

RESOLUTION NO. 138, SERIES 2017

A RESOLUTION DETERMINING ONE (1) PARCEL OF REAL PROPERTY LOCATED AT 818 KENWOOD DRIVE, LOUISVILLE, KENTUCKY OWNED BY THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“METRO GOVERNMENT”) AS SURPLUS AND NO LONGER NEEDED FOR A GOVERNMENTAL PURPOSE AND AUTHORIZING ITS TRANSFER TO HOUND DOG, LLC.

SPONSORED BY: COUNCILMEMBERS MARIANNE BUTLER, VICKI AUBREY-WELCH, RICK BLACKWELL AND PRESIDENT DAVID YATES

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

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

WHEREAS, Metro Government has entered into an Amended and Restated Development Agreement dated October 24, 2017, with Hound Dog, LLC, a Kentucky limited liability company (the “Development Agreement”), a copy of which is attached to this Resolution as Exhibit A, to enable the redevelopment of Colonial Gardens on the real property that is the subject of this Resolution; and

WHEREAS, the Development Agreement contemplates the restoration of the main structure of the historic Colonial Gardens building, and the construction of (i) new buildings, creating a total of approximately 18,000 square feet of leasable space suitable for use by retail, restaurant or commercial tenants; (ii) a landscaped outdoor

gathering place, including amenities such as bike racks, benches, a fountain and gazebo; and (iii) a paved, lighted and landscaped parking lot (the "Project"); and

WHEREAS, Section 1.19 of the Development Agreement contains a provision addressing the recapture of project incentives if the real property which is the subject of this Resolution at any time within fifteen (15) years of substantial completion of the Project is sold to a third party entity not affiliated with Hound Dog, LLC; and

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

WHEREAS, the Chief of Louisville Forward has declared and certified to the Council (see Exhibit B attached hereto and made a part hereof) that the real property which is the subject of this Resolution is surplus to the needs of Metro Government.

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

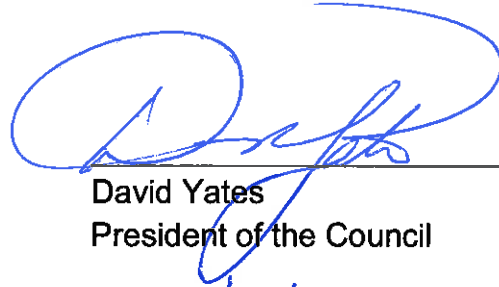
SECTION I: The Council hereby declares the real property described in Exhibit B is surplus and no longer needed to carry out the governmental functions of Metro Government.

SECTION II: The Mayor is hereby authorized to transfer the property named herein in the manner provided according to Section 2 of Executive Order No. 3, Series 2007, without further action by the Council.

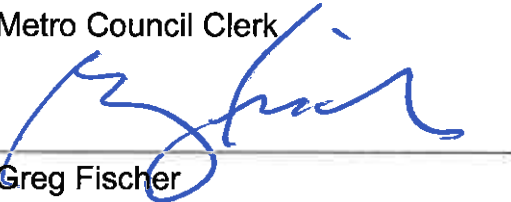
SECTION III: This Resolution will become effective upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

12/18/17
Approval Date

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: Stephanie Malone

R-188-17

LOUISVILLE METRO COUNCIL
ADOPTED
December 14, 2017

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 24th day of October, 2017 by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through Louisville Forward, with its principal office located at 444 S. 5th Street, Suite 600, Louisville, Kentucky 40202 ("City"), and (ii) **HOUND DOG, LLC**, a Kentucky limited liability company, with its principal office located at 5104 S. First Street, Louisville, Kentucky 40214 ("Developer").

WITNESSETH:

WHEREAS, the City desires to promote and encourage the revitalization of the commercial corridor along New Cut Road; and

WHEREAS, the City owns a parcel of real property, located at the corner of New Cut Road and Kenwood Drive, as more particularly described in Exhibit A attached hereto ("Property"); and

WHEREAS, the Property has historically been a significant gathering point and community asset for south Louisville, but in recent decades has been underutilized and largely unoccupied; and

WHEREAS, because of the importance of the Property to south Louisville and in order to encourage and promote the redevelopment of the New Cut Road corridor, the City purchased the Property and on July 2, 2013 issued a request for proposals soliciting proposals for the redevelopment of the Property as a mixed use, retail commercial development ("RFP"); and

WHEREAS, the Developer submitted the sole response to the RFP and the City determined that it was responsive to the RFP; and

WHEREAS, the City and Developer entered into negotiations and reached an agreement on the terms and conditions to govern the sale of the Property and its redevelopment by Developer; and

WHEREAS, the City and Developer entered into that certain Development Agreement dated April 14, 2014, as amended by that First Amendment to Development Agreement Between Louisville Metro and Hound Dog, LLC dated April 14, 2014, and as further amended by that Second Amendment to Development Agreement dated September 21, 2015 (collectively, the "Development Agreement"); and

WHEREAS, the tenant occupying the Property and doing business as a Little Caesars restaurant vacated the Property later than anticipate by either of the Parties; and

WHEREAS, construction costs have gone up after the Development Agreement was originally entered into due to the current construction market, the increase in the square footage of the proposed building and the patio area, and other factors; and

WHEREAS, the parties wish to amend and restate the Development Agreement to amend some of the dates and to address the increased construction costs of the redevelopment of the Property; and

WHEREAS, the City and Developer agree to enter into this Agreement with respect to the terms and conditions for the redevelopment of the Property by Developer;

NOW THEREFORE, in consideration of the premises 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. Development of Property. Developer agrees to purchase and develop the Property in accordance with the terms and conditions of this Agreement.

