

PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and between Capitol View Joint Venture, a Tennessee general partnership ("Capitol View"), and The Metropolitan Government of Nashville and Davidson County ("Metro").

WHEREAS, pursuant to ordinance BL2016-149 (the "CV Ordinance"), the Metropolitan Council approved a participation agreement addressing the construction of public infrastructure improvements to be completed in connection with the Capitol View development in downtown Nashville; and

WHEREAS, the CV Ordinance also authorized Metro to accept from Capitol View the donation of an approximately 1.26-acre parcel of property to be used as a public park (the "Park"), and Capitol View conveyed the Park to Metro on May 26, 2016; and

WHEREAS, Exhibit 2 to the CV Ordinance contemplated that Metro would undertake and complete certain improvements (the "Initial Park Components") to the Park at its cost; and

WHEREAS, pursuant to the terms of this agreement, Capitol View has proposed to build the Initial Park Components and additional Park elements, including a greenway/bikeway (the Initial Park Components and additional elements together being the "Improvements"), all in accordance with plans to be approved by the Metropolitan Department of Park and Recreation, in exchange for payment in the amount of \$2,500,000.

WHEREAS, Capitol View owns an additional tract of real property consisting of approximately .4 acres more particularly described on Exhibit A attached and incorporated by reference that it intends to convey to Metro upon the completion of the Improvements (the "Additional Property").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Plans. On or before June 30, 2018, Capitol View will provide to Metro final construction plans (the "Plans") for all Improvements contemplated by this Agreement. Metro shall have 14 days in which to review the Plans and approve them or notify Capitol View of any material deviation from schematic drawings previously approved by Metro, which deviations Capitol View shall promptly correct.
2. The Work. Capitol View agrees to complete fully all Improvements depicted on the Plans or reasonably inferable therefrom (the "Work"). All Work shall be completed in a good and workmanlike manner using commercially acceptable materials. Metro shall have the right to inspect the Work at all reasonable times and to reject Work that is defective or not in full compliance with the Plans (Work that is defective or not in compliance with the Plans being "Unacceptable Work"). All Work shall be completed by December 31, 2018 (the "Completion Date"), subject to reasonable

extension on account of force majeure or material delays caused by Metro's unjustified failure to approve the Plans or issue necessary permits.

3. Rejection of Defective Work. Metro shall notify Capitol View of any Unacceptable Work within 7 days after such Unacceptable Work is performed, and Capitol View shall promptly make such corrections as are necessary to remedy the defects or material deviations from the Plans.
4. Changes. Metro may order changes in the Work and shall bear the additional costs incurred in the performance of such Work, if any. Capitol View may request changes in the Work, which Metro shall consider in good faith. Capitol View shall bear any increase in the cost of the Work associated with any such change requested by Capitol View and approved by Metro. Any change in the Work, and all other modifications of this agreement shall be in writing and signed by authorized representatives of both parties.
5. Payment. For the successful completion of all the Work, Metro agrees to pay Capitol View a total of two million five hundred thousand dollars (\$2,500,000) (the "Contract Sum"). Payments shall be made to Capitol View in monthly installments based on Work completed. Capitol View shall submit properly documented payment applications each month, certifying in each instance that the Work for which payment is sought is complete in accordance with the Plans. Metro shall use best efforts to make payments required by this Paragraph within 20 days after receipt of an acceptable payment application. Capitol View shall not be entitled to any payment that would cause the percentage of the Contract Sum paid to exceed the percentage of Work completed. Capitol View shall bear all costs of performing the Work that exceed the Contract Sum.
6. Termination. In the event Capitol View fails to complete the Work by the Completion Date, as it may be extended pursuant to Paragraph 2, Metro shall have the right to terminate this agreement upon 60 days' written notice. In such event, Capitol View shall be entitled to payment for the lesser of: (1) the reasonable value of Work successfully completed as of the date of termination and (2) the amount by which the portion of the Contract Sum unpaid at the time of termination exceeds Metro's reasonable costs incurred in completing the Work by other means.
7. Payment and Performance Bonds. Capitol View has previously posted a payment and performance bond from a surety authorized to do business in Tennessee, naming Metro as obligee; having a penal sum in the amount of \$2,900,000; and otherwise complying with Tenn. Code Ann. § 12-4-201.
8. Insurance. At all times while any portion of the Work is underway and while Capitol View or its successors in interest or assignees are responsible for any obligations under this Agreement, Capitol View shall obtain and maintain, or cause to be obtained and maintained, policies of general commercial and automobile liability

insurance, naming Metro as an additional insured and having policy limits of at least \$2,000,000. Capitol View also shall obtain and maintain or cause its contractor to obtain and maintain throughout construction of the Work a policy of builder's risk insurance covering the full replacement value of all completed Work. Capitol View and Metro acknowledge and agree that Capitol View will not be obligated to carry the insurance coverages described herein upon the completion of the Work and Capitol View will terminate those insurance coverages upon the completion of the Work.

