

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment"), is made on this 15 day of November, 2002, by and among **CITY OF LOUISVILLE, KENTUCKY**, a municipal corporation of the first class (the "City"), **CITY OF LOUISVILLE PARKING AUTHORITY OF RIVER CITY ("PARC")** and **LOUISVILLE GALLERIA, LLC**, a limited liability company formed under the laws of the State of Maryland (the "Developer"). **CITY OF LOUISVILLE PUBLIC PROPERTIES CORPORATION**, a Kentucky non-stock, not for profit corporation (the "Corporation"), joins in the execution of this Amendment for the limited purposes set forth in Section 3 of this Amendment.

RECITALS

A. The City, pursuant to that certain Development Agreement (the "Agreement"), dated July 5, 2001, among the City, PARC, and the Developer, agreed to sell the Oxford Property to the Developer, and make other arrangements to enable the Developer to rehabilitate the existing improvements thereon and to operate the Louisville Galleria in a first class manner, as more particularly described in the Agreement.

B. The parties desire to amend the Agreement to, *inter alia*, clarify the particulars of the sale of the Oxford Property from the City to the Developer.

C. A mortgage on the Oxford Property is currently held by the Corporation (the "Mortgage").

D. The parties to this Amendment agree that the Agreement and this Amendment benefit the Corporation by stabilizing the use and value of the Oxford Property.

D. Any capitalized terms used in this Amendment but term not defined in this Amendment shall have the meanings set forth in the Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the matters set forth in the Recitals, which matters are incorporated into this Amendment as a substantive part hereof, the mutual obligations of the parties, and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, PARC, and the Developer, for themselves, their respective successors and assigns, hereby covenant, agree, represent, and warrant as follows:

1. A new Section 3.03 is added to the Agreement as follows:

"Section 3.03. Purchase of Improvements.

A. Existing Personal Property and the Existing Improvements. The parties acknowledge that the Oxford Property and the Department Store contain several structures (the "Existing Improvements") and equipment (the "Equipment"). The Developer believes that the acquisition of the Existing Improvements and the Equipment is necessary to the efficient and timely completion of the rehabilitation of the Project.

B. Conveyance. Effective as of the Developer Closing, the Existing Improvements and the Equipment shall be sold and conveyed by the City to the Developer. The purchase price for the Existing Improvements shall be determined pursuant to paragraph (F) of this Section 3.03 ("Purchase Price"). It is the intent of the parties that in consideration for payment of the Purchase Price to the City, the Developer shall receive and retain all right, title, and interest, including but not limited to, all of the benefits and burdens of ownership, of all of the Existing Improvements and the Equipment.

C. Payment of Purchase Price. The Purchase Price shall be paid by the Developer to the City pursuant to the provisions all of this Section 2.14. The Developer shall pay to the City the Purchase Price, together with interest at the rate of 5.00% per annum, through the payment of the First Percentage Payment and the Second Percentage Payment. The Purchase Price shall be payable only to the extent that payments are required to be made pursuant to Section 2.14 of this Agreement, until the first to occur of: (i) the entirety of the Purchase Price and all accrued interest (which interest shall begin to accrue as of the date hereof) has been paid to the City; or (ii) this Agreement terminates pursuant to its terms or is otherwise terminated, upon either of which events no further payments shall be allocable to the Purchase Price. The parties acknowledge and agree that the provisions of this Section 3.03.C constitute an installment obligation arising out of a "contingent payment sale" of the Existing Improvements and the Equipment, and constitute an installment obligation with a "stated maximum selling price" (as that term is defined in Temporary Treasury Regulation Section 15A .453-1(c)(2)).

D. Security for Purchase Price. In order to secure the payment of the Purchase Price, the Developer agrees to mortgage and grant to the City a security interest in all of the Existing Improvements and the Equipment upon the written request of the City. It is the intention of the parties to create, through the grant of this mortgage, "qualified nonrecourse financing which is secured by real property" within the meaning of Section 465(b)(6)(A) of the Internal Revenue Code of 1986, as amended. Upon a default in payment of any installment of the Purchase Price (as the term "default" is defined in Section 9.01 of this Agreement), the City, as mortgagee of the Existing Improvements and Equipment, shall be entitled to the remedies set forth in ARTICLE IX of this Agreement. Documents reasonably satisfactory to the Developer shall be recorded among the land records to perfect this security interest.

E. Subordination of Security. The obligation of the Developer to pay the Purchase Price, and the mortgage granted to the City with respect to the Existing Improvements and the Equipment, shall be subordinate to the rights of any Mortgagee to the same extent that payments pursuant to Section 2.14 are subordinated to the rights of a Mortgagee pursuant to ARTICLE XIII hereof.

F. Determination of Purchase Price. The Purchase Price for the Existing Improvements and the Equipment shall be determined in the following manner. The Developer shall cause Tilson & Becker, Chartered ("T&B"), an MAI appraiser with experience valuing similar types of property, to determine the fair market value of the Existing Improvements and the Equipment. T&B shall communicate its determination of fair market value to both the Developer and the City in writing. If T&B fails to so communicate its determination by such date, the City may engage an appraiser of its choice to determine the fair market value of the Existing Improvements and the Equipment, which appraisal will be done at the expense of the Developer. If either the City or the Developer objects to the determination of fair market value as set forth above, then such party may, within ten (10) days after receipt of the determination of fair market value by T&B, appoint its own appraiser to determine the fair market value of the Existing Improvements and the Equipment (the "Selected Appraiser(s)"). If the Selected Appraiser(s) and T&B agree upon the fair market value of the Existing Improvements and the Equipment, they shall jointly render a single written report stating the fair market value. If the Selected Appraiser(s) and T&B cannot agree upon the fair market value of the Existing Improvements and the Equipment, they shall appoint an appraiser (the "Appointed Appraiser") who shall determine the fair market value of the Existing Improvements and the Equipment and render a written report thereof. The fair market value contained in the joint report of T&B and the Selected Appraiser(s) or the written report of the Appointed Appraiser, as the case may be, shall be the fair market value of the Existing Improvements and the Equipment. The fees and other costs associated with the valuation work performed by T&B shall be paid for by the Developer. Each party shall pay the fees and other costs of the Selected Appraiser (if any) appointed by that party, and the fees and other costs of the Appointed Appraiser (if any) shall be shared equally by the Developer and the City."

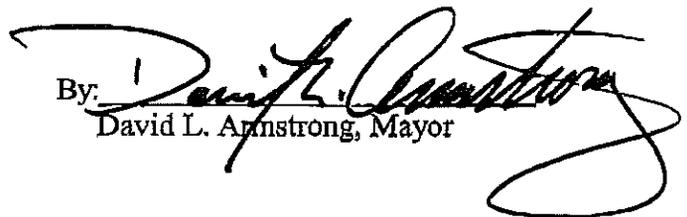
2. Each of Sections 3.03, 3.04, 3.05, 3.06, 3.07, 3.08, and 3.09 in the Agreement shall be redesignated Sections 3.04, 3.05, 3.06, 3.07, 3.08, 3.09, and 3.10, respectively.

3. The Corporation, for itself and all subsequent holders of the Mortgage, covenants and agrees that forthwith upon acquisition of the Oxford Property by virtue of exercising any rights arising under the Mortgage, the Corporation (or any subsequent holder of the Mortgage) shall execute and deliver to the City a counterpart of the Agreement (as amended), or a joinder agreement, or another instrument of similar import whereby the Corporation (or any subsequent holder of the Mortgage) agrees to be bound by, and perform all of the Developer's covenants arising under, the Agreement (as amended).

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Development Agreement to be executed as of the day and year first above mentioned.

WITNESS:

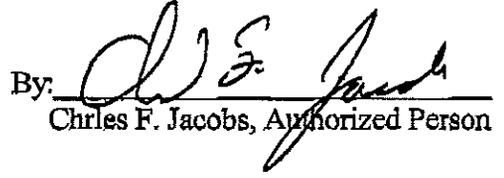
CITY OF LOUISVILLE, KENTUCKY

By: 
David L. Armstrong, Mayor

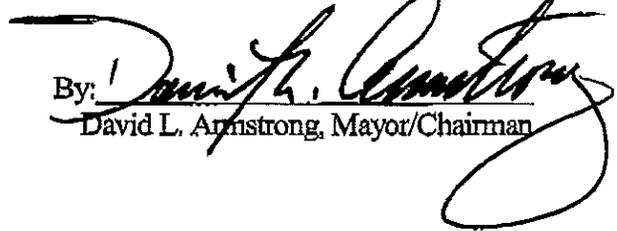
CITY OF LOUISVILLE PARKING
AUTHORITY OF RIVER CITY

By: 
Chairman

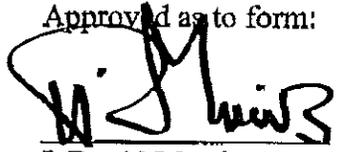
LOUISVILLE GALLERIA, LLC

By: 
Charles F. Jacobs, Authorized Person

CITY OF LOUISVILLE PUBLIC
PROPERTIES CORPORATION

By: 
David L. Armstrong, Mayor/Chairman

Approved as to form:



J. David Morris
Senior Attorney
City of Louisville, Kentucky

CORDISH-LOUISVILLE-AMEND-DEVELOPMENT AGT-ver2

**SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
("Second Amendment") is made on this 15th day of August, 2003,
by and among **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**
(successor to the **CITY OF LOUISVILLE**), a local government (the "City"), **CITY OF**
LOUISVILLE PARKING AUTHORITY OF RIVER CITY (PARC), INC.
("PARC"), and **LOUISVILLE GALLERIA, LLC**, a limited liability company formed
under the laws of the State of Maryland ("Developer").

RECITALS

A. The City, pursuant to that certain Development Agreement dated July 5, 2001, among the City, PARC, and the Developer, as amended by the First Amendment to Development Agreement dated November 15, 2002 ("Development Agreement") sold to the Developer the Galleria and the Developer, pursuant to the Development Agreement, agreed to rehabilitate the existing improvements thereon and to use its reasonable efforts to establish and maintain the highest level of quality and character in the operation of the Galleria in a first-class manner, as more particularly described in the Agreement .

B. In the Development Agreement it is acknowledged by the parties that the receipt by the Developer of Tourism Tax Credits from the State is important to the Project and the City agreed to establish and fund the Escrow Account with Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) to protect Developer from

shortfalls in the Tourism Tax Credits (or in the event that the Developer and the Project have not qualified for the Tourism Tax Credits at the time of Substantial Completion.)

C. Because the Developer anticipates that it shall receive substantially less Tourism Tax Credits than anticipated in the early years of the Project and has therefore requested the City to amend the Development Agreement with respect to the yearly amount which it can draw from the Tourism Tax Credits Escrow Fund.

D. Because of the importance of the Project to downtown Louisville, the City and PARC agree to amend the Development Agreement as provided below.

AGREEMENT

NOW THEREFORE, for and in consideration of the matters set forth in the Recitals, which matters are incorporated into this Amendment as a substantive part hereof, the mutual obligations of the parties, and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, PARC, and the Developer, for themselves, their respective successors and assigns, hereby covenant, agree, represent, and warrant as follows:

That subsections B. and C. of Section 3.05 of the Agreement is amended to read as follows:

B. Draw. Developer shall provide City with a minimum of thirty (30) days' notice prior to any draw upon the Escrow Account. Said notice shall contain evidence of shortfall in Tourism Tax Credits, such as a copy of the check from the State of Kentucky. The Developer shall have the right, from time to time: (i) to partially draw upon the Escrow

Account in the amount equal to the difference between One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) and the amount of the Tourism Tax Credit, if any, received by Developer during the immediately preceding Fiscal Year upon the written certification by Developer to the Bank and City. The Bank shall have the right to rely upon any such certification unless it receives notice from the City within five (5) days of receipt of such certification that such certificate is incorrect and the Developer should not be permitted to draw upon the Escrow Account. The City shall only have the right to give such a notice if same is true and correct. In addition, in order to be effective, such notice must be certified as true and correct by the City Representative, and the City must simultaneously provide a copy of such notice to Developer.

C. Developer shall not be able to draw upon the Escrow Account for shortfalls from the Tourism Tax Credit payable to Developer in any Fiscal Year until one hundred twenty (120) days after the end of the Fiscal Year or the date Developer certifies the amounts of the Percentage Payments, whichever occurs first. Notwithstanding the above, in the event that Developer has prepaid the Percentage Payments, Developer shall not be able to draw upon the Letter of Credit for shortfalls from the Tourism Tax Credit in any Fiscal Year until one hundred twenty (120) days after the end of the Fiscal Year. In the event the Percentage Payments, if any, equal or exceed the shortfall in the Tourism Tax Credit, Developer shall

deduct the amount of the shortfall from the amount of the First and Second Percentage Payments certified to be paid to the City and Developer shall have no right to draw upon the Escrow Account in that year. If the Percentage Payments, if any, are less than the Tourism Tax Credit shortfall, Developer shall not pay any of the amount certified as the Percentage Payments to the City and shall be entitled to draw upon the Escrow Account in an amount equal to the difference between the Tourism Tax Credit shortfall and the amount of the Percentage Payments certified to be payable to the City. In the event that in any Fiscal Year the Project has not qualified for the Tourism Tax Credit, the Tourism Tax Credit shortfall for such Fiscal Year shall be deemed to equal One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00).