Section 1.02. Project Construction. Developer shall use its best efforts to construct, at its sole cost and expense, the Project, as more particularly defined in Section 1.03, upon the approval of the preliminary project plans by the City, upon the acquisition of all necessary permits, inspections and approvals in accordance with Section 1.04 and the satisfaction of the conditions precedent set forth in Section 3.02 of this Agreement. The City will use reasonable efforts to assist Developer in all stages of the permit and approval process to help ensure that the objectives of this Agreement are satisfied.

Section 1.03. Project Description.

A. Developer shall demolish a portion and restore the main structure of the historic Colonial Gardens building as shown on Exhibit B, attached hereto (“Historic Building”), subject to the approval of the Metro Historic Landmarks and Preservation Districts Commission (“Commission”). Developer shall also (i) construct three new buildings, creating a total of approximately 18,000 square feet of leasable space suitable for use by retail, restaurant or commercial tenants; (ii) create a landscaped outdoor gathering place including amenities such as bike racks, benches, a fountain and gazebo; and (iii) construct a paved, lighted and landscaped parking lot, all reasonably comparable to the site plan attached hereto as Exhibit C (“Project”). 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 license (licenses to serve or sell liquor are not deemed adult

entertainment licenses) to be issued by the City. For the avoidance of doubt, Developer shall be permitted to lease space to restaurants serving alcohol for on-site consumption and to retail stores selling alcohol for both on-site and off-site consumption.

B. Developer may construct additional buildings upon the Property in a subsequent phase or phases provided that such additional phases shall be constructed, operated and maintained in accordance with the provisions of this Agreement

Section 1.04. Project Schedule and Construction.

A. Developer acknowledges and agrees to use its best efforts to adhere to the Project schedule set forth in subsection B of this Section ("Schedule"). Except for delays caused by force majeure as provided in Section 4.06, Developer shall obtain the prior written approval of the City for any substantial amendment to the Schedule, which approval shall not be unreasonably withheld.

B. Developer shall use its best efforts to undertake and complete the Project in accordance with the schedule set forth in Exhibit D attached hereto and incorporated herein by reference and to meet the milestone dates set forth therein.

C. Subject to the terms and conditions hereinafter set forth, Developer shall cause the construction of the Project to be substantially in accordance with the plans approved by the City pursuant to Section 1.06 and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations.

D. Developer shall verify that all construction on the Project shall be in accordance with the construction plans and specifications prepared pursuant to Section 1.06. All construction shall be in a good and workmanlike manner. Any provision of this Agreement to the contrary notwithstanding, if Developer is delayed in the

construction of the Project by reasons of force majeure as provided in Section 4.06, or another cause which Developer and the City mutually agree is reasonably justifiable, the date of completion of construction shall be reasonably extended by the City as provided in Section 4.06 at no additional cost to the City.

E. The City, their agents and employees, shall be granted a right of entry upon the Property during construction of the Project to enable the City to inspect the construction of the Project throughout the course of construction, although the City shall have no obligation to do so.

Section 1.05. Reporting. Developer agrees to provide the City 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 beginning three months after the execution of this Agreement and ending on the Grand Opening.

Section 1.06. Design and Approval of the Project.

A. Developer shall cause the plans to be prepared for the Project ("Plans") and shall submit the Plans to the City for review prior to applying for permits and approvals necessary to commence construction of the Project. The Plans shall be sufficient in detail to enable the City to determine whether the design of the Project including size, scope and exterior of the buildings will be consistent with best architectural practices and appropriate urban design principles. The City shall review the Plans and provide any comments thereon to Developer in writing within thirty (30) days after receipt thereof. If the City does not provide any comments to the Plans to Developer within said thirty (30) day period, the Plans shall be deemed approved.

B. Upon approval by the City, Developer shall proceed to apply for permits

and approvals required for construction of the Project, including approvals from the Commission, and the City agrees to provide reasonable assistance in order to ensure that said permits and approvals are not unreasonably withheld, conditioned, or delayed.

C. Upon approval by the City of the Plans, as set out above, Developer shall proceed to complete the construction plans and specifications for the Project, which plans shall be materially consistent with the approved Plans. Developer shall, for informational purposes only, submit to the City a set of construction plans and specifications for the Project at the time it applies for the building permit for the Project.

Section 1.07. Codes. The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations.

Section 1.08. Employment Regulations. 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 ensure that its employees and the employees of its contractors and subcontractors are treated 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, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Section 1.09. Construction Goals. Developer shall use commercially reasonable efforts to satisfy the following goals during construction of the Project:

- 1) 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.

