



**CLARKSVILLE CITY COUNCIL  
REGULAR SESSION  
FEBRUARY 6, 2014, 7:00 P.M.**

**COUNCIL CHAMBERS  
106 PUBLIC SQUARE  
CLARKSVILLE, TENNESSEE**

**AGENDA**

**PUBLIC COMMENTS:**

- 6:40 p.m. Monica Mitchell
- 6:45 p.m. Geneva Bell
- 6:50 p.m. Charles Mooreland
- 6:55 p.m. Justin Grant

1) CALL TO ORDER

2) PRAYER AND PLEDGE OF ALLEGIANCE

3) ATTENDANCE

4) PLANNING COMMISSION PUBLIC HEARING

1. **ORDINANCE 49-2013-14** (First Reading) Amending the Zoning Ordinance and map of the City of Clarksville, application of Regional Planning Commission for zone change on portions of Summerhaven Subdivision from R-4 Multiple Family Residential District to R-1A Single Family Residential District (*RPC: Approval/Approval*)
2. **ORDINANCE 50-2013-14** (First Reading) Amending the Zoning Ordinance and map of the City of Clarksville, application of Edward C. Burchett for zone change on property at the southern terminus of Buckingham Place from R-1 Single Family Residential District to R-2 Single Family Residential District (*RPC: Approval/Approval*)

3. **ORDINANCE 51-2013-14** (First Reading) Amending the Zoning Ordinance and map of the City of Clarksville, application of John E. and Sue M. Goodrich for zone change on property at Crossland Avenue and Elder Street from R-3 Three Family Residential District to C-2 General Commercial District (*RPC: Approval/Approval*)
4. **ORDINANCE 52-2013-14** (First Reading) Amending the Zoning Ordinance and map of the City of Clarksville, application of Billy Mace/White & Stafford, LLC, for zone change on property at Tiny Town Road and Heritage Point Drive from C-4 Highway Interchange District to C-5 Highway & Arterial Commercial District (*RPC: Approval/Approval*)

#### 5) CONSENT AGENDA

*All items in this portion of the agenda are considered to be routine and non-controversial by the Council and may be approved by one motion; however, a member of the Council may request that an item be removed for separate consideration under the appropriate committee report:*

1. **ORDINANCE 33-2013-14** (Second Reading) Amending the Official Code relative to Director of Finance Performance Bond
2. **ORDINANCE 42-2013-14** (Second Reading) Amending the FY14 Capital Projects Budget for Sango Road Improvements
3. **ORDINANCE 43-2013-14** (Second Reading) Amending the FY14 Parks Special Revenue Budget for purchase of a mobility cart for Liberty Park
4. **ORDINANCE 45-2013-14** (Second Reading) Amending the Zoning Ordinance and Map of the City of Clarksville, application of the Regional Planning Commission for zone change on portions of Miller Estates Subdivision and Cross Point Subdivision from R-4 Multiple Family Residential District to R-2 Single Family Residential District
5. **RESOLUTION 22-2013-14** Renewing the Certificate of Compliance for a retail liquor store for Ramesh Kasetty [Caddy's Discount Liquors, 2206B Madison Street] (*CPD: No local criminal history*)
6. **RESOLUTION 23-2013-14** Renewing the Certificate of Compliance for a retail liquor store for Todd E. Morris [Mulligan's, 2255 Wilma Rudolph Boulevard] (*CPD: No local criminal history*)
7. Approval of Minutes: January 2<sup>nd</sup>

8. Approval of Board Appointments:

Residential Development Commission: Valerie Guzman, Joel Wallace, Alan Burkhart, Rex Hawkins – February 2014 through December 2015

Two Rivers Company Board of Directors: Geno Grubbs, Stanley Ross, Laura Schroeder, Mike O'Malley – February 2014 through October 2016

6) COMMUNITY DEVELOPMENT COMMITTEE

*David Allen, Chair*

7) FINANCE COMMITTEE

*Joel Wallace, Chair*

1. **ORDINANCE 44-2013-14** (First Reading: postponed December 19) Amending the FY14 Parking Authority Budget for vehicle sensors and meter credit card mechanisms (*Finance Committee: Approval*)
2. **ORDINANCE 46-2013-14** (First Reading) Authorizing exercise of right of eminent domain for intersection utility relocations (*Finance Committee: Approval*)
3. **ORDINANCE 47-2013-14** (First Reading) Amending the FY14 Parks Special Revenue Fund for special revenue related improvements (*Finance Committee: Approval*)
4. **ORDINANCE 48-2013-14** (First Reading) Amending the FY14 General Fund budget to accept federal and state grants to complete the FEMA/TEMA hazard mitigation acquisition and demolition project (*Finance Committee: Approval*)

