once the parties have agreed to a list of Activities, including the amounts required to fund those Activities that Metro will assist with, the parties will execute an addendum to this Agreement outlining Activities to be supported through the Existing Funds. Metro shall provide funds for the Activities upon the receipt of invoices from Developer documenting payment due for qualifying Activities. Such invoices shall be provided on a monthly basis. Funds available for these Activities are as follows:



- A. \$350,000 in funds previously appropriated by the Metro Council for the Property (“Existing Funds”);
- B. For each \$250,000 Developer raises for the Project, including cash donations, pledges and private financing commitments in a form acceptable to Metro, Metro shall make available \$500,000 of funds from the Project Grant for the Activities, up to \$2,000,000.00 in total of funds from the Project Grant;
- C. \$50,000 in funds to be requested as an appropriation in Metro’s FY20 budget, pending approval by the Louisville Metro Council.

In the event of a default, described in Section 3.14, Developer will provide Metro the intellectual property developed with the Existing Funds and any portion of the Project Grant used for pre-construction costs, including the Work, and any plans, reports, studies, drawings and related materials and other work products (the “Intellectual Property”), and Metro shall own these materials.

**Section 2.05. Sidewalks.** Metro agrees (i) to use the balance of the Existing Funds, if any, referenced in Section 2.04 above, to construct required perimeter sidewalks for the Project, and to coordinate the completion of the construction of these sidewalks to align with Project construction so that they are available for use as of Project completion, or as otherwise agreed to by the parties to this Agreement, and (ii) that once constructed, Metro will maintain, in compliance with all applicable laws, rules, and regulations, such sidewalks so long as the Project is used for the purposes contemplated by this Agreement.

**Section 2.06. Support for Tourism Credits.** If Developer elects to file an application to the Commonwealth of Kentucky for the award of state tax credits based on the designation of the Project as a Tourism Attraction project pursuant to Kentucky Revised Statutes 148.853, Metro agrees to provide support for such application.

**Section 2.07. Option Agreement.** Once Metro Council has approved the surplus of the Property, Metro agrees to grant Developer an option on the Property. The Option Agreement shall be substantially similar in form and substance to the Option Agreement attached to this Agreement as Exhibit D.

**Section 2.08. 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 2.09-. Closing.**

A. Subject to the satisfaction of the closing conditions set forth in this Section 2.09 and in the Option Agreement, 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.

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 2.08. Conditions to Closing.**

A. **Metro Conditions.** Metro shall not 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), 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 1.05A have been completed.

B. **Developer Conditions.** Developer shall not be required to close 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. Metro Council shall have approved the Project Grant;

5. 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.

6. 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 Deeds 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. 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:           The Louisville Urban League, Inc.  
1535 W. Broadway  
Louisville, KY 40222  
Attn: Sadiqa N. Reynolds, President  
Phone: 502-585-4622

Copy to:                   Clifford H. Ashburner  
Dinsmore & Shohl, LLP  
101 S. 5<sup>th</sup> Street, Suite 2500  
Louisville, KY 40202

If to Metro:               Louisville Forward  
Department of Economic Development  
444 South Fifth Street, Suite 600



Louisville, Kentucky 40202  
Attn: Director  
Phone: 502-574-4140

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 or partial interests in this Agreement (such partial interests being the right to construct portions of the Project) 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, for the first ten (10) years after a certificate of occupancy has been issued for the Indoor Track Facility, Developer shall not assign or transfer any interests under this Agreement, including the Property, 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 with 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.

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 the event this Agreement is terminated as described above as a result of a default, then Developer shall convey the Property by deed to Metro and provide any Intellectual Property developed using the Existing Funds and the Project Grant. In the event of a default by Metro, Metro shall use best efforts to offset additional funds expended by Developer for documented expenses not covered by the Existing Funds and Project Grant as part of a future development of the Property. ,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.

Developer's obligation to convey the Property as outlined in this Section 3.14B shall be enforceable by specific performance.

