

PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the last date of execution of this 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 St., Suite 600, Louisville, Kentucky 40202 ("Seller"), and **SLS MANAGEMENT, LLC**, a Kentucky limited liability company with its principal address located at 6523 Longview Lane, Suite 2, Louisville, Kentucky 40222 ("Buyer").

RECITALS:

WHEREAS, the Seller owns the property located in Louisville, Kentucky at on South 4th Street with parcel id number 013K01880000 (the "Property"); and

WHEREAS, the Property is subject to a 30-year lease ending on April 1, 2039 (the "Lease"); and

WHEREAS, Seller previously deeded an 8-foot by 133-foot alley adjacent to the Property to Buyer in 2009, which was valued at \$1,000; and

WHEREAS, Buyer made improvements to the Property worth at least \$510,000 pursuant to the terms of the Lease; and

WHEREAS, Buyer desires to make additional improvements to the Property, but wishes to own the Property before committing to additional improvements; and

WHEREAS, Buyer intends to improve and maintain the Property as part of an overall restaurant development with adjacent property owned by Buyer (the "Project"); and

WHEREAS, because the sale of the Property, with the improvements already made to date pursuant to the Lease, would enhance the tax base of Louisville, and the Project would help to further enhance the tax base of Louisville, Seller is willing to sell the Property based on the terms and conditions contained in this Agreement, rather than continuing with the Lease through 2039;

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises, which are incorporated as a part of this Agreement, the conveyance of the premises, 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. **Sale of Property.** In consideration of purchase price of the Property, Seller agrees to convey said Property to Buyer pursuant to the terms and conditions contained in this Agreement.

2. **Purchase Price.** The purchase price for the Property (the “Purchase Price”) is \$15,000.00, which is the historic value of the property, consistent with the 2009 transaction.

3. **Hold Harmless and Indemnification.**

a. Buyer shall indemnify, hold harmless, and defend Seller, its elected and appointed officers, employees, agents and successors in interest (each as “Seller Party” and collectively “Seller Parties”), from all claims, damages, losses and expenses including reasonable attorneys' fees, arising out of or resulting, directly or indirectly, from the Buyer's (or Buyer's subcontractors, if any) Investigations (as defined herein) or breach of the Agreement, provided that such claim, damage, loss, or expense is: (1) not due to a pre-existing condition; (2) not attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, arising from breach of the terms of this Agreement by Seller or due to the acts or omissions of Seller or its agents or subcontractors, if any; and (3) not caused by the willful misconduct of a Seller Party acting within the scope of such Seller Party's employment. The provisions of this Section shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

b. If any action or proceeding is taken or brought against the Seller by any third party by reason of any of the foregoing acts for which the Seller is indemnified (each a “Third Party Claim”), Buyer shall, upon receipt of notice of such Third Party Claim, take necessary and appropriate action to protect such Seller's interests with regard to such Third Party Claim. Buyer shall, at all times, have the right to direct the defense of, including without limitation the hiring of counsel, and to accept or reject any offer to settle any such Third Party Claim, provided that Buyer pays the costs of any such settlement, and that Seller is not required to admit any liability with respect to any such Third Party Claim and that the Seller is fully released from any such Third Party Claim.

c. At least five (5) days prior to the initial entry on the Property, without limiting Buyer's indemnification obligations, Buyer shall provide evidence of an acceptable commercial general liability occurrence based insurance policy on a primary noncontributory basis to insure its activities on the Property and shall name Seller as an additional insured. Such insurance shall be at a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Buyer

shall also provide evidence of workers compensation insurance for its employees, if any, in accordance with KRS Chapter 342. Buyer shall provide Seller with a certificate as evidence of said insurance. These same insurance requirements may be applied to those provided access to the premises as referenced in Section 4, Entry upon Property.

