DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of July 2, 2018 by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth St., Suite 600, Louisville, Kentucky 40202 ("Metro") and **MARIAN DEVELOPMENT GROUP, LLC**, a Kentucky limited liability company, with its principal office at 1122 Rogers Street, Louisville, Kentucky 40204 ("Developer").

RECITALS

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

WHEREAS, Metro owns property located at 810 Barrett Avenue, known as the Urban Government Center, and as more particularly described in Exhibit A to this Agreement (the "Property"); and

WHEREAS, Metro issued a solicitation of interest in January 2017, soliciting proposals for the redevelopment of the Property (the "SOI"); and

WHEREAS, Developer submitted one of the responses to the SOI, which proposed to redevelop the Property for a mixed-use project; and

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

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

WHEREAS, the Parties have a shared vision for the Project, which encompasses a mixed use, neighborhood compatible development with multiple housing options and community space; and

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

NOW, THEREFORE, in consideration of the 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. The Project. Developer agrees, at its sole expense, except as otherwise set forth in this Agreement, to construct the Project on the Property in accordance with the terms and conditions of this Agreement. The "Project" shall consist of at least the following elements, all in accordance with Developer's response to the SOI, as may be amended in order to comply with final land use approvals obtained by Developer: the Vine Street Development as described in Section 1.02 of this Agreement, and the Mixed Use Development as described in Section 1.03 of this Agreement.

Section 1.02. Vine Street Development. Developer shall construct on a portion of the parcel located on Vine Street with parcel ID #021J00760000 (the "Vine Street Lot") single family homes, a pedestrian connection between Vine Street and Goullon Court or Dupuy Court and an outdoor community space located along the Vine Street frontage of the Vine Street Lot (the "Vine Street Development"). The Vine Street Development shall also include the following Community Benefits: (a) The retention of the existing community garden on the remainder of the Vine Street Lot, (b) a requirement that at least three (3) of the single family homes will be sold at a price that is affordable to a family earning up to 130% of the Area Median Income and (c) the outdoor community space along the Vine Street frontage. The Parties will use best efforts to ensure that the three (3) affordable homes will be sold to an income-qualified family, and Metro's Housing and Community Development will assist with the marketing and income verification for those three properties. Metro will further research and develop in partnership with Developer long term affordability provisions for these three (3) single family homes. Any additional affordability provisions shall be negotiated and agreed to by both parties prior to land transfer.

Section 1.03. Mixed Use Development. Developer shall construct the Mixed-Use Development on the portion of the Property not included in the Vine Street Lot (the "Mixed Use Lot") in a manner that is substantially similar to the Approved Plans. The term "Mixed Use Development" when used in this Agreement shall mean a group of buildings organized around the Master Plan and that includes commercial, retail and residential space, a parking structure, a center green space, a multimodal transportation hub and potentially a boutique hotel. The Mixed Use Development may be undertaken by Developer in several phases in accordance with the terms and conditions of this Agreement. The Mixed Use Neighborhood, when completed, shall consist of the following:

A. Building massing that reinforces neighborhood scale images and encourages pedestrian orientation of the Project.

B. No more than 20% of the total square footage of the buildings facing Vine Street is to be developed for commercial or retail space.

C. Multi-use connections between Breckenridge Street and Vine Street for pedestrian and bicycle use.

D. A total investment of at least $50 Million, consisting of an investment of at least Fifteen Million Dollars ($15,000,000.00) in the Vine Street Lot and the Mixed Use Lot every five (5) years. Should Developer invest more than $15,000,000.00 in any five (5)

year period, then any overage shall count towards to the minimum investment for the next five (5) year period.

E. A total of no more than ten percent (10%) of approved multi-family dwelling unit shall be affordable to residents making no more than eighty percent (80%) of the Area Median Income. Should Developer provide units significantly more affordable than those described above, the Parties shall adjust the percentage required at eighty percent (80%). These units may be provided in a Family Scholar House residential facility or in a senior housing facility.

F. Parking shall be sufficient for the development, which will likely include a parking garage

G. Developer's best efforts to reuse masonry material from existing structures on the Property in structures that are part of the Project.

H. Developer's cooperation with Metro on the movement of the existing Metrosafe equipment hub, which cooperation will consist of either providing space on the Property suitable for housing the existing Metrosafe equipment, or paying to have such equipment moved off of the Property to another location.

I. Developer's management of environmental conditions that may exist on the Property in cooperation with Metro.

J. Appropriate landscaping, including the preservation of existing mature native species trees where feasible, and will include consultation with Metro's Division of Community Forestry.

