

AGREEMENT FOR PURCHASE OF REAL ESTATE

THIS AGREEMENT ("Agreement") made this 28th day of April, 2023 by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** a Kentucky consolidated local government, with an office located at 527 West Jefferson Street, Louisville, Kentucky 40202 ("Seller"), and **DARE TO CARE, INC., d/b/a DARE TO CARE FOOD BANK**, a Kentucky non-profit corporation, with its principal office at P.O. Box 354383, Louisville, Kentucky 40232 ("Buyer").

RECITALS

WHEREAS, Seller is the owner of two parcels of real property located at 1200 South 28th Street and Dumesnil Street (Parcel ID No. 046J01110000), Louisville, Kentucky, more particularly described in Exhibit A, attached hereto (collectively, the "Property"); and

WHEREAS, Seller is currently leasing the Property to Buyer, pursuant to that certain Lease dated June 25, 2019, a copy of which is attached as Exhibit B (the "Lease"); and

WHEREAS, Section 5 of the Lease provides for a Right of First Offer regarding the Property the Property; and

WHEREAS, Seller has determined that conveying the Property to Buyer pursuant to Section 5 of the Lease is in furtherance of the public purposes of Louisville; and

WHEREAS, Buyer has a long history of providing meals to the community and developing and operating programs to address food insecurity; and

WHEREAS, Buyer desires to purchase the Property to be used for purposes related to its non-profit mission.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of

which is acknowledged, the parties agree as follows:

1. SALE AND PURCHASE OF PROPERTY. Buyer hereby agrees to purchase, and Seller hereby agrees to sell the Property in accordance with the terms and conditions contained in this Agreement

2. PURCHASE PRICE. In consideration of the substantial improvements made by Buyer to the Property pursuant to the Lease and the Development Agreement (as that term is defined in the Lease), the purchase price ("Purchase Price") for the Property shall be \$1.00 and the performance by Buyer of the obligations contained in this Agreement.

3. CLOSING. The closing of the sale and purchase of the Property shall occur within six (6) months after the execution of this Agreement (the "Closing") and shall be established by a written notice from Buyer to Seller delivered not less than one (1) week prior to the proposed Closing. The Closing shall be held at 444 S. Fifth Street, Suite 600, Louisville, Kentucky 40202, or at such other place as is mutually agreed to by Seller and Buyer. If the Closing fails to occur by that time, this Agreement shall terminate except upon written agreement of Buyer and Seller.

At the Closing, Buyer shall deliver the Purchase Price and Seller shall convey the Property to Buyer by deed of Special Warranty ("Deed") free and clear of all liens and encumbrances except governmental laws and regulations (including zoning regulations) affecting the Property, the condition referenced in Section 7.A. of this Agreement, and real estate taxes not yet due and payable, if any.

4. INVESTIGATIONS.

A. Buyer, its employees, agents or contractors shall have the right to enter upon the Property and prior to the Closing for the purpose of conducting such surveys, tests or investigations deemed

necessary by Buyer (the "Investigations"). Buyer agrees to conduct the Investigations so as to not unreasonably damage the Property and to promptly repair any damage thereto.

B. Buyer shall hold harmless Seller from and against any and all liabilities, losses, costs and expenses resulting from the exercise by Buyer of its right to enter upon Property to perform the Investigations as provided in subsection A of this Section, except to the extent such liabilities, losses, costs and expenses are caused by the negligent or intentional acts of Seller, its agents or invitees.

5. APPORTIONMENTS: RESPONSIBILITY FOR OTHER EXPENSES. Real property ad valorem taxes, if any, assessed against the Property and payable in the year of Closing, if any, shall be prorated on a calendar year basis to date of Closing. Seller shall pay the transfer tax on the conveyance of the Property, if any. Buyer shall pay the recording fees imposed for recording the Deed. Each party shall bear its own legal and other expenses associated with the transaction.

6. NO WARRANTIES. BUYER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS TO BE CONVEYED TO BUYER "AS IS", "WITH ALL FAULTS", IN ITS CURRENT CONDITION. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT: (1) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9, SELLER HAS NOT MADE ANY GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH THE RESPECT TO THE PROPERTY (OR ANY PARTS THEREOF), AND (2) SELLER SHALL NOT HAVE ANY LIABILITY WHATSOEVER AS TO: (I) THE VALUE, HABITABILITY, CONDITION, DESIGN, OPERATION OF THE PROPERTY (OR ANY PARTS THEREOF), (II) THE FITNESS FOR PURPOSE OR USE OF THE PROPERTY (OR ANY PARTS THEREOF), OR (III) THE ELIGIBILITY OF THE PROPERTY (OR ANY PARTS THEREOF) FOR ANY PERMIT, LICENSE, APPROVAL OR SIMILAR MATTER. FURTHER, BUYER

AGREES THAT SELLER SHALL HAVE NO LIABILITY FOR ANY LATENT, HIDDEN, OR PATENT DEFECT IN OR AT THE PROPERTY OR FOR THE FAILURE OF THE PROPERTY (OR ANY PARTS THEREOF) TO COMPLY WITH ANY APPLICABLE LAWS, REGULATIONS, RULES OR PERMITS.