8) GAS & WATER COMMITTEE

*Jeff Burkhart, Chair*

9) PARKS, RECREATION, GENERAL SERVICES

*Wallace Redd, Chair*

10) PUBLIC SAFETY COMMITTEE

(Building & Codes, Fire, Police)

*Geno Grubbs, Chair*

1. **RESOLUTION 21-2013-14** Authorizing a fireworks display during the Best of Clarksville event (*Public Safety Committee: Disapproval*)

11) STREET COMMITTEE

*James Lewis, Chair*

12) TRANSPORTATION COMMITTEE

*Marc Harris, Chair*

13) NEW BUSINESS

1. **RESOLUTION 24-2013-14** Approving a sublease for Liberty Park restaurant (*Mayor McMillan*)
2. Report on Debt Obligation (*Mayor McMillan*)

14) MAYOR AND STAFF REPORTS

15) ADJOURNMENT

ORDINANCE 49-2012-13

AMENDING THE ZONING ORDINANCE AND MAP OF THE CITY OF CLARKSVILLE, APPLICATION OF THE REGIONAL PLANNING COMMISSION FOR ZONE CHANGE ON PORTIONS OF SUMMERHAVEN SUBDIVISION

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Zoning Ordinance and Map of the City of Clarksville, Tennessee are hereby amended by designating the zone classification of the property described in Exhibit A, currently zoned R-4 Multiple Family Residential District, as R-1A Single Family Residential District.

*PUBLIC HEARING:*

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

EXHIBIT A

Case Number Z-1-2014 Application of the Regional Planning Commission for a zone change from R-4 (Multiple Family Residential District) to R-1A (Single Family Residential District) on properties located north of Tiny Town Road, west of Penridge Road and east of Iris Lane (portion of Summerhaven Subdivision), 43.41 +/- acres, further identified as County Tax Map and Parcel (s):

|         |                              |
|---------|------------------------------|
| 006 K-F | 001.00-012.00, 028.00-035.00 |
| 006 K-G | 055.00 – 078.00              |
| 006 K-J | 001.00-027.00                |
| 006 K-K | 001.00-009.00                |
| 006 K-L | 001.00-009.00                |
| 006K-M  | 003.00-006.00                |

ORDINANCE 50-2012-13

AMENDING THE ZONING ORDINANCE AND MAP OF THE CITY OF CLARKSVILLE, APPLICATION OF EDDIE BURCHETT FOR ZONE CHANGE ON PROPERTY AT THE SOUTHERN TERMINUS OF BUCKINGHAM PLACE

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Zoning Ordinance and Map of the City of Clarksville, Tennessee are hereby amended by designating the zone classification of the property described in Exhibit A, currently zoned R-1 Single Family Residential District, as R-2 Single Family Residential District.

*PUBLIC HEARING:*

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

EXHIBIT A

Beginning at a point in the north ROW of Woodhaven Drive, being the south corner of Yorkshire Estates lot 57, lying North 30 degrees 39 minutes 33 seconds West for 29.48 feet from the centerline intersection of Woodhaven Drive and Terrier Way; thence along Huff west property line, North 07 degrees 15 minutes 37 seconds East for 44.29 feet to a point. being the "True Point of beginning", also the northwest corner of the Edward Burchett property; thence with the east boundary line of Yorkshire Estates also being the Huff's west line, North 07 degrees 15 minutes 37 seconds East for 112.19 feet to a point; Thence leaving the Yorkshire east boundary line on the new zone line, North 07 degrees 17 minutes 59 seconds East for 12.81 feet; Thence continuing on the new zone line, South 67 degrees 20 minutes 09 seconds East for 34.46 feet, to the southeast corner of here described parcel, also being the southwest corner of lot 56 Yorkshire Place also lying in the north ROW of Woodhaven Drive; Thence along the current zone line and Burchett north property line, North 86 degrees 14 minutes 29 seconds West for 388.85 feet to the True Point of Beginning. Containing 1.109 +/- acres (Tax Map 43 Parcel 33.00 p/o)

ORDINANCE 51-2012-13

AMENDING THE ZONING ORDINANCE AND MAP OF THE CITY OF CLARKSVILLE, APPLICATION OF JOHN E. AND SUE M. GOODRICH FOR ZONE CHANGE ON PROPERTY AT CROSSLAND AVENUE AND ELDER STREET

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Zoning Ordinance and Map of the City of Clarksville, Tennessee are hereby amended by designating the zone classification of the property described in Exhibit A, currently zoned R-3 Three Family Residential District, as C-2 General Commercial District.