Section 1.04. Contingency Period. Developer shall have 270 days from the date of this Agreement to satisfy itself with the condition of the Property for the Project, including evaluating title, zoning, parking and access, environmental, subsurface and any other conditions that would affect Developer's ability to construct the Project (the "Contingency Period"). During the Contingency Period, Developer shall have the right to enter the Property for the purpose of performing evaluations of the Property's environmental and subsurface conditions. Developer shall also use the Contingency Period to obtain land use approvals (including, but not limited to, rezoning, conditional use permit, variance or waiver) for the Project. Should Developer determine in its sole and absolute discretion that the condition of the Property is unsatisfactory or that it cannot obtain land use approvals sufficient to allow the Project, then it shall notify Metro of same in writing and this Agreement shall be terminated.

At the conclusion of the Contingency Period, if Developer determines that the Project cannot happen without the assistance of local ad valorem tax increment financing ("TIF"), it shall provide Metro with sources and uses and other financial information that Metro may reasonably require showing that the "but for" requirement contained in KRS 65.7049(4)(a) has been satisfied. If Metro agrees that such requirement has been satisfied, Metro shall work with Developer to cause a local ad valorem tax increment financing ("TIF") ordinance to be

considered by Louisville Metro Council. Should the TIF ordinance fail to be passed by Louisville Metro Council on terms and conditions acceptable to Developer in its sole discretion, this Agreement may be voided by the Developer at the Developer's sole option.

Section 1.05. Option Agreement. Simultaneous with the signing of this Agreement, Metro and Developer shall enter into an Option Agreement in substantially the same form as the option agreement attached hereto as Exhibit B to this Agreement.

Section 1.06. Schedule and Construction: Term of this Agreement.

A. During and potentially after the Contingency Period, Developer acknowledges that time is of the essence and agrees to adhere to the schedule set forth in subsection B. of this Section (the "Schedule"). So long as Developer is in substantial compliance with the Schedule and subject to delays caused by force majeure as provided in Section 4.06, this Agreement shall remain in effect.

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

Action Item	Date
Commence land use approval process	August, 2018
Obtain zone change/development plan approval	January, 2019
Obtain all permits required to commence Construction of the Vine Street Development	January, 2019
Commence construction of the Vine Street Development	April, 2019
Obtain all permits required to commence construction of the Mixed Use Development, including any necessary demolition permits	May, 2019
Commence construction of the Mixed Use Development	June, 2019
Substantial completion of the Vine Street Development	December, 2020
Substantial completion of the Mixed Use Development	December, 2025

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

D. Any provision of the Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of force majeure as provided in Section 4.06, or another cause which Metro and Developer agree is reasonably justifiable, the date of completion of construction shall be extended by Metro as provided in Section 4.06.

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

Section 1.07. Design and Approval.

A. Developer shall obtain Metro's approval for its Schematic Design Plan (the "Plan") and Developer shall submit the Plan to the Planning Commission, Board of Zoning Adjustment or other administrative body to the extent such changes require additional approvals. Should the Plan be reasonably consistent with Developer's response to the SOI, Metro shall support the Plan and shall provide assistance in having said Plan reviewed and approved by the Planning Commission, Board of Zoning Adjustment or other administrative body and any utility providers, which support shall include signing all necessary applications for any necessary development approvals. Developer shall also provide Metro's Develop Louisville staff with final architectural renderings ("Project Renderings"), and shall receive approval of such Project Renderings from Metro prior to seeking construction approvals. Metro, exclusive of the time needed for any review required by an administrative body, shall have a period of not more than ten (10) business days from Metro's receipt of the Plan and Project Renderings to review and approve or disapprove the Plan or Project Renderings. Metro shall not unreasonably withhold such approval. If Metro requires changes to the Plan or Project Renderings, Developer shall have 10 business days from Developer's receipt of any such requested changes to make such changes and return the revised Plan or Project Renderings to Metro, and Metro shall then have 10 business days to again approve or disapprove the revised Plan or Project Renderings, not including the time required for any required administrative body review. Upon obtaining Metro's approval of, as applicable, the Plan or Project Renderings, Developer shall prepare the final construction plans (the "Construction Plans") which will be substantially in compliance with, as applicable, the Plan and Project Renderings. Before obtaining the necessary permits to begin construction of each phase of the Project, Developer shall provide Metro's Office of Construction Review or its successor with a copy of the Construction Plans for review for conformance with, as applicable, the Plan and Project Renderings, the Kentucky Building Code, and any other applicable state or local codes and regulations governing building construction. Metro shall designate a single point of contact for the review and approval of the Plan, Project Renderings and Construction Plans. The initial point of contact shall be Theresa Zawacki.

B. All Plans, Project Renderings, Construction Plans, Future Preliminary Plans, and Future Renderings (collectively, the "Work") are and shall remain the sole and

exclusive property of Developer, and by entering into this Agreement, Metro is not acquiring any license, property right, or other legal or equitable interest in the Work and Metro may not copy, distribute or use the Work in any way without the express written consent of Developer.

C. The Plan for the Project shall include certain minimum community benefits (the "Community Benefits"), which shall include the items enumerated in Paragraphs 1.02 and 1.03 above.

