

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Lease") is made and entered into this 3rd day of March, 2009 by and between the LOUISVILLE METRO HOUSING AUTHORITY, a Kentucky public entity, with its office located at 420 S. 8th Street, Louisville, Kentucky 40202, ("Lessor") and SAL LOUISVILLE, LLC, a Kentucky limited liability company, with its principal address located at 9127 Galene Drive, Suite D, Louisville, Kentucky 40299 ("Lessee").

WHEREAS, the Lessor owns certain parcels of real property located at 3002 Wilson Avenue and 2731 and 2733 Algonquin Parkway in Louisville, Kentucky, as more particularly described in Exhibit A, attached hereto ("Premises");

WHEREAS, the Premises are located in or near the Park DuValle Town Center; and

WHEREAS, it is the intention of the Lessor that the Park DuValle Town Center be developed as a commercial and retail hub providing services for the residents of the Park DuValle Neighborhood and surrounding neighborhoods; and

WHEREAS, Lessee has provided to the Lessor a proposal to develop the Premises and certain adjacent properties owned by the Louisville/Jefferson County Metro Government ("Louisville") into a mixed used project containing a full service grocery and retail, restaurant, office and commercial uses ("Project"); and

WHEREAS, the Lessor has determined that the development of the Premises by the Lessor for the Project will further its goals for the development of Park DuValle Town Center and the surrounding neighborhoods and therefore desires to lease the Premises to Lessee pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the rents to be paid and agreements to be performed as herein provided, Lessor leases to Lessee and Lessee leases from Lessor the Premises as described below, and the parties further agree as follows:

1. **Premises.** The Premises is an unimproved parcel of real property as more particularly described in Exhibit A together with all rights, including rights of ingress and egress, easements and appurtenances pertaining thereto and all trees, bushes, landscaping and foliage thereon.

2. **Condition of the Premises.** Lessee accepts the Premises in the condition existing as of the date of this Lease. Lessor shall have no responsibility for the performance of any site improvement or other development on the Premises except as otherwise stated in Section 16 of this Lease. Notwithstanding the foregoing, Lessor represents and warrants to Lessee as follows, which representations and warranties are true on the date Lessor is executing this Lease:

(a) Lessor holds good, marketable and insurable fee simple title to the Premises, free, clear and unencumbered, except for governmental laws and regulations affecting the Premises and other matters of record.

(b) That there is ingress and egress to the Premises from Wilson Avenue a dedicated and accepted public street.

3. **Use of Premises.** The Premises, together with certain properties owned by Louisville ("Louisville Properties") which have been ground leased to Lessee by Louisville pursuant to a Ground Lease Agreement dated _____, 20__ ("Louisville Ground Lease"), shall be used solely for the construction, operation and maintenance of the Project in accordance with the terms and conditions of this Lease. The Premises together with the Louisville Properties shall be referred to as the "Development Site".

4. **Project Construction.** Lessee shall construct the Project, as more particularly defined in Section 5, upon the Development Site..

5. **Project Description.** It is acknowledged that Lessee shall construct the first phase of the Project upon the Louisville Properties, which Project shall at a minimum include; (i) a new building containing no less than 17,000 square feet of leaseable space but having no less than 20,000 square feet of operational space available for the sale of goods and services suitable for leasing to a full service grocery store ("Grocery Building"), (ii) an additional building which may be connected to the Grocery Building containing no less than 10,000 square feet of leaseable space suitable for leasing to retail, office or other commercial tenants ("Additional Building"), (iii) surface parking lots and (iv) landscaping, lighting and amenities, all substantially in accordance with the Louisville Ground Lease. In a subsequent phase or phases, Lessee shall construct certain improvements upon the Premises which may include buildings suitable for lease to retail or office tenants, roadways or parking ("Improvements"). Until such time that Lessee constructs, or causes to be constructed, the Improvements it shall maintain the Premises in a good and clean condition and shall either pave the Premises for parking or seed and landscape the Premises and maintain as an attractive green space. No part of the Premises or the Improvements shall be leased to or used by massage parlors, pawn shops, liquor stores (not including a grocery store which sells beer and/or wine), bingo halls or gambling facilities of any type, flea markets, plasma centers, methadone clinics, check cashing businesses or any establishment requiring an adult entertainment license to be issued by Louisville Metro Government, but not excluding Goodwill, Salvation Army type retailers.

