

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 14th day of March, 2002 by and between 26TH STREET RENTAL CORPORATION, a Kentucky corporation, with its principal office at 2610 West Market Street, Louisville, Kentucky 40212 ("Developer"), and the CITY OF LOUISVILLE, a Kentucky municipal corporation, acting by and through its LOUISVILLE DEVELOPMENT AUTHORITY, 600 West Main Street, Suite 300, Louisville, Kentucky 40202 ("City").

WITNESSETH:

WHEREAS, the City desires to promote and encourage the revitalization of the West Market Street Corridor; and

WHEREAS, the Developer is currently assembling certain properties located at and near 26th Street and Market Street ("Project Site"), for the purpose of constructing a retail/commercial development ("Project"); and

WHEREAS, Developer intends to construct the Project in two phases, consisting of Phase I and Phase II as shown on the plat attached hereto as Exhibit A, such phases being referred to herein as the Project-Phase I and Project-Phase II.

WHEREAS, the Developer has requested that the City reimburse it for the costs Developer has incurred and expects to incur to purchase certain parcels within the portion of the Project Site included in the Project-Phase I ("Phase I Site"), such parcels being

identified on the plat attached hereto as Exhibit A ("Properties"), as an incentive for it to undertake the Project-Phase I ("Incentives"); and

WHEREAS, the City has determined that the Project will enhance the revitalization of the West Market Street Corridor, create jobs and generate additional taxes and that, therefore, providing the Incentives to Developer to enable it to undertake the Project-Phase I would be in furtherance of the public purposes of the City; and

WHEREAS, the City agrees to provide the Incentives to the Developer in accordance with the terms and conditions of this Agreement.

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. Developer agrees, at its sole expense, to purchase the Properties and to sell the Properties to the City in accordance with the terms and conditions of Section 2.01.

Section 1.02. Project Construction. Developer shall construct, at its sole cost and expense, the Project-Phase I, as more particularly defined in Section 1.03, upon the approval of the preliminary project plans by the City, the completion of final plans and upon the acquisition of all necessary permits and approvals in accordance with Section 1.05.

Section 1.03. Project Description. Developer shall construct upon the Phase I Site, at its sole expense, retail/commercial buildings containing approximately 17,000 square feet ("Buildings"). Developer agrees to lease space in the Buildings at market rates to persons or businesses providing retail or commercial services.

Section 1.04. Project-Phase I Schedule. Developer acknowledges that time is of the essence and agrees to adhere to the Project-Phase I schedule established herein ("Schedule"). Except for delays caused by force majeure as provided in Section 3.06 Developer shall obtain the prior written approval of the City for any substantial amendment to the Schedule, which approval shall not be unreasonably withheld.

A. Subject to the terms and conditions hereinafter set forth, Developer shall cause the construction of the Project-Phase I to be substantially in accordance with the plans approved by the City pursuant to Section 1.05 and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations.

B. Developer shall verify that all construction shall be in accordance with the final plans prepared pursuant to Section 1.05. All construction shall be in a good and workmanlike manner. Developer agrees to commence construction no later than three (3) years from the date of the approval of the Board of Aldermen and agrees to proceed diligently without undue delay and complete construction of the Project-Phase I in a reasonable time. Any provision of this Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project-Phase I by reasons of force majeure as provided in Section 3.06, or another cause which Developer and the City agree

is justifiable, the date of completion of construction shall be reasonably extended by the City as provided in Section 3.06.

C. The City, its agents and employees, shall be granted a right of entry upon the Phase I Site during construction of the Project-Phase I to enable the City to inspect the construction of the Project-Phase I throughout the course of construction, although the City shall have no obligation to do so.

Section 1.05. Design and Approval of the Project-Phase I.

A. Developer shall cause the preliminary plans to be prepared for the Project-Phase I ("Preliminary Plans") and shall submit such plans to the City for review as a condition precedent to the City purchasing the Properties pursuant to Section 2.01 . The Preliminary Plans shall be sufficient in detail to enable the City to determine whether the design of the Project-Phase I including the proposed site plan and the size, scope and exterior of the Buildings are consistent with good architectural practice and appropriate urban design principles. The City shall review the Preliminary Plans and provide any comments thereon to Developer in writing within thirty (30) days after receipt thereof.

B. Upon approval by the City of the Preliminary Plans, as set out above, Developer shall proceed expeditiously to complete the construction plans and specifications for the Project-Phase I ("Final Plans"). The Final Plans shall be materially consistent with the approved Preliminary Plans. Developer shall submit to the City a set of Final Plans as a condition precedent to the City conveying the Properties to Developer pursuant to Section 2.02.

