

# BARDENWERPER, TALBOTT & ROBERTS, PLLC

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July 2, 2018

Michael J. O'Connell  
Jefferson County Attorney  
600 W. Main Street  
Louisville, KY 40202

*via hand delivery*

**RE: 1300 & 1306 Bardstown Road (the "Bardstown Road Properties")  
Louisville Sterling, LLC ("Louisville Sterling") and  
John P. Hollenbach, Sr. ("John Hollenbach")**

Dear County Attorney O'Connell:

I am writing this letter on behalf of my clients, John Hollenbach, and Louisville Sterling, an LLC of which John Hollenbach is a partner, principal owner and manager. On August 7, 2015 Louisville Sterling contracted with Louisville/Jefferson County Metro Government ("Louisville Metro") to purchase the Bardstown Road Properties ([Tab 1](#) – pictures of properties) for \$500,000.00, subject to a remediation credit of up to \$75,000.00 ([Tab 2](#)). The purchase price was based upon an appraisal obtained by Louisville Metro prepared by Lin Bell & Associates, Inc., that appraised the properties for \$500,000.00 ([Tab 3-summary](#)). On November 12, 2015 Louisville Metro declared the Bardstown Road Properties to be surplus property under state and local law ([Tab 4](#)).

Initially, Louisville Sterling's plan for the properties was to restore the properties and lease portions of the buildings to Sterling Beer Company, as the principal tenant, for operation as a beer distillery and tap room and to lease to other mixed use tenants, as permitted in the C-2 Commercial zone. After expending hundreds of thousands of dollars for architectural, engineering, design, environmental, legal fees, loan interest and other expenses on the planned repurposing and renovation of the buildings for use by tenants, including Sterling Beer, the principals of Sterling Beer abandoned the project. As a consequence, Louisville Sterling, which had generated only \$1 in income from the properties from a Louisville Metro Lease ([Tab 5](#)), was compelled to pursue an alternative development plan.

In late 2017, a year after Louisville Sterling had purchased the properties from Louisville Metro, Louisville Sterling was approached by Jeff Sleadd and a group of investors to purchase the properties. Eventually an agreement was reached whereby Louisville Sterling would sell the

Bardstown Road Properties to MS Bardstown Road, LLC (“MS Bardstown”), and John Hollenbach would remain an investment partner in the new project, and would invest all of his share of the net proceeds (approximately \$250,000.00) from the sale of the Bardstown Road Properties, into the new project. The investment was for restoration of both of the deteriorated buildings for use as a short-term residential rental unit at 1306 Bardstown Road; a ground floor retail business with a patio adjacent to the retail space (1300 Bardstown Road); and a boutique mini-storage facility in both buildings, a project that involves the investment of over two million dollars (\$2,000,000.00).

Although he had never spoken with John Hollenbach about the current plans for the Bardstown Road Properties, Metro Councilman Brandon Coan has been critical of Louisville Sterling’s sale of the properties and the proposed new plans for the properties. In articles published by Business First and the Courier Journal (Tab 6) Councilman Coan has alleged based on very limited information that Louisville Sterling’s sale of the properties breached the “clear legal terms of the Purchase Agreement”; that Louisville Sterling should be accountable in court for not developing the properties as originally planned; that Louisville Sterling should disgorge any profits from its sale of the Bardstown Road Properties; and that the taxpayers were entitled to “restitution.” Before making statements to the Courier Journal on Monday, June 18, 2018 stating that he intended to seek “restitution” for Metro Government for what he claimed was a “clear case of unjust enrichment”<sup>1</sup>, Metro Councilman Coan had never contacted representatives of Louisville Sterling or Sterling Beer Company about any alleged concerns he had about the sale of the properties to MS Bardstown.

In a recent conversation with a representative of Louisville Forward John Hollenbach was informed that Councilman Coan declined to meet with him to discuss the situation, until after Councilman Coan had received a legal opinion from the Jefferson County Attorney’s office about the legality of Louisville Sterling’s sale of the Bardstown Road Properties to MS Bardstown.

My clients have asked me to write this letter to provide your office relevant and material facts they believe should be considered, before your office issues a legal opinion concerning these matters.

John Hollenbach is a highly respected developer in this community with a well-earned reputation for integrity, honesty and following through on all of his commitments for development of real estate. Over a 30 year career he has successfully developed multiple Business Parks and individual projects throughout Metro Louisville. These projects have helped to create thousands of jobs and more than a billion dollars of investment in our city. The following projects are a few examples:

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<sup>1</sup> From October 29, 2014, the date of the Bell Appraisal, until now the Dow Jones Industrial Average has grown 42.72%. Had John Hollenbach invested the purchase price and remediation costs for the Bardstown Road Properties and the hundreds of thousands of dollars he expended for architectural, engineering, design, environmental and legal fees on the planned repurposing and renovation of the buildings in Dow Jones Stocks that investment likely would be worth over \$999,040.00 today

- Partner and Project Manager of Louisville City Soccer Stadium/ Butchertown Development District.
- Master Developer of Gateway Office Park River Ridge Commerce Center (500 acre Class A Business Park).
- Partner and Managing Member of Blankenbaker Station Business Park (600 acre Class A Business Park).
- Partner and Master Developer of Oldham Reserve (1,000 acre commercial and residential community).
- Project Director of Eastpoint Business Center, (700 acre Class A Business Park).
- Director of Commercial Land, NTS Corp. Blankenbaker Crossings (500 acre Class A Business Park).