6. **Acquisition of Additional Properties.** Lessor agrees to use commercially reasonable efforts to acquire fee simple, marketable title to the properties located at 3038, 3030 and 3034 Wyandotte Avenue and 2729, 2735, 2737 and 2741 Algonquin Parkway and 3050 and 3052 Wilson Avenue as more particularly described in Exhibit B, attached hereto ("LMHA Acquisition Properties"). The failure of the Lessor to acquire all of the LMHA Acquisition Properties shall not constitute a default under this Lease. Upon acquisition of any of the LMHA

Acquisition Properties, Lessor and Lessee shall enter into an Addendum to this Lease adding such properties to the definition of the Premises and the Lessee shall proceed to develop such properties added to this Lease as part of the Project pursuant to the terms and conditions of this Agreement. The LMHA Acquisition Properties added to the Premises shall be used by Lessee for vehicular access to Algonquin Parkway and for the construction of additional Improvements and parking.

7. Project Schedule and Construction.

A. Lessee, pursuant to the Louisville Ground Lease has agreed to construct the first phase of the Project upon the Louisville Properties in accordance with a schedule set forth in the Louisville Ground Lease and in accordance with the terms and conditions set forth in the Louisville Ground Lease ("Louisville Project Requirements"). The failure of Lessee to undertake and complete the Project in accordance with the Louisville Project Requirements shall constitute a default of this Lease pursuant to Section 21 hereof.

B. At such time that Lessee elects to construct Improvements upon the Premises it shall perform such work in accordance with the terms and conditions of this Lease.

C. If Lessee fails to construct any Improvements upon the Premises within 2 years of the commencement date of this Lease, Lessor may elect to terminate this Lease by sending written notice to Lessee no less than three (3) months prior to the date of termination.

D. Subject to the terms and conditions hereinafter set forth, Lessee shall cause the construction of the Improvements to be substantially in accordance with the preliminary plans approved by Lessor pursuant to Section 8 and in all events in accordance with all applicable statutes, codes, laws, ordinances, rules and regulations applicable to such Improvements.

E. Lessee shall verify that all construction of Improvements shall be in accordance with the construction plans and specifications prepared pursuant to Section 8. All construction shall be in a good and workmanlike manner.

F. Lessor, its agents and employees, shall be granted a right of entry upon the Premises during construction of the Improvements to enable Lessor to inspect the construction throughout the course of construction, although, Lessor shall have no obligation to do so. Lessor shall not be responsible for any defect, neglect or failure of workmanship or materials, such inspections being made solely for the benefit of Lessor. The inspections are made to ensure

strict compliance with the plans and to verify the accuracy of reports, requests for disbursements and any other documents submitted by Lessee.

G. Lessee shall make commercially reasonable efforts to include the participation of at least 15% minority-owned businesses and 5% women-owned businesses in the construction of all Improvements constructed upon the Premises (including the procurement of materials). In addition, Lessee shall make good faith efforts to meet the goal of reserving up to 75% of the construction jobs available in connection with the construction for participation by Kentucky and Indiana residents, including good faith efforts to meet the goal of reserving at least 60% of such total available construction jobs for residents of the Metro Louisville Standard Metropolitan Statistical Area. It is expressly acknowledged and agreed between the parties that any failure by Lessee to meet these participation goals shall not constitute a default under this Lease.

8. Design and Approval of Future Project Phases.

A. At such time that Lessee elects to construct any Improvements upon the Premises, it shall give written notice to Lessee of its intent to do so ("Notice"). The Notice shall provide: (i) a description of the Improvements to be constructed, (ii) a schedule for construction of the Improvements, (iii) a budget for the cost of the construction of the Improvements, (iv) evidence that Lessee has obtained commitments for funding sufficient to construct the Improvements, and (v) the identity of the proposed subtenant or subtenants of the Improvements, if any. Lessor shall have sixty (60) days from the date of receipt of the Notice to approve the Improvements proposed in the Notice, which approval shall not be unreasonable denied.

B. Upon receipt of approval by the Lessor pursuant to subsection A of the Section, Lessee shall cause the preliminary plans to be prepared for the Improvements ("Preliminary Plans") and shall submit the Preliminary Plans to Lessor for approval prior to applying for permits and approvals necessary to commence construction of the Improvements. All buildings, fixtures and equipment constructed or purchased shall be compliant with Energy Star requirements. The Preliminary Plans shall be sufficient in detail to enable Lessor to determine whether the design of the Improvements, including size, scope and exterior of any buildings, lighting, landscaping and traffic flow, will be consistent with good architectural practice and appropriate urban design principles including, but not limited to, the Design Standards developed for the Park DuValle Town Center. Lessor shall review the Preliminary Plans and provide any comments thereon to Lessee in writing within thirty (30) days after receipt thereof. If Lessor fails to provide any comments to the Preliminary Plans to Lessee within said thirty (30) day period, the Preliminary Plans shall be deemed approved. During the term of this Lease, any subsequent changes to the Premises or Improvements, including new construction, demolitions or exterior renovations shall continue to be subject to prior approval as provided in this Section.