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

3) Employment opportunities for both union and non-union employees and contractors.

4) 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 1.10. Indemnification. Except as may otherwise be provided herein, Developer agrees to indemnify the City against any claim or filing of any lien on any part of the Property as a result of Developer's construction thereof and shall hold the City harmless from any and all such claims or liens.

Section 1.11. Non-Discrimination. Upon completion of the Project, Developer agrees to abide by all fair housing laws and will not discriminate on the basis of race, sex, color, creed, disability, sexual orientation or national origin, in the sale, lease, rental, use or occupancy of the Project.

Section 1.12. Insurance. During the construction period, Developer shall provide all insurance as required by the City's Risk Management Department. The requirements are listed on Exhibit E.

Section 1.13. Security. Developer agrees to furnish reasonable and customary security at the Property during construction of the Project.

Section 1.14. Project Budget. Prior to commencing construction on the Project,

Developer shall submit to the City a reasonably detailed budget/purchase analysis for construction and fit out of all buildings and components of the Project, including landscaping, sufficiently detailed to enable the City to determine if the budget is reasonable and sufficient to enable the Project to be constructed in accordance with the terms of this Agreement (“Budget”), a copy of which is attached as Exhibit F to this Agreement and incorporated herein by reference. Developer is responsible for all costs in excess of the Budget. The parties shall work with the general contractor to see if any savings can be obtained with respect to the Budget. Such shared savings, including any and all contingencies, would be 50% to the Developer and 50% to the City.

Section 1.15. Developer Financing. Developer shall obtain all necessary financing to construct the Project in accordance with the Budget and this Agreement, in addition to the Project Incentive provided pursuant to Section 2.03 of this Agreement. As a condition precedent to the closing on the sale of the Property, Developer shall present written evidence to the City that it has received a term sheet or comparable document for financing the Project either from equity financing (including, but not limited the procurement of tax credits), a construction loan (in a usual and customary form) from a financial institution (a “Term Sheet”) or a combination of equity and debt satisfactory to the City.

Section 1.16. Indemnification. Developer agrees to indemnify and hold the City, its officers, employees and agents harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable attorneys' fees) imposed upon or incurred by such 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.

C. Any claim, damage, loss or expense attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom arising from or resulting after the execution of this Agreement including, but not limited to, liability expenses or damages resulting from the presence on or under or the release from the Property of any Hazardous Materials (as defined below), unless caused by the negligent act or willful misconduct of the City or its employees acting within the scope of their employment.

Section 1.17. Environmental Testing and Remediation.

A. The Parties have conducted a Phase 1 assessment of the Property to determine whether Hazardous Materials (as defined below) are present in, on or under the Property ("Environmental Testing"). The City has agreed to conduct a Phase 2 environmental review at the City's expense and to disclose the results of same to Developer.

Developer shall be under no obligation to close on the acquisition of the Property in the event it determines, in its sole and absolute discretion, that the Environmental Testing identifies anything objectionable. City covenants and agrees to fully cooperate

with Developer in complying with the terms of this Section 1.17. 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 "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery 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.

The parties agree to work together to ensure that any required environmental remediation measures stay within the amount currently contained in the Budget (\$20,000). If such measures exceed the budgeted amount, the excess costs shall first be paid out of any shared cost savings achieved elsewhere in the Budget. If environmental issues exist that require funding in addition to the budgeted amount and any shared savings, if any, then the parties agree to meet and confer to resolve any remaining environmental issues.

B. Developer and its officers, employees, engineers, surveyors and other agents and assigns, shall have, and are granted by the City, the right to enter onto the Property from time to time and the right to ingress and egress over, through and from the Property, for the purpose of Environmental Testing and making such other reasonable observations and inspections of the Property deemed necessary or appropriate by

Developer. Developer shall undertake the Environmental Testing in a manner so as not to unreasonably interfere with the current use of the Property and shall promptly repair any damage to the Property resulting from the Environmental Testing and shall not permit any dangerous or unsafe condition to be created by the Environmental Testing.

C. Developer will indemnify and hold the City harmless from and against any loss, claim, cause of action or actions resulting from injuries to persons which are the result of the entry of Developer's employees or agents upon the Property prior to Closing.

Section 1.18. Operation and Maintenance of Project. Upon completion of the Project, Developer shall comply with the provisions of this Section. Developer recognizes and acknowledges that the manner in which the Project is used and operated is important to the City by reason of the impact which the Project is expected to have upon south Louisville. In order to give the City assurance as to the manner in which the Project will be used and operated, Developer to use its best efforts to establish and maintain the highest level of quality and character in the operation of the Project in a first-class manner.