2. This Second Amendment shall extend to, be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

3. If any term, provision or condition of this Second Amendment is found to be or is rendered invalid or unenforceable, it shall not affect the remaining terms, provisions and conditions of this Second Amendment, and each and every other term, provision and condition of this Second Amendment shall be valid and enforceable to the fullest extent permitted by law.

4. This Second Amendment and the Development Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

5. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall together constitute one Second Amendment.

6. Except as expressly amended herein, all other terms, covenants and conditions of the Development Agreement shall remain in full force and effect.

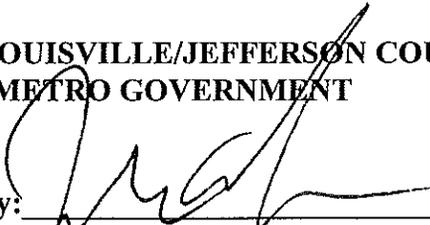
7. Any capitalized terms not otherwise defined herein shall have the same meaning in this Second Amendment as defined in the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Second Amendment as of the day and year first written above.

"CITY"

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____


Jerry E. Abramson
Mayor

"PARC"

**CITY OF LOUISVILLE PARKING
AUTHORITY OF RIVER CITY (PARC),
INC.**

By: _____

Title: _____

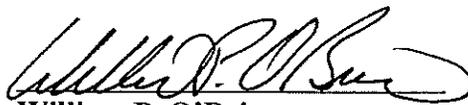

Chairman

"DEVELOPER"

LOUISVILLE GALLERIA, LLC

By: Charles F. Jacobs
Charles F. Jacobs
Authorized Person

Approved as to Form:



William P. O'Brien
Assistant County Attorney

[JDM/GALLERIA] Second Amendment
to Development Agreement

**THIRD AMENDMENT TO
DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT ("Third Amendment") is made on this 20th day of February, 2004, by and among **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** (successor to the **CITY OF LOUISVILLE**), a local government (the "City"), **CITY OF LOUISVILLE PARKING AUTHORITY OF RIVER CITY (PARC), INC.** ("PARC"), and **LOUISVILLE GALLERIA, LLC**, a limited liability company formed under the laws of the State of Maryland ("Developer").

RECITALS

A. The City, pursuant to that certain Development Agreement dated July 5, 2001, among the City, PARC, and the Developer, as amended by the First Amendment to Development Agreement dated November 15, 2002 and a certain Second Amendment to Development Agreement, undated, sold to the Developer the Galleria and the Developer agreed to rehabilitate the existing improvements thereon and to use its reasonable efforts to establish and maintain the highest level of quality and character in the operation of the Galleria in a first-class manner, as more particularly described in the Development Agreement and the above cited Amendments.

B. The parties desire to amend the Development Agreement, as so amended, for purposes of accommodating the financing of the Project.

AGREEMENT

NOW THEREFORE, for and in consideration of the matters set forth in the Recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, PARC, and the Developer, for themselves, their respective successors and assigns, hereby covenant, agree, represent, and warrant as follows:

1. Section 3.03 (C) of the Agreement is hereby amended as follows:

(a) In the first sentence of Section 3.03(C), after the phrase "of Section 2.14", and prior to the punctuation ending the sentence, insert the following parenthetical phrase:

"(including Section 2.14(F))".

(b) At the end of Section 3.03(C), insert the following as a new sentence:

"Notwithstanding anything contained herein to the contrary, the Purchase Price, together with all accrued and unpaid interest thereon, unless the First Percentage Payment and the Second Percentage Payment is prepaid in accordance with the provisions of Section 2.14 of this Agreement, shall be due and payable (if not paid sooner) on February 7, 2042."

2. Section 3.03(E) is deleted in its entirety, and replaced with the following new Section 3.03(E):

"E. Subordination of Security and Tenant Non-Disturbance.

(x) The mortgage and security interest (individually or jointly, together with any renewals, extensions, modifications, consolidations, and replacements, the "City Mortgage") referenced in section 3.03(D) hereof, are and shall be subordinate to the rights of any and all Mortgagees. This provision will be self-operative and no further instrument of subordination will be required in order to effect it. Nevertheless, the City will execute, acknowledge and deliver to Developer or to Mortgagee, at any time and from time to time, within thirty (30) days of Developer's request therefore, time being of the essence, documents reasonably requested by any Mortgagee, to confirm or effect the subordination. Additionally,

the City shall, from time to time, within thirty (30) days of Developer's request therefore, time being of the essence, enter into an Intercreditor Agreement with any Mortgagee designated by the Developer. The terms of such Intercreditor Agreement shall be in a form reasonably acceptable to Mortgagee and may include a provision that during any period in which Developer is in default of its obligations to Mortgagee, the City may not enforce the lien and/or security interest created by the City Mortgage without the prior written consent of the Mortgagee. The City Mortgage shall not, for any purposes, be deemed a "Mortgage", as that term is defined in Article XI hereof.

(y) So long as any tenant of the Project and/or the Galleria is not in default under its lease beyond the expiration of any applicable notice and cure period contained therein, its rights as tenant, and the rights of any person or entity claiming by or through Tenant, such as a subtenant or secured lender of such Tenant, shall not be disturbed by the City. These provisions will be self-operative and no further instrument of non-disturbance will be required in order to make them effective. Nevertheless, the City will execute, acknowledge and deliver to the Developer or to a Tenant designated by Developer, at any time and from time to time, within thirty (30) days of Developer's request therefore, time being of the essence, documents reasonably requested by the Developer or such designated Tenant, to confirm or effect the non-disturbance provisions of this Agreement and the City Mortgage.

(z) The City, in its capacity as mortgagee under the City Mortgage, shall be deemed to have joined in, executed, consented to and delivered (i) all instruments pursuant to which Developer conveys any interest in, or imposes or releases restrictions upon, the Galleria (such instruments to include, by way of illustration but not limitation: easements, grants of air rights, condominium declarations, declarations of covenants conditions and restrictions; such instruments shall not include the mortgage securing the obligations of Developer under this Agreement) and (ii) any amendments or modifications to any of the above. This provision will be selfoperative and no further action will be required in order to effect it. Nevertheless, the City will execute, acknowledge and deliver to Developer, at any time and from time to time, within thirty (30) days of Developer's request therefor, time being of the essence, documents reasonably requested by Developer, to confirm or effect such consent and joinder."

3. 3. Section 3.03(F) of the Development Agreement as contained in the First Amendment to the Development Agreement is hereby deleted and the following is substituted in lieu thereof as Section 3.03 (F):

F. The Purchase Price for the Existing Improvements and the Equipment shall be determined in the following manner. The Developer shall cause Axial Advisory Group, LLC ("AAG"), an MAI appraiser with experience valuing similar types of property, to determine the fair market value of the Existing Improvements and the Equipment. AAG shall communicate its determination of fair market value to both the Developer and the City in writing.

4. This Third Amendment shall extend to, be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

5. If any term, provision or condition of this Third Amendment is found to be or is rendered invalid or unenforceable, it shall not affect the remaining terms, provisions and conditions of this Third Amendment, and each and every other term, provision and condition of this Third Amendment shall be valid and enforceable to the fullest extent permitted by law.

6. This Third Amendment may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

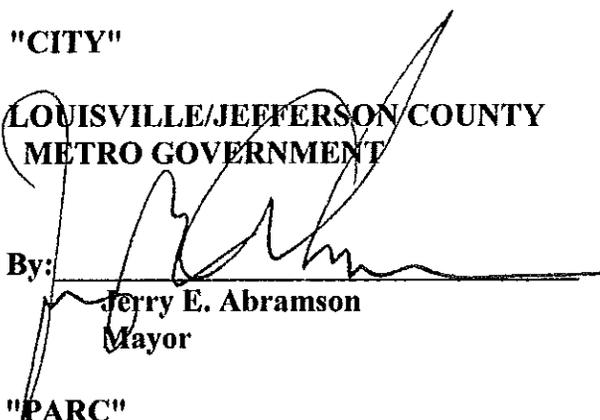
7. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall together constitute one Third Amendment.

8. Any capitalized terms not otherwise defined herein shall have the same meaning in this Third Amendment as defined in the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this
Third Amendment as of the day and year first written above.

"CITY"

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

By: 

Jerry E. Abramson
Mayor

"PARC"

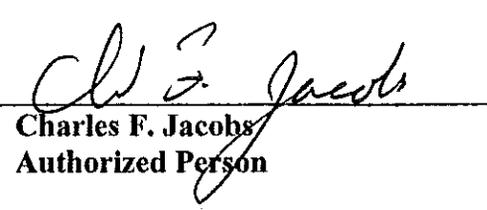
CITY OF LOUISVILLE PARKING
AUTHORITY OF RIVER CITY (PARC),
INC.

By: C. Bruce Traubner

Title: Chairman

"DEVELOPER"

LOUISVILLE GALLERIA, LLC

By: 

Charles F. Jacobs
Authorized Person

J.A.M.
Approved as to Form and Legality:



Irv Maze
Jefferson County Attorney

LOUISVILLE-3RD AMENDMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 5th day of July, 2001 by and among LOUISVILLE GALLERIA, LLC, a Maryland limited liability company, and CITY OF LOUISVILLE, KENTUCKY, a municipal corporation of the first class and CITY OF LOUISVILLE PARKING AUTHORITY OF RIVER CITY (PARC), INC., and approved by a Resolution of the Board of Aldermen on the _____ day of _____, 2001.

WITNESSETH:

WHEREAS, in the 1980's, City and the predecessor in interest to Oxford developed in downtown Louisville, an enclosed retail and office complex known as the Louisville Galleria; and

WHEREAS, Oxford owns or leases and manages as a retail and office complex a portion of the Louisville Galleria (*i.e.*, the Oxford Property); and

WHEREAS, the retail component of the Louisville Galleria is characterized by a high vacancy rate, decreasing sales and significantly fewer customers; and

WHEREAS, the redevelopment of the retail component of the Louisville Galleria into an Urban Retail/Entertainment Complex is important to the continued vitality of the Downtown Area; and

WHEREAS, because of the importance of the Louisville Galleria to the Downtown Area, the City has determined to purchase the Oxford Property from Oxford

in accordance with the terms and conditions of this Agreement and the Oxford Agreement; and

WHEREAS, Developer, through its affiliates, is a nationally recognized developer and operator of Urban Retail/Entertainment Complexes; and

WHEREAS, City has determined that it is in the best interest of the City that Developer undertake the redevelopment of the existing retail portion of the Louisville Galleria into an Urban Retail/Entertainment Complex in accordance with the terms and conditions contained in this Agreement; and

WHEREAS, City has determined that because of the importance of the retail component of the Louisville Galleria to the economic vitality of the Downtown Area it is in furtherance of the public purposes of City to convey the Galleria to the Developer in consideration of the commitment of the Developer to redevelop the retail component of the Louisville Galleria into an Urban Retail/Entertainment Complex as provided in this Agreement; and

WHEREAS, Developer, subject to the provisions of this Agreement and the satisfaction of the conditions contained herein, intends to redevelop the retail component of the Louisville Galleria into an Urban Retail/Entertainment Complex and, in connection with such redevelopment, intends to directly and/or indirectly cause approximately Seventy Million and 00/100 Dollars (\$70,000,000.00) to be invested in and around the Louisville Galleria; and

WHEREAS, PARC is the owner of the Galleria Garage and the Additional Parking Facility and consents to being a party to this Agreement solely for the purpose of agreeing to the commitments and representations contained in Article IV.

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
DEFINITIONS

Section 1.01. Specific Terms. For purposes of this Agreement, the following words and phrases shall have the meanings assigned in this Section 1.01 unless the context clearly indicates that a contrary meaning is intended.

"Additional Parking Spaces" shall mean seven hundred fifty (750) spaces for parking motor vehicles located in the Additional Parking Facility.

"Additional Parking Facility" means one (1) or more parking facilities owned by PARC, exclusive of the Galleria Parking Facility, containing in the aggregate at least seven hundred fifty (750) spaces for parking motor vehicles located within a three (3) city block radius of the Galleria.

"Atrium Structure" shall mean the steel and glass roof and wall structure connecting the two portions of the Galleria on either side of the old Fourth Street right-of-way.

"Bank" shall mean the bank in which the Escrow Account is deposited as provided in Section 3.05.

"Board Approval" shall mean the enactment of a Resolution by the Board of Aldermen of the City approving the Agreement, the purchase of the Oxford Property by the City from Oxford and the conveyance of the Galleria to Developer pursuant to the terms and conditions of this Agreement, and such other transactions as set out in Section 3.08.

"City" shall mean the City of Louisville, acting by and through LDA.

"City Grant" shall mean the grant made by the City to the Developer pursuant to Section 3.06.

"City Representative" has the meaning ascribed to it in Section 3.09 hereof.

"Department Store" shall mean the real property and improvements within the Galleria currently owned by City and leased to Oxford, and which is more particularly described in Exhibit "A", attached hereto.

"Developer" shall mean: Louisville Galleria, LLC

"Developer Closing" shall mean the event at which City executes and delivers to Developer the Deed, bill of sale and other assignments and agreements concerning the Galleria pursuant to the terms and conditions of this Agreement.