C. Upon approval by Lessor, Lessee shall proceed to apply for permits and approvals required for construction of the Improvements, and Lessor agrees to provide reasonable

assistance in order to ensure that said permits and approvals are not unreasonably withheld, conditioned or delayed.

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

9. Compliance with all Codes. The construction, use and occupation of the Improvements shall comply with all federal, state and local codes, ordinances, statutes and regulations.

10. Employment Regulations; Affirmative Action. Lessee, its contractors and subcontractors, shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of sex, race, creed, color, national origin, sexual orientation or disability. At all times during the construction of the Improvements, Lessee 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.

11. Liens. Except as may otherwise be provided herein, Lessee agrees to indemnify Lessor against any claim or filing of any lien on any part of the Premises as a result of Lessee's construction thereof and shall indemnify and hold the Lessor harmless from any and all such claims or liens. Lessee's failure to commence taking appropriate actions to cause the removal of any such lien by bond or otherwise within thirty (30) days after its creation shall constitute a default under this Lease.

12. Non-Discrimination. Upon completion of the Improvements, Lessee agrees to abide by all fair housing laws, specifically including Louisville Metro Codified Ordinances Chapter 92 and all other applicable state and federal rules and regulations and will not discriminate and will not permit any tenant or user of the Improvements to discriminate on the basis of race, sex, color, creed, disability, sexual orientation or national origin, in the sale, lease, rental, use or occupancy of the Improvements.

13. Insurance. Lessee shall provide all insurance as required by Lessor. The requirements are listed on Exhibit C.

14. Security. Lessee agrees to furnish reasonable security at the Premises during construction of the Improvements.

15. **Indemnification.** Lessee agrees to indemnify and hold Lessor, its officers, employees and agents harmless from and against any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs and expenses of every kind and nature (including, but not limited to, reasonable attorneys' fees) imposed upon or incurred by such parties as a result of or in connection with any of the following:

A. Any misrepresentation or breach of warranty made by Lessee in this Lease or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

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

C. Any claim, damage, loss or expense attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use resulting therefrom arising from or resulting after the execution of this Lease or the occupation of the Premises including, but not limited to, liability expenses or damages resulting from the presence on or under or the release from the Premises of any Hazardous Material (as defined in Section 16), unless caused by the negligent act or willful misconduct of Lessor or its employees acting within the scope of their employment.

16. **Environmental Testing and Remediation.**

A. Lessor is aware of the possible existence of Hazardous Material in, on or under a portion of the Premises and Lessor agrees to undertake, at its sole expense, environmental testing of the Premises ("Environmental Testing"). If the Environmental Testing discloses the existence of Hazardous Material on or under the Premises, Lessor agrees to develop a plan to remove, remediate or manage the Hazardous Material consistent with the intended use of the Premises and satisfactory to the Commonwealth of Kentucky Cabinet for Natural Resources and Environmental Protection ("Cabinet") and the Lessee ("Remediation/Management Plan"). Prior to closing, Lessor agrees to (i) have the Remediation/Management Plan approved by the Cabinet, (ii) have commenced implementation and (iii) be pursuing the scheduled implementation required by the Remediation/Management Plan. In the event Lessee and Lessor cannot agree upon the Remediation/Management Plan, Lessee may elect to terminate this Lease, in which case Lessor shall have no further obligation to undertake the Remediation/Management Plan.

B. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any applicable federal, state or local governmental agency or authority. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33

USC Section 1317), (iv) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601), or (vi) defined as a "pollutant" or "contaminant" pursuant to Section 101(33) of CERCLA.

17. **Operation and Maintenance of Improvements.** Upon completion of the Improvements and at all times during the Term, Lessee shall comply with the provisions of this Section. Lessee recognizes and acknowledges that the manner in which the Improvements are used and operated is a matter of concern to Lessor by reason of the impact which the Project is expected to have upon the Park DuValle Neighborhood. In order to give Lessor assurance as to the manner in which the Improvements will be used and operated, Lessee agrees that at all times during the Term, Lessee shall use its best efforts to establish and maintain the highest level of quality and character in the operation of the Project in a first-class manner.