The following is a summary of key facts my clients would like your office to consider.

### SUMMARY OF FACTS

- Louisville Metro was the owner of 1300 Bardstown Road, which it purchased on January 5, 1995 (Tab 7) from the Louisville Ballet Company. This property had previously been owned and used by Bellsouth Telephone Company. It is believed this building has been vacant for many years.
- Louisville Metro also owned 1306 Bardstown Road, which it acquired on October 2, 1908 (Tab 8). For many years that property had been the Highlands Branch of the Louisville Police Department. In recent years, until June 2018, it had been used and occupied by MetroSafe.
- 1300 and 1306 Bardstown Road are zoned C-2 Commercial and neither property is subject to Louisville Metro's "Plan Certain" ordinance (Tab 9 and 10).
- On December 5, 2014 Lin Bell & Associates, Inc., at the request of Louisville Metro, appraised the "fair market value" of both 1300 and 1306 Bardstown Road for \$500,000.00, as of October 29, 2014 (the "Bell Appraisal - Tab 3- summary). The Bell Appraisal noted that the poor condition of the buildings, the lack of off street parking and potential environmental issues negatively impacted the value of the properties.
- Pictures of the buildings on the Bardstown Road Properties included in the Bell Appraisal and others revealed that both buildings needed repairs and maintenance (Tab 1).
- By Resolution No. 111, Series 2015, Louisville Metro on November 12, 2015 declared 1300 and 1306 Bardstown Road to be surplus properties under Kentucky Statute and local law. That Resolution stated in that Metro Government had set aside funds to relocate the MetroSafe equipment. The Resolution recognized "that these properties have value in that they are located along Bardstown Road commercial corridor in the Tyler Park neighborhood, and could be restored to a productive use that would generate tax revenue for the community...." It authorized the Mayor to transfer the properties.

- The principals of Sterling Beer Company made the initial contact with Louisville Metro about their interest in developing a beer brewery and taproom in the buildings on the Bardstown Road Properties. After they determined that both properties might be available from Louisville Metro for their proposed use, as the major tenant, the Sterling Beer principals contacted John Hollenbach seeking his assistance in redevelopment and renovation of 1300 and 1306 Bardstown Road buildings.
- Since 2014 John Hollenbach estimates that conservatively he has expended over 500 uncompensated hours on planning for the redevelopment of the Bardstown Road Properties.
- On December 22, 2014 Louisville Sterling was organized with John Hollenbach, as its Manager (Tab 11).
- By Purchase Agreement dated August 7, 2015 Louisville Metro agreed to sell the Bardstown Road Properties to Louisville Sterling, for \$500,000.00, subject to a credit of up to \$75,000.00 to the Louisville Sterling if environmental problems were discovered in the Bardstown Road Properties (Tab 2 –Section 3). Three amendments to the Purchase Contract extended the date for Closing until December 21, 2016.
- Section 12 of the Purchase Agreement allowed Louisville Metro within 120 days of the date of the Purchase Agreement to request that Louisville Sterling enter into a Development Agreement for the Bardstown Road Properties. Louisville Metro never requested a Development Agreement with Louisville Sterling. The Purchase Agreement imposed no obligations on Louisville Sterling regarding restoration, renovation or redevelopment to the buildings on the Bardstown Road Properties.
- The Purchase Agreement provided no right for Louisville Metro to repurchase or reacquire the Bardstown Road Properties after Closing.
- The Purchase Agreement required Louisville Sterling to Lease the properties to Metro Louisville for Communications Equipment after the Closing (Tab 2, Section 13). On December 2, 2016 Louisville Sterling and Louisville Metro signed a lease for \$1 with the Interior Equipment to be removed from 1306 Bardstown Road by August 1, 2017 (Tab 5). Louisville Metro paid no additional rent, but remained a “hold-over tenant” in 1306 Bardstown Road through late June 2018, preventing any restoration or redevelopment work on the buildings at 1300 and 1306 Bardstown Road from being undertaken.
- On Louisville Metro’s web page there is a section regarding Louisville Forward which is the Louisville Metro’s Economic Development Organization. Louisville Forward’s page on the louisvilleky.gov webpage has a section regarding Legal Agreements that lists various types of Legal Agreements to which Louisville Metro is a party. The webpage defines Development Agreements as *“agreements between a private developer in Louisville, which requires the developer to perform specified activities in connection with real estate projects and obligates Louisville to provide certain financial or other incentives, provided the company performs its obligations.”* The local properties listed as subject to Development Agreements are: 4<sup>th</sup> Street Live!; New Bridge Crossings; River

Park Place; Michter's Distillery; Sempers City; Mohammed Ali Center; 26st Street Rental Corp (Tab 12). An exemplar Development Agreement between Michter's Distillery, LLC, at 801 West Main Street and Louisville Metro dated July 1, 2011 is attached (Tab 13). The Bardstown Road Properties are not subject to a Development Agreement with Louisville Metro.