*PUBLIC HEARING:*

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

EXHIBIT A

Beginning at a point, said point being 39 +/- feet northeast of the centerline of the Crossland Ave. and Elder St. intersection, said point also being the in the eastern ROW of Elder St. also the southwest corner of the subject tract thence in a northerly direction 122 +/- feet with the eastern ROW of Elder St. to a point, said point being the southwest corner of the Tim Majors property, thence with the Majors south property line 156+/- feet in a easterly direction to a point said point being the northwest corner of the James Bolin property, thence with the western boundary of the Bolin property 122+/- feet in southerly direction to a point, said point being in the northern ROW of Crossland Ave. thence in a westerly direction with the northern ROW of Crossland Ave 155+/- feet to the point of beginning, containing 0.43+/- acres (Tax Map 66-K-J Parcel(s) 18 & 19)

ORDINANCE 52-2012-13

AMENDING THE ZONING ORDINANCE AND MAP OF THE CITY OF CLARKSVILLE, APPLICATION OF BILLY MACE/WHITE & STAFFORD FOR ZONE CHANGE ON PROPERTY AT TINY TOWN ROAD AND HERITAGE POINT DRIVE

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Zoning Ordinance and Map of the City of Clarksville, Tennessee are hereby amended by designating the zone classification of the property described in Exhibit A, currently zoned C-4 Highway Interchange District, as C-5 Highway & Arterial Commercial District.

*PUBLIC HEARING:*

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

EXHIBIT A

Beginning at an iron pin found, said pin being located 226.5 feet north of Tiny Town Road as measured along the east right of way of Heritage Pointe Drive, said pin being located at the northwest corner of the FWJR Development Partnership property as recorded in Orv. 1490, Page 278 in the Montgomery County Register of Deeds Office. Thence with the east right of way of Heritage Pointe Drive, North 12 degrees 36 minutes 43 seconds East for a distance of 827.28 feet to an iron pin found in the south line of the Heritage Pointe Apartments property as recorded in Orv. 1303, Page 686. Thence with the south line of the Heritage Pointe Apartments property, South 75 degrees 17 minutes 43 seconds East for a distance of 197.38 feet to an iron pin found in the west line of the Clare Abrahamson property as recorded in Orv. 630, Page 2319. Thence with the west line of Abrahamson, South 12 degrees 31 minutes 35 seconds West for a distance of 820.08 feet to an iron pin found at the northeast corner of the FWJR Development Property. Thence with the north line of FWJR Development, North 77 degrees 23 minutes 12 seconds West for a distance of 198.47 feet to the point of beginning. Subject tract contains 3.741 acres more or less.

Beginning at an iron pin found, said pin being located 226.5 feet north of Tiny Town Road as measured along the west right of way of Heritage Pointe Drive, said pin being located at the northeast corner of the Fort Campbell Credit Union property as recorded in Orv. 1233, Page 635 in the Montgomery County Register of Deeds Office, said pin also being located in the west right of way of Heritage Pointe Drive. Thence with the north line of Fort Campbell Credit Union, North 77 degrees 27 minutes 11 seconds West for a distance of 191.50 feet to an iron pin found in the east line of the BC Property Trust property as recorded in Orv. 1525, Page 818. Thence with the west line of BC Property Trust, North 12 degrees 37 minutes 41 seconds East for a distance of 360.12 feet to an iron pin found. Thence continuing with BC Property Trust, North 77 degrees 22 minutes 28 seconds West for a distance of 277.41 feet to an iron pin found in the east line of the Janice Bellamy property as recorded in Orv. 1019, Page 939. Thence with the east line of Bellamy, North 03 degrees 25 minutes 42 seconds East for a distance of 495.58 feet to an iron pin found, said pin being located at the southwest corner of the Heritage Pointe Apartments property as recorded in Orv. 1303, Page 686. Thence with the south line of said apartments, South 75 degrees 17 minutes 43 seconds East for a distance of 548.29 feet to an iron pin found in the west right of way of Heritage Pointe Drive. Thence with said west right of way, South 12 degrees 36 minutes 48 seconds West for a distance of 829.17 feet to the point of beginning. Subject tract contains 7.167 acres more or less. Combined tracts containing 10.91 +/- acres (Tax Map 08 Parcels 13.05, 13.06 & 21.00)

**CITY ZONING ACTIONS**

The following case(s) will be considered for action at the formal session of the Clarksville City Council on February 6, 2014. The public hearing will be held on: February 6, 2014.