4. Entry upon Property. Buyer and its respective officers, employees, engineers, surveyors and other agents and assigns (each a "Buyer Party," and collectively the "Buyer Parties"), shall have, and are hereby granted by Seller, the right to enter upon the Property from time to time upon reasonable notice with prior approval of Seller 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 Buyer ("Investigations"), and upon execution of this Agreement Seller shall provide Buyer with access to the Property when and as necessary for Buyer to conduct all necessary due diligence. All Investigations shall be done in a manner that causes the least possible disturbance to Seller's possession. During the course of the Investigations, Buyer Party shall not permit or create any unsafe or dangerous condition on the Properties. Buyer shall compensate Seller for any damage to the Property caused by the Investigations if Buyer fails to close under this Agreement.

5. Assignment of Agreement. Buyer may not assign this Agreement without the prior written consent of Seller, other than to an affiliate of Buyer or of any principals of Buyer.

6. Representations, Warranties and Covenants of Seller.

a. Within 10 days of the execution of this Agreement, Seller shall use reasonable efforts to deliver or make available to Buyer copies of due diligence items readily available to Seller or in Seller's possession, including, but not limited to, any information regarding the presence and location of hazardous or asbestos-containing material and presumed hazardous or asbestos-containing materials on the Property, any and all plans, engineering studies, environmental reports and any other test results or reports concerning the Property.

b. Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall be automatically deemed to be restated as of the Closing Date, and all of which shall survive the execution and the delivery of deeds (the "Deeds") by Seller to Buyer and the recordation thereof:

i. Seller will have as of the Closing Date, 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 8.

ii. 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.

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

iv. 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.

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

vi. Time is of the essence with regard to this Agreement.

vii. There are no tenants, leases, licenses or parties in possession affecting the Property, other than the lease with Buyer.

c. Seller hereby covenants with Buyer that, during the period after the execution of this Agreement until Closing or other valid termination of this Agreement, Seller shall not:

i. Sell, grant, convey, mortgage, encumber or dispose of the Property;

ii. 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.

iii. Grant any easement, license or right-of-way in, other than to extend utility services to the Property, to or through the Property or any part thereof which cannot be terminated as of the Closing Date.

iv. 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 8 of this Agreement.

v. Seek any change in the zoning of the Property without the Buyer's prior consent. Seller shall use its best efforts to cooperate with Buyer in obtaining any planning approvals or zoning changes required for the Project.

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

e. Seller shall use its reasonable efforts to cooperate with the Buyer, MSD and other applicable government agencies in connection with Buyer's efforts to obtain desired governmental permits and approvals for the Project.

7. Environmental Condition of Properties.

a. Seller represents that it is not aware of any Hazardous Materials (as hereinafter described) in, on or under the Property.

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 ("Environmental Testing"). If the Environmental Testing determines that contamination of the Property by any Hazardous Material has occurred and Buyer will be required by any local, state or federal government agency ("Agency") to remove such Hazardous Material from the Property or otherwise remediate or manage such Hazardous Material ("Remedial Measures"), Buyer shall have the right to terminate this Agreement. If Buyer chooses to proceed with the purchase, Seller agrees to assist Buyer in any negotiations with the Agency concerning the removal, remediation or management of Hazardous Material and further agrees to use its best efforts to enable Buyer to expeditiously obtain all necessary approvals from the Agency. 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, including 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.

8. 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 (“Survey”). Buyer may obtain, at its sole cost and expense, an owner's title insurance commitment with respect to the Property (the “Title Commitment”) from a title company of its choosing (“Title Company”). 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. Easements, restrictions and stipulations that appear of public record as of the date of this Agreement that would not materially and adversely affect Buyer's use and enjoyment of the Property for the purpose intended by the Project; provided that Buyer objects in writing to same within 60 days after the date of this Agreement and provides Seller the opportunity to elect in writing to cure or remove same within 15 days of receiving Buyer’s written objection.

c. Such other matters disclosed to and accepted by Buyer in writing.