- Louisville Sterling purchased 1300 and 1306 Bardstown Road from Louisville Metro for \$425,000.00 (after credits) by Deed dated December 2, 2016 (Tab 14).
- When Louisville Metro conveyed the Bardstown Road Properties to Louisville Sterling, Louisville Metro imposed no Deed Restrictions on the development of the Bardstown Road Properties, nor did Louisville Metro retain any rights regarding those properties.
- No agreement with Metro Louisville was signed by Louisville Sterling or its proposed tenant, Sterling Beer Company that guaranteed the re-development of the Bardstown Road Properties for a Sterling Beer distillery and taproom or for any other use permitted by the C-2 zoning classification.
- When Louisville Metro conveyed the Bardstown Road Properties to Louisville Sterling it retained no Right of First Refusal to repurchase the properties from Louisville Sterling or retain any right to repurchase the properties if the Bardstown Road Properties were not developed, in part, for a Sterling Beer distillery and taproom.
- Sterling Beer Company acquired the brand name of "Sterling Beer," and it developed a different version of that beer, which it began selling in March of 2013. Louisville Sterling intended to lease a large part (if not all) of the Bardstown Road Properties to a Sterling Beer Company organized by brothers, Todd Jackson and Ken Jackson on January 17, 2012 (Tab 15). The Sterling Beer Company owned by the Jacksons had planned to operate a Sterling Beer brewery and tap house in the Bardstown Road Properties.
- After Louisville Sterling had expended hundreds of thousands of dollars in architectural, engineering, design, legal, loan interest expense and planning fees for constructing the facilities required by the Sterling Beer Company, that company in early 2017 determined that it was not financially feasible to continue with the project, and withdrew completely from the project.
- Louisville Sterling advised Louisville Metro that the Sterling Beer Company project had fallen through and the property would have to be developed in a different manner, but, that it still intended to repurpose and renovate the existing buildings on the Bardstown Road Properties.
- On or about October 2017, Jeff Sleadd on behalf of an investment group contacted John Hollenbach to discuss a proposed purchase of the Bardstown Road Properties from Louisville Sterling. During several months John Hollenbach and Jeff Sleadd negotiated the terms of a redevelopment contract for the Bardstown Road Properties so that the Bardstown Road Properties would be redeveloped at the cost of over two million dollars

(\$2,000,000.00). As part of this development arrangement Louisville Sterling sold the Bardstown Road Properties to MS Bardstown Road, LLC for \$950,000.00. As part of the redevelopment agreement John Hollenbach agreed to invest his entire share of the net proceeds from the sale of the Bardstown Road Properties back into the MS Bardstown project to help facilitate the renovation and restoration of the properties.

- Before the sale of the Bardstown Road Properties to MS Bardstown was consummated on March 2, 2018 (Tab 16), John Hollenbach disclosed to Louisville Metro the proposed redevelopment of the Bardstown Road Properties by MS Bardstown.
- As part of the proposed redevelopment MS Bardstown as owner applied with the Louisville Metro Planning & Design Services for an Overlay District Permit in Case No. 18BROD1006 (Tab 17). That application was filed on June 11, 2018 and it is believed it is pending approval.
- On June 11, 2018 an application for a Conditional Use Permit (“CUP”) for “storage/short term rental/retail” for the Bardstown Road Properties was filed with Planning & Design Services of Louisville Metro. It includes a boutique mini-storage facility, a one-unit short term residential rental at 1306 Bardstown Road, and a first floor retail use at 1300 Bardstown Road (Tab 18). Also filed was a Site Plan (Tab 19) and Architectural renderings prepared by Architect Edward Eiche of buildings on the properties (Tab 20). The CUP Application in Case No. 18CUP1072 is pending.

If your office writes a legal opinion about this matter or provides legal advice to the Louisville Metro Council or any of its members about this matter my clients, John Hollenbach, and Louisville Sterling, request that your office consider the undisputed facts summarized above. If you have questions or need additional information, please let me know.

Respectfully,



J. Bissell Roberts

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## PURCHASE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the last date of execution of this Agreement as set forth on the signature page ("Agreement Date"), by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a Kentucky consolidated local government, acting by and through LOUISVILLE FORWARD, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and LOUISVILLE STERLING, LLC, a Kentucky limited liability company with its principal address located at 4965 US Highway 42, Suite 2800, Louisville, Kentucky 40222 ("Buyer").