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

- (1) develop and manage the Improvements in a first-class manner and use reasonable efforts to lease space in the Improvements to quality tenants ("Tenants") which will provide services to the residents of the Park DuValle Neighborhood and surrounding neighborhoods;
- (2) attempt to impose reasonable hours and days of operation on each Tenant that leases space in the Improvements;
- (3) make reasonable efforts to market, or cause others to market, the Project by appropriate promotions and advertising of a first-class nature;
- (4) keep the Improvements and all furniture, fixtures, HVAC systems, equipment and other personal property of Lessee that serve the Project in good repair and condition;
- (5) maintain the Improvements (exclusive of Tenants' spaces) in a clean and sanitary condition;
- (6) comply with all applicable laws, ordinances, regulations and codes applicable to its operations;
- (7) obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the Improvements by Lessee (as opposed to the operation of Tenant's spaces); and

- (8) require Tenants to maintain Tenant spaces within the Improvements in the same manner as required of Lessee in paragraphs (4) – (7) of this Section.

18. **Term.** The term (“Term”) of this Lease shall commence on the date it is executed by Lessor and Lessee (the “Commencement Date”), and shall terminate at the end of the 75th Lease Year after the Commencement Date. For purposes of this Lease, a "Lease Year" shall be defined as that twelve (12) month period during the Term (as hereinafter defined) commencing on the Commencement Date or the annual anniversary thereof, as may be applicable; provided, however, that if the Commencement Date is a day other than the first day of a calendar month, then the first Lease Year shall include that period of time from the Commencement Date up to the first day of the next calendar month, and any subsequent Lease Year shall be the twelve (12) month period beginning on the first day of such month.

19. **Rent.** Rent for the Term shall be the sum of one dollar, payable at the time of execution of the Lease.

20. **Utilities.** Lessee shall be solely responsible for costs and expenses of any and all utilities used on the Premises, and for the costs and expenses of installation, use, repair and maintenance of any utility services to and on the Premises, including but not limited to gas, electricity, water, sewers, telephone, cable, fiber-optic and satellite service, during the Term.

21. **Default.**

A. If Lessee materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, including but not limited to: (i) failure to construct Improvements by the date established by Section 7 of this Lease, (ii) in the reasonable judgment of Lessor there has been a substantial decrease in Lessee's capacity to complete the Improvements in accordance with the terms and conditions of this Lease, (iii) Lessee is in default of the Louisville Ground Lease, (iv) the filing by Lessee of a voluntary proceeding or the consent by Lessee to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights, or (v) any item that has been mentioned as an event of default under this Lease, Lessor shall give written notice (with a copy of said notice being given to any lender of Lessee, provided that Lessee has given written notice to Lessor of the identity of such lender) that the item of default shall be remedied within thirty (30) calendar days. Lessee shall correct such breach or default within thirty (30) days after Lessor's receipt of such written notice. If the default is not reasonably curable within thirty (30) days, then Lessee may continue to cure the default or breach so long as Lessor is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, Lessor may terminate this Lease by giving written notice to Lessee at least ten (10) days prior to the effective date of termination.

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

B. If Lessor materially breaches or defaults on its respective obligations under this Lease or any of the documents incorporated herein, Lessee may give written notice to Lessor that remedial action must be taken within thirty (30) calendar days. Lessor shall correct such breach or default within thirty (30) days after the receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Lessor may continue to cure the default or breach so long as Lessee is satisfied that sufficient progress is being made toward a cure. If such action is not taken, Lessee shall give written notice to Lessor that it is in default and shall be entitled to any remedy and damages available to it at law or in equity resulting from said default.

22. Use of Insurance Proceeds.

A. Except as otherwise provided in subsection B hereof, all insurance proceeds payable for loss and damage arising out of the casualties covered by the fire and extended coverage policies insuring the Premises required to be maintained by Lessee pursuant to Section 13 shall be used to restore and, if necessary, rebuild such portions of the Improvements damaged or destroyed.

B. Notwithstanding anything in the foregoing to the contrary, in the event that a fire or other casualty occurred: (i) a total or substantially complete destruction of all or any part of the Improvements, (ii) Lessee determines that it would be uneconomical to cause all or any part of the Improvements to be repaired, restored or replaced, or (iii) in the event that as a result of such fire or other casualty, the subtenant occupying the portion of the Improvements damaged by such fire or other casualty terminates its sublease, Lessee may elect to raze all or part of the Improvements in lieu of repair, restoration or replacement. In addition, Lessee may terminate this Lease provided it gives to Lessor notice of such termination not more than twelve (12) months after the date of the fire or other casualty. In the event Lessee elects not to repair, restore or replace the Improvements or part thereof, all insurance proceeds actually received by Lessee shall be first applied by Lessee to raze all or part of the Improvements.