In particular, and without limiting the generality of the foregoing, Developer covenants and agrees that, at no cost to City, it shall:

- 1) develop and manage the Project in a first-class manner and use reasonable efforts to lease the Project to quality tenants which will provide services or goods to the residents of south Louisville;
- 2) attempt to impose reasonable hours and days of operation on each tenant that leases space in the Project;

- 3) make reasonable efforts to market, or cause others to market, the Project by appropriate promotions and advertising of a first-class nature;
- 4) keep the Project and all furniture, fixtures, HVAC systems, equipment and other personal property of Developer that serve the Project in good repair and condition;
- 5) maintain the Project (exclusive of tenants' spaces) in a clean and sanitary condition;
- 6) comply with all applicable laws, ordinances, regulations and codes applicable to its operations;
- 7) obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the Project by Developer (as opposed to the operation of tenants' spaces); and
- 8) require tenants to maintain tenant spaces within the Project in the same manner as required of Developer in paragraphs (4) – (7) of this Section.

Section 1.19. Recapture of Project Incentive. If, at any time within fifteen (15) years of Substantial Completion of the Project (the "Recapture Period"), Developer sells all or part of the Project to a third party entity not affiliated with Developer, Developer may have an obligation to repay to the City all or a portion of the Project Incentive as provided herein. Developer shall notify the City in writing if it receives an offer to purchase the Project which it intends to accept and shall provide the City with a copy of the offer, which sets forth the agreed purchase price for the Project ("Offer Price"). Developer shall subtract from the Offer Price, the Property Basis, as determined below, and if:

- 1) The product is greater than \$0.00 ("Profit"), but less than or equal to the amount of the Project Incentive plus the Property Cost (as defined below), it shall pay to the City an amount equal to the lesser of (i) the amount of the Profit, or (ii) the amount of the Recapture Amount.
- 2) If the product is greater than the Recapture Amount; it shall pay to the City an amount equal to the Recapture Amount, plus 25% of any profit in excess of the Recapture Amount.

For the avoidance of doubt, no Recapture Amount shall be due after the end of the Recapture Period. The Recapture Amount shall be paid to the City at the closing on the sale of the Property. The City shall have a lien on the Property, subordinate to the construction financing or permanent financing (including any and all paid and unpaid interest up to and including the date of the determination of the Recapture Amount), to secure payment of the Recapture Amount. The Property Basis shall be an amount equal to the construction costs of the Project, which includes both hard costs and soft costs, including, but not limited to, architectural, engineering, development and legal fees, the financing costs paid for the construction or permanent financing of the Project (including any and all out-of-pocket costs of Developer in connection therewith), any brokerage fees for tenants, and tenant improvement costs paid directly by Developer and not reimbursed by tenants, brokerage fees due in connection with the sale of the Property, property management fees, and any and all other fees due and payable to Developer to any party prior to or after the closing of any sale, and a return on Developer's equity investment in the Project not to exceed a 9% rate of return. The Property Basis shall not include Developer's general overhead, travel or entertainment expenses or project operating

expenses after substantial completion of the Project. Developer shall provide documentation satisfactory to City for the Project Basis, including, but not limited to, pay applications, time sheets, invoices, bills of sale, cancelled checks and credit card receipts. Any expense which cannot be documented to the satisfaction of the City shall be excluded from the calculation of the Project Basis.

Section 1.20. Additional Representations and Covenants and Agreements of Developer. Developer represents and covenants as follows:

A. Developer is a Kentucky limited liability company, 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, the purchase of the Property 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. Developer, in this Agreement and in any schedule, exhibit, document or certificate delivered in accordance with the terms hereof, has not made any untrue statement of a material fact or failed to state a material fact.

E. 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 Project in accordance with this Agreement.

F. The Developer will submit all plans for construction on the Project to the City for design, review and acceptance as provided herein.

ARTICLE II

COVENANTS AND UNDERTAKINGS OF THE CITY

Section 2.01. Developer Representation. Developer represents to City that it would not enter into this Agreement to construct the Project but for the commitment of the City 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. Conveyance of Property. The City, upon the satisfaction of the conditions precedent set forth in Section 3.02 of this Agreement shall convey fee simple title to the Property to Developer, or an affiliate thereof, by deed of special warranty, “as is”, “where is” with no warranties of any kind. Developer acknowledges that the City paid \$430,000.00 to purchase the Property (“Property Cost”).

Section 2.03. Project Incentive. In order to induce Developer to construct the Project, the City agrees to pay to Developer the sum of \$2,383,226.00 to be used by the Developer solely for the purpose of constructing the Project, including pre-development costs, demolition costs, construction and fit out costs (“Project Incentive”). The Project Incentive shall be paid in two installments, both subject to the appropriation of sufficient funds by the City Metro Council. The First Installment shall be in the amount of \$1,200,000.00 (“First Installment”) and shall be payable to Developer upon a percentage of completion of construction basis, pursuant to the following procedure:

Developer shall submit a draw request to the City, signed by the Developer’s general contractor and approved by Developer showing the percentage of completion of

construction and accompanied by such supporting documentation as may be required by the City, including but not limited to all required mechanic's lien waivers and releases. The City shall have ten (10) 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 the City has to the draw request. In the event any such objections are noted, then the parties shall promptly meet to resolve such issues.

The Second Installment, in the amount of \$1,115,726.00, subject to the appropriation of sufficient funds by the City Metro Council, shall be available beginning July 2, 2018 and shall be disbursed in the same manner as the First Installment.