C. Upon completion of the Final Plans, Developer shall proceed expeditiously to obtain all permits and approvals required for construction of the Project-Phase I.

Section 1.06. Codes. The construction of the Project-Phase I shall comply with all federal, state and local codes, ordinances, statutes and regulations, nothing herein notwithstanding.

Section 1.07. Performance and Payment Bonds. Developer shall cause the general contractor engaged in constructing the Project-Phase I to maintain a 100% performance and payment bond with corporate surety for the construction. Such bond shall be in a form acceptable to the City, which shall be named as an obligee. The bond shall be in the form of one bond from the general contractor which will include bonds for sub-contractors.

Section 1.08. 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 comply with City Ordinance No. 140, Series 1988 and shall take affirmative action to 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. 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 Properties as a result of Developer's construction thereof and shall hold the City harmless from any and all such claims or liens.

Section 1.10. Non-Discrimination. Upon completion of each phase 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 1.11. Insurance. Developer shall provide all insurance as required by the City of Louisville's Risk Management Department. The requirements are listed on Exhibit B.

Section 1.12. Security. Developer agrees to furnish reasonable and customary security at the Phase I Site during construction of the Project-Phase I.

Section 1.13. Developer Financing. Developer shall obtain all necessary financing to construct the Project-Phase I in accordance with this Agreement. As a condition precedent to the purchase and repurchase of the Properties pursuant to Article II, Developer shall demonstrate to the City that it has commitments for funding sufficient to construct the Project-Phase I either from equity financing, a construction loan from a financial institution or a combination of equity and debt as required by Sections 2.03 and 2.04.

Section 1.14. 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 the City 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 from the ownership by the City of the Properties including, but not limited to, liability expenses or damages resulting from the presence on or under or the release from the Properties of any hazardous materials or substances as defined by federal, state or local laws, unless caused by the negligence or omission or willful misconduct of the City, or its employees acting within the scope of their employment.

Section 1.16. Interim Management of Properties. From the date the Developer conveys the Properties to the City pursuant to Section 2.01 until such time the

City conveys the Properties back to the Developer pursuant to Section 2.02. Developer shall manage the Properties on behalf of the City.

Section 1.17. Additional Representations and Covenants of Developer.

Developer represents and covenants as follows:

A. Developer is a Kentucky 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-Phase I 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-Phase I in accordance with this Agreement.

ARTICLE II
COVENANTS AND UNDERTAKINGS OF CITY

Section 2.01. City Purchase of Properties.

A. Subject to the satisfaction of conditions set forth in Section 2.03, the City shall purchase the Properties for a purchase price of **One Hundred Fifty Thousand Dollars (\$150,000.00)** ("Purchase Price"). If the Purchase Price exceeds the amount previously paid by the Developer to acquire the Properties, Developer shall use such excess amount solely for demolition of the existing improvements on the Properties. Developer shall convey the Properties to the City by deeds of general warranty free and clear of all liens and encumbrances except governmental laws and regulations affecting the Properties, and real estate taxes not yet due and payable. Developer shall pay the transfer tax on the conveyances and all recording fees. Real estate taxes shall not be apportioned, but shall remain the responsibility of the Developer.

B. Notwithstanding the conveyance of the Properties by the Developer to the City, all risk of loss, destruction or damages to all or any part of the Properties shall remain the sole responsibility of the Developer. Developer, after the sale of the Properties to the City, shall, at its sole expense, continue to maintain and manage the Properties in the same or better condition as existing on the effective date of this Agreement and shall have the right to continue to retain any and all revenues generated by the Properties until such time that the City conveys the Properties back to the Developer pursuant to Section 2.04 or this Agreement is terminated by the City pursuant to Section 3.14.A.

C. After the conveyance of the Properties to the City, the City grants to Developer, its employees, agents and contractors, a right of entry on, under and above the Properties for the purpose of maintaining the Properties and for inspecting, measuring, appraising, testing and such other inquiries and examinations reasonably required prior to commencing construction of the Project. Developer agrees to indemnify and hold harmless the City from and against any claims, damages, or liabilities resulting from Developer's exercise of the right of entry granted herein, other than those arising from the City's gross negligence.

Section 2.02. Sale of Properties to Developer.

A. Subject to the conditions set forth in Section 2.04, Developer shall have the right to repurchase the Properties from the City for the purpose of constructing the Project-Phase I and the City agrees to convey the Properties to the Developer within thirty (30) days from receipt of notice by the Developer that Developer has satisfied all the conditions set forth in Section 2.04.