**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.

**METRO:**

**LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT**

Dated: June 14, 2018

By: Greg Fischer, Deputy for  
Greg Fischer, Mayor

**DEVELOPER:**

**THE LOUISVILLE URBAN LEAGUE, INC.**

Dated: June 13, 2018

By: Ladiga N. Reynolds  
Title: President & CEO

**Approved as to form:**

Michael J. O'Connell  
Jefferson County Attorney

By: John P. Wilmes  
Assistant Jefferson County Attorney

531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348

## Exhibit A

### (Property Description)

BEGINNING at the Northwest corner of 30<sup>th</sup> Street and West Muhammad Ali Boulevard, a/k/a Michigan Drive and Walnut Street; thence with the North line of said Muhammad Ali Boulevard, North 84°34'49" west 654.67 feet to the point in the Easterly right-of-way of the Kentucky and Indiana Terminal Railroad Company; thence leaving said Muhammad Ali Boulevard said Easterly right-of-way as follows: North 08°42'59" West 66.94 feet to a point; thence North 02°28'00" East passing an existing pipe at 518.04 feet and a total of 1434.79 feet to a point in the Southerly line of Market Street; thence with the Southerly line of said Market Street, South 85°01'30" East 706.67 feet to the Southwest corner of 30<sup>th</sup> Street and Market Street, as now improved; thence with the Westerly line of said 30<sup>th</sup> Street as follows: South 03°16'10" West 579.75 feet and South 03°42'52" West 402.52 feet and South 05°18'37" West 421.67 to the point of beginning.

Being the same property conveyed to Metro by Deed dated September 14, 2016, and recorded in Deed Book 10718, Page 757, in the Office of the Clerk of Jefferson County, Kentucky.



**Exhibit B**

**(Attach Concept Design Plans)**

## Exhibit C

### 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 the 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.

**EXHIBIT D**  
**OPTION AGREEMENT**

**THIS OPTION AGREEMENT** ("Option Agreement") is made as of the last date of execution of this Option Agreement as set forth on the signature page ("Agreement Date"), by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and **THE LOUISVILLE URBAN LEAGUE, INC.**, a Kentucky non-profit corporation with its principal address located at 1535 East Broadway, Louisville, Kentucky 40203 ("Buyer").

**RECITALS:**

**WHEREAS**, the Seller owns the property located in Louisville, Kentucky as more particularly described in Exhibit A attached hereto ("Property"); and

**WHEREAS**, Buyer desires to obtain an option to acquire the Property from Seller to enable it to perform certain investigations to determine the feasibility of developing the Property for an indoor track and field facility and related uses ("Project"); and

**WHEREAS**, the parties have entered into a Development Agreement dated June 22, 2018 ("Development Agreement") with respect to the Property and the Project, wherein it is contemplated that an option will be negotiated following action by the Legislative Council of the Louisville/Jefferson County Metro Government to declare the Property surplus and authorize its sale; and

**WHEREAS**, the Legislative Council of the Louisville/Jefferson County Metro Government enacted Resolution \_\_\_\_\_ on \_\_\_\_\_, 2018 to declare the Property surplus and authorize its sale; and,

**WHEREAS**, Seller, because the Project would create jobs, enhance the tax base of Louisville and further the public purposes of the Seller, is willing to grant to Buyer an Option to acquire the Property, subject to the terms contained in the Development Agreement and in accordance with the terms and conditions of this Option Agreement; and

**WHEREAS**, Seller desires to grant to Buyer, and Buyer desires to obtain from Seller an option to purchase the Property for the purposes described in these recitals and to construct the Project in accordance with the terms and conditions of the Development Agreement and this Option Agreement.



**AGREEMENT:**

**NOW, THEREFORE,** in consideration of the premises, the Option Consideration hereafter defined, the mutual promises, covenants and agreements hereinafter set forth and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

1. **Grant of Option.** In consideration of the "Option Consideration", outlined in Paragraph 2, Seller agrees to grant Buyer an option to purchase the Property, which shall exist through December 31, 2019. In all cases the terms and conditions of this Option Agreement shall be in effect. During the Option Term, Buyer shall present a detailed written report to Seller, no less often than semi-annually, which shall describe the activities taken with respect to the Project by Buyer.

2. **Option Consideration.** The consideration for the Option shall be \$1.00, payable as of the Option Agreement Date.

3. **Exercise of Option.** Buyer may exercise the Option through the satisfaction of the first five action items in accordance with the performance schedule described in the Section 1.03B of the Development Agreement, and the satisfaction of the conditions described in Section 2.10 of the Development Agreement. The Option shall be exercised pursuant to Sections 2.09 and 2.10 of the Development Agreement. Buyer shall deliver written notice to Seller ("Notice") of its intention to exercise the Option and shall specify in the Notice a date of closing on the purchase of the Property ("Closing"), which date shall not be more than six (6) months from the date of the Notice. On the date of the Notice this Option Agreement shall be deemed to be a legally binding contract of purchase and sale of the Property between Seller and Buyer, enforceable in accordance with its terms.

4. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be \$1.00.

5. **Indemnification.** Tenant shall indemnify, hold harmless and defend Seller, 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 the Tenant's (or Tenant's contractors, if any) performance or breach of the contract 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 negligent act or omission or

willful misconduct of Seller or 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 Option Agreement.

6. **Entry Upon Property.** During the Option Term and, if the Option is exercised by Buyer, up to the Closing Date, Buyer shall have, and is hereby granted by Seller, the right to enter upon the Property from time to time upon reasonable notice to Seller, and shall have the right of ingress and egress over, through and from the Property for the purpose of inspecting, testing, making surveys, conducting test borings and other surface or subsurface tests, and making such other reasonable observations and inspections of the Property as are deemed necessary or appropriate by Buyer ("Investigations"). All Investigations shall be done in a way that causes the least possible disturbance to Seller's possession. Prior to beginning any of the Investigations, Buyer shall provide written documentation of all required insurance as specified in Exhibit B hereto. During the course of the Investigations, Buyer shall not permit or create any unsafe or dangerous condition on the Property. If the Option is not exercised, Buyer shall compensate Seller for any damage to the Property caused by the Investigations. If the Option is exercised, Seller waives and releases claims for damage to the Property caused by the Investigations.

7. **Assignment of Option Agreement.** Buyer may not assign this Option Agreement without the prior written consent of Seller.

8. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall be automatically deemed to be restated as of the Closing, and all of which shall survive the execution and the delivery of deed (the "Deed") by Seller to Buyer and the recordation thereof:

a. Seller will have at the Closing, good, fee simple, marketable title to the Property, free and clear of all covenants, conditions, restrictions, easements, liens, leases, charges, mortgages and encumbrances of every nature, kind or character whatsoever, except for the Permitted Exceptions, as such term is defined in Section 11 and, consistent with Section 11, Buyer may, at its sole cost and expense, select a title insurance company ("Title Company") to insure the title to the Property upon delivery of the Deed to Buyer, which title insurance shall be pursuant to a standard ALTA Policy (Form B) at standard rates, in an amount equal to the lesser

of the Purchase Price or the fair market value of the Property, and without any exceptions whatsoever, except for the Permitted Exceptions.

b. Seller is not aware of any condemnation or similar proceeding which is pending or threatened against the Property or any part thereof, nor is any Seller aware of any governmental plans to appropriate or purchase the Property or any part thereof.

c. Seller makes no warranties with respect to the Property except those specifically set out in this Option Agreement and Buyer shall accept the Property AS IS.

d. Seller has received no notification from any governmental agency, authority or instrumentality of any pending or threatened assessments on or against the Property to secure the cost of public improvements made or to be made with respect to the Property or any part thereof.

e. This Option Agreement has been executed and delivered by Seller's duly authorized representative.

f. Time is of the essence with regard to this Option Agreement.

**9. Environmental Condition of Property.**

a. Seller makes no warranties concerning the environmental condition of the Property, or the existence or nonexistence of Hazardous Materials (as hereinafter described) in, on or under the Property, however Seller acknowledges that the Property was historically used as part of a tobacco manufacturing facility.

b. Buyer shall be solely responsible for performing any testing, assessments or other examinations to determine whether Hazardous Materials are present in, on or under the Property if it exercises the Option ("Environmental Testing"). If the Environmental Testing determines that contamination of the Property by any Hazardous Material has occurred and Buyer is required by the Commonwealth of Kentucky Cabinet for Natural Resources and Environmental Protection ("Cabinet") to remove such Hazardous Material from the Property or otherwise remediate or manage such Hazardous Material ("Remedial Measures"), the costs of the Remedial Measures shall be the sole responsibility of Buyer after Buyer has purchased the Property. Seller agrees to assist Buyer in any negotiations with the Cabinet concerning the removal, remediation or management of Hazardous Material and further agree to use its best efforts to enable Buyer to expeditiously obtain all necessary approvals from the Cabinet. As used herein, the term "Hazardous Material" 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 Material" 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) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recover Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601) or (vi) defined as a "pollutant" or "contaminant" pursuant to Section 101(33) of CERCLA.