Section 1.08. Labor Requirements. Developer shall make good faith efforts to satisfy the following goals during construction of the Project:

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

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

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

It is expressly acknowledged and agreed between the parties that any failure by Developer to meet these participation goals shall not constitute a default under this Agreement.

Section 1.09. Operation and Maintenance of Project. Upon completion of the Project, Developer agrees to comply with the provisions of this Section 1.09. Developer recognizes and acknowledges that the manner in which the Project is used and operated is critical to Metro by reason of the impact that the Project will have. In order to give Metro assurance as to the manner in which the Project will be used and operated, Developer covenants and agrees that, at no cost to Metro, it shall develop and manage the Project in a first-class manner, including (a) making reasonable efforts to market, or cause others to market, the Project by appropriate promotions and advertising of a first-class nature; (b) keeping the Property, its exterior and all furniture, fixtures, HVAC systems, equipment and other personal property in good repair and condition, (c) complying with all laws, ordinances, regulations and codes applicable to Developer's operations; (d) obtaining and maintaining, or causing others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the businesses located in the Project, (e) using commercially reasonable efforts to cause each tenant of the property to comply with that the operational standards set forth in this (a) through (d) of this Section.

Section 1.10. Codes. The construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations.

Section 1.11. Employment Regulations: Affirmative Action. Developer, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national, origin, sexual orientation or disability. At all times during the construction of the Project, Developer shall take affirmative action to ensure that its employees and the employees of its contractors and subcontractors are treated fairly during employment, without regard to their sex, race, creed, color or national origin. This requirement shall apply to, but not be limited to, the following: employment; promotion; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training.

Section 1.12. Mechanics' and Materialmen's Liens. Developer will keep the Project free and clear of all mechanics' and materialmen's liens and other liens on account of work done for Developer or persons claiming under Developer. Should any such lien be filed against the Property, Developer shall immediately pay, bond over, or otherwise remove such lien. Should Developer elect to dispute the amount required to release such lien or the quality of service provided by the contractor who placed the lien, Developer shall have the right to provide a bond against such lien in form and content acceptable to Metro.

Section 1.13. Non-Discrimination. Upon completion of the Project and as applicable, Developer agrees to abide by all fair housing laws, and will not discriminate on the basis of race, sex, creed, disability, sexual orientation or national origin, in the sale lease, rental use or occupancy of the commercial units on the Property.

Section 1.14. Insurance. Developer shall provide all insurance as required by Metro's Risk Management Department as is more particularly described on Exhibit C, attached hereto and made a part hereof.

Section 1.15. Security. Developer agrees to furnish reasonable and customary security for the construction work site, or sites, located on the Property during each construction phase. Metro shall provide security and police protection to the Project in the same manner and at the same level as Metro provides police protection to comparable facilities located in the area of the Project

Section 1.16. Developer Financing. Before beginning construction of the Project, Developer shall furnish to Metro written evidence of firm financing commitments for such phase before beginning construction.

Section 1.17. Indemnification. Developer agrees to indemnify and hold Metro and its officers, employees and agents ("Metro Parties") harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liability, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable attorneys' fees) imposed upon or incurred by the Metro Parties as a result of or in connection with any of the following:

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

pursuant hereto.

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

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

Section 1.18. Environmental Testing and Remediation. Developer, at its expense, shall be solely responsible for performing any environmental testing to determine whether hazardous materials are present in, on, or under the Property and, at its expense, to conduct any remedial measures or management of the hazardous materials disclosed by the environmental testing as may be required by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet or other local, state or federal agency. Metro and any agency thereof agrees that it will cooperate with and assist Developer in obtaining any property management or corrective action plan approvals from the Commonwealth required for the Project.

Section 1.19. 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. Developer has not made any untrue statement of a material fact or failed to state a material fact in this Agreement or any schedule, exhibit, document or certificate

delivered in accordance with the terms hereof.

D. The execution of this Agreement, and the construction of the Project by Developer will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to Developer.

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 development in accordance with this Agreement.

ARTICLE II
COVENANTS AND UNDERTAKINGS OF METRO

Section 2.01. Developer Representation. Developer represents that it would not enter into this Agreement to construct the Project but for the commitment of Metro to provide financial and other incentives to the Project, as provided in this Agreement, to induce Developer to undertake the Project pursuant to this Agreement.

Section 2.02. Sale of Property, Purchase Price. Subject to the satisfaction of the conditions set forth in Section 2.06, Metro agrees to convey the Property to Developer for the Purchase Price, as more particularly described in Section 2.05, below.