"Disposition" shall mean the transfer, total or partial sale, assignment, conveyance or land lease or any grant of a trust or power or transfer in any mode or form of, or with respect to, this Agreement or the Galleria by Developer to any entity other than a subsidiary or affiliate of Developer, but shall exclude space leases and/or ground leases to Tenants or operating agreements with occupants in the Galleria and shall also exclude the granting of a Mortgage by Developer.

"Downtown Area" shall mean generally the central business district of the City of Louisville.

"Effective Date" means the last to occur of the date first above written and that date that occurs ten (10) days after the date of Board Approval.

"Escrow Account" shall have the same meaning ascribed to it in Section 3.05.

"Event of Default of Developer" shall have the meaning ascribed to it in Section 11.01 hereof.

"Event of Default of City" shall have the meaning ascribed to it in Section 11.02 hereof.

"Exhibit" shall mean a number of designated exhibits attached to and forming part of this Agreement.

"Existing Retail Portion of Galleria" shall mean such portion of the Galleria that is currently used or intended to be used for retail businesses (whether or not currently being used) on the first, second and third floors of the Galleria and all common areas used for access to such portion.

"First Percentage Payment" shall mean the annual payment to be made to the City by the Developer pursuant to Section 2.14A.

"Fiscal Year" means each successive twelve-(12)-month period beginning on the first day of the first full calendar month following the date of the Developer Closing and ending at midnight on the last day of each such twelve-(12)-month period. Developer shall have the right, at any time, after notice to the City, to change the Fiscal Year to the calendar year.

"**Galleria**" shall mean the Galleria Shopping Center, a structure containing approximately 226,527 square feet, including therein approximately 168,000 rentable square feet of retail/service space (including the Department Store), approximately 63,000 rentable square feet of office space, approximately 48,727 rentable square feet of storage space approximately 98,000 square feet of common areas and 54 current parking spaces, as more particularly described in Exhibit B.

"**Galleria Parking Facility**" means that certain parking facility owned by PARC and located adjacent to the Galleria at 425 South Fifth Street. Louisville, Kentucky.

"**Galleria Parking Spaces**" shall mean seven hundred twenty-two (722) spaces for parking motor vehicles located in the Galleria Parking Facility.

"**Generate**" means to use, collect, generate, store, transport, treat, or dispose.

"**Gross Revenues**" means the gross revenues of the Galleria actually received by Developer from Tenants in an applicable Fiscal Year, including, but not limited to, expense reimbursements from Tenants of the Galleria, distributions from reserves held by Developer in connection with the Galleria and interest on such reserves that are released to Developer, but excluding the proceeds of secured or unsecured loans, insurance and condemnation proceeds, equity contributions by Developer, the City Grant, the Tourism Tax Credit, and draws from the Escrow Account interest accruing on Developer's investment accounts and reserves, repayment of loans to Tenants, or proceeds from the sale of all or any part of Developer's interest in the Galleria.

"**Hazardous Substance**" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), as amended

from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environment Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) any substance the presence of which at the Galleria is prohibited, regulated, or restricted by any law or regulation similar to those set forth in this definition; and (d) any other substance which by law or regulation requires special handling in its Generation because of its material adverse effect or potential material adverse effect on the environment.

"LDA" shall mean the Louisville Development Authority, which is an agency of the City.

"Major Space Concept" means a retail, entertainment or retail concept that is presently contained in Bayou Place, Power Plant or Power Plant Live, such as ESPN Zone, Hard Rock Café, Howl at the Moon, the Improv, Barnes & Noble, Sake Lounge, Harlan's Bayou Blues, Have a Nice Day Café, Bar Baltimore, Aerial Theater, McFaddens, Bill Batemens or Ruth's Chris, or that is similar to or affiliated with any of the above.

"Management Agreement" shall mean the management agreement entered into between the City and Developer pursuant to Section 2.01, substantially in the form attached hereto as Exhibit C.

"Modified Net Operating Profit" means Net Operating Profit calculated without deduction for depreciation or a preferred return of fifteen percent (15%) per annum on all

funds (debt and/or equity) directly or indirectly invested in the Galleria by Developer but in calculating Modified Net Operating Profit, Developer may deduct from Net Operating Profit in each year an amount sufficient to amortize its equity investment in the Project over a twenty-five (25) year period plus interest on such equity investment at a rate of eight percent (8%) per annum.

"Mortgage" has the meaning ascribed to it in Section 11.01 hereof.

"Mortgagee" has the meaning ascribed to it in Section 11.01 hereof.

"Net Operating Profit" for each Fiscal Year means the amount determined as follows: (a) the amount of all Gross Revenues for such Fiscal Year; less (b) (i) operating expenses for the Galleria, determined in accordance with generally accepted accounting principles, (ii) depreciation, and, (iii) to the extent not included in operating expenses, as so defined or depreciation, the amount of all *bona fide* costs, expenses and reserves paid or incurred in connection with the ownership and operation of the Galleria during such Fiscal Year (or previous Fiscal Years, to the extent Gross Revenues were insufficient during prior Fiscal Years to pay all of the costs, expenses and reserves incurred during such prior Fiscal Years), including without limitation, real property and personal property taxes, security costs, insurance costs, appropriate reserves (as may be required by any lender of Developer or are otherwise commercially prudent, however, reserves that are funded with Gross Revenues shall be deemed Gross Revenues in the Fiscal Year that said reserves are released), debt service, financing fees and closing costs, a preferred return of fifteen percent (15%) per annum on all funds (debt and/or equity) directly or indirectly invested in the Galleria by Developer (which Developer shall have the right to deduct and

retain and, in the event that Gross Revenues are not sufficient to pay the full amount of such preferred return in any Fiscal Year, the unpaid amount shall accrue and, until paid, be deemed part of the "funds invested in the Galleria by Developer" for all purposes of this Agreement), the return, to the extent feasible (as determined by Developer), of funds invested in the Galleria by Developer (which amount shall only be paid in any Fiscal Year after Developer has received the full amount of the preferred return described above and which Developer shall have the right to deduct and retain), utilities (including without limitation, electricity, gas, water, sewer, and telephone), accounting fees, legal fees, financing fees, administrative costs (other than those customarily included in a management fee), tenant allowances, tenant improvement costs, modifications, repairs, improvements and replacements to the Galleria, marketing expenses, and a management fee payable to Developer for the management of the operations of the Galleria in an amount equal to five percent (5%) of Gross Revenues for the Fiscal Year in question, provided that the preferred rate of return, financing fees, leasing fees, legal fees and the management fees payable to Developer shall be deemed to be actual expenses for purposes of determining Net Operating Profit (and Modified Net Operating Profit except for the preferred rate of return but including the amortization of Developer's equity investment as provided in the definition of Modified Net Operating Profit) regardless of whether Developer collects such preferred rate of return or fees in any fiscal year and Developer shall have the right to distribute such amounts to itself and retain same as cash flow distributions instead of fees.

"**Oxford**" shall mean Oxford Properties, LLC, a Kentucky limited liability company, with its principal office located at Suite 1700, 120 Adelaide Street, Toronto, Ontario CD M5H1T1.

"**Oxford Closing**" shall mean the event at which the City executes and receives from Oxford the Deed to the Oxford Property.

"**Oxford Agreement**" shall have the meaning ascribed to it in Section 3.01 hereof.

"**Oxford Property**" shall mean all property interests and rights purchased by City from Oxford pursuant to the Oxford Agreement, specifically: the Galleria, including Oxford's interest in the Department Store, if any, together with all leases, easements, rights-of-ways and other appurtenances attached thereto, and the Assigned Agreements (as such term is defined in the Oxford Agreement).

"**PARC**" shall mean the City of Louisville Parking Authority of River City (PARC), Inc.

"**Percentage Payments**" shall mean the First Percentage Payment and the Second Percentage Payment as required by Section 2.14 hereof.

"**Project**" shall mean the reconstruction and renovation of the Galleria in accordance with Section 2.03 hereof.

"**Project Plans**" shall mean the conceptual plans for the Project submitted by Developer to LDA for approval in accordance with Section 2.06 hereof, which plans shall only be required to show the Fourth Street exteriors of the Project, the reconstruction and/or demolition of the Atrium Structure, the design of Fourth Street and walkways and

the general circulation within the principal common areas of the Existing Retail Portion of the Galleria, but shall not include the plans and specifications concerning construction work to be undertaken by or for a Tenant.

"Second Percentage Payment" shall mean the annual payment to be made to the City by the Developer pursuant to Section 2.14B.

"State" shall mean the Commonwealth of Kentucky, its cabinets, departments and agencies.

"Substantial Completion" shall be defined as provided in Section 2.05.

"Tenant" shall mean any corporation, limited liability company, partnership, person or entity leasing, subleasing, using or occupying space within the Galleria as a retail store, a restaurant, a café, a cafeteria, a delicatessen, a food court operation, an entertainment venue, an arcade, a nightclub, a bar, a comedy club, a dance club, a live music theater, a movie theater, a discotheque, a corporate sponsored exhibition, a catering facility, a museum and/or any similar type of use. Tenant shall also mean any corporation, limited liability company, partnership, person or entity leasing, subleasing, using or occupying space within the non-retail portion of the Galleria (*i.e.*, the portion of the Galleria, that on the date hereof, is not part of the Existing Retail Portion of the Galleria) for any lawful use.

"Tourism Tax Credit" shall mean the Kentucky sales tax credit pursuant to KRS 139.536 on sales at a tourism attraction project which has been approved by the State pursuant to KRS Subchapter 154.29.

"Urban Retail/Entertainment Complex" shall mean a first-class mixed use complex containing retail businesses, such as clothing stores, book stores and music stores, and entertainment oriented businesses such as theaters, clubs, restaurants, cinemas and contemporary arcades, similar to other mixed use complexes developed by affiliates of the Developer.

ARTICLE II
COVENANTS, UNDERTAKINGS, REPRESENTATIONS
AND WARRANTIES OF DEVELOPER

Section 2.01. Interim Management of Galleria and other Facilities. Between the time the City acquires ownership of the Oxford Property at the Oxford Closing and the time it conveys the Galleria to Developer at the Developer Closing, Developer agrees to manage and control all operations at the Galleria and to maintain the Galleria in accordance with the terms and conditions of the Management Agreement and to manage the 600 West Main Condominium in accordance with the management agreement between Oxford and the condominium corporation, which agreement shall be assigned to the City at the Oxford Closing.

Section 2.02. Project Construction. After the Developer Closing, Developer shall construct the Project in material accordance with the Project Plans (as same may be modified in accordance with the provisions of this Agreement) and the provisions of this Agreement.

Section 2.03. Project Description. After the Developer Closing and in consideration of the City's agreement to make the grant to the Developer pursuant to Section 3.04 and to convey the Galleria to Developer, Developer shall reconstruct and

renovate the Existing Retail Portion of the Galleria into an Urban Retail/Entertainment Complex. In connection therewith, Developer, with the assistance of City, shall use its reasonable efforts to attempt to cause the Project to qualify as a tourism attraction project as defined by KRS 154.29-010(13) so that the project is eligible for Tourism Tax Credits (as that term is defined on the date hereof by KRS). (The parties hereto recognize, however, that the Project may never so qualify.) After the Developer Closing, as part of the Project, Developer shall undertake (or cause to be undertaken) the following activities:

A. The reconstruction (or demolition) of the Atrium Structure , which may or may not include the removal of all or part of the Atrium Structure, so that the old right-of-way of 4th Street can be reopened to vehicular traffic;

B. The reconstruction of the facades of that portion of the Galleria abutting the old right-of-way of 4th Street as reasonably required by the reconstruction and/or demolition of the Atrium Structure and the reopening of Fourth Street;

C. The remodeling and reconfiguration of the Existing Retail Portion of the Galleria so that the Existing Retail Portion of the Galleria, after the completion of the Project, will be suitable for use as a first-class Urban Retail/Entertainment Complex in accordance with Section 2.11;

D. The upgrading and/or replacing of the existing mechanical, plumbing HVAC systems of the Existing Retail Portion of the Galleria to the extent Developer determines such upgrading and/or replacement is reasonably necessary; and

E. The making of reasonable efforts to lease space in the Existing Retail Portion of the Galleria to Tenants.

F. The management of the existing office space portion of the Galleria in a manner similar to the operation and management of comparable office space in the Downtown Area.

Section 2.04. Project Schedule. Because the Project is considered an important element for the revitalization of the Downtown Area, it is important to City that construction of the Project commence as soon as practically possible and that the Project be completed on schedule by Developer. Developer acknowledges that time is of the essence and agrees to adhere to the project schedule established in this Section. Except for delays caused by force majeure, as provided in Section 12.06 hereof and/or caused by the failure of City to timely comply with any of the material provisions of this Agreement, and subject to the provisions of Section 2.04B (including the provisions therein that provide for the extension of the project schedule), Developer shall obtain the prior written approval of City for any material amendment to the project schedule, which approval shall not be unreasonably withheld, conditioned or delayed.

A. Subject to the terms and conditions of this Agreement and the compliance by the City with the material provisions of this Agreement, Developer shall cause the construction of the Project to be substantially in accordance with this Agreement and the Project Plans to be performed in a good and workmanship manner, and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations.

B. Developer recognizes that it is important to City that Substantial Completion be achieved no later than the third anniversary of the Developer Closing. Developer shall use good faith efforts to achieve Substantial Completion by such date and

provided that the necessary permits for such construction has been issued to Developer and the Tenants, Developer shall use its reasonable efforts to cause the Project to be substantially completed by such date.