### **RECITALS:**

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

WHEREAS, Buyer desires to purchase the Properties from Seller for the purposes of Buyer and/or an affiliate of Buyer operating a corporate headquarters, offices, brewery, microbrewery, retail store, production facility, product test kitchen and/or tasting room, or for other use or uses consistent with a C-2 zoning classification ("Project"); and

WHEREAS, Seller, because the Project would create jobs, enhance the tax base of Louisville, enhance economic development and make use of an otherwise non-productive property and further the public purposes of the Seller, is willing to sell to Buyer said Properties in accordance with the terms and conditions of this Agreement; and

WHEREAS, Buyer desires to purchase the Properties for the purposes described in these recitals and to construct the Project in accordance with the terms of the Development Agreement as defined in Section 12 hereof, and in accordance with the terms and conditions of this Agreement.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing premises, which are incorporated as a part of this Agreement, the conveyance of the premises, the mutual promises, covenants and agreements hereinafter set forth and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Sale of Properties.** In consideration of purchase price of the Properties, Seller agrees to convey said Properties to Buyer pursuant to the terms and conditions contained in this Agreement.

2. **Declaration of Surplus Property.** Upon agreement of the purchase price and formal release from the Buyer of all conditions precedent, Seller agrees to place a resolution on the agenda of the Legislative Council of the Louisville/Jefferson County Metro Government requesting that the Properties be declared surplus as soon as practicable.

3. **Purchase Price.** The purchase price for the Properties (the "Purchase Price") shall be determined prior to the closing of the sale and purchase of the Properties pursuant to this Agreement (the "Closing"). Seller has obtained an appraisal of the Properties, which values them together at \$500,000. However, Seller and Buyer agree that the Properties are in need of substantial repairs and possible environmental remediation to address lead paint and asbestos-containing materials, and that these costs payable to third-parties, as determined by Buyer and reasonably agreed to by Seller during the Review Period, will be offset in establishing the Purchase Price to be paid at the Closing. These factors were not fully considered in the appraisal value. In no case shall the Purchase Price be greater than \$500,000, and in no case shall the Purchase Price be less than \$425,000.

4. **Hold Harmless and Indemnification.**

a. Buyer shall indemnify, hold harmless, and defend Seller, its elected and appointed officers, employees, agents and successors in interest (each as "Seller Party" and collectively "Seller Parties"), from all claims, damages, losses and expenses including reasonable attorneys' fees, arising out of or resulting, directly or indirectly, from the Buyer's (or Buyer's subcontractors, if any) performance or breach of the Agreement, provided that such claim, damage, loss, or expense is: (1) not due to a pre-existing condition; (2) not attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of the terms of the Agreement, due to the acts or omissions of Seller or its agents or subcontractors, if any; and (3) not caused by the willful misconduct of a Seller Party acting within the scope of such Seller Party's employment. The provisions of this Section shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

b. If any action or proceeding is taken or brought against the Seller by any third party by reason of any of the foregoing acts for which the Seller is indemnified (each a



"Third Party Claim"), Buyer shall, upon receipt of notice of such Third Party Claim, take necessary and appropriate action to protect such Seller's interests with regard to such Third Party Claim. Buyer shall, at all times, have the right to direct the defense of, including without limitation the hiring of counsel, and to accept or reject any offer to settle any such Third Party Claim, provided that Buyer pays the costs of any such settlement, and that Seller is not required to admit any liability with respect to any such Third Party Claim and that the Seller is fully released from any such Third Party Claim.

c. At least five (5) days prior to the initial entry on the Properties, without limiting Buyer's indemnification obligations, Buyer shall provide evidence of an acceptable commercial general liability occurrence based insurance policy on a primary noncontributory basis to insure its activities on the Properties and shall name Seller as an additional insured. Such insurance shall be at a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Buyer shall also provide evidence of workers compensation insurance for its employees, if any, in accordance with KRS Chapter 342. Buyer shall provide Seller with a certificate as evidence of said insurance. These same insurance requirements may be applied to those provided access to the premises as referenced in Section 5, Entry upon Properties.

5. **Entry upon Properties.** Buyer and its respective officers, employees, engineers, surveyors and other agents and assigns (each a "Buyer Party," and collectively the "Buyer Parties"), shall have, and are hereby granted by Seller, the right to enter upon the Properties from time to time upon reasonable notice with prior approval of Seller and shall have the right of ingress and egress over, through and from the Properties, for the purpose of inspecting, testing, making surveys, and making such other reasonable observations and inspections of the Properties as are deemed necessary or appropriate by Buyer ("Investigations"), and upon execution of this Agreement Seller shall provide Buyer with access to the Properties when and as necessary for Buyer to conduct all necessary due diligence. All Investigations shall be done in a manner that causes the least possible disturbance to Seller's possession. During the course of the Investigations, Buyer Party shall not permit or create any unsafe or dangerous condition on the Properties. Buyer shall compensate Seller for any damage to the Properties caused by the Investigations if Buyer fails to close under this Agreement.