Notwithstanding anything in this Section 2.03 to the contrary, the Parties agree that the City previously advanced Developer \$50,000.00 of the Project Incentive for the commencement of architectural and other miscellaneous design to include engineering work, renderings, marketing, signage and related items to be utilized in the development of the Project. The Parties further agree that the demolition work performed by the City in the fall of 2015 at the Property results in a credit to the City in the amount of \$17,500.00 with respect to the Project Incentive.

Section 2.04. General Assistance.

- A. Commencing on the date hereof and continuing for the term of this Agreement, Louisville Metro shall use commercially reasonable efforts to assist Developer in obtaining all permits and approvals that are sought by Developer in connection with the development, construction, operation and

maintenance of the Project. In addition, Louisville Metro, to the extent necessary, shall:

- (i) Assist Developer in pursuing any necessary changes to or variances of the zoning ordinance, specifically including a re-zoning to C-2 zoning that would allow for the consumption of alcohol on sidewalks, patios or otherwise outdoors on the Property, or other land use ordinances in order to accommodate the development and/or redevelopment of the Project;
- (ii) Assist Developer in pursuing any approvals of any subdivision plan proposed by Developer concerning the development of the Project;
- (iii) Assist Developer in applying for any and all governmental approvals or permits that are necessary or desirable to carry out the development of the Project;
- (iv) Enter into a lease agreement with Republic Bank for the use of approximately twenty-two (22) parking spaces for the benefit of the Project no later than the date of the Grand Opening; and
- (v) Assist Developer in securing a five (5) year reassessment moratorium for City taxes on the Historic Building;

Section 2.05. Additional Representations, Covenants, and Agreements of the

City. The City represents and covenants as follows:

- A. The City is a Kentucky consolidated local government possessing the requisite authority to enter into this Agreement.

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

ARTICLE III

CLOSING

Section 3.01. Closing.

A. The parties shall close thirty (30) days after the satisfaction of the closing conditions set forth in Section 3.02 (the "Closing"). The Closing shall be held at 444 South Fifth Street, Suite 600, Louisville, Kentucky 40202, or at such other place as is mutually agreed to by Developer and the City.

At the Closing, Developer shall deliver to the City the purchase price of \$1.00, and the City shall convey the Property to Developer by Deed of Special Warranty.

B. State, Metro and School District property ad valorem taxes assessed against the Property, if any, and payable in the year of Closing, shall be prorated on a calendar year basis to the date of Closing. The City 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 the City through the date of Closing. Each party shall bear its own legal and other expenses associated with the transaction.

Section 3.02. Conditions to Closing.

A. City Conditions. The City's closing on the sale of the Property is contingent upon the following conditions:

1. Developer shall have furnished a usual and customary financing commitment for construction loan or evidence of equity financing in

an amount sufficient to construct the Project, together with Project Incentive.

2. Developer shall have submitted the Plans, pursuant to Section 1.06 and the Plans shall have been approved by the City.
3. Developer shall have submitted to the City the Budget, pursuant to Section 1.14 of this Agreement, which is satisfactory to the City.
4. The Commission shall have approved Developer's plan for the restoration and renovation of the Historic Building.
5. The Metro Council, by resolution, shall have declared the Property surplus and authorized its sale to the Developer, pursuant to the terms and conditions of this Agreement.
6. Developer shall have tendered the purchase price.
7. The representations and warranties of Developer set forth herein shall be true and correct as of the Closing.

B. Developer Conditions. Developer shall not be required to close unless the following conditions have been met by the City or waived by Developer in whole or in part prior to the Closing:

1. The representations and warranties of the City 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, flood, riot, civil disturbance, uprising, activity of armed forces or act of God or enemy.
3. Developer's complete satisfaction with the condition of title to the Property.

C. Termination for Failure to Satisfy Contingencies. The failure of a party to satisfy any condition set forth in Sections A and B of this Section shall not constitute a default pursuant to Section 4.14 of this Agreement, but shall only entitle the other party to terminate this Agreement. Upon the exercise of either

party of its option to terminate this Agreement because of the failure of the other party to satisfy a condition, this Agreement shall be void and the parties shall be relieved of any and all further obligations and duties hereunder, each to the other.

Section 3.03. Reconveyance of Property. If Developer fails to (a) commence construction of the Project within 30 days of the Closing, (b) fails to complete construction of approximately 18,000 square feet of building shells within two (2) years after the Closing, for reasons not caused by force majeure and/or (c) prior to the completion of approximately 18,000 square feet of building shells, ceases construction for a period of three (3) months after beginning construction for reasons not caused by force majeure, the City may demand, in writing, that Developer reconvey the Property to the City and repay to the City the amount of the Project Incentive which had been paid to the Developer, in addition to exercising its other rights and remedies as provided herein (the "Reconveyance"). Notwithstanding anything contained herein to the contrary, (i) the Reconveyance rights of the City shall automatically terminate at the completion of approximately 18,000 square feet of building shells and the City shall execute and any all documents reasonably requested by Developer evidencing such termination of the Reconveyance, (ii) the Reconveyance is subject and subordinate to the rights of any lender with a loan secured by a mortgage on the Property and the City shall execute any and all documents reasonably requested by any such lender in order to evidence such subordination, and (iii) the Reconveyance is subject and subordinate to the rights of any equity investor (who is not a direct family member of the Underhills or an entity with

common ownership with the Underhills) who invested equity in the Property and the City shall execute any and all documents reasonably requested by any such equity investor in order to evidence such subordination.