C. Subject to issuance of necessary permits, Developer shall commence construction of the Project no later than the first anniversary of the date of the Developer Closing and shall proceed diligently without undue delay so that Substantial Completion shall occur no later than the third (3rd) anniversary of the date of the Developer Closing. Any provision of this Agreement to the contrary notwithstanding, if Developer is delayed in the construction of the Project by reasons of force majeure as provided in Section 11.06, by the failure of the City to comply with any of the material provisions of this Agreement, or another cause which Developer and City agree is reasonably justifiable, the date for commencement of construction of the Project and the date of Substantial Completion shall each be extended by the period equivalent to the length of such delay.

D. City, its agents and employees, subject to the reasonable rules and regulations of Developer and its contractors and tenants, are hereby granted a right of entry upon the Galleria during construction of the Project to enable City to inspect the construction of the Project throughout the course of construction.

E. From the date hereof through the date of Substantial Completion, Developer shall keep City reasonably informed as to its progress in developing and constructing the Project.

Section 2.05. Substantial Completion. It is acknowledged by the parties that the Project will continue to develop and change over the years of operation as an Urban

Retail/Entertainment Project and that therefore final completion cannot be accurately defined. Nevertheless, Developer has agreed that the Project will be Substantially Complete by a date certain as specified in Section 2.04.B and C. As used in this Agreement, for the Project to be Substantially Complete the Developer shall have accomplished the following:

- A. Restored the facades of the buildings along Fourth Street and reopened Fourth Street to vehicular traffic;
- B. Leased space within the Existing Retail Portion of the Galleria to Tenants for at least six (6) Major Space Concepts; and
- C. Renovated the common areas located on the first two (2) levels of the Existing Retail Portions of the Galleria.

Section 2.06. Design and Approval of the Project.

A. After the Effective Date, Developer shall commence preparation of the Project Plans. The Project Plans shall be reasonably sufficient in detail to enable City, acting through the City Representative, to verify that the design of the Project, including size, scope and exterior of the Project, if constructed in accordance with the Project Plans, will be substantially in accordance with the provisions of this Agreement. The Project Plans shall include renderings and elevations of the exterior of the Project. The design of the Project, as depicted in the Project Plans, shall be consistent with good architectural practice and appropriate urban design principles, as reasonably determined by Developer.

B. No later than nine (9) months after the Effective Date, Developer shall submit to City the Project Plans, for approval by City, acting by and through the City

Representative, which approval shall not be unreasonably withheld, conditioned or delayed. The Project Plans shall, in any event, be deemed to have been approved by City unless rejected, in whole or in part, in writing, within twenty-one (21) days after their submission, specifying the reasons for the rejection. If any Project Plans are not approved, Developer shall have the right, but not the obligation, to redraw and resubmit same. In the event City, acting by and through the City Representative, disapproves the Project Plans, at Developer's election, Developer may terminate this Agreement by sending written notice of termination, to LDA within sixty (60) days of the date of any such disapproval, whereupon, with the exception of those provisions that, by their express terms, survive termination, this Agreement shall be deemed null and void.

C. Developer shall have the right to modify approved Project Plans, provided that with regard to any material modifications of the exterior of the Project depicted in such plans, Developer shall comply with the approval process for Project Plans as provided above (in other words, such modified Project Plans shall be submitted by Developer to City for the approval or deemed approval pursuant to the provisions of Section 2.06B hereof and such submission shall be treated as a "first time" submission for purposes of its review and approval pursuant to this Section 2.06C).

D. Developer shall, for informational purposes only, submit to City a preliminary budget for the Project at the same time it submits the Project Plans, and prior to achievement of Substantial Completion, shall submit supplemental or amended budgets during the construction of the Project in the event of any material change to the initial budget submitted. City acknowledges that such information constitutes a

confidential trade secret of Developer. To the extent permitted by law, City shall use reasonable efforts to keep all such information confidential.

E. Upon approval (or deemed approval) by City of the Project Plans, as set out above, Developer shall proceed expeditiously to complete the construction plans and specifications for the Project (exclusive of plans and specifications for construction work associated with a Tenant), which plans shall be materially consistent with the approved (or deemed approved) Project Plans and obtain all permits and approvals required for construction of the Project (exclusive of permits and approvals for construction work undertaken by or for a Tenant), including, but not limited to, approval pursuant to the requirements of the Downtown Review Overlay District. Developer shall, for informational purposes only, submit to City a set of construction plans and specifications for the construction work that it is performing in connection with the Project at the time it applies for the primary building permit for the Project.

Section 2.07. Codes. The initial construction of the Project shall comply with all federal, state and local codes, ordinances, statutes and regulations, nothing herein notwithstanding.

Section 2.08. Environmental Approvals. Developer, with the assistance of the City, shall be responsible for obtaining any environmental and other similar approvals, consents or permits necessary for the Project.

Section 2.09. Performance and Payment Bonds. Developer shall cause the general contractor engaged by Developer in constructing the Project to maintain one hundred percent (100%) performance and payment bonds with corporate surety for the

construction. Such bond shall be in a form acceptable to Developer's lender. Developer, Developer's lender and City and each shall be named as an obligee.

Section 2.10. Employment Regulations; Affirmative Action. Developer will not discriminate on the basis of race, sex, color, creed, or national origin in the sale, lease, rental, use or occupancy of the Galleria. Developer shall not refuse to hire or employ, bar or discharge from employment, or discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color or national origin. 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. At all times after commencement of construction and until Substantial Completion, Developer shall use its reasonable efforts to cause the general contractor or the construction manager that it retains to construct the Project to comply with the provisions of this Section 2.10 during the construction of the Project.

Section 2.11. Operation and Maintenance of Galleria. After the Developer Closing, Developer shall comply with the provisions of this Section. Developer recognizes and acknowledges that the manner in which the Galleria is used and operated is a matter of concern to City by reason of the impact which the use of the Galleria is

expected to have upon the Downtown Area. In order to give City assurance as to the manner in which the Galleria will be used and operated, Developer agrees that at all times after the Developer Closing, Developer shall use its reasonable efforts to establish and maintain the highest level of quality and character in the operation of the Galleria in a first-class manner.

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

- (1) develop and manage the Existing Retail Portion of the Galleria in a first-class manner and use its reasonable efforts to lease the Galleria to Tenants which will be consistent with the operation of the Galleria as an Urban Retail/Entertainment Complex, as same may evolve from time to time;
- (2) attempt to impose hours and days of operation on each Tenant that operates a retail operation in the Galleria;
- (3) make reasonable efforts to market, or cause others to market, the Existing Retail Portion of the Galleria by appropriate promotions and advertising of a first-class nature;
- (4) keep the Existing Retail Portion of the Galleria and all furniture, fixtures, HVAC systems, equipment and other personal property of Developer that serve the Existing Retail Portion of the Galleria in good repair and condition;
- (5) maintain the Existing Retail Portion of the Galleria (exclusive of Tenants' spaces) in a first-class, clean and sanitary condition;
- (6) substantially comply with all applicable laws, ordinances, regulations and codes applicable to its operations;
- (7) obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the Existing Retail Portion of the Galleria

by Developer (as opposed to the operation of Tenant's spaces).

B. In particular, and without limiting the generality of the foregoing, Developer covenants and agrees with respect to the Galleria that it shall use its reasonable efforts to not:

- (1) use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio, or broadcast within or on the Galleria in such a manner that any sounds reproduced, transmitted, or produced shall be directed beyond the Galleria in a manner that creates a public nuisance or permit vibration and noise from mechanical apparatus to be transmitted beyond the interior of the Galleria in a manner that creates a public nuisance;
- (2) cause or permit objectionable odors to emanate or be dispelled from the Galleria;
- (3) permit any use of the Galleria in a manner likely to injure the reputation of the Downtown Area or which will be in violation of law, or permit any part of the Galleria to be used for any disreputable or immoral purpose whatsoever; including any use which would require a license pursuant to L.C.O. §111.001 *et seq.* (Adult Entertainment Activities) or a license pursuant to L.C.O. §111.390 *et seq.* (Massage Parlors);
- (4) permit undue accumulations of garbage, trash, rubbish, or any other refuse, fail to remove the same at regular intervals, fail to keep such refuse in proper containers in the interior of the Galleria or other places designated therefor until called for to be removed, or fail to keep the Galleria free of rodents, roaches, or other pests;
- (5) use or permit any use to be made of the Galleria that constitutes a nuisance;
- (6) commit waste upon the Galleria;

- (7) generate Hazardous Substances at, to, or from the Galleria (unless the same is specifically permitted by or handled in strict accordance with applicable laws and for which adequate insurance coverage and, if necessary or appropriate, a permit is obtained by Developer or a Tenant);

Section 2.12. Tenant Standards. Developer shall use its reasonable efforts (without any requirement to reduce rent or make other concessions) to cause each Tenant of the Existing Retail Portion of the Galleria to comply with the operational standards set forth in Section 2.11 and to meet the following additional standards:

A. To the extent that a Tenant elects to operate a retail operation in its space in the Galleria, endeavor to maintain and operate its respective business operations in a first-class manner at all times, including maintaining the condition of its respective premises, tenant improvements, and personal property in good condition and repair;

B. Maintain its premises, including without limitation, fixtures, kitchen and other equipment, and other personal property in good, clean, sanitary, and orderly condition and make all repairs and replacements thereof when necessary, prudent, and in accordance with commercially reasonable standards;

C. Be open to the public every day except New Year's Day and Christmas if such Tenant is operating a retail operation at the Galleria;

D. Be open for business to the public at least from ten o'clock a.m. to eight o'clock p.m. if such Tenant is operating primarily a retail operation at the Galleria;

E. Comply with all applicable laws; and

F. Obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of such Tenant's premises in the Galleria.

Section 2.13. Refuse. Developer shall at all times provide and maintain facilities in the Galleria for the storage and collection of garbage and refuse, none of which shall at any time be stored outside or visible from outside of the Galleria unless suitably screened.

Section 2.14. Additional Consideration to City. As additional consideration for the establishment of the Escrow Account, Developer agrees to make percentage payments to the City as provided herein.

A. Subject to the provisions of Section 3.07C, commencing as of date of the Developer Closing and continuing thereafter for a period of forty (40) years, Developer shall pay to City, for each Fiscal Year, the First Percentage Payment due for such Fiscal Year. The term "**First Percentage Payment**" means the amount equal to ten percent (10%) of Net Operating Profit for such Fiscal Year. Commencing with the first Fiscal Year the Percentage Payment shall be determined and payable within one hundred twenty (120) days after the end of each Fiscal Year.

B. Subject to the provisions of Section 3.07C, commencing on the date of the Developer Closing, and continuing for a period of forty (40) years thereafter, Developer shall pay to the City, for each Fiscal Year, the Second Percentage Payment due for such Fiscal Year. The term "**Second Percentage Payment**" shall mean an amount equal to twenty-five percent (25%) of the Modified Net Operating Profit. Commencing with the first Fiscal Year the Second Percentage Payment is due, Developer shall pay the Second

Percentage Payment to the City no later than one hundred twenty (120) days after the end of each Fiscal Year.

C. With each annual payment of the First and Second Percentage Payments, Developer shall furnish City with a statement of Net Operating Profit and Modified Net Operating Profit in accordance with generally accepted accounting principles, certified by an independent Certified Public Accountant; provided, however, that if no Mortgagee requires Developer to furnish either audited or reviewed financial statements, such statements may be certified as true and correct by Developer and accompanied by a review letter or certification from an independent Certified Public Accountant.

D. Complete business records respecting the determination of the Percentage Payments shall be kept by Developer. Such records for each Fiscal Year shall be retained for three (3) years after the end of each Fiscal Year. City may, at any time (but not more frequently than once per Fiscal Year), and on reasonable advance notice, inspect, copy and audit such records for the then current Fiscal Year and two (2) prior Fiscal Years at City's expense. Developer's statements of determination of the Percentage Payments shall be deemed, for all purposes under this Agreement, to be final after the third (3rd) anniversary of City's receipt of such statements.

E. The statements provided by Developer to City pursuant to the provisions of this Section 2.14 and all information obtained by City from Developer's records shall be deemed to be "trade secrets" and "confidential financial information" of Developer and, to the extent such records are exempt from inspection pursuant to KRS 61.870 through 61.884, shall not be disclosed to the public or anyone in the employ of City who

does not have a demonstrated need for such information. City, to the fullest extent permitted by applicable law, shall deny public inspection of such information. This Section 2.14E shall not limit, however, the exercise of City's rights in any legal proceeding, provided that City then requests the court to maintain such information as confidential. Notwithstanding anything to the contrary contained in this Agreement, Developer shall not be obligated to disclose to City the terms of individual leases of Tenants or the sales of individual Tenants.