6. **Assignment of Agreement.** Buyer may not assign this Agreement without the prior written consent of Seller, other than to an affiliate of Buyer or of any principals of Buyer.

7. **Representations, Warranties and Covenants of Seller.**

a. Seller hereby represents and warrants to Buyer as follows, which representations and warranties shall be automatically deemed to be restated as of the Closing Date, and all of which shall survive the execution and the delivery of deeds (the "Deeds") by Seller to Buyer and the recordation thereof:

i. Seller will have as of the Closing Date, good, fee simple, marketable title to the Properties, free and clear of all covenants, conditions, restrictions, easements, liens, leases, charges, mortgages and encumbrances of every nature, kind or character whatsoever, except for the Permitted Exceptions, as such term is defined in Section 9 and, consistent with Section 12, Buyer may, at its sole cost and expense, select a title insurance company ("Title Company") to insure the title to the Properties upon delivery of the Deeds to Buyer, which title insurance shall be pursuant to a standard ALTA Policy (Form B) at standard rates, in an amount equal to the lesser of the Purchase Price or the fair market value of the Properties, and without any exceptions whatsoever, except for the Permitted Exceptions.

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

iii. Seller makes no warranties with respect to the Properties except those specifically set out in this Agreement and Buyer shall accept the Properties AS IS.

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

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

vi. Time is of the essence with regard to this Agreement.

b. Seller hereby covenants with Buyer that, during the one (1) year period after the execution of this Agreement, unless Buyer is engaged in an administrative, judicial or governmental proceedings related to the use, zoning, development plan approval or improvement

of either of the Properties, in which case said covenants shall remain in effect until ninety (90) days following the unappealable end of all such proceedings. Seller shall not:

i. Sell, grant, convey, mortgage, encumber or dispose of the Properties;

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

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

iv. Create nor allow to be created, any condition, restriction or covenant of any kind, character or nature whatsoever with respect to the Properties except those listed as a Permitted Exception in Section 9 of this Agreement.

v. Seek any change in the zoning of the Properties without the Buyer's prior consent.

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

**8. Environmental Condition of Properties.**

a. Seller makes no warranties concerning the environmental condition of the Properties, or the existence or nonexistence of Hazardous Materials (as hereinafter described) in, on or under the Properties, however Seller acknowledges that the Properties have been used as a private telephone interchange, a police station and radio communications center, and, briefly, a fire station.

b. Buyer shall be solely responsible for performing any testing, assessments or other examinations to determine whether Hazardous Materials are present in, on or under the Properties ("Environmental Testing"). If the Environmental Testing determines that contamination of the Properties by any Hazardous Material has occurred and Buyer is required by any local, state or federal government agency ("Agency") to remove such Hazardous Material from the Properties or otherwise remediate or manage such Hazardous Material ("Remedial Measures"), the costs of the Remedial Measures shall be the sole responsibility of Buyer after Buyer has purchased the Properties. Seller agrees to assist Buyer in any negotiations with the

Agency concerning the removal, remediation or management of Hazardous Material and further agrees to use its best efforts to enable Buyer to expeditiously obtain all necessary approvals from the Agency. 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, including without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 USC Section 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recover Act (42 USC Section 6903), (v) defined as a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601), or (vi) defined as a "pollutant" or "contaminant" pursuant to Section 101(33) of CERCLA.

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

- a. All ad valorem property taxes and assessments on the Properties, if any, not yet due and payable;
- b. Matters shown on a survey which would not materially and adversely affect Buyer's use and enjoyment of the Properties for the purpose intended by the Project.
- c. Easements, restrictions and stipulations that appear of public record as of the date of this Agreement.
- d. Such other matters acceptable to Buyer.

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

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

- i. Special warranty deeds, conveying an unencumbered, good, marketable, fee simple title to the Properties to Buyer, without any exceptions, except for the Permitted Exceptions (the "Deeds"). The Deeds shall be in proper form for recording, duly executed by Seller, with the signature of Seller duly acknowledged in the appropriate place.

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

iii. An affidavit of Seller in a form reasonably acceptable to Buyer sufficient to enable Buyer's title company to insure over any exception for mechanics liens or parties in possession.

iv. The Development Agreement, unless waived by Seller, referred to in Section 12 and the Lease referred to in Section 13 of this Agreement executed on behalf of Seller.

b. **Buyer's Obligations.** At the Closing, Buyer shall deliver to Seller:

i. The Purchase Price as specified in Section 5.

ii. The Development Agreement, unless waived by Seller, referred to in Section 12 and the Lease referred to in Section 13 of this Agreement executed by the Buyer.