Section 2.03. Public Garage. Developer agrees to provide to Metro a pro forma and other information sufficient to allow the Parking Authority of River City ("PARC"), to determine whether building a garage on the Property is financially feasible. It is anticipated that such information will be provided within 60 days of execution of the Agreement. Metro agrees to work with both PARC and Developer to facilitate this process. Upon receipt of satisfactory financial evaluation, Metro agrees to work with PARC to issue a letter of intent regarding a garage, which approval would be subject to (i) approval of the PARC Board, and (ii) with respect to any bonds to finance the garage, approval of the Louisville/Jefferson County Metro Council.

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

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

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

C. Metro agrees to use reasonable efforts to assist Developer in coordinating the work of various governmental entities and utilities with respect to servicing and permitting the Project and use of the Property. Metro shall further facilitate meetings between Metro agencies and other non-profit entities affiliated with Metro upon receipt

of request from same from Developer. Should Metro be unable to facilitate said meetings, then Developer should be able to arrange such meetings directly.

Section 2.05. Closing.

A. Subject to the satisfaction of the closing conditions set forth in this Section 2.06, the sale of the Vine Street Lot, less the portion of the Vine Street Lot retained by Metro which contains an existing community garden (the "Vine Street Development Lot") (the "Closing") shall occur at such time as requested by Developer upon written notice to Metro delivered not less than one (1) week prior to the proposed Closing. The Closing shall be held at 444 South Fifth Street, Sixth Floor, Louisville, Kentucky, or at such other place as is mutually agreed to by Developer and Metro.

B. Metro and Developer agree that the Project includes certain Community Benefits (defined above) that limit the potential market value of the Project. Metro agrees that the Community Benefits are an integral part of the Project and serve a public purpose that would not be served were the Property sold on the open market. Metro further recognizes that Developer will provide, as consideration for the portion of the Property owned by Kentucky Municipal Finance Corporation, certain affordable residential units for a period of years. The Purchase Price for the Vine Street Development Lot, in addition to the covenant to provide the Community Benefits, shall be One Dollar ($1.00)

C. At the Closing of the Vine Street Development Lot Metro shall convey the Vine Street Development Lotto Developer by the Deed free and clear of all liens and encumbrances except for the Permitted Encumbrances and a right of reverter as described in the Deed.

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

E. With regard to the Mixed Use Lot, within 30 days of receipt of all required land use approvals for the Mixed Use Development, the Parties shall use good faith efforts to enter into a ground lease for a period of 20 years, with four (4) five (5) year renewal options in favor of Developer (the "Ground Lease"). The initial rent for the Ground Lease shall be One Dollar ($1.00) per year during the construction phase. The Ground Lease shall allow for Developer to pledge its leasehold interest in the Mixed Use Lot as collateral to secure project financing, and require Metro cooperation in Developer's efforts to procure pre-development and construction financing for the Mixed Use Lot. It is anticipated that once the land use approvals have been obtained for the Mixed Use Development, the issues described in Sections 1.04 and 2.03 of this Agreement should have been resolved and a firmer estimate calculated for the cost of the Community Benefits. At such time, the Parties, with the benefit of that information, will

negotiate in good faith to address (i) any increase in the initial rent amount once construction of the Project is completed, (ii) the applicable purchase price for any portions of the Mixed Use Lot that may be released by Metro from the Ground Lease and conveyed either to Developer or to a third party that has agreed to acquire a portion of the Mixed Use Lot in order to construct a portion of the Mixed Use Development, (iii) if a Mixed Use Lot is resold within ten (10) years of conveyance for an amount that exceeds Developer's true cost in the Mixed Use Lot, which shall include, but not be limited to, demolition, construction, engineering, design, legal expenses, reasonable expenses and other soft costs, market rate developer fees, property management fees and brokerage fees, debt service (including third party investor return), and a return on Developer's equity investment not to exceed a nine percent (9%) rate of return, a provision that allows Metro to share in a portion of any profits above that amount, and (iv) any reasonable additional financial reporting requirements as agreed to by both parties. Metro shall issue no construction permits on the Mixed Use Lot and construction shall not commence on the Mixed Use Lot until such time as the Ground Lease has been agreed to by both parties.

Section 2.06. Conditions to Closing.

A. Metro Conditions. Metro shall not close on the sale of either the Vine Street Development Lot, or any portions of the Mixed Use Lot as may be determined subject to Section 2.05, above, unless the following conditions have been met or waived by Metro (with the exception of Condition 4) in whole or in part before the Closing:

1. Developer shall furnish written evidence reasonably acceptable to Metro that financial and/or other institutions are prepared to extend it sufficient capital to construct the Vine Street Development or the Mixed Use Development, as applicable.
2. The Schematic Design Plan and the Project Renderings for the Vine Street Development or the Mixed Use Development, as applicable, shall be completed and approved by Metro as provided in Article I.
3. The representations and warranties of Developer set forth herein shall be true and correct as of the Closing.
4. The Metro Council shall have declared the Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable, surplus and authorized its conveyance to Developer.