7. COVENANTS AND UNDERTAKINGS OF BUYER

A. Use of Property. Buyer agrees to use the Property in a manner that is consistent with an eligible CDBG use, as defined in 24 C.F.R. Pt 570, §§ 570.200-570.207, for a period of five (5) years from Closing, with such condition to be reflected in the Deed.

B. Indemnification. Buyer agrees to indemnify and hold Seller, 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:

(1) Any misrepresentation or breach of warranty made by Buyer in this Agreement or in any agreement or instrument executed by it in connection herewith or pursuant hereto.

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

C. Environmental Testing and Remediation. Buyer shall be solely responsible for performing any testing, assessments or other examinations to determine whether Hazardous Materials (as defined below) are present in, on or under the Property ("Environmental Testing") and, if Buyer elects to close on the purchase of the Property, to conduct any remediation or management of the Hazardous Materials disclosed by the Environmental Testing as Buyer may

reasonably determine is necessary ("Remedial Measures"). 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.

8. SELLER'S REPRESENTATIONS AND WARRANTIES. In addition to any other express agreements of Seller contained herein, the matters set forth in this Section constitute representations and warranties by Seller which shall be true and correct as of the date of this Agreement. In the event that Seller learns, or has reason to believe, that any of the following representations and warranties may cease to be true, Seller hereby covenants to give notice thereof to Buyer immediately.

A. Authority of Seller. Seller possesses the full power and authority to enter into and perform this Agreement. This Agreement does not conflict with any contract, agreement or commitment to which Seller is a party.

B. Binding on Seller. This Agreement constitutes the legally valid and binding obligation of Seller enforceable in accordance with its terms. Neither the entering into of this Agreement, nor the consummation of the transactions contemplated hereby, will constitute a violation or breach by Seller of any contract or other instrument to which it is a party or to which

it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in any violation of applicable law, order or regulation of any governmental authority.

9. REPRESENTATIONS AND WARRANTIES BY BUYER. In addition to any other express agreements of Buyer contained herein, the matters set forth in this Section constitute representations and warranties by Buyer which shall be true and correct as of the date of this Agreement and as of the Closing.

A. Authority of Buyer. Buyer has full power and authority to enter into and perform this Agreement. This Agreement does not conflict with any provisions of Buyer's articles of organizations, or of any contract, agreement or commitment to which Buyer is a party. As of the date of Closing, the execution, delivery and performance of this Agreement shall have been duly authorized by all necessary action on the part of the Buyer, and no further action shall be required to give effect to this Agreement or to permit Buyer to carry out the transaction contemplated hereby.

B. Binding on Buyer. This Agreement constitutes the legally valid and binding obligation on Buyer enforceable in accordance with its terms. Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation or breach by Buyer of any contract or other instrument to which it is a party to or to which it is subject, or any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in any violation of applicable law, order, rule or regulation of any governmental authority.

10. THE CLOSING CONTINGENCIES. The obligations of the parties to close on the purchase and sale of the Property shall be subject to the following contingencies:

A. Contingencies to Seller's Obligation to Close. Seller shall be under no

obligation to close on the conveyance of the Property to Buyer unless the following conditions have been satisfied or waived by Seller, in writing, at the time of the Closing:

- (1) Buyer shall have tendered the Purchase Price.
- (2) The Metro Council shall have declared the Property surplus to the needs of Seller and authorized its sale to Buyer pursuant to the terms and conditions of this Agreement.
- (3) All of Buyer's representations and warranties shall remain true and correct as of the Closing and Buyer shall have performed its other obligations under this Agreement.

B. Contingencies to Buyer's Obligations to Close. Buyer shall be under no obligations to close on the purchase of the Property unless the following conditions have been satisfied, or waived by the Buyer, in writing, at the time of the Closing:

- (1) All of the Seller's representations and warranties shall remain true and correct as of the date of the closing and Seller shall have performed its obligations under this Agreement.