9. Property Not To Be Used As Security. Capitol View shall not permit the site (the "Property") where the Work is to be performed to be used as security for any debt. In the event any lien is filed against the Property, Capitol View shall promptly cause the removal of any such lien by bond or otherwise.
10. Indemnity. Capitol View agrees to indemnify Metro and its employees, officers and agents against all costs, claims and causes of action, including, without limitation, reasonable attorney fees, arising from or relating to Capitol View's performance under this agreement. Capitol View and Metro acknowledge and agree that Capitol View's obligation to indemnify Metro will cease upon the completion of the Work.
11. Transfer of Improvements. Capitol View will convey all Improvements to Metro upon successful completion of the Work. Capitol View will also transfer the Additional Property to Metro upon the completion of the Improvements.
12. Maintenance of Improvements. Metro will be responsible for maintaining the hardscape components of the Park in accordance with the maintenance standards applicable to its other park facilities. Capitol View will be responsible for maintenance of all landscape components of the Park consistent with the standards of the Capitol View Amended and Restated Declaration of Covenants, Conditions and Restrictions, Instrument No. 20160408-0034076 (the "CCR").
13. Duty to Repair. Capitol View agrees to repair or replace any Work found to be defective for a period of one year after the day on which the Work is completed.
14. Gay Street Tunnel. Metro will cooperate with Capitol View in seeking the repair of the East tunnel located on Gay Street by CSX. Capitol View will have no liability for failing to repair or failing to cause CSX to repair the East tunnel located on Gay Street.
15. Merger, Venue and Choice of Law. This agreement contains all of the understandings of the parties with respect to the Work. The exclusive forum for any dispute arising from this agreement shall be the Chancery or Circuit Courts of Davidson County, Tennessee, and the laws of the state of Tennessee shall apply.
16. Assignment. Capitol View may not assign this agreement without Metro's written consent; provided, however, that Capitol View may without further consent assign its insurance and landscaping maintenance responsibilities under this Agreement to the

Capitol View Property Owners Association upon acceptance of the Work by Metro. The Capitol View Property Owners Association shall contract with a third party to maintain the landscaping. Capitol View Property Owners Association shall cause the third party contractor to obtain and maintain general and automobile liability insurance coverage having the same limits as provided in paragraph 8 and naming Metro as an additional insured.

17. Notices. Notices required under this agreement shall be sent as appropriate as follows:

Director
Metropolitan Department of Parks and Recreation
511 Oman Street
Nashville, Tennessee 37203

or to

Capitol View
c/o Jeff Haynes
Boyle Investment Company
2000 Meridian Boulevard, Suite 250
Franklin, Tennessee 37067

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**THE METROPOLITAN
GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:**

Nargue N. Cabm
Director, Department of Parks and
Recreation

Approved as to Funding Availability:

Homrodneel
Director, Department of Finance *1L x*

Approved as to Form and Legality:

Tom Guss
Metropolitan Attorney

CAPITOL VIEW JOINT VENTURE

Capitol View Joint Venture, a Tennessee general partnership
By: C – Land Fund, LLC, a Delaware limited liability
company, general partner

By: NML Real Estate Holdings, LLC, a Wisconsin
limited liability company, its sole member
The Northwestern Mutual Life
Insurance Company, a Wisconsin
corporation, its sole member



By: Northwestern Mutual
Investment Management
Company, LLC, a Delaware
limited liability company, its
wholly-owned affiliate
By: *Christina M. Misiti-Eskritt*
Name: Christina M. Misiti-
Eskritt, Managing Director

By: Charlotte Eleventh Investments, LLC, general partner

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**THE METROPOLITAN
GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY:**

Director, Department of Parks and
Recreation

Approved as to Funding Availability:

Director, Department of Finance

Approved as to Form and Legality:

Metropolitan Attorney

CAPITOL VIEW JOINT VENTURE

Capitol View Joint Venture, a Tennessee general partnership
By: C – Land Fund, LLC; a Delaware limited liability
company, general partner

By: NML Real Estate Holdings, LLC, a Wisconsin
limited liability company, its sole member

By: The Northwestern Mutual Life
Insurance Company, a Wisconsin
corporation, its sole member

By: Northwestern Mutual
Investment Management
Company, LLC, a Delaware
limited liability company, its
wholly-owned affiliate

By: _____
Name: _____
Its: _____

By: Charlotte Eleventh Investments, LLC, general partner

By: Jeffrey N. Haynes
Name: Jeffrey N. Haynes
Its: me

EXHIBIT A

NOTES

1. THIS SURVEY MEETS THE REQUIREMENTS OF AN URBAN LAND SURVEY (CATEGORY 1), WITH A RATIO OF PRECISION OF THE UNADJUSTED SURVEY GREATER THAN 1:10,000 AS PER STANDARDS OF PRACTICE ADOPTED BY THE BOARD OF EXAMINERS FOR LAND SURVEYORS, STATE OF TENNESSEE.