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

1. The representations and warranties of Metro set forth herein shall be true and correct as of the Closing Date.
2. The Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable, shall not be threatened or materially adversely affected in any way as a result of earthquake, disaster, labor dispute, any action by the United

States or any other governmental authority, riot, civil disturbance, uprising, activity or armed forces or act of God or enemy.

3. Developer shall have obtained construction financing acceptable to it.

4. Developer shall have received a notice of eligibility (if applicable) from the Commonwealth of Kentucky under the Brownfield Redevelopment Act.

5. In the case of the Vine Street Lot, that the Vine Street Lot has been subdivided into the Vine Street Development Lot and the remainder lot containing the community garden.

6. Developer shall have obtained, at its sole expense, a title commitment from a title insurance company showing that the Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable is owned by Metro in fee simple unencumbered insurable market title except for Permitted Encumbrances and such other exceptions reasonably acceptable to Developer. The following items shall be deemed to be permitted title exceptions (hereinafter referred to as the "Permitted Encumbrances"):

a. All ad valorem property taxes and assessments on the Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable, if any, not yet due and payable;

b. Matters shown on a survey which would not materially and adversely affect Developer's use and enjoyment of the Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable for the purpose intended by the Project;

c. Easements, restrictions and stipulations that appear of public record as of the date of this Agreement and that would not materially and adversely affect Developer's use and enjoyment of the Vine Street Development Lot, or any portions of the Mixed Use Lot, as applicable for the purpose intended by the Project; and

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

ARTICLE III
MORTGAGEE RIGHTS

Section 3.01. Right to Mortgage. Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Project, or any portion or portions thereof, including, without limitation, in the Option, Ground Lease and/or to this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance any portion or portions of the Project. The beneficiary of or mortgagee under any such Mortgage is hereby referred to as a "**Mortgagee**."

Section 3.02 Notice of Breaches to Mortgagee. In the event Metro gives written notice to Developer of a breach of its obligations under this Agreement, Metro shall forthwith furnish a copy of the notice to the Mortgagee(s) that have been identified to Metro by Developer. To

facilitate the operation of this Section 3.02, Developer shall at all times keep Metro provided with an up to date list of any Mortgagee(s).

Section 3.03 Mortgagee May Cure Breach.

A. In the event that Developer receives notice from Metro of a breach of any of its obligations under this Agreement and such breach is not cured pursuant to the provisions of this Agreement, Metro shall, in addition to the notice provided in Section 3.02 above, give notice of the failure to cure, on the part of the Developer, to the applicable Mortgagee(s) at the expiration of the period within which Developer may cure as set forth in this Agreement. Any Mortgagee may proceed to cure any such failure and such Mortgagee, if it elects to cure such default, shall give Metro written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice set forth herein. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies Metro of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

B. In the event any Mortgagee elects to exercise its right of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment in lieu of foreclosure), after foreclosure of the applicable encumbered interest in and to the Project or any portion thereof (or after the appointment of a receiver or the obtaining of an encumbered interest in and to the Project or any portion thereof via deed and/or assignment in lieu of foreclosure), such Mortgagee may, at its option:

(i) elect to assume the position of Developer under this Agreement, in which case, in the event Metro has terminated this Agreement, Metro agrees that this Agreement shall be deemed reinstated and such Mortgagee shall cure the applicable defaults by Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 3.03 hereof within the timeframes contained in this Agreement; or

(ii) elect not to reinstate the provisions of this Agreement. The Mortgagee shall have the right so to elect (i) above of this Section 3.03(B) only if it shall exercise such right within three (3) months after the receipt by the Mortgagee of the notice give to the Mortgagee pursuant to Section 3.03A hereof.

Section 3.04 Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer to be performed or observed, or be in any way obligated to complete the improvements contemplated to be constructed in accordance with this Agreement, nor shall it guarantee the completion of any improvements, whether as a result of (a) it having become a Mortgagee, (b) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (c) the performance of any of the covenant, terms or conditions on the part of Developer to be performed or observed under this Agreement, or (d) otherwise, unless such Mortgagee shall either make the election under this Section 3.04 to assume the applicable

obligations of Developer by written notice to Metro whereupon such Mortgagee, upon making any such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the applicable obligations of Developer hereunder.

Section 3.05 Mortgagee's Rights Agreements. Metro covenants and agrees with Developer that Metro shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Article III of this Agreement that apply to Mortgagees and Mortgages. Within thirty (30) days of a request for a lender's rights agreement pursuant to the provisions of this Section 3.05, time being of the essence, Metro shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Article III that apply to Mortgagees and Mortgages (such as the Mortgagee notice provisions and the Mortgagee cure rights provisions of this Article III).

ARTICLE IV MISCELLANEOUS

Section 4.01. Provisions not Merged with Deeds and Other Agreements. This Agreement shall not terminate upon the execution of the lease or deeds required by this Agreement, and the provisions of this Agreement shall not be deemed to be merged into such lease or deeds.