C. Termination for Failure to Fulfill Contingencies. Upon the exercise by either Buyer or Seller of its option to terminate this Agreement because of the failure of the other party to fulfill the applicable contingencies referenced in Section 10. A. and B. above, this Agreement shall be void and the parties shall be relieved of any and all further obligations and duties hereunder, each unto the other except for Buyer's obligations under Section 7 of this Agreement.

12. RISK OF LOSS AND INSURABLE INTEREST; DAMAGE. Until the time of recording of the Deed, risk of loss with respect to the Property shall continue to be borne by Seller.

13. NOTICES. Any notice to be given herein by either party to the other shall be given

in writing by personal delivery or first class mail, to the persons and addresses below, until notification of change of such address.

If to Seller: Louisville Forward
444. S. Fifth Street, Suite 600
Louisville, KY 40202
Attn: Chief

If to Buyer: Dare to Care, Inc., d/b/a Dare to Care Food Bank
P.O. Box 35438
Louisville, Kentucky 40232
ATTN: Vincent James CEO

14. TERMINATION.

A. Seller may terminate this Agreement if Buyer fails to perform its contractual duties under this Agreement.

B. If Buyer is determined to be in default, Seller shall notify Buyer of the determination in writing, and Buyer shall have thirty (30) days to cure the identified deficiencies. Seller may proceed with termination if Buyer fails to cure the deficiencies within the specified time.

C. A default in performance by Buyer for which this Agreement may be terminated shall include, but shall not necessarily be limited to, failure to perform the Agreement according to its terms and conditions and specifications.

15. TIME AND ESSENCE. Time is of the essence to this Agreement

16. ENTIRE AGREEMENT. This agreement, together with any exhibits hereto, which are deemed to be incorporated by references as if set forth at length herein, shall continue the entire written understanding of the parties and shall supersede all oral and written understandings of the parties, all of which are deemed to be merged herein. This Agreement may not be modified or amended except in writing, signed by each of the parties hereto, their successors or assigns.

17. GOVERNING LAW. This Agreement and obligations of the parties hereunder

shall be governed in all respects by the laws of the Commonwealth of Kentucky.

18. **NO ASSIGNMENT.** Buyer shall not assign or transfer any interests under this Agreement without the prior written consent of Seller.

19. **BROKERS.** Seller and Buyer each shall be responsible solely for paying any broker's commissions incurred by them, respectively, in connection with this Agreement and shall hold the other party harmless from any claims for broker's commissions.

20. **SURVIVAL.** All warranties, covenants and other obligations set forth herein shall be deemed satisfied by Closing of the sale and delivery of the Deed at the Closing, except as to customary warranties contained in the Deed.

21. **DATE OF AGREEMENT.** This Agreement or their authorized representatives have executed this Agreement on the day and year first above written.

Witness the signatures of the authorized representatives of the parties.

"SELLER"

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____

**Craig Greenberg
Mayor**

"BUYER"

**DARE TO CARE, INC., d/b/a DARE TO CARE
FOOD BANK**

By: DocuSigned by:
Vincent James
69ED265EA33545E...

Title: President & CEO

Approved as to form:

DocuSigned by:

Laura Ferguson

72F7CD754D00459
Michael J. O'Connell

Jefferson County Attorney

EXHIBIT A

Tract 1

Beginning at the southwest corner of 28th Street and Virginia Avenue; running thence with the West line of 28th Street, South 2 degrees, 14 minutes East 180 feet to a point; thence South 86 degrees 13 minutes West 140.52 feet to a pin; thence South 2 degrees 14 minutes East 20 feet to a pin; thence South 86 degrees 13 minutes West 49.48 feet to a pin; thence North 2 degrees 14 minutes West 200 feet to a point in the South line of Virginia Avenue, thence with the South line of Virginia Avenue North 86 degrees 13 minutes East 190 feet to the point of beginning. Said property also being known as Tract 1, on Minor Subdivision Plat, Docket No. 55-96, approved by the Louisville and Jefferson County Planning Commission on February 15, 1996, attached to the Deed dated May 28, 1996, of record in Deed Book 6742, Page 843, in the Office of the County Clerk of Jefferson County, Kentucky. Being the same property conveyed to Metro Government by virtue of Deed of record in Deed Book 10876, Page 223 in the Jefferson County Clerk's Office.

Tract 2

Being Tract 2, as shown on the Minor Subdivision Plat attached to and made a part of Deed Book 6742, Page 843, in the Office of the County Clerk of Jefferson County, Kentucky, and reflected by Deed dated August 23, 2019, of record in Deed Book 11491, Page 152 in the Jefferson County Clerk's Office.