2. BEARINGS SHOWN ARE BASED ON RECORDED PLAT, CONSOLIDATION AND SUBDIVISION OF CAPITOL VIEW, INSTR. NO. 201403240223774, R.O.D.G.

3. ABOVE GRADE AND UNDERGROUND UTILITIES SHOWN WERE TAKEN FROM FIELD LOCATED VISIBLE APPURTENANCES, ATLAS MAPS AS MAY BE AVAILABLE FROM MUNICIPALITIES OR UTILITY COMPANIES, AND OTHER DRAWINGS. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES STATE THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION CONSULTED. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. AVAILABILITY AND COST OF SERVICE SHOULD BE CONFIRMED WITH THE APPROPRIATE UTILITY COMPANY. TO AVOID ANY POSSIBLE HAZARD OR CONFLICT, IT IS A REQUIREMENT OF THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT, FOR ANYONE WHO ENGAGES IN EXCAVATION TO NOTIFY ALL KNOWN UTILITY OWNERS (NO LESS THAN THREE (3) OR MORE THAN TEN (10) WORKING DAYS PRIOR TO THE DATE OF THEIR INTENT TO EXCAVATE. CALL TENNESSEE ONE CALL AT 1-800-367-1111.

4. BASED UPON A GRAPHIC SCALE A PORTION OF THIS PROPERTY IS LOCATED IN A FLOOD HAZARD AREA ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY NO. 470040 PANEL NO. 0216 F, DATED APRIL 20, 2001, ZONE X (SHADED). AREAS OF 500 YEAR FLOOD; AREAS OF 100 YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD. NO ELEVATIONS OR CONTOURS WERE OBTAINED AS A PART OF THIS SURVEY.

DEED REFERENCE

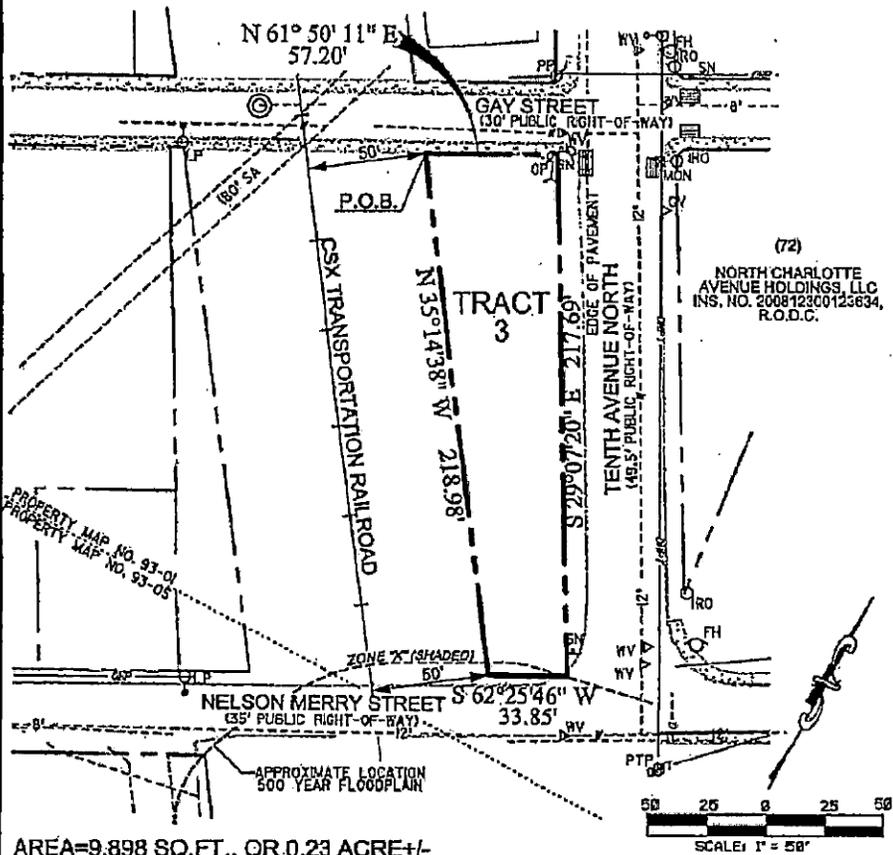
BEING PROPERTY CONVEYED TO CSX RAILROAD (NO DEED FOUND).