9. Buyer's and Seller' Closing and Other Obligations.

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

i. 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”). The Deed shall be in proper form for recording, 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.

iv. Exclusive possession of the Property.

b. Buyer's Obligations. At the Closing, Buyer shall deliver to Seller:

i. The Purchase Price as specified in Section 2.

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 Agreement.

10. Conditions to Closing. Seller shall not be obligated to close on the sale of the Property unless Buyer shall have performed all material covenants, agreements and obligations, and complied with all conditions, required by this Agreement to be performed or complied with by Buyer prior to Closing, Buyer's representations and warranties shall be true and correct in all material respects, and the resolution in paragraph 10(d) has been approved. Buyer shall not be obligated to close on the sale of the Property unless the following conditions have been satisfied or waived by Buyer:

a. Seller shall have complied with its obligations pursuant to Section 9 of this Agreement;

b. Seller shall have performed all material covenants, agreements and obligations, and complied with all conditions, required by this Agreement to be performed or complied with by Seller prior to Closing, and Seller's representations and warranties shall be true and correct in all material respects;

c. Buyer shall have concluded that all desirable environmental due diligence has been completed to Buyer's satisfaction, Buyer is otherwise fully satisfied with the condition of the Property and the anticipated costs of the Project, including that the site is suitable for Buyer's intended use, and Buyer has received all non-appealable governmental permits and approvals for the Project desired by Buyer;

d. The Legislative Council of the Louisville/Jefferson County Metro Government, by resolution, shall have declared the Property surplus and authorized its sale to Buyer pursuant to the terms and conditions of this Agreement; and

e. Buyer shall have obtained the Survey and Title Commitment, each showing the Property to be subject to no liens, easements, restrictions or other exceptions except for the Permitted Exceptions (as hereinafter defined) and free of all tenancies.

The Closing shall be held at the offices of Buyer's counsel, or at another location in Metro Louisville mutually acceptable to the parties, on a date (the "Closing Date") designated by Buyer in writing to Seller and falling within thirty (30) days after Buyer has satisfied or waived the conditions precedent set out above. Buyer may terminate this Agreement upon written notice to

Seller upon failure of any of the above conditions precedent, or within one (1) year of the date of this Agreement should Buyer otherwise determine that the Property are not acceptable to Buyer for any reason.

11. Right of First Negotiation. The parties agree that Seller would retain a one-time right of first negotiation on the Property for the period between the time the Property are sold to Buyer and Buyer has been issued a building permit with respect to the Property for the Project (the “Term”). During the Term, before Buyer could sell the Property to a third party, Buyer would offer the Property to Seller, and Seller would have 10 days to decide whether to negotiate an agreement. If Seller 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, Buyer 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 Seller offered to Buyer.

12. 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: SLS Management, LLC
6523 Longview Ln, Suite 2
Louisville, KY 40222

Copy to: _____

If to Seller: Louisville/Jefferson County Metro Government
527 West Jefferson Street
Louisville, Kentucky 40202

Copy to: Jefferson County Attorney
531 Court Place, Suite 900
Louisville, Kentucky 40202
Attn: John 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. **Risk of Loss.** Until Closing, risk of loss to the Properties shall remain with Seller. If the improvements on the property are partially or totally destroyed prior to Closing, Seller shall be required to take such actions as are necessary, including without limitation, demolition or restoration, as applicable, to stabilize the Properties and comply with applicable laws, regulations and reasonable property management practices pertaining to the condition of the Properties.

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

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

e. **Entire Agreement.** This 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 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 Agreement or the application thereof to any person or in any circumstance shall be invalid or unenforceable to any extent, the remainder of this 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 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 Properties to Buyer other than as noted above. 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 Agreement.

i. Interpretation. No provision of this 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 Agreement.

SELLER:

**Louisville/Jefferson County Metro
Government**

Dated: _____

By: _____

Title: _____

BUYER:

SLS Management, LLC

Dated: _____

By: _____

Title: _____

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

BY: _____
Assistant Jefferson County Attorney
531 Court Place
Suite 900
Louisville, KY 40202
(502) 574-3348