23. Quiet Enjoyment. Lessor covenants and agrees that Lessee, while paying the rent and other sums payable under this Lease and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the full Term without hindrance or molestation from Lessor or any other person claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease.

24. Non-disturbance and Attornment.

A. Lessor covenants and agrees with Lessee for the benefit of each and every Tenant from time to time occupying any part of the Premises and the Improvements or having rights granted to it by Lessee with regard to the Premises, which Tenants shall be third party

beneficiaries of this section as it may apply to each of them respectively, that in the event of a termination of this Lease, each such Tenant may continue to occupy its portion of the Premises under its pre-existing sublease and enjoy the rights granted to such Tenant in such sublease; provided such Tenant shall then attorn to Lessor (to the extent that such Tenant occupies any part of the Premises) and, if such Tenant's sublease does not provide for such attornment (and such Tenant occupies any part of the Premises), such Tenant, promptly after the termination of this Lease, provides Lessor with a written statement of such Tenant whereby such Tenant attorns to Lessor.

B. In addition to the provisions of Section A hereof, Lessor covenants and agrees with Lessee that Lessor shall, at the request of Lessee may from time to time enter into a non-disturbance and attornment agreement with any Tenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section A hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within thirty (30) days after receipt of the form thereof from Lessee.

C. Notwithstanding anything to the contrary contained in this Lease, (i) in the event that this Lease is terminated as a result of the Improvements being damaged by a casualty or as a result of all or part of the Premises being condemned, Lessor shall not be obligated to restore or rebuild the Project; and (ii) Lessor shall not be liable for or obligated with respect to (A) any security deposits that it does not receive, (B) defaults and actions of Lessee, or (C) Rents paid by Tenants to Lessee.

25. Estoppel Certificates. Lessor and Lessee, at any time and from time to time, upon not less than thirty (30) days prior written notice from a party hereto, or to a person designated by such party, such as a Tenant or lender of Lessee, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best knowledge of the signer of such certificate, Lessor or Lessee is in breach and/or default in performance of any covenant, agreement, or condition contained in this Lease and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Lease (if such other person is identified at the time such certificate was requested).

26. Surrender. Upon expiration, cancellation, or termination of the Term, Lessee shall at once surrender possession of the Premises to Lessor including all modifications or Improvements constructed by Lessee thereupon in as good condition as received, ordinary wear and tear excepted.

27. Condemnation.

A. If the entire Premises shall be taken by reason of condemnation or under eminent domain proceedings, Lessor or Lessee may terminate this Lease as of the date when possession of the Premises is so taken. If a portion of the Premises shall be taken under eminent domain or by reason of condemnation and if in the opinion of Lessee, the remainder of the Premises are no longer suitable for Lessee's use, then at Lessee's option, to be exercised by notice to Lessor within sixty (60) days of such taking, this Lease shall terminate. If this Lease is not so terminated, Lessee may at its sole cost and expense restore the remaining portions of the Premises as Lessee deems necessary or appropriate (subject to applicable law) and this Lease shall be amended as to the description of the Premises. For purposes of this paragraph: (i) a partial taking shall be deemed to include loss or impairment of access to and from the Premises, and (ii) grants or conveyances made in lieu or anticipation of or under threat of a taking or condemnation shall be deemed a taking.

B. Any award or compensation paid on account of any taking or sale described in Section 30. A. above, shall be divided between Lessor and Lessee as follows: first to Lessor for the value of the Premises taken (deducting the value of Lessee's leasehold Improvements); next to Lessee for the value of any Improvements taken less the value of Lessor's reversionary interest in those Improvements; and the balance to Lessor.

28. Right of Entry. Lessor retains the full right and authority to enter, inspect and view the Premises during regular business hours and at other times upon twenty-four (24) hours prior written notice to Lessee; provided that at no time shall Lessor conduct such activities so as to interfere with or otherwise frustrate Lessee's use and occupancy.

29. Transfers of Lessor's Interest. No transfer or sale of Lessor's interest hereunder shall release Lessor from any of its obligations or duties hereunder prior thereto. Lessor shall be released of any ongoing obligations hereunder from and after the date of such transfer upon the assumption of all such obligations and duties by the transferee of Lessor, except for Lessor's indemnity obligations provided herein.

30. Waiver of Terms, Conditions, Covenants. The parties to this Lease agree that the Lessor may waive the performance of any term, condition and covenant contained herein, provided that such waiver shall not be construed or deemed a continuing waiver of the same or any subsequent conduct which may constitute a default of any provision.

31. Notice. All notices required hereunder will be in writing and served by first class mail or in person to the persons named below until change of such names or addresses. Lessor shall notify Lessee and Lessee shall notify Lessor immediately, in writing, of change in name or address of the persons named below.