ARTICLE IV MISCELLANEOUS

Section 4.01. 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 such deed.

Section 4.02. 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 4.03. Severability. Each and every provision hereof, including Articles, Sections, 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 4.04. 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 4.05. Mutual Extension; Diligent Performance. Where any time for performance or otherwise is set forth herein, such time may be extended by mutual agreement of the City 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

Section 4.08. Entirety of Agreement. This Agreement, together with all Exhibits attached hereto and thereto, constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and all prior agreements and understandings, between the City 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 4.09. Brokers and Finders; Fees and Expenses. Each of the parties hereto represents and warrants to the other 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 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.

Section 4.10. Successors and Permitted Assigns for the Parties Hereto. Developer shall not assign or transfer any interests under this Agreement without the prior written consent of the City.

Section 4.11. 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 4.12. No Third Party Beneficiaries; No Partnership or Joint Venture Created. Each of the parties hereto agrees that nothing contained in this Agreement shall be deemed or construed by any of them, or by any third party, as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or any other association or relationship between Developer and the City. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successors and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

Section 4.13. No Abrogation of Legal Requirements. Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

Section 4.14. Default.

A. If Developer materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, including but not limited to, construction of the Project in accordance with the Schedule, the City may give written notice (with a copy of said notice being given to the Lender) that remedial action must be taken within sixty (60) calendar days. Developer shall correct such breach or default within sixty (60) days after Developer's receipt of such written notice. If the default is not reasonably curable within thirty (30) days, then Developer may continue to cure the

default or breach so long as the City is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, the City may terminate the Agreement by giving written notice to Developer at least ten (10) days prior to the effective date of termination.

The City agrees to provide any construction lender with additional notice and cure rights reasonably requested by any such construction lender in connection with any default under this Agreement.

In the event of any such termination, the City shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity.

Developer's obligation to reconvey the Property to the City, as outlined in Section 3.03 of this Agreement: shall be enforceable by specific performance, and Developer hereby waives any and all defenses to such action.

If the City materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Developer may give written notice to the City that remedial action must be taken within sixty (60) calendar days. The City shall correct such breach or default within sixty (60) days after the City's receipt of such written notice. However, if the default is not reasonably curable within sixty (60) days, the City may continue to cure the default or breach so long as Developer is satisfied that sufficient progress is being made toward a cure. If such action is not taken, Developer may terminate the Agreement by giving written notice to the City at least ten (10) days prior to the effective date of termination.

In the event of any such termination, Developer shall be entitled to any remedy and damages available to it at law or in equity.

Section 4.15. 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.

Section 4.16. Lender Protection Provisions. The City hereby acknowledges that the Developer will not be able to develop the Project without obtaining a construction loan, so the City hereby agrees to enter into any and all documents reasonably requested by any construction lender in order to finance the Property.


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

"CITY"

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
a Kentucky consolidated Local Government

BY: 
GREG FISCHER, Mayor

LOUISVILLE FORWARD
a Kentucky local government agency

BY: 
TITLE: Chief, Louisville Forward

"DEVELOPER"

HOUND DOG, LLC

BY: _____

TITLE: _____

Approved as to Form and Legality:

**MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY**

BY: _____

JOHN A. WILMES

Assistant Jefferson County Attorney

Exhibits

- A - Property
- B - Historic Building
- C - Project Site Plan
- D - Project Schedule
- E - Insurance Requirements
- F- Budget

EXHIBIT A

Property

Beginning at the Southeast corner of the New Cut Road and Kenwood Avenue, being an Avenue 100 feet wide as shown by Deed of Benoni Figg and wife to Kenwood Park Residence Co., dated January 1890, of record in Deed Book 343, Page 181, in the office of the Clerk of Jefferson County, Kentucky; thence with the South line of same, South $86^{\circ} 30'$ East 217.75 feet; thence South $12^{\circ} 30'$ East 272 feet to a corner of the remaining property of B.A. Watson; thence South $77^{\circ} 30'$ West 210 feet to the New Cut Road; thence with the East line of same, North $12^{\circ} 30'$ West 329.5 feet to the beginning; EXCEPTING THEREFROM so much as was conveyed to the City of Louisville, Kentucky, by Deed dated February 25, 1974, of record in Deed Book 4709, Page 321, in the office aforesaid; AND EXCEPTING THEREFROM so much as was conveyed to the City of Louisville, Kentucky, by Deed dated February 25, 1974, of record in Deed Book 4709, Page 326, in said office.

Being all of the same property acquired by Louisville/Jefferson County Metro Government by Deed dated June 26, 2013, of record in Deed Book 10095, Page 366 in the office aforesaid.