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

11. **Conditions to Closing.** No party shall be obligated to close on the sale of the Properties unless the following conditions have been satisfied or waived by the applicable party, as applicable:

a. Seller and Buyer shall have complied with their respective obligations pursuant to Section 10 of this Agreement; and

b. Buyer and Seller shall have executed a Development Agreement as provided in Section 12 and a Lease as provided in Section 13 of this Agreement.

c. Buyer shall have concluded that all desirable environmental due diligence has been completed to Buyer's satisfaction, Buyer is otherwise fully satisfied with the condition of the Properties and the anticipated costs of the Project, and Buyer has received all non-appealable governmental permits and approvals for the Project desired by Buyer; and

d. Buyer shall have concluded that adequate utility services and parking can be secured for the Project.

e. The Legislative Council of the Louisville/Jefferson County Metro Government shall have approved a resolution declaring the Properties to be surplus.

The Closing shall be held at the offices of Buyer's counsel, or at another location in Metro Louisville mutually acceptable to the parties, on a date (the "Closing Date") designated by Buyer in writing to Seller and falling within sixty (60) days after Buyer has satisfied or waived the conditions precedent set out above. Buyer may terminate this Agreement upon written notice to Seller upon failure of any of the above conditions precedent, or within one (1) year of the date of this Agreement should Buyer otherwise determine that the Properties are not acceptable to Buyer for any reason.

12. **Development Agreement.** Within one-hundred-twenty (120) days of the date of this Agreement, if Seller wishes to enter into a Development Agreement, Seller shall deliver to Buyer for review a draft of a development agreement which will establish the terms and conditions for the development of the Properties and the construction of the Project ("Development Agreement"), the mutually agreed form of which Development Agreement will be entered into by Buyer and Seller at or before the Closing unless waived by Seller. At a minimum, the Development Agreement shall contain, in pertinent part, the following provisions:

- a. A description, in reasonable detail, of the Project which shall include, but not be limited to:
  - i. A conceptual master plan for the entire site.
  - ii. A detailed phasing plan for construction of the Project.
  - iii. A detailed budget for the Project.
  - iv. A detailed financial plan for funding the Project, including equity, debt, proposed city contribution, if any, and other sources of funds.
- b. A requirement that Buyer, prior to commencing construction, submit preliminary plans for the Project to Develop Louisville, an agency of the Louisville/Jefferson County Metro Government ("DL") for approval, including design review and approval, in accordance with its customary requirements, which approval DL will process in a manner consistent with the schedule for construction of the Project. In no case shall DL's approval be unreasonably withheld, delayed or conditioned.
- c. A pledge of nondiscrimination in hiring, construction, occupancy and use of the Project.

d. A pledge by Buyer that it shall use its best commercially reasonable efforts to have its contractor constructing the Project to utilize 20% minority, 5% female and ½% disabled subcontractors and suppliers.

e. A requirement that Buyer demonstrate to Seller's reasonable satisfaction that the Project's pre-development approvals, including any approval required by the Louisville Metro Planning Commission or Board of Zoning Adjustment, Bardstown Road/Baxter Avenue Corridor Development Review Overlay Board, or the Kentucky Department of Environmental Protection, will be underway within one (1) year after the Closing Date, subject to automatic extension for any appeals or challenges of such approvals. In the event the Project fails to commence within one year after the Closing Date, then Buyer shall, upon notice from Seller given within one hundred eighty (180) days following thereafter, be obligated to re-convey the Properties to Seller for an amount equal to the Purchase Price. The Project will be deemed to have commenced upon the start of any environmental remediation, demolition, repairs or construction on either of the Properties, or the expenditure of material funds by Buyer with respect thereto.

f. A provision that if Buyer fails to complete the Project to the extent that the Project, or any other business conducted on either of the Properties, has not been opened for business in at least one of the Properties within five (5) years after the Closing Date, then Buyer shall, upon notice from Seller given within one hundred eighty (180) days following thereafter, be obligated to re-convey the Properties to Seller for an amount equal to the Purchase Price.<sup>1</sup> This language shall survive the transfer of the Properties to Seller regardless of whether a Development Agreement is executed.

g. Such other provisions usually and customarily contained in development agreements of the Seller.

13. Lease. Seller and Buyer acknowledge that Seller maintains critical communications equipment (the "Equipment Array") at the Properties, a portion of which occupies interior building space ("Interior Equipment"), and a portion of which is contained in an exterior compound that houses equipment and a large antenna (the "Exterior Equipment"). Seller anticipates an ongoing need to maintain the Equipment Array at the Properties. Seller and Buyer agree that, prior to the Closing Date, a Lease will be executed to allow Seller to maintain the Interior Equipment until such time as it can be consolidated with the Exterior Equipment, and

then to allow the Exterior Equipment to remain at the Properties. Such Lease shall contain in pertinent part the following provisions:

a. A schedule for the consolidation of the Interior Equipment with the External Equipment, that gives Seller no less than three (3) years to remove the Interior Equipment.

b. A term of 99 years for the use, repair and maintenance of the External Equipment at the Properties.

c. A provision that no use of the Properties shall interfere with Seller's use, repair and maintenance of the Equipment during the 99-year term; provided, that the use of the Properties and operation of any businesses thereon, including, without limitation, the Project, in accordance with applicable laws, rules and regulations, including zoning regulations, and the terms of the Lease which shall outline provisions for maintaining access to the Equipment which access will not unreasonably interfere with the Buyer's use of the Properties for all proper purposes, will not in any way be deemed to interfere with Seller's use, repair and maintenance of the Equipment.