F. At any time after the second (2nd) anniversary of the date of Substantial Completion, upon thirty (30) days' notice to City, Developer shall have the right to prepay the Percentage Payments by paying City a lump sum amount equal to the Percentage Payments due and payable hereunder for the last full Fiscal Year immediately preceding such prepayment, divided by a capitalization rate, determined pursuant to the procedure below, provided that in no event shall the amount of such prepayment be less than the sum of \$2,000,000 less the amount of the Percentage Payments previously paid by Developer to City. In the event Developer exercises its option pursuant to this subsection, it shall notify the City, in writing, of its intention to do so at least ninety (90) days prior to the date Developer intends to prepay the Percentage Payments. Developer and City shall each employ, at their sole expense, a MAI certified appraiser. The two appraisers chosen by Developer and City shall then select a third MAI certified appraiser subject to their mutual agreement. The expense of the third appraiser shall be shared equally by Developer and City. The three appraisers shall each independently examine and evaluate Developer's operation of the Galleria and calculate a capitalization rate

) (appropriate to determine the lump sum value of the City's rights to receive the Percentage Payments pursuant to this Agreement. The two closest rates among the three rates determined by the three appraisers shall be added together then divided by two (2) and the product thereby determined shall be the capitalization rate used in the above formula. Developer shall provide each appraiser full opportunity and right to examine and inspect any and all business records of the Developer relating to the Galleria. From and after the date of such prepayment, Developer shall be relieved of any obligation to pay Percentage Payments, maintain books and records in accordance with the provisions of this Section 2.14, report Gross Revenues, Net Operating Profit or Modified Net Operating Profit to the City, or permit the City to review and audit any such records. In the event of such prepayment, Developer shall prepare, execute and deliver to City an amendment to this Agreement that eliminates all references herein to the Percentage Payments, that eliminates this Section 2.14 (except for the confidentiality provisions) and City shall, within ten (10) days of receipt of such amendment, time being of the essence, execute and deliver to Developer such amendment.

F. City shall have the right to assign its rights to payments hereunder, to PARC or other agency or instrumentality as the City shall designate in writing from time to time to Developer, and Developer agrees to make payments directly to such duly designated assignee; provided any lump-sum payments or prepayment shall be made directly to City unless the City's right to same is clearly and specifically assigned in writing to PARC or such other agency or instrumentality.

Section 2.15. Security. Developer shall use its reasonable efforts to provide, or cause others to provide, reasonably adequate security services at the Galleria.

Section 2.16. Representations and Warranties of Developer. Developer represents and warrants to City on the date hereof and on the date of the Developer Closing as follows:

A. Developer is a limited liability company duly formed and validly existing under the laws of the State of Maryland authorized to do business in Kentucky and possessing the power and authority to enter into this Agreement.

B. Developer is not a "foreign person" as that term is defined in Section 1445 of the Internal Revenue Code, and applicable regulations.

C. The execution of this Agreement, the construction of the Project and the operation and maintenance of the Galleria by Developer pursuant to the terms and conditions of this Agreement 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 that would, if adversely determined, affect Developer's ability to enter into this Agreement, construct the Project or operate and maintain the Galleria in accordance with this Agreement.

Section 2.17. Indemnification. Except as may otherwise be provided herein and except for claims arising as a result of a default hereunder by the City, Developer agrees to indemnify City against any claim or filing of any lien on any part of the Project as a result of Developer's construction thereof and shall hold City harmless from any and all such claims or liens.

Section 2.18. General Liability Insurance.

A. Developer shall carry comprehensive general liability insurance insuring City and Developer against any and all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer or City and their respective agents, contractors or employees, in connection with the design and construction of the Project, in the amount of Five Million Dollars (\$5,000,000.00) for property damage and Ten Million Dollars (\$10,000,000.00) for bodily injury or death of persons. Developer may procure and maintain a "blanket" All Risk policy to satisfy the requirements of this Section 2.18, which may cover other property or locations of Developer and its affiliates and/or the affiliates of a member of Developer.

B. The following general requirements shall apply to all insurance coverage carried by Developer pursuant to Section 2.18A hereof:

(i) **Waiver of Subrogation.** To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against City.

(ii) **Additional Insured.** City shall be named as additional insured in all policies hereunder.

(iii) Financially Sound Company. Such policies shall be procured from financially sound and reputable insurers licensed to do business in the State and have an A.M. Best rating of not less than A-8 or, if not rated with A.M. Best, the equivalent of A.M. Best, the equivalent of A.M. Best's size of A-8 (or otherwise approved by City).

(iv) Certificates of Insurance. Developer shall deliver to City policies or certificates of insurance evidencing such coverage before the commencement of construction.

(v) Replacement Certificates of Insurance. Within thirty (30) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be delivered by Developer to City.

(vi) Non-Cancelable Without Notice. The coverage shall be non-cancelable unless the carrier gives to City thirty (30) days' prior written notice of cancellation.

ARTICLE III **COVENANTS AND UNDERTAKINGS OF CITY**

Section 3.01. Purchase of Oxford Property. The City agrees to purchase from Oxford all of Oxford's rights, title and interests in the Oxford Property together with related easements, leases, operating agreements, management agreements, and the various agreements with state and local entities to which Oxford is a party. The purchase of the Oxford Property shall be in accordance with a purchase and sale agreement attached hereto as Exhibit D (the "**Oxford Agreement**"). The Oxford Closing shall occur no later than one hundred twenty (120) days after the Effective Date.

Section 3.02. Sale of Galleria to Developer.

A. Subject to the satisfaction or waiver of the Conditions to Developer Closing contained in Article IV, the City agrees to convey to the Developer, by deed of special warranty and such other instruments as Developer may reasonably require, the Galleria, the Oxford Property and the Department Store for the sum of One Dollar (\$1.00).

B. The Developer Closing shall occur no later than one hundred eighty (180) days after the Effective Date unless extended by mutual agreement of City and Developer, and shall be established by a written notice from Developer to City delivered not less than one (1) week prior to the proposed Closing. The Closing shall be held at City Hall, Room 200, 601 West Jefferson Street, Louisville, Kentucky, or at such other place as is mutually agreed to by the parties.

C. State and County real property ad valorem taxes assessed against the Galleria and payable in the year of Closing shall be prorated on a calendar year basis to date of Closing. City of Louisville ad valorem taxes shall be prorated from the previous July 1 to date of Closing. Developer shall pay the recording fees imposed for recording the deed and the mortgage. All utilities, other operating expenses, tenant rent and other income associated with the Galleria shall be equitably prorated. Each party shall bear its own legal and other expenses associated with the transaction.

D. At the Developer Closing, City shall deliver good and marketable title to the Galleria, by deed of special warranty, free and clear of all liens and encumbrances, except governmental laws affecting the Galleria, recorded leases, restrictions and other

encumbrances of record which are acceptable to Developer and shall assign to the Developer, its interests and Oxford's interests in the Tenant leases, the operating agreements and the management agreements. At the Developer Closing, City shall execute and deliver to Developer, all deeds and bills of sale, and the Assigned Agreements as defined in the Oxford Agreement and such other estoppels necessary in order to transfer and/or assign to Developer all of the right, title and interest of City and/or Oxford, on the date hereof, in and to the Galleria, the Oxford Property and the Department Store.

Section 3.03. Interim Management of Galleria. Immediately after the City acquires title to the Oxford Property at the Oxford Closing, the City and Developer agree to enter into the Management Agreement.

Section 3.04. City Grant.

A. Because of the public benefits to be derived by City from the Project and the operation of the Galleria as an Urban Retail/Entertainment Complex, City agrees to pay Developer, as a grant and not as a fee, the sum (the "City Grant") of Nine Million and 00/100 Dollars (\$9,000,000.00) to assist Developer with the costs incurred or to be incurred by Developer in connection with the development of the Project, including the building-out of space in the Galleria as required by Tenants as a condition to leasing space within the Galleria. At the Developer Closing, the entire amount of the City Grant shall have been appropriated by the Board of Aldermen for the benefit of the Project. The City Grant shall be distributed to Developer by City in installment payments in accordance with the provisions of Section 3.04.B hereof.

B. Developer shall have the right, from time to time, to submit to City a draw request requesting City to make a distribution of the proceeds of the City Grant to Developer to reimburse or pay Developer the costs incurred or to be incurred by Developer in connection with the development, leasing and construction of the Project (each, a "Requisition"). The Requisition shall be accompanied by copies of invoices, cancelled checks or such other backup documentation substantiating such costs incurred or to be incurred by Developer as is reasonably requested by City. Each Requisition shall be paid within thirty (30) days of the date of such Requisition.

Section 3.05. Tourism Tax Credits Escrow Fund. As provided in Section 4.01 hereof, the obtaining of Tourism Tax Credits is a waivable condition precedent to the Developer Closing. Because the Project may not qualify for the Tourism Tax Credits, and because if the Project qualifies for the Tourism Tax Credits, the amount of Tourism Tax Credits to be received by Developer in any year is dependent upon the amount of business conducted at the Existing Retail Portion of the Galleria (and the amount of sales taxes paid), the obligation of the State to provide Tourism Tax Credits may not constitute sufficient security to enable Developer to obtain financing for the Project. Therefore, as a further condition precedent to Developer going forward with undertaking the Project, the City agrees to establish an escrow fund which may be drawn against by Developer in the event of a shortfall in the Tourism Tax Credits (or in the event that the Developer and the Project have not qualified for the Tourism Tax Credits at the time of Substantial Completion.)

A. Establishment of Escrow Account. At the Developer Closing, City shall deliver to Developer evidence that it has established the Escrow Account with a bank located in Louisville, Kentucky and deposited into the Escrow Account the sum of \$3,500,000. The City, Developer and Bank shall execute an escrow agreement which shall provide that the Bank shall release the escrow funds in the Escrow Account to the Developer in accordance with the provisions of subsections B and C of this Section. The terms of such Escrow Agreement shall be acceptable to Developer. Unless drawn down earlier as provided in subsections B and C, the Escrow Account shall remain on deposit with the Bank for a period of twelve (12) years from the date of establishment. At the end of such twelve-year period any funds remaining in the Escrow Account shall be paid to the City.

B. Draw. Developer shall provide City with a minimum of thirty (30) days' notice prior to any draw upon the Escrow Account. Said notice shall contain evidence of shortfall in Tourism Tax Credits, such as a copy of the check from the State of Kentucky. The Developer shall have the right, from time to time: (i) to partially draw upon the Escrow Account in the amount equal to the difference between Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) and the amount of the Tourism Tax Credit, if any, received by Developer during the immediately preceding Fiscal Year upon the written certification by Developer to the Bank and City. The Bank shall have the right to rely upon any such certification unless it receives notice from the City within five (5) days of receipt of such certification that such certificate is incorrect and the Developer should not be permitted to draw upon the Escrow Account. The City shall only have the right to give

such a notice if same is true and correct. In addition, in order to be effective, such notice must be certified as true and correct by the City Representative, and the City must simultaneously provide a copy of such notice to Developer.

C. Developer shall not be able to draw upon the Escrow Account for shortfalls from the Tourism Tax Credit payable to Developer in any Fiscal Year until one hundred twenty (120) days after the end of the Fiscal Year or the date Developer certifies the amounts of the Percentage Payments, whichever occurs first. Notwithstanding the above, in the event that Developer has prepaid the Percentage Payments, Developer shall not be able to draw upon the Letter of Credit for shortfalls from the Tourism Tax Credit in any Fiscal Year until one hundred twenty (120) days after the end of the Fiscal Year. In the event the Percentage Payments, if any, equal or exceed the shortfall in the Tourism Tax Credit, Developer shall deduct the amount of the shortfall from the amount of the First and Second Percentage Payments certified to be paid to the City and Developer shall have no right to draw upon the Escrow Account in that year. If the Percentage Payments, if any, are less than the Tourism Tax Credit shortfall, Developer shall not pay any of the amount certified as the Percentage Payments to the City and shall be entitled to draw upon the Escrow Account in an amount equal to the difference between the Tourism Tax Credit shortfall and the amount of the Percentage Payments certified to be payable to the City. In the event that in any Fiscal Year the Project has not qualified for the Tourism Tax Credit, the Tourism Tax Credit shortfall for such Fiscal Year shall be deemed to equal Seven Hundred Thousand and 00/100 Dollars (\$700,000.00).

D. The City shall be entitled to the interest earnings on the Escrow Account, and such earnings shall be paid out to the City no less frequently than annually. Further, subject to approval of the Developer, which approval shall not be unreasonably withheld, delayed or conditioned, the amounts from time to time in the Escrow Account shall be invested at the direction of the City in a collateralized, guaranteed investment agreement or such other investment as shall be selected by the City, provided in any event such investment shall at the time be a legal investment for the City under Kentucky law.

Section 3.06. Board Approval. On or before July 31, 2001, City agrees to prepare and cause to be introduced before the legislative body of the City, the Board of Aldermen, a resolution approving this Agreement and the various transactions necessary to consummate this Agreement. The resolution shall provide that the Board approves and authorizes the Mayor and other appropriate officers or employees of the City to perform the following in accordance with the terms and conditions of this Agreement:

- A. Execute and deliver the Oxford Contract and purchase the Oxford Property from Oxford pursuant thereto;
- B. Sell the Galleria to Developer in accordance with the terms of this Agreement (including executing and delivering a deed and bill of sale for same);
- C. Execute and deliver Management Agreement with Developer; and
- D. Such other acts necessary or convenient to consummate the transactions required or contemplated by this Agreement.

In addition, such resolution shall repeal or amend Ordinance No. 17, Series 1982, requiring rents received from Oxford pursuant to the lease on the Department Store to fund a discount loan program for minority businesses.

Section 3.07. City Assistance.