Colonial Gardens Conjectural Building Sequence

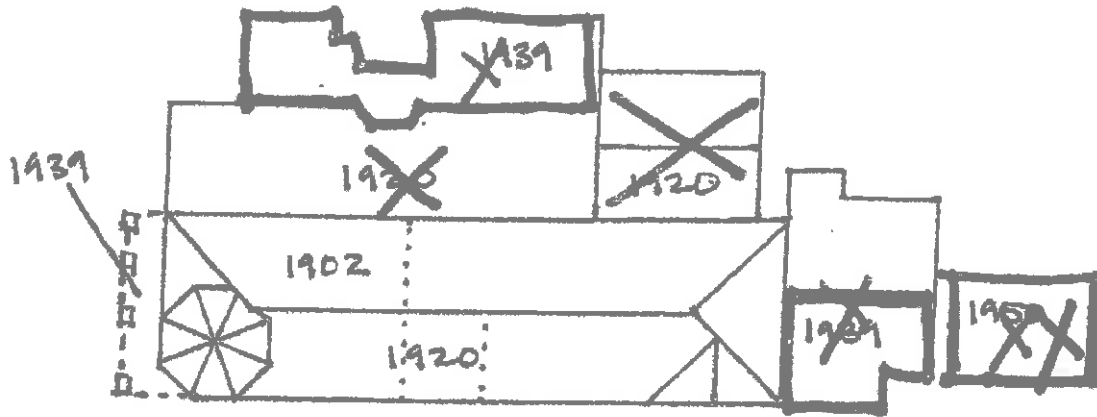
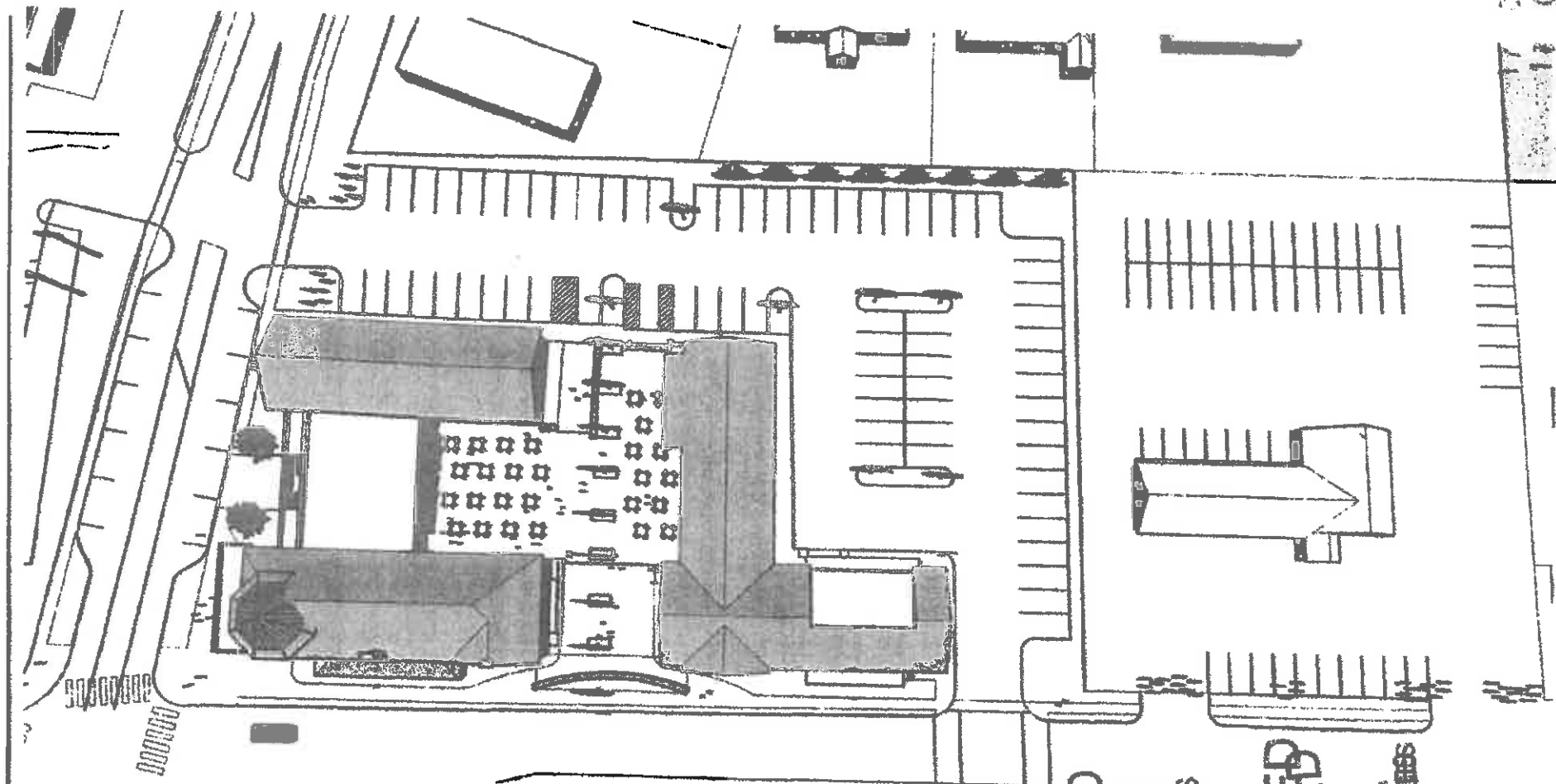