d. A rental rate of \$1 for the entire term of the Lease.

e. Provisions for access, maintenance and repairs to the Exterior Equipment, property maintenance and security, none of which will unreasonably or materially interfere with the use of the Properties for the Project.

f. Such other provisions usually and customarily contained in leases of the Seller.

g. A provision that states that, pursuant to Ordinance No. 11, Series 2003, the Louisville/Jefferson County Metro Government is self-insured for all properly asserted General Liability claims brought against it to which the Louisville/Jefferson County Metro Government does not otherwise have a legal defense. In addition, the Louisville/Jefferson County Metro Government agrees to keep in full force and effect Excess Self Insurance coverage for all properly asserted claims brought against it to which the Louisville/Jefferson County Metro Government does not otherwise have a legal defense covering Bodily Injury; Property Damage and Personal injury Liability under the Louisville Area Governmental Self Insurance Trust; as long as such coverage is available. The Limit of Liability provided by such Excess coverage shall be at least \$5,000,000 per Occurrence under a Combined Single Limit format. Limits of liability shall be reviewed and reassessed every 20 years based on Metro's liability protections



available at that time. The Louisville/Jefferson County Metro Government agrees to provide Buyer with a Certificate of Self Insurance from the Louisville Area Governmental Self Insurance Trust, if requested. The Trust Bylaws do not allow including additional insureds on Members coverages, however, Broad Form Contractual Liability coverages are provided.

14. Miscellaneous.

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

If to Buyer: c/o John Hollenbach  
Hollenbach-Oakley, LLC  
PO Box 7368  
Louisville, KY 40257  
502-253-1200  
john@hollenbach-oakley.com

Copy to: Greg Compton  
Middleton Reutlinger  
4965 US Highway 42, Suite 2800  
Louisville, KY 40222  
502-625-2862  
gcompton@middreut.com

If to Seller: Louisville Forward  
444 South Fifth Street, Suite 600  
Louisville, Kentucky 40202  
502.574.4140  
Attn: Deputy Chief

Copy to: Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, Kentucky 40202  
Attn: Edward S. Carle  
502.574-3348

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

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

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

c. **Efforts in Dealing with Governmental Agencies.** Seller approves of the use of the Properties for the Project, and agrees to publicly express support for the Project and to use reasonable efforts to assist Buyer in coordinating the work of various governmental entities and utilities with respect to servicing and permitting the development and use of the Properties for the Project.

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

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

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

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

h. **Commissions.** Seller and Buyer hereby represent and warrant that there are no commissions or brokerage fees now due or hereafter to become due in connection with the sale of the Properties to Buyer. Buyer and Seller shall each indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees, incurred by the other as a result of any claims that may be

made against the other by any person claiming a commission, brokerage fee or other compensation from the other in consequence of the transaction evidenced by this Agreement.

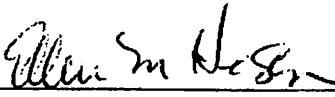
i. **Interpretation.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of either Buyer or Seller by any court or other governmental or judicial authority by reason of such party having or deemed to have structured or dictated such provision.

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

**SELLER:**

**Louisville/Jefferson County Metro  
Government**

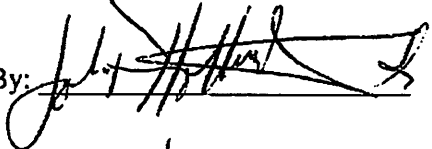
Dated: 8/7/15

By:   
Greg Fischer, Mayor

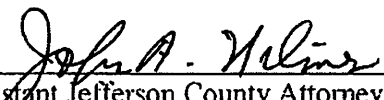
**BUYER:**

**Louisville Sterling, LLC**

Dated: 7-21-15

By:   
Title: Member

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

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

**FIRST AMENDMENT TO PURCHASE AGREEMENT**

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT ("Amendment") is made as of the first date of execution of this Amendment as set forth on the signature page ("Agreement Date"), by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a Kentucky consolidated local government, acting by and through its DEPARTMENT OF ECONOMIC DEVELOPMENT, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and LOUISVILLE STERLING, LLC, a Kentucky limited liability company with its principal address located at 4965 US Highway 42, Suite 2800, Louisville, Kentucky 40222 ("Buyer").

**RECITALS:**

WHEREAS, Seller and Buyer entered into a Purchase Agreement dated August 7, 2015 (the "Purchase Agreement") for the sale of certain property located in Louisville, as more particularly described in the Purchase Agreement, and

WHEREAS, and said Purchase Agreement will terminate on August 7, 2016 unless Seller and Buyer agree to amend it in writing; and

WHEREAS, Seller and Buyer agree that the Purchase Agreement should be extended to allow Buyer additional time to complete certain due diligence;

**NOW, THEREFORE**, the parties hereto agree as follows.

**AGREEMENT:**

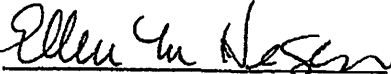
1. The date applicable to Section 7.b. of the Purchase Agreement shall be extended to October 31, 2016.
2. The date applicable to Section 11 of the Purchase Agreement shall be extended to October 31, 2016.
3. The Purchase Agreement is hereby extended to October 31, 2016.