A. Commencing on the date hereof and continuing for a period of ninety-nine (99) years following the Developer Closing, the City shall assist Developer and, to the extent requested by Developer, its Tenants, in obtaining all permits and approvals, including liquor licenses for Tenants, that are sought by Developer in connection with the development, construction, operation, maintenance, and reconstruction of the Galleria. In addition, City, to the extent necessary, shall:

- (i) assist Developer in pursuing any necessary changes to or variances of the zoning ordinance, or other land use ordinances of the City in order to accommodate the initial development of the Project;
- (ii) assist Developer in pursuing any approvals of any subdivision plan proposed by Developer concerning the initial development of the Project; and
- (iii) assist Developer in applying for any and all Federal, State and City approvals or permits that are necessary or desirable to carry out the initial development of the project.

B. City shall assist Developer in obtaining the approval of the State for certain modifications, as determined by Developer, to existing agreements between the State and Oxford and its predecessors-in-interest in order to permit the Project and the operation of the Galleria as an Urban Retail/Entertainment Complex, as well as permitting all or a portion of the Atrium Structure to remain in place over the reopened Fourth Street in the event the Developer retains all or a portion of the Atrium Structure.

C. City shall provide security and police protection to the Project in the same manner and at the same level as the City provides police protection to convention centers, arenas and stadiums located in the City. City shall cause the Project and the streets around the Project to be patrolled by uniformed police on a regular basis. City agrees to use its best efforts to establish a police substation in the Galleria upon substantial completion of the Project and Oxford agrees to lease space to the City for such substation at no charge to the City. In addition, City agrees to assist Developer with scheduling periodic meetings with the commanders of the Police District in which the Galleria is located to discuss security needs and concerns.

D. City shall cooperate with the efforts of Developer to market the Project, and shall encourage convention, visitors and tourism entities that promote City to market and promote the Project. In the event that City markets, promotes or advertises any retail or entertainment facility located in the City, City shall market, promote and advertise the Project the same way. Any City sponsored marketing, promotion or advertising concerning the Project shall be subject to the prior approval of Developer, which approval shall not be unreasonably denied.

E. City and Developer shall, promptly after the Developer Closing, develop a directional sign program for the Project and City shall implement same prior to Substantial Completion. It is the intention of the parties hereto that City install an adequate number of directional signs on the highways, subject to approval of the Commonwealth of Kentucky, Cabinet for Transportation, which approval City shall use its reasonable efforts to obtain, leading into the downtown of the City and in the

downtown streets of the City that identify the name and location of the Project (and directions to the Project).

F. Upon reopening of 4th Street as a public right-of-way, City shall maintain 4th Street in the same manner as provided for other similar rights-of-way. City shall, for no consideration or fee, grant permits to Developer and/or one or more Tenants designated by Developer for special events, as requested by Developer, for the portion of 4th Street adjacent to the Project, unless the City's Traffic Engineer makes a good faith determination that the temporary closure of Fourth Street at such time would seriously hinder or restrict traffic flow in the Downtown Area because of a special event or events occurring in the Downtown Area at the same time. The City acknowledges that the Developer and/or one or more Tenants designated by Developer, from time to time, may have several special events a week that require the temporary closure of Fourth Street, such as Thursday night and Friday night happy hour events. At the option of Developer, a special event may occur every Thursday, Friday and Saturday evening.

G. City shall, for no consideration or fee, grant permits to Developer and/or one or more Tenants designated by Developer for use of sidewalks adjacent to Project, as requested by Developer.

H. In order to expedite the construction of the Project and the leasing of space within the Galleria to new tenants, the City agrees to reimburse the Developer for the following costs incurred by the Developer prior to the Developer Closing in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00):

1. 100% of costs incurred by Developer to prepare the Project Plans;
and

2. 100% of costs incurred by Developer to prepare marketing materials and do marketing for new tenants in the Galleria.
3. 50% of attorney fees incurred for due diligence investigations pursuant to subsection I of this Section.

All amounts reimbursed to Developer pursuant to this section shall be an advance upon the City Grant and shall be deducted from payment of the proceeds of the City Grant.

Developer, after the Effective Date and before the Developer Closing, may submit to City reimbursements requests for costs incurred pursuant to this subsection. Each request shall be accompanied by copies of invoices, cancelled checks or other backup documentation substantiating such costs for which Developer is requesting reimbursement. The City shall pay each such request within thirty (30) days after the date of such request.

I. Because the closing conditions set out in Article V of this Agreement and the closing contingencies set out in Section 8 of the Oxford Agreement are substantially similar, the City and Developer agree that it is in their mutual interests to cooperatively act to satisfy the conditions and contingencies. City therefore agrees to contract with an attorney, which attorney and his fee structure shall be acceptable to Developer, to undertake and coordinate all due diligence investigations and actions necessary to satisfy the closing contingencies in the Oxford Agreement and the closing conditions contained in this Agreement. Such attorney shall represent both Developer and the City and shall take direction from Developer and City. Developer agrees that it shall be responsible for 50% of the legal fees incurred by the City under the contract with the attorney in the event

that the Developer Closing occurs and that its share of such legal expenses shall be paid out of the fund established in subsection H of this Section.

J. City agrees that Developer may retain excess funds from the operation of the Galleria during the interim management period which would otherwise be paid to the City pursuant to the Management Agreement provided that Developer uses such funds exclusively for the payment of ad valorem taxes payable by Developer on the Galleria after it acquires title to the Galleria at the Developer Closing.

Section 3.08. Additional Representation and Covenants of City. City represents and warrants to Developer on the date hereof and on the date of Closing as follows:

A. City is a Kentucky municipal corporation of the first class validly existing under the laws of the Commonwealth of Kentucky, with the power and authority to enter into this Agreement, to convey to Developer the Department Store and undertake the actions required of it by this Article.

B. Subject to Subsection 3.08E hereof, there shall be no leases, liens or encumbrances upon the Galleria which cannot be released or assigned to Developer prior to Closing.

C. No work has been done, or materials furnished in or about the Department Store for which the statutory period for filing any mechanic's or materialmen's lien has not expired. If such work shall be done or materials furnished, the same shall be paid for in full by City prior to the Closing and City shall so certify by affidavit at Closing in order

that Developer's title company's mechanic's lien exception shall be removed from Developer's title policy without additional charge or premium.

D. 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.

E. There shall be no mortgage, debt or mechanic liens or encumbrances upon the Galleria on the date of the Developer Closing.

Section 3.09. City Representative. City hereby appoints C. Bruce Traughber as its agent (the "City Representative") to receive any and all submissions and to grant any and all approvals with respect to the Project. City reserves the right to modify or terminate such appointment and to appoint another City Representative as its agent. Such modification or termination and appointment shall not become effective until City provides Developer with a notice of such action, which notice contains a reasonably detailed description of such action.

ARTICLE IV OBLIGATIONS OF PARC

Section 4.01. Galleria Parking.

A. Commencing on the date of the Developer Closing and continuing for a period of ninety-nine (99) years, PARC shall make available, for the exclusive use of the general public visiting the Galleria, the Galleria Parking Spaces. The Galleria Parking Spaces shall be available to the general public, free of charge (*i.e.*, at no charge to Developer, the Tenants and/or their patrons), after 6:00 p.m. on weekdays and all day and night on weekends. PARC covenants that there are currently 213 transient parking spaces

within the Galleria Parking Facility, that during the Term of this Agreement, PARC shall, at the request of Developer, always maintain at least 213 transient parking spaces within the Galleria Parking Facility and PARC agrees to establish a parking rate for such transient parking spaces between the hours of 11:00 A.M. and 2:00 P.M. Monday through Friday no greater than \$1.25 per hour. Such rate shall be subject to change periodically as PARC alters its general rates for its parking facilities, but PARC, in revising the rates set out above agrees to consider the competitive needs of the Developer and the tenants in the Galleria and in no event shall PARC increase such rates by an amount in excess of the cumulative increase in the Consumer Price Index (using the date of this Agreement as the base year). PARC further agrees to adopt a parking validation program for patrons of tenants in the Galleria during the above periods and to cooperate with Developer to establish a valet parking operation during such hours if requested by Developer.

B. During the term set out in subsection A, PARC: (i) shall cause the Galleria Parking Facility to be operated and maintained in a first-class manner in good condition and repair in a clean, safe and well lit condition; (ii) shall cause adequate security services to be provided to the Galleria Parking Facility during all hours of operation of the Galleria Parking Facility; and (iii) shall cause the Galleria Parking Facility to be regularly patrolled by at least one uniformed guard whenever the Galleria is open to the public. Commencing on the date of the Developer Closing and continuing for a period of ninety-nine (99) years, the manager of the Galleria Parking Facility, and the terms of its contract with PARC concerning the management of the Galleria Parking Facility, shall be subject to the approval of Developer, which approval Developer shall

not unreasonably withhold, condition or delay. In the event Developer has a *bona fide* concern or issue concerning the then current manager of the Galleria Parking Facility, and Developer notifies PARC of such issue or concern, PARC shall use its best efforts to cause such issue or concern to be resolved to the reasonable satisfaction of Developer. From time to time, at the request of Developer, PARC, the manager of the Galleria Parking Facility and Developer shall meet to discuss any issues or concerns that Developer may have concerning the Galleria Parking Facility.

C. In the event that the Galleria Parking Facility is damaged or destroyed by a fire or other casualty, PARC shall promptly cause the Galleria Parking Facility to be restored. During such restoration PARC shall provide the patrons of the Galleria with replacement Galleria Parking Spaces in a parking facility approved by Developer, which approval shall not be unreasonably withheld, delayed or conditioned, that is within a two-(2)-block radius of the Galleria on the same terms and conditions contained herein concerning the Galleria Parking Spaces. In the event the Galleria Parking Facility is taken by eminent domain, PARC shall provide the patrons of the Galleria with replacement Galleria Parking Spaces in a parking facility approved by Developer, which approval shall not be unreasonably withheld, delayed or conditioned, that is within a two-(2)-block radius of the Galleria on the terms and conditions contained herein concerning the Galleria Parking Spaces.

D. At the request of Developer, PARC shall adopt a parking validation program for the patrons of the Galleria with terms, conditions and procedures that are

approved by Developer, which approval shall not be unreasonably withheld, conditioned or delayed.

E. All signage located within the Galleria Parking Facility shall be subject to the approval of Developer, which approval shall not be unreasonably withheld, conditioned or delayed. Developer and one or more Tenants designated by Developer shall have the right to erect and maintain signage in and on the Galleria Parking Facility, subject to approval by PARC, which approval shall not be unreasonably withheld.

F. At the election of Developer, the parties hereto shall execute and deliver to each other a memorandum agreement, in recordable form, that reflects the provisions of this Section 3.04. The form and substance of such agreement shall be acceptable to Developer. PARC shall execute and deliver such memorandum agreement to Developer within thirty (30) days of Developer's request therefor, time being of the essence. Developer shall have the right to cause such memorandum to be recorded among the land records of Jefferson County, Kentucky.

G. PARC agrees to cooperate with Developer to establish a valet parking operation for the Galleria, if requested by Developer.

H. PARC and the CITY agree to assist Developer and Tenants designated by Developer from time to time with the procurement of reasonably priced, safe and convenient parking for employees of Developer and such designated Tenants and their respective contractors.

Section 4.02. Additional Parking.

A. Commencing on the date of the Developer Closing and continuing for a period of ninety-nine (99) years, PARC shall make available, for the exclusive use of the general public visiting the Galleria, the Additional Parking Spaces. The Additional Parking Spaces shall be available to the general public, at a cost of no more than \$3.00 per park, after 6:00 p.m. on weekdays and all day and night on weekends. Such \$3.00 charge may be increased by \$.25 on every fifth anniversary of the date of the Developer Closing. During such period, PARC: (i) shall cause the Additional Parking Facility to be operated and maintained in a first-class manner in good condition and repair in a clean, safe and well lit condition; (ii) shall cause adequate security services to be provided to the Additional Parking Facility during all hours of operation of the Additional Parking Facility; and (iii) shall cause the Additional Parking Facility to be regularly patrolled by at least one uniformed guard whenever the Galleria is open to the public. In the event Developer has a *bona fide* concern or issue concerning the then current management of the Additional Parking Facility, and Developer notifies PARC of such issue or concern, PARC shall use its best efforts to cause such issue or concern to be resolved to the reasonable satisfaction of Developer.

B. From time to time, PARC shall have the right to substitute one Additional Parking Facility for one or more Additional Parking Facilities. In the event that a Additional Parking Facility is damaged or destroyed by a fire or other casualty, PARC shall promptly cause the Additional Parking Facility to be restored or replaced with another Additional Parking Facility. During such restoration PARC shall provide the

patrons of the Galleria with replacement Additional Parking Spaces in another Additional Parking Facility on the same terms and conditions contained herein concerning the Galleria Parking Spaces. In the event an Additional Parking Facility is taken by eminent domain, City shall provide the patrons of the Galleria with replacement Additional Parking Spaces in an Additional Parking Facility on the terms and conditions contained herein concerning the Galleria Parking Spaces.

C. At the request of Developer, PARC shall adopt a parking validation program for the patrons of the Galleria with terms, conditions and procedures that are approved by Developer, which approval shall not be unreasonably withheld, conditioned or delayed.

D. PARC agrees to cooperate with Developer to establish a valet parking operation for the Galleria, if requested by Developer. In the event that Developer desires to utilize the Additional Parking Facility for such a valet parking operation, notwithstanding the above, the price per park shall not exceed \$1.00, which amount shall be increased by \$.25 on every fifth anniversary of the date of the Developer Closing.