SURVEYOR'S CERTIFICATE

I (WE) HEREBY CERTIFY THAT THIS SURVEY MEETS THE REQUIREMENTS OF AN URBAN LAND SURVEY (CATEGORY 1) WITH A RATIO OF PRECISION OF THE UNADJUSTED SURVEY GREATER THAN 1:10,000 AS PER STANDARDS OF PRACTICE ADOPTED BY THE BOARD OF EXAMINERS FOR LAND SURVEYORS, STATE OF TENNESSEE.

BARGE, WAGGONER, SUMNER AND CANNON, INC.

BY: _____
 REGISTRATION NO. _____
 DATE: _____



<p>BWSC BARGE WAGGONER SUMNER & CANNON, INC. 110 Commerce Street, Suite 600 Nashville, Tennessee 37203 PHONE: 615-254-8000 FAX: 615-254-0271</p>	<p>CAPITOL VIEW BOUNDARY SURVEY - TRACT 3 C.S.X. RAILROAD RIGHT-OF-WAY NELSON MERRY STREET TO GAY STREET URBAN SERVICES DISTRICT NINETEENTH COUNCILMANIC DISTRICT NASHVILLE, DAVIDSON COUNTY, TENNESSEE</p>		<p>PLANNED BY: RWF</p>	<p>DESIGNED BY: JLI</p>
	<p>PROJECT NO.: 3555705</p>	<p>DATE: 6-05-15</p>		

Parcel 7Z

Being a tract of land lying in Nashville, Davidson County, Tennessee, also being Lot P of the Revised Subdivision Plat of Capitol Hill Redevelopment Project, as of record in Plat Book 2663, Page 120, at the Register's Office for Davidson County, Tennessee;

Beginning at an existing concrete monument at the intersection with the westerly right-of-way line of CSX Transportation Railroad, and the easterly right-of-way line of Tenth Avenue North, in the northerly right-of-way line of Nelson Merry Street, said existing concrete monument being located at Northing: 667,485.61; Easting: 1,735,499.34; on the State Plane Coordinate System NAD-83 (1990);

Thence leaving the northerly right-of-way line of Nelson Merry Street and the westerly right-of-way line of CSX Transportation Railroad, with the easterly right-of-way line of Tenth Avenue North, North 29 deg 07 min 20 sec West, 180.58 feet to an iron rod set at the intersection with the southerly right-of-way line of Gay Street;

Thence leaving the easterly right-of-way line of Tenth Avenue North, with the southerly right-of-way line of Gay Street, with a curve to the right, along an arc length of 7.95 feet, the central angle of which is 91 deg 06 min 00 sec, the radius of which is 5.00 feet, the chord of which is North 16 deg 27 min 39 sec East, 7.14 feet to an "X" in concrete;

Thence North 62 deg 00 min 39 sec East, 76.48 feet to an iron rod set in the westerly right-of-way line of CSX Transportation Railroad;

Thence leaving the southerly right-of-way line of Gay Street, with the westerly right-of-way line of CSX Transportation Railroad, South 05 deg 13 min 20 sec East, 201.33 feet to the POINT OF BEGINNING. Containing 7,567 square feet or 0.174 acres more or less.

Being part of the same property conveyed to Crosland Capitol View, LLC by deed from United States Cold Storage, Inc. of record as Instrument No. 20060320-0031332, Register's Office for Davidson County, Tennessee.

SURVEYOR'S DESCRIPTION
CSX Right-of-Way, TRACT 3

Being land in Nashville, Urban Services District, Nineteenth Councilmanic District Davidson County, Tennessee, being a portion of the CSX Railroad right-of-way, generally located between Nelson Merry Street and Gay Street west of Tenth Avenue North, and being more particularly described as follows:

Beginning in the southerly right-of-way line of Gay Street 50' east of and parallel to the centerline of the CSX railroad track:

THENCE, along said southerly right-of-way line N 61°50'11" E, 57.20 feet to the westerly right-of-way line of Tenth Avenue North:

THENCE, along said right-of-way line, S 29°07'20" E, 217.69 feet to the northerly right-of-way line of Nelson Merry Street:

THENCE, along said right-of-way line, S 62°25'46" W, 33.85 feet to a point 50 feet from and parallel to the centerline of said CSX railroad track:

THENCE, N 35°14'38" W, 218.98 feet to the Point of Beginning;

Containing 9,898 square feet, or 0.23 acre, more or less.