To Lessee: SAL Louisville, LLC
9127 Galene Drive, Suite D
Louisville, Kentucky 40299

Attention: Robert K. Holmes

To Lessor: Louisville Metro Housing Authority
420 S. 8th Street
Louisville, Kentucky 40202
Attention: Tim Barry

32. **Authority.** Lessor and Lessee, by execution of this Lease, do hereby warrant and represent to each other that they are duly organized and validly existing entities, are qualified to do business in the State of Kentucky, have full right, power and authority to enter into this Lease, and that the person signing on behalf of Lessor and Lessee is authorized to do so.

33. **Severability.** If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

34. **Entire Understanding.** This Lease represents the entire understanding and agreement between the parties relating to the subject matter hereof and supercedes all prior negotiations and agreements relative thereto. The language in all parties of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. This Lease may be amended only in writing and only by mutual agreement of Lessor and Lessee.

[Remainder of Page Intentionally Left Blank]

WITNESS the signatures of the authorized representatives of the Lessor and the Lessee effective as of the date first written above.

LESSOR:

LESSEE:

WITNESS the signatures of the authorized representatives of the Lessor and the Lessee effective as of the date first written above.

LESSOR:

LESSEE:

LOUISVILLE METRO HOUSING
AUTHORITY

SAL LOUISVILLE, LLC

By: Tim Barry
Tim Barry
Executive Director

By: Robert K. Holmes, Jr.
Robert K. Holmes, Jr.
Member

By: Randy Roth
Randy Roth
Member

COMMONWEALTH OF KENTUCKY)
(SS:
COUNTY OF JEFFERSON)

The foregoing Lease Agreement was acknowledged before me this 1 day of March,
¹⁰2009, by Tim Barry, as Executive Director of the Louisville Metro Housing Authority, a
Kentucky public entity on behalf of said public entity.

My Commission expires: March 11, 2012.

Cathy S. Salvate
Notary Public

COMMONWEALTH OF KENTUCKY)
(SS:
COUNTY OF JEFFERSON)

The foregoing Lease Agreement was acknowledged before me this 23rd day of February, 2009, by Robert K. Holmes, Jr. and Randy Roth, both as members of SAL Louisville, LLC, a Kentucky limited liability company.

My Commission expires: 12/30/2013.

Lisa R. Smith
Notary Public

This Instrument Prepared By:



- A. Description of Premises
- B. Project Site Plan
- C. LMHA Acquisition Properties
- C. Insurance Requirements

EXHIBIT A

LMHA Properties

Block

Lot

40 A

115

40 A

116

49 R

3

EXHIBIT B

LMHA Acquisition Properties

<u>Block</u>	<u>Lot</u>
40 A	13
40 A	14
40 A	21
40 A	52
40 A	53
40 A	54
40 A	55
40 A	113
40 A	114
40 A	117

EXHIBIT C

Insurance Requirements

The Developer including all Contractors, Subcontractors shall obtain at their own cost and expense the following types of insurance (as designated below) through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable, if such coverage is required in this Exhibit E. The Developer's insurance coverages as required in this Exhibit E must be evidenced via a Certificates of Insurance and submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division, at the address listed at the end of this Exhibit E. Without limiting the Developer's indemnification requirements, it is agreed that the Developer shall not allow any Contractor and/or Subcontractor to commence work until the insurance required of such Contractor and/or Subcontractor has been obtained and proof of such insurance coverage(s) is in the possession of the Developer. The Louisville/Jefferson County Metro Government may require the Developer to supply proof of any Contractors' and/or Subcontractors' insurance via Certificates of Insurance, or at Louisville/Jefferson County Metro Government's option, actual copies of policies.

A. AT THE TIME OF CLOSING FOR THE LOAN AND PROPERTY USE AGREEMENT THE FOLLOWING INSURANCE COVERAGE SHALL BE PRODUCED FROM THE DEVELOPER. ADDITIONALLY, THE DEVELOPER SHALL MAINTAIN THE COMMERCIAL GENERAL LIABILITY COVERAGE FOR THE ENTIRE DURATION (INCLUDING SUBSEQUENT RENEWALS) OF THE GROUND LEASE OF THE CITY PROPERTIES AND LMHA PROPERTIES.

1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, The required amounts to be carried for years one (1) through ten (10) of the Ground Lease shall be a minimum of **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury and Property Damage, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Independent Contractors Protective Liability
- e. Broad Form Property Damage
- f. Personal Injury

NOTE: The following clause shall be added to the Developer's Commercial General Liability Policy:

"Louisville/Jefferson County Metro Government and the Louisville Metro Housing Authority are added as Additional Insureds as respects operations of the Named Insured performed relative to the "Project" as described in the Loan and Property Use Agreement."