B. The City agrees to convey the Properties to the Developer by Deed of Special Warranty for the sum of One Dollar (\$1.00). The Developer shall accept the Properties AS IS, with no warranties of any kind.

Section 2.03. Conditions Precedent to Purchase of Properties by City.

A. As a condition precedent to the purchase of the Properties by City as provided in Section 2.01, the following conditions shall have been satisfied:

- (1) The City shall have approved the Preliminary Project Plans pursuant to Section 1.05;

- (2) Developer shall have demonstrated to the reasonable satisfaction of the City that it has preliminary commitments for financing sufficient to construct the Project-Phase I in accordance with the Preliminary Project Plans;
- (3) Developer shall have submitted to the City a preliminary budget and schedule for the construction of the Project;
- (4) Developer shall not be in default of any material term of this Agreement; and

B. If the conditions set forth in subsection A of this Section are not satisfied by December 31, 2002, then the City shall have the right to terminate this Agreement and upon such termination by the City, this Agreement shall be void and the parties shall each be relieved of any and all obligations and duties hereunder.

Section 2.04. Conditions Precedent to Sale of Properties to Developer.

As a condition precedent to the conveyance of the Properties by the City to the Developer pursuant to Section 2.02, the following conditions shall have been satisfied:

- A. Developer shall have prepared and submitted to the City the Final Plans.
- B. Developer shall have demonstrated to the reasonable satisfaction of the City that Developer has obtained binding commitments for financing sufficient to construct the Project-Phase I in accordance with the Final Plans.
- C. Developer shall have submitted to the City a final budget for the Project-Phase I which is satisfactory to the City.

Section 2.05. Additional Representations and Covenants of the City. The

City represents and covenants as follows:

A. The City is a Kentucky municipal corporation 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 MISCELLANEOUS

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

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, 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 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 shall be 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 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 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 of performance thereof.

Section 3.06. Force Majeure. 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, restrictive governmental laws or regulations, riots, insurrection, war or the act, failure to act or default of the other party, or any other cause beyond its control, 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 as the receiving party shall have notified the sender, as follows:

If to Developer:

If to the City:

Executive Director
Louisville Development Authority
600 W. Main St., Suite 300
Louisville, Kentucky 40202

cc: Director of Law
City of Louisville
601 W. Jefferson St.
Louisville, Kentucky 40202
Attn: J. David Morris

In addition, in the case of any notice to Developer alleging or asserting an event of default by Developer, written notice also shall be provided to Developer's lender(s) from time to time designated by Developer, at the address(es) of such lender(s) provided by Developer to the other parties hereto.

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 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 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 others 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 others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.

Section 3.10. Successors and Permitted Assigns for the Parties Hereto.

Developer shall not assign or transfer any other interests under this agreement without the prior written consent of the City.

Section 3.11. Estoppels. Each of the parties hereto agrees to provide to the others, 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. 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 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 this Agreement or any of the documents incorporated herein, or there has been a substantial decrease in Developer's capacity to complete the Project-Phase I, the City may give written notice (with a copy of said notice being given to any lender of Developer) that remedial action must be taken within thirty (30) calendar days. Developer shall correct such breach or default within thirty (30) 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 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.

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.

In addition to the remedy provided above, if the default of the Developer is the failure of the Developer to commence construction of the Project within three years from the date of approval by the Board of Aldermen of the conveyance of the Properties to the City as required by Section 1.04B, the City, at its sole option, may demand that the Developer convey the Properties back to the City for the purchase price paid by the Developer to the City, the sum of One Dollar (\$1.00), free and clear of any encumbrances or liens. Developer's obligation to convey the Properties to the City in the event of such a default shall be enforceable by specific performance.

B. 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 that remedial action must be taken within thirty (30) calendar days. the City shall correct such breach or default within thirty (30) days after the City's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) 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 relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity.


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.

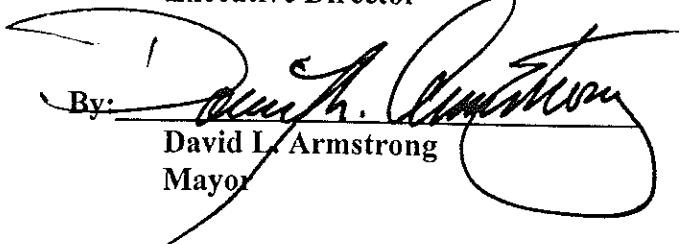
IN TESTIMONY WHEREOF, witness the signatures of the authorized representatives of the parties hereto as of the day and year first written above.