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

**SELLER:**

Louisville/Jefferson County Metro  
Government

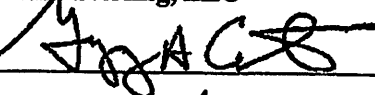
Dated: 8/5/14

By:   
Greg Fischer, Mayor

**BUYER:**

Louisville Sterling, LLC

Dated: 8/4/14

By:   
Title: Organizer / Agent

**Approved as to form:**

Michael J. O'Connell  
Jefferson County Attorney

By:   
Assistant County Attorney  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348

**SECOND AMENDMENT TO PURCHASE AGREEMENT**

THIS SECOND AMENDMENT TO PURCHASE AGREEMENT ("Amendment") is made as of the first date of execution of this Amendment as set forth on the signature page ("Agreement Date"), by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through its **DEPARTMENT OF ECONOMIC DEVELOPMENT**, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and **LOUISVILLE STERLING, LLC**, a Kentucky limited liability company with its principal address located at 4965 US Highway 42, Suite 2800, Louisville, Kentucky 40222 ("Buyer").

**RECITALS:**

**WHEREAS**, Seller and Buyer entered into a Purchase Agreement dated August 7, 2015, as amended by that First Amendment to Purchase Agreement dated August 7, 2016 (the "Purchase Agreement") for the sale of certain property located in Louisville, as more particularly described in the Purchase Agreement, and

**WHEREAS**, and said Purchase Agreement will terminate on October 31, 2016 unless Seller and Buyer agree to amend it in writing; and

**WHEREAS**, Seller and Buyer agree that the Purchase Agreement should be extended to allow Buyer additional time to complete certain due diligence;

**NOW, THEREFORE**, the parties hereto agree as follows.

**AGREEMENT:**

1. The date applicable to Section 7.b. of the Purchase Agreement shall be extended to November 30, 2016.
2. The date applicable to Section 11 of the Purchase Agreement shall be extended to November 30, 2016.
3. The Purchase Agreement is hereby extended to November 30, 2016.

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

**SELLER:**

**Louisville/Jefferson County Metro  
Government**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
**Greg Fischer, Mayor**

**BUYER:**

**Louisville Sterling, LLC**

Dated: 10-28-16

By: [Signature]

Title: Manager/Member

**Approved as to form:**

**Michael J. O'Connell  
Jefferson County Attorney**

By: \_\_\_\_\_  
Assistant County Attorney  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348



**THIRD AMENDMENT TO PURCHASE AGREEMENT**

**THIS THIRD AMENDMENT TO PURCHASE AGREEMENT** ("Amendment") is made as of the first date of execution of this Amendment as set forth on the signature page ("Agreement Date"), by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, acting by and through its **DEPARTMENT OF ECONOMIC DEVELOPMENT**, with an office located at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Seller"), and **LOUISVILLE STERLING, LLC**, a Kentucky limited liability company with its principal address located at 4965 US Highway 42, Suite 2800, Louisville, Kentucky 40222 ("Buyer").

**RECITALS:**

**WHEREAS**, Seller and Buyer entered into a Purchase Agreement dated August 7, 2015, as amended by that First Amendment to Purchase Agreement dated August 7, 2016 and that Second Amendment to Purchase Agreement dated October 31, 2016 (collectively, the "Purchase Agreement") for the sale of certain property located in Louisville, as more particularly described in the Purchase Agreement, and

**WHEREAS**, and said Purchase Agreement will terminate on November 30, 2016 unless Seller and Buyer agree to amend it in writing; and

**WHEREAS**, Seller and Buyer agree that the Purchase Agreement should be extended to allow Buyer additional time to complete certain due diligence;

**NOW, THEREFORE**, the parties hereto agree as follows.

**AGREEMENT:**

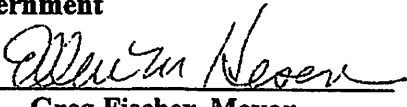
1. The date applicable to Section 7.b. of the Purchase Agreement shall be extended to December 21, 2016.
2. The date applicable to Section 11 of the Purchase Agreement shall be extended to December 21, 2016.
3. The Purchase Agreement is hereby extended to December 21, 2016.

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

**SELLER:**

**Louisville/Jefferson County Metro  
Government**

Dated: 11/30/14

By:   
Greg Fischer, Mayor

**BUYER:**

**Louisville Sterling, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to form:**

Michael J. O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_  
Assistant County Attorney  
531 Court Place, Suite 900  
Louisville, KY 40202  
(502) 574-3348