Since the ground lease is for a period of seventy five (75) years, it is necessary that the Developer increase the minimum limits of liability under the Commercial General Liability coverage beginning on the eleventh (11) year of the ground lease for the benefit of the Developer, the Louisville/Jefferson County Metro

The Developer including all Contractors, Subcontractors shall obtain at their own cost and expense the following types of insurance (as designated below) through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable, if such coverage is required in this Exhibit E. The Developer's insurance coverages as required in this Exhibit E must be evidenced via a Certificates of Insurance and submitted to and approved by the Louisville/Jefferson County Metro Government's Risk Management Division, at the address listed at the end of this Exhibit E. Without limiting the Developer's indemnification requirements, it is agreed that the Developer shall not allow any Contractor and/or Subcontractor to commence work until the insurance required of such Contractor and/or Subcontractor has been obtained and proof of such insurance coverage(s) is in the possession of the Developer. The Louisville/Jefferson County Metro Government may require the Developer to supply proof of any Contractors' and/or Subcontractors' insurance via Certificates of Insurance, or at Louisville/Jefferson County Metro Government's option, actual copies of policies.

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- b. Products and Completed Operations
- c. Contractual Liability
- d. Independent Contractors Protective Liability
- e. Broad Form Property Damage
- f. Personal Injury

NOTE: The following clause shall be added to the Developer's Commercial General Liability Policy:

"Louisville/Jefferson County Metro Government and the Louisville Metro Housing Authority are added as Additional Insureds as respects operations of the Named Insured performed relative to the "Project" as described in the Loan and Property Use Agreement."

Since the ground lease is for a period of seventy five (75) years, it is necessary that the Developer increase the minimum limits of liability under the Commercial General Liability coverage beginning on the eleventh (11) year of the ground lease for the benefit of the Developer, the Louisville/Jefferson County Metro

Government and the Louisville Metro Housing Authority (as Additional Insureds). The minimum acceptable amounts shall be as follows:

- i. For years eleven through twenty, \$2,000,000 per occurrence/\$3,000,000 annual aggregate, and
- ii. For years twenty-one through thirty, \$3,000,000 per occurrence and \$4,000,000 annual aggregate and
- iii. For years thirty-one through forty \$5,000,000 per occurrence/\$5,000,000 annual aggregate.
- iv. For years forty-one through fifty \$7,000,000 per occurrence/\$7,000,000 annual aggregate.
- v. For years fifty-one through sixty \$8,000,000 per occurrence/\$8,000,000 annual aggregate.
- vi. For years sixty-one through seventy five \$10,000,000 per occurrence/\$10,000,000 annual aggregate.

B. PRIOR TO COMMENCING CONSTRUCTION OF THE PROJECT THE DEVELOPER SHALL REQUIRE ALL CONTRACTORS AND SUBCONTRACTORS TO PROCURE AND MAINTAIN THE FOLLOWING INSURANCE COVERAGES UNTIL FINAL ACCEPTANCE OF WORK BY THE DEVELOPER. THE INSURANCE TO BE PROCURED MAINTAINED AND MINIMUM LIMITS OF LIABILITY SHALL BE AS FOLLOWS:

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, with a minimum of **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury and Property Damage, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations
 - c. Contractual Liability
 - d. Independent Contractors Protective Liability
 - e. Broad Form Property Damage
 - f. Personal Injury.

NOTE 1: If Remedial Measures are necessary either this policy shall, by Endorsement, specifically state that the Pollution Hazard is covered, **via the Pollution Liability Coverage Extension Endorsement**, or a separate policy providing **Contractor's Pollution Legal Liability Coverage (CPLL)** shall be purchased. If this coverage is written on a **CLAIMS-MADE** basis, the Contractor shall, after work has been completed, furnish evidence to the **Developer** that the liability coverage has been maintained for at least **two (2) years** after completion of the work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this project or by evidence that the Contractor has purchased an **Extended Reporting Period Endorsement** that will apply to any and all claims arising from work performed under this contract.

NOTE 2: The following clause shall be added to all approved Contractors' and/or Subcontractors' Commercial General Liability Policies:

"Louisville/Jefferson County Metro Government and the Louisville Metro Housing Authority are added as Additional Insureds as respects operations of the Named Insured performed relative to the "Project" as described in the Loan and Property Use Agreement."