"CITY"

CITY OF LOUISVILLE,
acting by and through its
LOUISVILLE DEVELOPMENT AUTHORITY

By: 

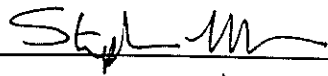
Executive Director

By: 

David L. Armstrong
Mayor

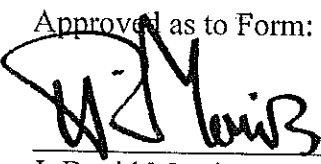
"DEVELOPER"

26TH STREET RENTAL CORPORATION

By: 

Title: President

Approved as to Form:

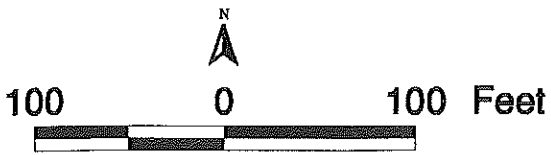
A handwritten signature in black ink, appearing to read "J. David Morris", written over a horizontal line.

J. David Morris
Senior Attorney
City of Louisville

[JDM\WESTMARKET]DA-26th STREET

EXHIBITS

- A. Properties**
- B. Insurance Requirements**



Copyright (c) 2002 LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD) and LOUISVILLE WATER COMPANY (LWC) All Rights Reserved.



**HOLD HARMLESS AND INDEMNIFICATION CLAUSE,
AND INSURANCE REQUIREMENTS
26TH STREET RENTAL CORPORATION DEVELOPMENT AGREEMENT**

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Developer shall indemnify and hold harmless the City of Louisville, its agents and employees from and against all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting from the Developer's (or Developer's Subcontractors, if any) performance of the contract provided that such claim, damage, loss or expense (1) is 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, and/or breach of contract, and (2) is not caused by the negligent act or omission or willful misconduct of the City of Louisville or its employees acting within the scope of their employment.

II. INSURANCE

Prior to commencing work, Developer shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. **The Developer shall not commence work under this Contract until all insurance required under the Development Agreement has been obtained and until copies of policies or certificates thereof are submitted to and approved by the City's Risk Management, (who may request review by the City's Risk Management Division).** *The Developer shall not allow any Subcontractors to commence work until the insurance required of such Subcontractors has been obtained and copies of Certificates of Insurance retained by Developer evidencing proof of coverages.*

Without limiting Developer's indemnification requirements, it is agreed that Developer shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and *require Subcontractors, if subcontracting is authorized, to procure and maintain these same policies* until final acceptance of the work by the City. The City may require Developer to supply proof of Subcontractors's insurance via Certificates of Insurance, or at the City's option, actual copies of policies.

A. The following clause shall be added to the Developer's (and approved Subcontractors) Commercial/Comprehensive General Liability Policies:

1. "The City of Louisville, its officers, and employees are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the **(insert name of project and/or contract).**"

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 contract. :

1. COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY, via the **Occurrence Form**, with a **\$1,000,000** Combined Single Limit for any one Occurrence 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 Developers Protective Liability
 - f. Personal Injury

2. COMMERCIAL PROPERTY INSURANCE – insuring all real property:
 - a. Insurance shall be written on the I.S.O. (or equivalent) Special Property Form, with the limit of liability equal to the full Replacement Cost of the building including any improvements.
 - b. The interest of the City of Louisville must be added as Mortgagee.
 - c. Coverage is to remain in effect until termination of this agreement.

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 the Company is submitted to and approved by the City's Risk Management Division.

IV. MISCELLANEOUS

- A. The Developer shall procure and maintain insurance policies as described herein and for which the City of Louisville shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include provisions stating that the policies may not be cancelled or materially amended without the City of Louisville having been provided at least (30) thirty days written notice. The Certificates shall identify the Contract 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 Contract, renewal Certificates of Insurance shall be furnished to the City's Risk Management Division 30 days before the expiration date. Certificates of Insurance as required above shall be furnished, as called for:

Louisville Development Authority
Attn: Susan Hamilton
600 West Main Street, Suite 300
Louisville, KY 40202

AND

City of Louisville
Department of Finance and Budget
Risk Management Division
611 West Jefferson Street, Room 22
Louisville, KY 40202

- C. Approval of the insurance by the City shall not in any way relieve or decrease the liability of the Developer hereunder. It is expressly understood that the 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 the Developer.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Addendum to Development Agreement ("First Addendum") is made and entered into this 21st day of September, 2009, by and between 26th Street Rental Corporation, a Kentucky corporation with its principal office at 2610 West Market Street, Louisville, Kentucky 40212 ("Developer") and the Louisville/Jefferson County Metro Government, a Kentucky consolidated local government, successor in interest to the City of Louisville, acting by and through its Economic Development Department, successor in interest to the Louisville Development Authority, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky, 40202 ("City").