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, Section, and Subsections shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability or illegality of any such provision shall not affect the enforceability of any other provision hereof.

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

manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement or performance thereof.

Section 4.06. 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, material modification to the Internal Revenue Code affecting the financing of affordable housing units, failure of power, riots, insurrection, war or the act, failure to act or default of the other party, then performance of such act shall be extended for a period equivalent to the period of such delay.

Section 4.07. Notices. Whenever a notice is required or permitted to be given to a party hereunder, such notice shall be in writing and shall be deemed to have been made when hand delivered or two (2) business days after being deposited in the United States mail, certified or registered mail return receipt requested, postage prepaid, addressed to the parties, or to such other address or to such other persons as any party shall have requested by notice to the other(s) pursuant to this Section, as follows:

If to Developer: Marian Development Group, LLC
1122 Rogers Street
Louisville, Kentucky 40204
Attn: _____
Phone: _____

and

Dinsmore & Shohl, LLP
Attn: Cliff Ashburner
101 S. 5th Street, Suite 2500
Louisville, KY 40202

If to Metro: Louisville Forward
444 South Fifth Street, Suite 600
Louisville, Kentucky 40202
Attn: Director
Phone: 502-574-4140

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

Section 4.08. Entirety of Agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire understanding and agreement of the parties with respect to the matters set forth herein, and all prior agreements and understandings, between Metro and

Developer, are merged herein. The Exhibits to this Agreement constitute a material part hereof and are incorporated by reference herein. This Agreement may not be modified, amended or revoked, except in writing, executed by each of the parties.

Section 4.09. Brokers and Finders: Fees and Expenses. Each of the parties hereto represents and warrants to the others that it has engaged no broker or finder in connection with the negotiation of this Agreement, and each party indemnifies and holds the other harmless against any claims for fees for such services buy any person or firm claiming under or through such indemnitor. Each party hereto shall bear its own respective expenses and costs for legal, accounting and administrative services in connection with the negotiation of this Agreement and consummation of the transactions contemplated hereby, except as mutually agreed to by the parties. Each party hereto is indemnified and holds the others harmless against any claims for fees for such services by any person or firm claiming under or through such indemnitor.

Section 4.10. Successor and Permitted Assigns for the Parties Hereto. Developer may collaterally assign or pledge its rights under this Agreement, or portions of those rights, as security for loans or guaranties of loans with respect to the Project, without the consent of Metro. Developer may also assign and transfer this Agreement or partial interests in this Agreement (such partial interests being the right to construct portions of the Project) to entities affiliated with Developer through partial common ownership or management, without the consent of Metro; provided, that with respect to actual assignments or transfers (and not collateral assignments or pledges to secure loans), Developer shall notify in writing Metro as to the assignee and as to the portion of the rights assigned or transferred (if less than a full assignment or transfer). Except as permitted in the foregoing sentences, Developer shall not assign or transfer any interests under this Agreement without the prior written consent of Metro.

Section 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. Nothing contained in this Agreement shall be deemed or construed as creating any relationship of third party beneficiary, principal and agent, general partnership or joint venture or other association or relationship among Developer and Metro. The terms and provisions of this Agreement are solely for the benefit of each of the parties hereto, their successor and permitted assigns, and shall not benefit in any manner any person not a party to this Agreement.

Section 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 the

Agreement or any of the documents incorporated herein, or in the reasonable judgment of Metro there has been a substantial decrease in Developer's capacity to complete the Project in accordance with the Schedule and other terms and conditions of this Agreement, Metro may give written notice (with a copy of said notice being given to any lender of Developer) that remedial action must be taken with 30 calendar days. Developer shall correct such breach or default within 30 days after receipt of such written notice. If the default is not reasonably curable within 30 days, then Developer may continue to cure the default or breach so long as Metro is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken within the 30 day period, then Metro may terminate the Agreement by giving written notice to Developer at least 10 days before the effective date of termination.

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

In the event this Agreement is terminated as described above as a result of a default by (i) Metro, Developer shall be entitled to any remedy and damages available to it at law or in equity, or (ii) Developer, Metro shall be entitled to any remedy and damages available to it at law or in equity. In the event of a default by Developer prior to Project completion, Metro will negotiate a work out with Developer and/or seek new/additional development partners to complete the Project. In the event of a default by Metro, Metro shall use best efforts to assist Developer in recouping the costs associated with (i) obtaining land use approvals for the Property, (ii) sitework on the Property, and (iii) any improvements to the Property, as part of a future development of the Property. For purposes of this paragraph, if Developer proceeds with the Vine Street Development but not the Mixed Use Development, then only the costs associated with the Mixed Use Lot would be deemed costs associated with the "Property" for purposes of recoupment. If this Agreement is terminated, such termination shall not in any way affect any rights set forth in this Agreement that by their terms survive the termination or expiration.