**10. Covenants of Seller Prior to the Closing.** Seller hereby covenants with Buyer that, from and after the Agreement Date and through the earlier of the date of expiration or other termination of the Option Term or the date of Closing, as applicable, Seller shall not:

- a. Sell, grant, convey, mortgage, encumber or dispose of the Property.
- b. Allow any defects, liens, adverse claims, demands or encumbrances of any nature, kind or character to be asserted against the Property or any part thereof, other than Permitted Exceptions.
- c. Grant any easement, license or right-of-way in, other than to extend utility services to the site, to or through the Property or any part thereof which cannot be terminated as of the Closing Date.
- d. Create nor allow to be created, any condition, restriction or covenant of any kind, character or nature whatsoever with respect to the Property except those listed as a Permitted Exception in Section 11 of this Option Agreement.
- e. Seek any change in the zoning of the Property without the Buyer's prior consent.

**11. Survey; Title Commitment; Permitted Exceptions.** Buyer, at its sole expense, may obtain an ALTA survey of the Property prepared and duly certified to Buyer by a licensed land surveyor. Buyer may obtain, at its sole cost and expense, an owner's title insurance commitment with respect to the Property. The following items shall be deemed to be permitted title exceptions (hereinafter referred to as the "Permitted Exceptions"):

- 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 Buyer'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 Option Agreement.
- d. Such other matters acceptable to Buyer.

**12. Buyer's and Seller' Closing and Other Obligations.**

a. **Seller' Obligations.** At the Closing, Seller shall deliver to Buyer the following with respect to the Property:

i. A special warranty deed, conveying an unencumbered, good, marketable, fee simple title to the Property to Buyer, without any exceptions, except for the Permitted Exceptions. The Deed shall be in proper form for recordation, duly executed by Seller, with the signature of Seller duly acknowledged in the appropriate place.

ii. An Affidavit, executed by Seller under the penalty of perjury, which complies with Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

iii. An affidavit of Seller in a form reasonably acceptable to Buyer sufficient to enable the Title Company to insure over any exception for mechanics liens or parties in possession.

b. **Buyer's Obligations.**

At the Closing, Buyer shall deliver to Seller:

- i. The Purchase Price as specified in Section 4; and
- ii. If Buyer is other than a natural person, a copy, certified by a duly authorized representative of Buyer, of resolutions of Buyer authorizing the acquisition of the Property pursuant to this Option Agreement and the Development Agreement.

**13. Conditions to Closing.** No party shall be obligated to close on the sale of the Property unless Seller and Buyer shall have complied with their respective obligations pursuant to Section 12 of this Option Agreement.

**14. Default by Seller or Buyer.**

a. **Default by Seller.** In the event that Buyer shall exercise the Option, and Seller, prior to Closing, shall fail to comply with any of their duties and obligations provided



hereunder, Buyer shall, as its sole remedy, receive a return of the Option Consideration as well as Buyer's reasonable documented out-of-pocket costs and expenses directly related to the Project which were incurred prior to Buyer becoming aware of Seller's failure to comply with any of its duties and obligations, as liquidated damages; and in which event this Option Agreement shall be canceled.

**b. Default by Buyer.** In the event that Buyer shall exercise the Option, and, prior to Closing, Buyer fails to comply with any of its duties and obligations provided herein, Seller, as Seller's exclusive remedy, except for any indemnification obligations of Buyer herein that by their terms survive cancellation of this Option Agreement, shall be entitled to retain the Option Consideration as liquidated damages, and this Option Agreement shall be canceled.

**15. Risk of Loss; Condemnation or Destruction Prior to Closing.** The risk of condemnation, destruction or damages to all or any part of the Property until the Closing shall be shared among Seller and Buyer. If all or any part of the Property shall be condemned, destroyed or damaged at any time prior to the Closing, or if any notice of condemnation shall be given at any time prior to the Closing, Seller shall immediately give notice to Buyer specifying in detail such condemnation, destruction or damage. After Buyer's receipt of notice that a portion of the Property has been condemned, destroyed or damaged, Buyer may, at its sole discretion, regardless of whether Buyer has exercised the Option, either (i) terminate this Option Agreement, whereupon Buyer shall be relieved of all obligations contained herein and shall have the Option Consideration returned to it by Seller; or (ii) permit this Option Agreement to remain in full force and effect as herein provided, or otherwise proceed with the Closing as herein provided.