WITNESSETH:

WHEREAS, the City and Developer entered in a certain development agreement dated March 14, 2002 ("Development Agreement") wherein in order to assist the Developer to construct the Project, as defined in the Development Agreement, the Developer agreed to convey to the City six parcels of real property for the sum of ~~\$150,000~~ ("Properties"), 135,000 and the City agreed to convey the Properties back to the Developer for the sum of \$1.00 CBT at such time that the Developer satisfied certain conditions precedent within the Development Agreement;

WHEREAS, because of adverse economic conditions nationally and locally, Developer has been unable to satisfy the conditions precedent in the Development Agreement;

WHEREAS, Developer intends to construct the Project, but currently has no timetable to commence the Project;

WHEREAS, the City remains hopeful that the Project will be constructed by the Developer and that the Project will assist the revitalization of the surrounding neighborhood and be of benefit to the City and is therefore willing to amend the Development to extend the schedule set forth in the Development Agreement;

WHEREAS, Section 1.16 of the Development Agreement permits Developer to manage the Properties on an interim basis and the City and Developer agree to amend that Section as provided herein;

Now Therefore, in consideration of the premises and the mutual covenants and undertakings contained herein and in the Development Agreement, the parties agree as follows:

Section 1. That Section 2.03(B) is amended to read as follows:

If the conditions set forth in subsection A of this Section are not satisfied by December 31, 2012, then the City shall have the right to terminate this Agreement and upon such termination by the City, this Agreement shall be void and the parties shall each

be relieved of any and all obligations and duties hereunder. Provided however that such deadline may be extended upon agreement of the City upon a showing of good cause by the Developer.

Section 2. That Section 1.16 of the Development Agreement is amended to read as follows:

From the effective date of this First Addendum, until such time that the City conveys the Properties back to the Developer pursuant to Section 2.02, Developer shall manage the Properties on behalf of the City subject to the following conditions:

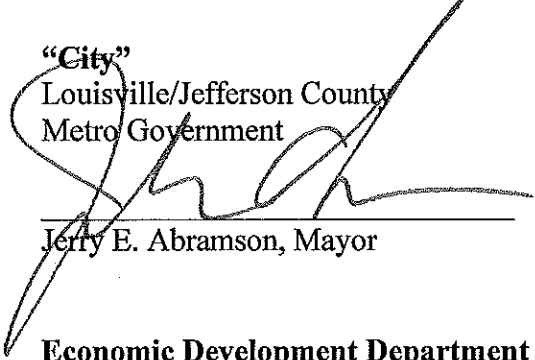
- A. Developer may rent the three houses located west of 26th Street on the Phase I Site ("Houses") as single family residences provided:
- 1) It charges market rate rents;
 - 2) It maintains the Houses in good condition and repair in accordance with all applicable building and housing codes;
 - 3) It complies with all applicable provisions of the Landlord-Tenant Act and Fair Housing Laws;
 - 4) It provides to the City copies of all leases and income and expense records related to the rental and maintenance of the Houses; and
 - 5) It pays to the City beginning on the date three months from the effective date of this First Addendum and on a quarterly basis thereafter, an amount equal to 50% of the Net Rental Income received by Developer from the Houses. As used in this Section "Net Rental Income" shall mean the total rent received minus the actual expenses incurred by Developer to manage and maintain the Houses.
- B. If Developer receives income from the use of the Properties located east of 26th Street on the Phase I Site, it shall pay to the City on a quarterly basis 50% of Net Rental Income and shall furnish to the City copies of all leases or use agreements and all income and expense records related to the Properties.

Section 3. All capitalized terms used in this First Addendum shall have the same meaning as such terms are defined in the Development Agreement.

Section 4. That except as amended by this First Addendum, the Development Agreement shall remain in full force and effect.


In Testimony Whereof, witness the signatures of the authorized representatives of the parties as of the date first written above.

"City"
Louisville/Jefferson County
Metro Government



Jerry E. Abramson, Mayor

Economic Development Department



C. Bruce Traugher, Director

"Developer"
26th Street Rental Corporation

By: 

Title: President

Approved as to form:



Jefferson County Attorney's Office