2. **AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is **\$1,000,000** Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.
3. **WORKERS' COMPENSATION**, insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY** - **\$100,000** Each Accident/ **\$500,000** Disease – Policy Limit/ **\$100,000** Disease – Each Employee.
4. **BUILDERS RISK INSURANCE**, whereas the Louisville/Jefferson County Metro Government has contributed financially to the Project the **Developer shall procure or cause to be procured** Builders Risk insurance coverage. The Developer must provide evidence of "Builders Risk" insurance coverage prior to beginning construction in either the form of a Certificate of Insurance or actual copies of policies. Developer or General Contractor shall purchase an "All Risk" (Comprehensive Form including theft of building materials, flood, earthquake) Builders Risk policy with Limits of Liability equaling the full estimated Replacement Cost of the building being constructed, plus Replacement Cost of labor and materials. The policy shall list the Louisville/Jefferson County Metro Government as a "mortgagee ATIMA" with regard to the financial contribution that the Louisville/Jefferson County Metro Government has made to the Project. The **maximum deductible** which may be purchased under this policy is \$250,000. or 5% of the anticipated completed value of the building, whichever is less.
5. **PROFESSIONAL SERVICES INSURANCE REQUIREMENT**. If the Developer subcontracts portions of the work to be performed to a Contractor and/or Subcontractor(s) relied upon principally because of the professional services rendered by their firm (such as, but not limited to, surveyors, civil, structural, geotechnical, or other professional engineering services), the Developer shall also require that these Contractor(s)/Subcontractor(s) provide proof to the Developer, via a Certificate of Insurance, that the Contractor(s)/Subcontractor(s) has purchased **Professional Liability (Errors and Omissions)** insurance, which includes a minimum **Limit of Liability of \$1,000,000** per claim and **\$2,000,000** aggregate, in addition to the other types of insurance referenced above. The professional service Contractor shall maintain such coverage for at least one year after substantial completion of the construction phase of the Project. The Developer is responsible for obtaining and maintaining copies of the Certificate of Insurance until final acceptance of work by the Louisville /Jefferson County Metro Government.

C. IMMEDIATELY UPON SUBSTANTIAL COMPLETION OF THE GROCERY BUILDING AND/OR ADDITIONAL BUILDING THE DEVELOPER SHALL PROCURE OR CAUSE TO BE PROCURED REAL PROPERTY INSURANCE COVERAGE. THIS COVERAGE MUST BE MAINTAINED BY THE DEVELOPER FOR THE ENTIRE DURATION (INCLUDING SUBSEQUENT RENEWALS) OF THE GROUND LEASE OF THE CITY PROPERTIES AND LMHA PROPERTIES.

1. **REAL PROPERTY INSURANCE** insuring all real property upon completion of the construction under this Loan and Property Use Agreement. Insurance shall be written on the I.S.O (or equivalent) Special

Property Form, with the limit of liability equal to the full Replacement Cost of the building, including all improvements. The policy should include the Agreed Amount endorsement, and include the perils of Flood and Earthquake. If Developer deems that Earthquake coverage is not available at a reasonable cost in the commercial insurance marketplace at limits equal to the full Replacement Cost of the buildings including all improvements, Developer may request the Louisville/Jefferson County Metro Government to accept reduced limits as mutually agreed upon by the parties. The policy shall be endorsed to add the interest of the Louisville/Jefferson County Metro Government as Loss Payee ATIMA with respect to all real property.

D. ACCEPTABILITY OF INSURERS

1. All Insurance coverages as requested of the Developer must be placed with Insurance Companies with an A. M. Best Rating of no less than "B+VI" unless proper financial information relating to the Company is submitted to and approved by Louisville/Jefferson County Metro Government's Risk Management Division.

E. MISCELLANEOUS – APPLICABLE TO DEVELOPER'S INSURANCE REQUIREMENTS AS DESCRIBED IN SECTIONS A AND C.

1. The Developer shall procure and maintain insurance policies as described herein and for which the Louisville/Jefferson County Metro Government shall be furnished Certificates of Insurance at the times stated.
2. The Certificates shall include provisions stating that the policies may not be cancelled or materially amended without Louisville/Jefferson County Metro Government having been provided at least (30) thirty days written notice. The Certificates shall identify the Project to which they apply and shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. Renewal Certificates of Insurance shall be furnished to the Louisville/Jefferson County Metro Government before the expiration date of such policies.
3. Certificates of Insurance required of the Developer shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, KY 40202
4. Approval of the insurance by Louisville/Jefferson County Metro Government shall not in any way relieve or decrease the liability of the Developer hereunder. It is expressly understood that Louisville/Jefferson County Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Developer.