EXHIBIT C
Project Site Plan



RECEIVED
JAN 19 1977
PLANNING &
DESIGN SERVICES

RECEIVED
JAN 19 1977
PLANNING &
DESIGN SERVICES

COA 10
COA 10 67

EXHIBIT D
Project Schedule

EXHIBIT E

Insurance Requirements

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Developer shall indemnify, hold harmless, to the extent permitted by law, and defend City, 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 City, 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 City (who may request review by the City'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: "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: **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 City's Risk Management Division.

IV. MISCELLANEOUS

A. Developer shall procure and maintain insurance policies as described herein and for which City 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 City having been provided at least 30 days written notice, subject to prevailing law. 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 City 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 City'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 City's Risk Management Division within two (2) business days. If Developer fails to notify City as required by this Agreement, Developer agrees that such failure shall be a breach of this Agreement. City 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 City, a copy of the policy endorsement shall be provided to City's Risk Management Division.

D. Approval of the insurance by City shall not in any way relieve or decrease the liability of Developer hereunder. It is expressly understood that City 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 F
Project Budget

COLONIAL GARDENS

<i>Development Budget</i>		<i>Capital Stack</i>	
Acquisition/ Financing Costs		Sources:	
Building Purchase	\$1.00	Bank Loan Financing	\$2,136,191.00
Phase I Environmental	\$1,500.00	City Funding	\$2,383,226.00
Legal	\$20,000.00	Sponsorship Equity	\$650,000.00
Title Insurance	\$7,500.00	Total Sources	\$5,169,417.00
Loan Fees	\$12,588.00	Uses:	
Appraisal	\$3,500.00	Construction/ Development Costs	\$5,169,417.00
Total Acquisition Costs	\$45,089.00	Total Uses	\$5,169,417.00
Summary Construction Costs		Net Sources/ Uses	\$0.00
New & Rehab Construction Costs	\$4,153,254.00		
Environmental Allowance	\$20,000.00		
Contingency	\$207,663.00		
Builders Risk Insurance	\$25,000.00		
Architectural/ Engineering	\$175,000.00		
Construction Management	\$221,046.00		
Operating Capital	\$150,000.00		
Acquisition Costs	\$45,089.00		
Amenities	\$25,000.00		
Utility Connections	\$15,000.00		
Interest Reserve	\$57,925.00		
Leasing Commissions	\$74,440.00		
Total Costs*	\$5,169,417.00		

* Both parties acknowledge that there exists a water retention issue that the parties are working with MSD to resolve. There is a possibility that this issue could cost an additional \$98,000 (approximately). However, given the most recent discussion with MSD, it is more likely that the costs will be between \$25k and \$60k due to the availability of MSD credits and less costly ways of addressing this issue. The parties have agreed to address this issue after the testing is finalized and more due diligence has been performed.

EXHIBIT B

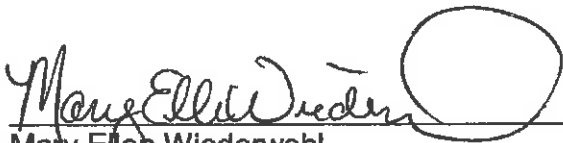
CERTIFICATION OF SURPLUS PROPERTY

The Chief of Louisville Forward has carefully reviewed the Louisville/Jefferson County Metro Government's need for land or improvements used in the administration of Metro programs and to conduct municipal business. This office has determined that the parcel of real property identified below, is surplus and not needed or suitable for any specific municipal use.

Parcel ID	Address	Assessed Value
062G-0068-0000	818 W. Kenwood Dr.	\$764,580

Beginning at the Southeast corner of the New Cut Road and Kenwood Avenue, being an Avenue 100 feet wide as shown by Deed of Benoni Figg and wife to Kenwood Park Residence Co., dated January 1890, of record in Deed Book 343, Page 181, in the office of the Clerk of Jefferson County, Kentucky; thence with the South line of same, South 86° 30' East 217.75 feet; thence South 12° 30' East 272 feet to a corner of the remaining property of B.A. Watson; thence South 77° 30' West 210 feet to the New Cut Road; thence with the East line of same, North 12° 30' West 329.5 feet to the beginning; EXCEPTING THEREFROM so much as was conveyed to the City of Louisville, Kentucky, by Deed dated February 25, 1974, of record in Deed Book 4709, Page 321, in the office aforesaid; AND EXCEPTING THEREFROM so much as was conveyed to the City of Louisville, Kentucky, by Deed dated February 25, 1974, of record in Deed Book 4709, Page 326, in said office.

Being all of the same property acquired by Louisville/Jefferson County Metro Government by Deed dated June 26, 2013, of record in Deed Book 10095, Page 366 in the office aforesaid.



Mary Ellen Wiederwohl
Chief of Louisville Forward