**16. Miscellaneous.**

**a. Notices.** All notices, elections, consents, requests, demands and other communications hereunder shall be in writing and shall be personally delivered or sent by express courier service or by first class United States mail, postage prepaid, addressed to the parties as follows, or by facsimile to the phone numbers indicated (or to such other person or place or facsimile of which either party hereto shall have given written notice to the other):

If to Buyer: The Louisville Urban League  
1535 W. Broadway  
Louisville, Kentucky 40203  
Attn: Sadiqa N. Reynolds, President

Copy to: Clifford H. Ashburner  
Dinsmore & Shoal, LLP  
101 S. 5<sup>th</sup> Street, Suite 2500  
Louisville, KY 40202

If to Seller: Louisville/Jefferson County Metro Government  
c/o Louisville Forward  
444 S. 5<sup>th</sup> Street, Suite 600  
Louisville, Kentucky 40202  
Attn: Chief

Copy to: Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, Kentucky 40202  
Attn: John A. Wilmes

All such notices, elections, requests, demands and other communications shall be deemed to have been given when actually delivered or two (2) business days after having been deposited in the United States mails in accordance with the foregoing, except that facsimiles shall be deemed given on the date received by the recipient.

b. **Binding Agreement.** This Option Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

c. **Efforts in Dealing with Governmental Agencies.** The Seller agrees to use reasonable efforts to assist Buyer in coordinating the work of various governmental entities and utilities with respect to servicing and permitting the development and use of the Property.

d. **Authorization of Buyer and Seller.** Each representative of Buyer executing this Option Agreement hereby represents and warrants to Seller, and each representative of Seller executing this Option Agreement hereby represents and warrants to Buyer, that they each, respectively, have been duly authorized and directed to execute and deliver this Option Agreement.

e. **Entire Agreement.** This Option Agreement constitutes the entire agreement of the parties hereto pertaining to its subject matter, and supersedes all prior or contemporaneous agreements, undertakings and understandings of the parties in connection with the subject matter hereof.

f. **Governing Law.** This Option Agreement has been made, delivered and is intended to be performed in the Commonwealth of Kentucky and shall be construed and

enforced in accordance with the laws of such Commonwealth. If any provision of this Option Agreement or the application thereof to any person or in any circumstance shall be invalid or unenforceable to any extent, the remainder of this Option Agreement and the application of such provision to other persons or in other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**g. Headings.** In the event of any inconsistency between the section headings and captions in this Option Agreement and the provisions hereof, the provisions shall control.

**h. Commissions.** Seller and Buyer hereby represent and warrant that there are no commissions or brokerage fees now due or hereafter to become due in connection with the sale of the Property to Buyer. Buyer and Seller shall each indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees, incurred by the other as a result of any claims that may be made against the other by any person claiming a commission, brokerage fee or other compensation from the other in consequence of the transaction evidenced by this Option Agreement.

**i. Interpretation.** No provision of this Option Agreement shall be construed against or interpreted to the disadvantage of either Buyer or Seller by any court or other governmental or judicial authority by reason of such party having or deemed to have structured or dictated such provision.

IN WITNESS WHEREOF, the duly authorized representatives of the Seller and the Buyer have executed this Option Agreement.

**SELLER:**

**Louisville/Jefferson County Metro  
Government**

Dated: \_\_\_\_\_

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

Greg Fischer, Mayor

**BUYER:**

**The Louisville Urban League, Inc.**

Dated: \_\_\_\_\_

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

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

**Approved as to form:**  
Michael J. O'Connell  
Jefferson County Attorney

BY: \_\_\_\_\_  
John A. Wilmes  
Assistant Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348

**Exhibit A**

**(Property Description)**

BEGINNING at the Northwest corner of 30<sup>th</sup> Street and West Muhammad Ali Boulevard, a/k/a Michigan Drive and Walnut Street; thence with the North line of said Muhammad Ali Boulevard, North 84°34'49" west 654.67 feet to the point in the Easterly right-of-way of the Kentucky and Indiana Terminal Railroad Company; thence leaving said Muhammad Ali Boulevard said Easterly right-of-way as follows: North 08°42'59" West 66.94 feet to a point; thence North 02°28'00" East passing an existing pipe at 518.04 feet and a total of 1434.79 feet to a point in the Southerly line of Market Street; thence with the Southerly line of said Market Street, South 85°01'30" East 706.67 feet to the Southwest corner of 30<sup>th</sup> Street and Market Street, as now improved; thence with the Westerly line of said 30<sup>th</sup> Street as follows: South 03°16'10" West 579.75 feet and South 03°42'52" West 402.52 feet and South 05°18'37" West 421.67 to the point of beginning.

Being the same property conveyed to Metro by Deed dated September 14, 2016, and recorded in Deed Book 10718, Page 757, 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 the 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.