Section 4.03. Additional Representations and Covenants of PARC. PARC represents and warrants to the Developer on the date hereof and on the date of closing as follows:

A. PARC is a Kentucky nonprofit, nonstick corporation, validly existing under the laws of the Commonwealth of Kentucky, with the power and authority to enter into this Agreement and to make the binding obligations contained in this Article.

B. PARC, in this Article, has not made any untrue statement of a material fact, or failed to state a material fact.

C. PARC has no continuing obligation to Dillard's with respect to the use of the Galleria Parking Facility except for whatever obligation if any it has with respect to all tenants in the Galleria (which PARC shall continue to honor.)

Section 4.04. Events of Default by PARC. Each of the following shall constitute an "Event of Default by PARC":

- (a) The failure of PARC to perform or to observe any covenant, obligation or requirement contained in this Article IV of this Agreement, and the continuation of such failure for thirty (30) days after receipt of written notice from Developer specifying the nature and extent of such default, or if such default cannot reasonably be cured within such thirty-(30)-day period, the failure of either (i) to commence to cure such default within such thirty-(30)-day period and to diligently continue to pursue such efforts to cure to completion or (ii) to cure such event of default within a reasonable time after the expiration of the first thirty-(30)-day period, in no event to exceed ninety (90) days after the written notice of the event of default . A copy of any notice of default shall also be sent to City.
- (b) The filing by PARC of a voluntary proceeding or the consent by PARC to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.
- (c) The entering of an order for relief against PARC or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of PARC in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days.

Section 4.05. Remedies. Should an Event of Default by PARC occur hereunder, Developer may, by written notice to PARC and City, terminate this Agreement, and may,

in addition to, or in lieu of terminating this Agreement, exercise any remedies available to it at law or in equity. All remedies under this Agreement shall be cumulative and not restrictive of other remedies, including, without limitation, specific performance. The City hereby guarantees to Developer the timely performance of the obligations of PARC hereunder. An Event of Default by PARC shall be deemed to be an Event of Default by City.

ARTICLE V
CLOSING CONDITIONS

Section 5.01. Developer's Conditions . The obligation of Developer to attend the Developer Closing and to undertake the development of the Project shall be subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by Developer:

A. The representations and warranties of City contained herein shall have been true and correct as of the date when made, and shall be deemed to have been made again at and as of the Closing Date as provided herein and then shall be true and correct in all material respects.

B. On the Developer Closing date, City shall not be in default of any of its material obligations under this Agreement and City shall be ready, willing and able to comply with all of its obligations set forth in Article III hereof.

C. On the Developer Closing date, PARC shall not be in default of any of its material obligations under Article IV of this Agreement and PARC shall be ready, willing and able to comply with all of its obligations set forth in Article IV.

D. There shall be no lawsuits or other proceedings, including without limitation, any bankruptcy or insolvency proceedings, pending or threatened: (i) against City that is likely to impair its ability to carry out its obligations hereunder or under any agreement between the City and Oxford concerning the Galleria; or (ii) regarding ownership, use or possession of the Galleria or any portion thereof.

E. The City shall possess good and marketable fee simple title to the Oxford Property and the Department Store, which title shall not be subject to the operation and effect of that certain Agreement for Last Offer, dated October 27, 1988, between Oxford and First Capital Income and Growth Fund Series XII, as amended March 31, 1998.

F. Crown Life Insurance Company (“**Crown**”), if it is the holder of a mortgage on the Galleria, and any other holder of a mortgage on the Galleria, shall have released its mortgage on the Galleria.

G. Developer shall be reasonably satisfied that the State is prepared to approve the issuance of Kentucky Tourism Tax Credit for the benefit of the Galleria with a minimum value of Seven Million and 00/100 Dollars (\$7,000,000.00).

H. The State shall have consented to the transfer by Oxford to the Developer of all of Oxford’s right, title and interest in and to all agreements that the State and Oxford have concerning the Property. In addition, the State and Developer shall have entered into agreements (the “**State Agreements**”), which may include modifications of existing agreements concerning the Galleria, such as the agreement by the State to permit Developer to demolish the Galleria’s existing glass atrium. The State shall have provided Developer with an estoppel certificate concerning the status of its existing agreements

with Oxford with respect to the Galleria, which estoppel certificate shall be dated within thirty (30) days of the Developer Closing date (as same may be extended). Each such consent, estoppel certificate and agreement shall be in a form and substance that is acceptable to Developer in its sole and absolute discretion.

I. All consents required, if any, for the transfer to the Developer of the rights and obligations of Oxford in the Third Party Management Agreement between Oxford and the 600 West Main Condominium Association dated September 8, 1993, as renewed October 1, 1998, for management services in the 600 West Main Street Building shall have been given, and the building owner that is a party to such agreement shall have provided the Developer with an estoppel certificate concerning the status of that agreement (which estoppel certificate shall be dated within thirty (30) days of the Developer Closing date, as same may be extended) in form and substance reasonably acceptable to Developer.

J. All consents required, if any, for the transfer to the Developer of the rights and obligations of Oxford in the "**B&W Operating Agreements**" (as that term is defined in the Oxford Agreement and that certain Master Lease of Retail Space dated November 19, 1982, between Oxford Properties, Inc., and Brown & Williamson Tobacco Corporation (as that lease had been amended and assigned) shall have been given. The owner of the Brown & Williamson Tower shall have provided Developer with an estoppel certificate concerning the status of the B&W Operating Agreements, which estoppel shall be dated within thirty (30) days of the Developer Closing date, as same

may be extended. Each such consent and estoppel certificate shall be in a form reasonably acceptable to Developer.

K. All consents required, if any, for the transfer to the Partnership of the rights and obligations of Oxford in the **Meidinger Operating Agreements** (as that term is defined in the Agreement to Form Partnership) shall have been given. At the election of Developer, Developer and the owner of the Meidinger Tower ("**Cottonwood**") shall have entered into such modifications of that certain Letter Agreement dated October 27, 1988, between Oxford Properties, Inc., and First Capital Income and Growth Fund -- Series XII, as may be necessary to permit Developer to redevelop the Galleria as contemplated in this Agreement. At the election of Developer, Developer and Cottonwood shall have entered into such modifications to Section 5 C of that certain Reciprocal Easement, License and Restriction Agreement dated October 27, 1988, between Oxford Properties, Inc., and First Capital Income and Growth Fund -- Series XII, as may be necessary to permit Developer to redevelop the Galleria as contemplated in this Agreement. Cottonwood shall have provided Developer with an estoppel certificate concerning the status of the Meidinger Operating Agreements, which estoppel shall be dated within thirty (30) days of the Developer Closing date, as same may be extended. Each such consent, modification, and estoppel certificate shall be in a form reasonably acceptable to Developer.

L. All consents required, if any, for the transfer to Developer of the rights and obligations of Oxford in all of the agreements that Oxford has with the lessee of the Department Store ("**Dillard's**") concerning the Galleria shall have been given. At the

election of Developer. Developer and Dillard's shall have entered into such modifications to Sections 10, 11 and 16.1 of that certain Sub-Lease and Declaration of Restrictions dated October 7, 1981, between Oxford Properties, Inc., and J. Bacon & Sons, as amended and assigned, as may be necessary to permit Developer to redevelop the Galleria as contemplated in this Agreement. Dillard's shall have provided Developer with an estoppel certificate concerning the status of its existing agreements with Oxford concerning the Galleria, which estoppel shall be dated within thirty (30) days of the Developer Closing date, as same may be extended. Each such consent, modification, and estoppel certificate shall be in a form reasonable acceptable to Developer.

M. Each tenant of the Existing Retail Portion of the Galleria on the Closing Date except (i) tenants whose leases expire without right of renewal in eighteen (18) months or less, (ii) tenants leasing less than 3,600 square feet and (iii) Dillard's has provided Developer with an estoppel certificate concerning the status of its lease, which estoppel certificate shall be dated within thirty (30) days of the Developer Closing date (as same may be extended hereunder) and Developer is satisfied, in its sole discretion, with the terms and status of each lease concerning space in the Galleria.

N. The City has obtained Board Approval.

O. City has obtained an opinion from its bond counsel that the Department Store can be conveyed to Developer and released from that certain Mortgage and Trust Indenture and Security Agreement, both dated December 1, 1985. Such opinion shall be in a form and substance reasonably acceptable to Developer.

P. City has appropriated sufficient funds for the City Grant and the Escrow Account.

Q. City, Developer and Bank have entered into an escrow agreement substantially in accordance with the provisions of Section 3.05 that is in a form acceptable to Developer in its sole discretion.

Section 5.02. City Conditions . The obligation of City to attend the Developer Closing shall be subject to the satisfaction of the following conditions, any one or more of which may be waived in writing by City:

A. The representations and warranties of Developer contained herein are true and correct in all material respects as of the date when made and shall be deemed to have been made again at and as of the Developer Closing date as provided herein and then shall be true and correct in all material respects.

B. On the Developer Closing date, Developer is not in default of any of its material obligations under this Agreement.

C. There are no lawsuits or other proceedings, including without limitation, any bankruptcy or insolvency proceedings, pending or threatened against Developer that would likely impair its ability to carry out its obligations hereunder.

D. City has received Board Approval.

E. City has have received reasonable assurance from the U.S. Department of Housing & Urban Development that the sale of the Department Store to Developer pursuant to this Agreement does not violate the UDAG agreement between City and the U.S. Department of Housing & Urban Development.

F. Developer has provided City with reasonable evidence that Developer has arranged equity and/or debt financing sufficient, when added to the City's monetary obligations hereunder and the Tourism Tax Credit, to fund the construction work to be undertaken by Developer with regard to the development of the Project.

G. Developer is qualified to do business in Kentucky.

ARTICLE VI **ACTIONS PENDING CLOSING**

Section 6.01. Actions Pending Closing. City and Developer will make reasonable efforts to satisfy the conditions to the Developer Closing set out in Article V hereof and to effectuate the redevelopment of the Galleria as contemplated herein. City shall not unreasonably withhold, delay or condition any approval or consent sought by Developer hereunder.

Section 6.02. Opinion of Counsel. Upon the execution of this Agreement, each party shall have furnished to the other party an opinion of counsel, in form and substance mutually acceptable and customary in like transactions, as to the taking of all necessary action in connection with the authorization, execution, and delivery of this Agreement by such party, the enforceability of this Agreement in accordance with its terms, and as to other matters mutually deemed necessary or appropriate by the parties.

ARTICLE VII **ASSIGNMENT AND TENANT PROVISIONS**

Section 7.01. Restriction Against Transfer of Interests. Developer represents and agrees for itself and any successor in interest that, except only by way of security for and only for the purposes of obtaining financing reasonably necessary to enable

Developer or a successor in interest to perform its obligations to undertake the Project (and to finance all of the costs incurred by Developer associated with the undertaking and completion of the Project), Developer has not made or created, and that it will not, prior to the fourth anniversary of the Developer Closing, make or create or suffer to be made or created, a Disposition, or any contract or agreement to do the same, without the prior written approval of City, which approval shall be in the sole discretion of City.

Section 7.02. Conditions to the Approval of Disposition Prior to the Fourth Anniversary of Developer Closing. City shall be entitled to require, but shall not be obligated to require, as conditions to the approval required in Section 7.01, that:

- (a) any proposed transferee shall have the purpose, qualifications, and financial responsibility, in the sole opinion, to satisfy and perform all of the obligations undertaken in this Agreement by Developer;
- (b) any proposed transferee by instrument in writing, shall, for itself, its successors and assigns, and expressly for the benefit of City, have expressly assumed all of the obligations of Developer not previously performed under this Agreement and shall have agreed to be subject to all of the conditions and restrictions to which Developer is subject hereunder; and
- (c) there has been submitted to City for review, and City has approved, all instruments and other legal documents involved in effecting the Disposition.

In the event that pursuant to the provisions of Section 7.01 of this Agreement, the approval of City is required for a Disposition and a request for City's approval of a Disposition is made, City shall approve or deny such request for approval within thirty (30) days of City's receipt of such request.

No such Disposition with respect to the Galleria or any portion thereof or approval by City thereof shall be deemed to relieve Developer, or any other party bound in any way

by this Agreement or otherwise with respect to the construction of the Project or the maintenance and operation of the Galleria, or any portion thereof, from any of its obligations with respect thereto, and no such Disposition shall limit any of the remedies of City hereunder, except as specifically provided herein; provided, however, that if City approves a Disposition of all of Developer's interest, Developer shall be relieved of all further liability except for defaults under the Agreement arising prior to such Disposition.

Section 7.03. Disposition After Fourth Anniversary of Developer Closing.

City agrees that, on or any time after the Fourth Anniversary of the Developer Closing, Developer may, without the prior consent of City, make or create, or suffer to be made or created, any Disposition; provided, however, that promptly after a Disposition (but excluding space leases to Tenants or operating agreements with occupants in the Galleria and financing transactions made in accordance with this Agreement) Developer shall provide City with a written instrument benefiting City and executed by the transferee, assuming Developer's obligations under this Agreement.

Section 7.04. Permitted Sub-Leases to Tenants. Notwithstanding anything in Section 9.01 or other sections of this Agreement to the contrary, Developer may enter into leases or other contractual agreements with Tenants for all or part of Developer's interest in the Galleria, at any time and upon such terms and conditions as Developer shall, in its sole discretion, deem fit and proper.