Section 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.

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

METRO:

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

Dated: 7/2/18

By: _____
Greg Fischer, Mayor

DEVELOPER:

MARIAN DEVELOPMENT GROUP, LLC

Dated: 7/2/18

By: _____

Title: Principal

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

By: _____
Assistant Jefferson County Attorney

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

Exhibit A

(Property Description)

Parcel Address	Parcel #
768 & 801 Barret Avenue	021J0090
814 & 822 Barret Avenue	021J0076
810 Barret Ave & 825 Vine St	021J0130
850 Barret Ave	021J0013
1235 E Breckenridge St	021J0114

Exhibit B

(Option Agreement)

OPTION AGREEMENT

THIS OPTION AGREEMENT ("Option Agreement") is made as of the last date of execution of this Option Agreement as set forth on the signature page ("Agreement Date"), by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT,** a Kentucky consolidated local government, acting by and through **LOUISVILLE FORWARD**, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and **MARIAN DEVELOPMENT GROUP, LLC** a Kentucky limited liability company with its principal address located at 1122 Rogers Street, Louisville, Kentucky 40204 ("Buyer").

RECITALS:

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

WHEREAS, a portion of the Property will be retained by Seller which contains an existing community garden (the "Retained Parcel"); and

WHEREAS, Buyer desires to obtain an option to acquire the balance of the Property, less the Retained Parcel (the "Development Parcel") from Seller to enable it to perform certain investigations to determine the feasibility of developing the Development Parcel for single family homes, including three homes that are to be sold at a price affordable to a family earning up to 130% of the Area Median Income for Louisville, a pedestrian connection between Vine Street and Goullon Court or Dupuy Court and an outdoor community space along the Vine Street frontage ("Vine Street Development"); and

WHEREAS, it is contemplated that the Property will be subdivided into two parcels, the Development Parcel and the Retained Parcel; and

WHEREAS, the parties have entered into a Development Agreement ("Development Agreement") with respect to the Development Parcel and the Vine Street Development, wherein it is contemplated that an option will be executed, subject to action by the Legislative Council of the Louisville/Jefferson County Metro Government to declare the Development Parcel surplus and authorize its sale; and

WHEREAS, Seller, because the Vine Street Development would create jobs, provide affordable housing opportunities, enhance the tax base of Louisville and further the public purposes of the Seller, is willing to grant to Buyer an Option to acquire the Development Parcel

subject to the terms contained in the Development Agreement included as Exhibit A hereto and in accordance with the terms and conditions of this Option Agreement; and

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

AGREEMENT:

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

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

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

3. **Exercise of Option.** Buyer may exercise the Option through the satisfaction of the first three action items in accordance with the performance schedule described in the Section 1.06B of the Development Agreement, the satisfaction of the conditions described in Section 2.06 of the Development Agreement, and action by the Legislative Council of the Louisville/Jefferson County Metro Government to declare the Development Parcel surplus and authorize its sale. The Option shall be exercised pursuant to Sections 2.05 and 2.06 of the Development Agreement. Buyer shall deliver written notice to Seller ("Notice") of its intention to exercise the Option and shall specify in the Notice a date of closing on the purchase of the Property ("Closing"), which date shall not be more than six (6) months from the date of the Notice. On the date of the Notice this Option Agreement shall be deemed to be a legally binding contract of purchase and sale of the Development Parcel between Seller and Buyer, enforceable in accordance with its terms.

4. **Purchase Price.** The purchase price for the Development Parcel (the "Purchase Price") shall be $1.00, and reflects the additional consideration provided in terms of community benefits such as the affordable housing units, the pedestrian connection and an outdoor community space along the Vine Street frontage.

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

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

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

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

a. Seller will have at the Closing, good, fee simple, marketable title to the Development Parcel, free and clear of all covenants, conditions, restrictions, easements, liens, leases, charges, mortgages and encumbrances of every nature, kind or character whatsoever, except for the Permitted Exceptions, as such term is defined in Section 11 and, consistent with Section 11, Buyer may, at its sole cost and expense, select a title insurance company ("Title Company") to insure the title to the Development Parcel upon delivery of the Deed to Buyer, which title insurance shall be pursuant to a standard ALTA Policy (Form B) at standard rates, in an amount equal to the lesser of the Purchase Price or the fair market value of the Development Parcel, and without any exceptions whatsoever, except for the Permitted Exceptions.