Section 7.05. Liability. No permitted assignment or lease shall relieve Developer from primary liability for the performance of the terms, covenants, and conditions herein contained. In the event of a Disposition of all of Developer's interest

pursuant to Section 6.03, Developer shall be relieved of all further liability arising hereunder except for defaults under this Agreement that arose prior to such Disposition which remain uncured.

Section 7.06. Project Financing and Mortgages. The provisions of this Article VII are not intended to modify or supersede any of the rights granted any Mortgagee under this Agreement. In the event that the provisions of this Article VII conflict with or are inconsistent with the any of the provisions of Article XI of this Agreement, the provisions of Article XI of this Agreement shall control and the provisions of this Article VII shall be construed and interpreted accordingly.

ARTICLE VIII **TERM**

Section 8.01. Term. This Agreement has a term that commences on the date hereof and, unless this Agreement is otherwise terminated, shall terminate on the ninety-ninth (99th) anniversary of the date of the Developer Closing. This Agreement shall automatically terminate and be void and of no further force and effect in the event that the Developer Closing has not occurred on or before December 31, 2021.

ARTICLE IX **EVENTS OF DEFAULT**

Section 9.01. Events of Default by Developer. Each of the following shall constitute an "Event of Default by Developer":

- (a) The filing by Developer of a voluntary proceeding or the consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.
- (b) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a

substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days.

- (c) Breach of any material covenant, obligation or requirement of Developer arising under this Agreement not specifically named as an Event of Default in this Section 9.01, and the continuation of such breach for thirty (30) days after receipt of written notice from City specifying the nature and extent of such breach, or if such breach cannot reasonably be cured within such thirty-(30)-day period, the failure of Developer to commence to cure such breach within such thirty-(30)-day period and to diligently pursue same to completion.
- (d) Breach of any provision of Article VII of this Agreement by Developer prior to the fourth anniversary of the date of the Developer Closing and the continuation of such failure for ten days after written notice from City specifying the nature and extent of any such default.

Section 9.02. Events of Default by City. Each of the following shall constitute an "Event of Default by City":

- (a) The failure of City to perform or to observe any non-monetary covenant, obligation or requirement of Agreement not specifically named as an Event of Default in this Section 9.02, and the continuation of such failure for thirty (30) days after receipt of written notice from Developer specifying the nature and extent of any such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of either (i) to commence to cure such default within such thirty (30) day period and (ii) to diligently continue to pursue such efforts to cure completion.
- (b) The failure of City to perform or to observe any non-monetary covenant, obligation or requirement contained in Article III of this Agreement, and the continuation of such failure for thirty (30) days after receipt of written notice from Developer specifying the nature and extent of such default, or if such default cannot reasonably be cured within such thirty (30) day period, the failure of either (i) to commence to cure such default within such thirty (30) day period and to diligently continue to pursue such efforts to cure to completion or (ii) to cure such event of termination within a reasonable time after the expiration of the first thirty (30) day period, in no

event to exceed ninety (90) days after the written notice of the event of termination.

- (c) The filing by City of a voluntary proceeding or the consent by City to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights.
- (d) The entering of an order for relief against City or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of City in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days.
- (e) The failure of City to pay or advance or cause to be paid or advanced when due any sum of money owed by City to Developer under this Agreement or required to be paid or advanced by City under or in connection with any provision of this Agreement and the continuation of such failure for thirty (30) days after written notice from Developer specifying the nature and extent of any such default.

Section 9.03. Remedies.

Should an Event of Default by Developer occur hereunder, City may, by written notice to Developer, terminate this Agreement. Should an Event of Default by City occur hereunder, Developer may, by written notice to City, terminate this Agreement. The non-defaulting party may, in addition to, or in lieu of terminating this Agreement, exercise any remedies available to it at law or in equity. All remedies under this Agreement shall be cumulative and not restrictive of other remedies, including, without limitation, specific performance.

With the exception of a material default by Developer of any of its obligations under Article VII prior to the fourth anniversary of the Developer Closing (which default is dealt with by the provisions of Section 9.01 hereof), Developer fails to comply with any of its material obligations under this Agreement, City shall have the right to notify

Developer of such default. A copy of such notice shall also be sent to the Mortgagee. In the event that such default is not cured by or for Developer within thirty (30) days after receipt of written notice from City specifying the nature and extent of such breach (or if such default cannot reasonably be cured within such thirty (30) day period and to diligently pursue same to completion), City may exercise any remedies available to it at law or in equity.

Section 9.04. Waiver of Jury Trial. City and Developer do hereby waive trial by jury in any action, suit, proceeding and/or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement any claim of injury or damage, and/or statutory remedy.

ARTICLE X
NON-BINDING MEDIATION

In an effort to resolve any conflicts which may arise between the City, PARC and Developer concerning the interpretation, performance or implementation of this Agreement or any other aspect of the Project, the City, PARC and Developer agree that all disputes between them arising out of or relative to this Agreement or the Project shall be submitted to non-binding mediation unless otherwise agreed. The mediator shall be mutually acceptable to the City, PARC and the Developer and the costs and expenses charged by the mediator for such mediation shall be borne equally by the City, PARC and Developer.

In the event non-binding mediation does not result in the resolution of any dispute between the City and Developer, either party may pursue their rights at law or in equity.

Either party may terminate any such non-binding mediation at any time for any reason or no reason.

ARTICLE XI
MORTGAGEE RIGHTS

Section 11.01. 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 Galleria, or any portion or portions thereof, 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 or refinance the Project and/or the Galleria. The beneficiary of or mortgagee under any such assignment and/or mortgage is hereby referred to herein as a "**Mortgagee**".

Section 11.02. Notice of Breaches to Mortgagees. In the event City gives written notice to Developer of a breach of its obligations under this Agreement, City shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to City by Developer. To facilitate the operation of this Section, Developer shall at all times keep City provided with an up-to-date list of Mortgages.

Section 11.03. Mortgagee May Cure Breach of Developer.

A. In the event that Developer receives notice from City of a breach by Developer of any of its obligations under this Agreement and such breach is not cured by Developer pursuant to the provisions of this Agreement, City shall, in addition to the notice provided in Section 11.02 hereof, give notice of the failure to cure on the part of Developer to the Mortgagee at the expiration of the period within which Developer may

cure as set forth in this Agreement. Then the Mortgagee may proceed to cure any such failure and the Mortgagee, if it elects to cure such default, shall give city written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that the Mortgagee elects to proceed to cure any such default, the 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 City 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 the Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed-in-lieu of foreclosure), after foreclosure of Developer's interest in and to the Galleria (or after the appointment of a receiver or the obtaining of title to the Galleria via deed and/or assignment-in-lieu of foreclosure), the Mortgagee may at its option:

- (i) elect to assume the position of Developer hereunder in which case, in the event City has terminated this Agreement or suspended the distribution of any funds that the City is obligated to provide Developer pursuant to this Agreement, City agrees that this Agreement shall be deemed reinstated and City shall commence the distribution of such funds in accordance with the provisions of this Agreement and, in which case, such Mortgagee shall cure any default by Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 10.02 hereof within the timeframes contained in this Agreement and shall cause the Project to be substantially completed in accordance with the provisions of this Agreement; and/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 10.03B only if it shall exercise such right within six (6) months after the receipt of the additional herein set forth.

C. For purposes of this Section 11.03, the term "Mortgagee" shall include not only the "Mortgagee", as that term is defined in Section 11.01 hereof, but shall also include any person or entity that obtains title to the Property as a result of the Mortgagee's exercise of its foreclosure rights or the transfer of title to the Property at the direction of the Mortgagee by Developer to a person or entity by deed-in-lieu of foreclosure.

Section 11.04. Rights and Duties of Mortgagee. In no event shall any Mortgagee be deemed to be Developer hereunder or 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 to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (a) its 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 covenants, 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 set forth in Section 11.03B (i) of this Agreement or shall specifically elect under this Section 11.04 to become Developer by written notice to City whereupon such

Mortgagee, upon making any such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to be Developer hereunder.

Section 11.05. Mortgagee's Rights Agreements. City covenants and agrees with Developer that City, acting by and through the City Representative, 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 X of this Agreement that apply to Mortgagees and Mortgages. Within thirty (30) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 11.05, time being of the essence, City, acting through City Representative, shall execute and deliver to Developer such a lender's right agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential 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, at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Article XI that apply to Mortgagees and Mortgages (such as the Mortgagee notice provisions and the Mortgagee cure rights provisions of this Article XI).

ARTICLE XII **MISCELLANEOUS**

Section 12.01. Provisions Not Merged with Deeds and Other Agreements.

This Agreement shall not terminate upon the execution of the Deed for the Galleria and the provisions of this Agreement shall not be deemed to be merged into such deed.

Section 12.02. 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 12.03. 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. Notwithstanding the above, in the event that any of the provisions of Article III of this Agreement are found, at any time, to be invalid, unenforceable or illegal, Developer shall have the right to terminate this Agreement by notice by City of such termination.

Section 12.04. 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 12.05. 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 is set forth herein, such time may be extended by mutual agreement of City, acting through its Mayor, 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.

Attn: General Counsel

If to City: . City of Louisville, Kentucky
c/o Louisville Development Authority
600 W. Main St., Suite 300
Louisville, KY 40202
Attn: Executive Director

With a copy to: Director of Law
City of Louisville
601 W. Jefferson St.
Louisville, KY 40202
Attn: J. David Morris

If to PARC: City of Louisville Parking Authority
of River City (PARC), Inc.
333 Guthrie Green
Louisville, Kentucky 40202
Attn: Cathy Duncan

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 the Mortgagee.

Notices or other communications by hand-delivery shall be effective when received at the recipient's location (or when delivered to that location if receipt is refused). Notices or other communications given by Federal Express or other recognized overnight courier service shall be presumed received on the following business day. Notices or other communications given by certified mail, return receipt requested, postage prepaid, shall be presumed received four (4) business days after the date of mailing.

Section 12.08. Entirety of Agreement. This, 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 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 12.09. Brokers and Finders . 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.

Section 12.10. Successors and Assigns. The covenants, terms and conditions contained in this Agreement shall inure to the benefit of the successors and permitted assigns of the parties hereto; however, Developer shall not sell, assign or transfer any interests under this Agreement except as provided in Article VI.

Section 12.11. Estoppels. Each of the parties hereto agrees to provide to the other, or to such third parties as may be reasonably requested by the other, 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 12.12. 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 either 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 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 12.13. No Abrogation of Legal Requirements. Nothing contained herein shall be construed to permit any party to violate any applicable law, regulation or code.

Section 12.14. Binding Effect. Each of the parties hereto covenants and warrants that (i) it is duly authorized to transact business in the Commonwealth of Kentucky, (ii) the person executing this Agreement on behalf of the party is duly authorized by the party to sign and execute this Agreement on its behalf, (iii) this Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms, and (iv) it is the intention of each of the parties to this Agreement that it shall be binding and legally enforceable in accordance with its terms.

Section 12.15. Compliance with Law. Nothing in this Agreement shall be construed to (i) limit or prevent Developer from challenging at law or in equity the applicability of any law, rule, regulation or ruling and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Developer to comply with any law, rule, regulation or ruling during the period that Developer may be pursuing a *bona fide* challenge of the applicability, lawfulness and/or enforceability of such law, rule, regulation or ruling (unless such law, rule, regulation or ruling requires compliance

during any such challenge). If Developer's challenge is successful, Developer shall not be required by the provisions of this Agreement to comply with such law, rule, regulation or ruling.

Section 12.16. Right to Representation. Each party to this Agreement has had the opportunity to have counsel of its choice review this Agreement and such party's obligations hereunder on its behalf prior to such party's execution and delivery of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of either party by any arbiter, court or other governmental or judicial authority by reason of either party having or being deemed to have drafted, structured or dictated such provision. Both parties have freely negotiated this Agreement.

Section 12.17. Due Execution. This Agreement may be executed in counterparts, and a facsimile signature on behalf of any party to this Agreement shall be binding on that party in the same manner as a manual signature on behalf of that party.

Section 12.18. Further Assurances. Each party hereto will, whenever and as often as they shall be requested so to do by another party hereto, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assignments, confirmations, instruments of further assurance, approvals, consents and any and all such further instruments and documents as may be necessary, expedient or proper in the reasonable opinion of such party's counsel used in this transaction in order to complete any and all transfers, admissions and assignments provided for herein.

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

Witness:

Brenda Lewisay

CITY OF LOUISVILLE, KENTUCKY
a Kentucky municipal corporation of the
first class

By: David L. Armstrong
David L. Armstrong
Mayor

Witness:

Brenda Lewisay

LOUISVILLE DEVELOPMENT AUTHORITY

By: C. Bruce Traughber
C. Bruce Traughber
Executive Director

Witness:

Lori K. Davis

LOUISVILLE GALLERIA, LLC

By: David S. Cordish
David S. Cordish
Authorized Member

**CITY OF LOUISVILLE PARKING
AUTHORITY OF RIVER CITY (PARC),
INC.**

By: C. Bruce Traughber
C. Bruce Traughber
Chairman

Brenda Lewisay
Witness

PARC executes this Agreement solely for the purpose of agreeing to the obligations contained in Article IV and Article X.

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