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

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

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

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

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

9. **Environmental Condition of Development Parcel.**

a. Seller makes no warranties concerning the environmental condition of the Development Parcel, or the existence or nonexistence of Hazardous Materials (as hereinafter described) in, on or under the Development Parcel.

b. Buyer shall be solely responsible for performing any testing, assessments or other examinations to determine whether Hazardous Materials are present in, on or under the Development Parcel if it exercises the Option ("Environmental Testing"). If the Environmental Testing determines that contamination of the Development Parcel by any Hazardous Material has occurred and Buyer is required by the Commonwealth of Kentucky Cabinet for Natural Resources and Environmental Protection ("Cabinet") to remove such Hazardous Material from the Property or otherwise remediate or manage such Hazardous Material ("Remedial Measures"), the costs of the Remedial Measures shall be the sole responsibility of Buyer after Buyer has purchased the Development Parcel. Seller agrees to assist Buyer in any negotiations with the Cabinet concerning the removal, remediation or management of Hazardous Material and further agree to use its best efforts to enable Buyer to expeditiously obtain all necessary approvals from the Cabinet, including any property management or corrective action plan approvals. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any applicable federal, state or local governmental agency or authority. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recover Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601) or (vi) defined as a "pollutant" or "contaminant" pursuant to Section 101(33) of CERCLA.

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

a. Sell, grant, convey, mortgage, encumber or dispose of the Development Parcel.

b. Allow any defects, liens, adverse claims, demands or encumbrances of any nature, kind or character to be asserted against the Development Parcel or any part thereof, other than Permitted Exceptions.

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

d. Create nor allow to be created, any condition, restriction or covenant of any kind, character or nature whatsoever with respect to the Development Parcel except those listed as a Permitted Exception in Section 11 of this Option Agreement.

e. Seek any change in the zoning of the Development Parcel without Buyer's prior consent.

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

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

b. Matters shown on a survey which would not materially and adversely affect Buyer's use and enjoyment of the Development Parcel for the purpose intended by the Vine Street Development.

c. Easements, restrictions and stipulations that appear of public record as of the date of this Option Agreement.

d. Such other matters acceptable to Buyer.

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

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

i. A special warranty deed, conveying an unencumbered, good, marketable, fee simple title to the Development Parcel to Buyer, without any exceptions, except for the Permitted Exceptions. The Deed shall be in proper form for recordation, duly executed by Seller, with the signature of Seller duly acknowledged in the appropriate place. In the event that the Vine Street Development fails to commence within one (1) year of Closing, Buyer, upon notice from Seller given at any time thereafter shall re-convey the Property to Seller for an amount equal to the Purchase Price.

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

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

b. Buyer's Obligations.

At the Closing, Buyer shall deliver to Seller:

i. The Purchase Price as specified in Section 4; and

ii. If Buyer is other than a natural person, a copy, certified by a duly authorized representative of Buyer, of resolutions of Buyer authorizing the acquisition of the Property pursuant to this Option Agreement and the Development Agreement.

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

14. Default by Seller or Buyer.

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

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

15. Risk of Loss; Condemnation or Destruction Prior to Closing. The risk of condemnation, destruction or damages to all or any part of the Development Parcel until the Closing shall be shared among Seller and Buyer. If all or any part of the Development Parcel shall be condemned, destroyed or damaged at any time prior to the Closing, or if any notice of

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

16. Miscellaneous.

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

If to Buyer: The Marian Group
1122 Rogers Street
Louisville, Kentucky 40204
Attn: _____

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

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

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

All such notices, elections, requests, demands and other communications shall be deemed to have been given when actually delivered or two (2) business days after

having been deposited in the United States mails in accordance with the foregoing, except that facsimiles shall be deemed given on the date received by the recipient.

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

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

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

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

f. **Governing Law.** This Option Agreement has been made, delivered and is intended to be performed in the Commonwealth of Kentucky and shall be construed and enforced in accordance with the laws of such Commonwealth. If any provision of this Option Agreement or the application thereof to any person or in any circumstance shall be invalid or unenforceable to any extent, the remainder of this Option Agreement and the application of such provision to other persons or in other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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

h. **Commissions.** Seller and Buyer hereby represent and warrant that there are no commissions or brokerage fees now due or hereafter to become due in connection with the sale of the Development Parcel to Buyer. Buyer and Seller shall each indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses, including,

without limitation, reasonable attorney's fees, incurred by the other as a result of any claims that may be made against the other by any person claiming a commission, brokerage fee or other compensation from the other in consequence of the transaction evidenced by this Option Agreement.

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

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

SELLER:

Louisville/Jefferson County Metro Government

Dated: 7/2/18

By: _____
Greg Fischer, Mayor

BUYER:

Marian Development Group, LLC

Dated: 7/2/18

By: _____

Title: Principal

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

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

EXHIBIT A

814 Vine Street, which has Parcel ID #021J00760000

Exhibit C

INSURANCE REQUIREMENTS

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

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

II. INSURANCE REQUIREMENTS

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

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

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

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

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

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

a. Premises - Operations Coverage
b. Products and Completed Operations

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

III. ACCEPTABILITY OF INSURERS

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

IV. MISCELLANEOUS

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

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

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

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

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