CITY ORD. #: 49-2013-14      RPC CASE NUMBER: Z-1-2014  
Applicant:      REGIONAL PLANNING COMMISSION  
Location:      north of Tiny Town Road, west of Penridge Road and east of Iris Lane (portion of Summerhaven Subdivision)  
Ward #:      8/1  
Request:      R-4 Multiple-Family Residential District  
                 to  
                 R-1A Single-Family Residential District

STAFF RECOMMENDATION: APPROVAL  
PLANNING COMMISSION RECOMMENDATION: APPROVAL

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CITY ORD. #: 50-2013-14      RPC CASE NUMBER: Z-2-2014  
Applicant:      EDWARD C BURCHETT  
Location:      north of the Woodhaven Dr. and Terrier Way intersection and south of the southern terminus of Buckingham Place.  
Ward #:      4/2  
Request:      R-1 Single-Family Residential District  
                 to  
                 R-2 Single-Family Residential District

STAFF RECOMMENDATION: APPROVAL  
PLANNING COMMISSION RECOMMENDATION: APPROVAL

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CITY ORD. #: 51-2013-14      RPC CASE NUMBER: Z-3-2014  
Applicant:      JOHN E AND SUE M GOODRICH  
Location:      in the northeast quadrant of the Crossland Ave. and Elder Street intersection.  
Ward #:      7/6  
Request:      R-3 Three Family Residential District  
                 to  
                 C-2 General Commercial District

STAFF RECOMMENDATION: APPROVAL  
PLANNING COMMISSION RECOMMENDATION: APPROVAL

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CITY ORD. #: 52-2013-14      RPC CASE NUMBER: Z-4-2014

Applicant:      BILLY MACE / WHITE & STAFFORD, LLC

Location:      500 +/- feet north of the Tiny Town Rd. and Heritage Pointe Dr. intersection, fronting on both the east and west side of Heritage Pointe Dr.

Ward #:      8

Request:      C-4 Highway Interchange District  
                 to  
                 C-5 Highway & Arterial Commercial District

STAFF RECOMMENDATION: APPROVAL

PLANNING COMMISSION RECOMMENDATION: APPROVAL

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**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**RPC MEETING DATE: 1/29/2014**

**CASE NUMBER: Z - 1 - 2014**

**NAME OF APPLICANT: Regional Planning      Commission**

**AGENT:**

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**GENERAL INFORMATION**

**PRESENT ZONING: R-4**

**PROPOSED ZONING: R-1A**

**EXTENSION OF ZONE  
CLASSIFICATION:**

**APPLICANT'S STATEMENT Bring non-conforming zoning into compliance (due to new R-4 regulations).**  
**FOR PROPOSED USE:**

**PROPERTY LOCATION: Properties located north of Tiny Town Road, west of Penridge Road and east of Iris Lane (portion of Summerhaven Subdivision)**

**ACREAGE TO BE REZONED: 43.41 +/-**

**DESCRIPTION OF PROPERTY Single family residential homes currently zoned R-4.**  
**AND SURROUNDING USES:**

**GROWTH PLAN AREA:                      CITY    **TAX PLAT: See Attached**    **PARCEL(S):****

**CIVIL DISTRICT: 3**

**CITY COUNCIL WARD: 8/1                      **COUNTY COMMISSION DISTRICT: 18****

**PREVIOUS ZONING HISTORY:**  
**(to include zoning, acreage and  
action by legislative body)**

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**

**STAFF REVIEW - ZONING**

**DEPARTMENT COMMENTS**

- CITY ENGINEER
- UTILITY DISTRICT
- JACK FRAZIER
- CITY STREET DEPT.
- TRAFFIC ENG. - ST. DEPT.
- COUNTY HIGHWAY DEPT.
- CEMC
- DEPT. OF ELECTRICITY (CDE)
- CHARTER COMM.

- BELL SOUTH
- FIRE DEPARTMENT
- EMERGENCY MANAGEMENT
- POLICE DEPARTMENT
- SHERIFF'S DEPARTMENT
- CITY BUILDING DEPT.
- 1.  COUNTY BUILDING DEPT.
- SCHOOL SYSTEM OPERATIONS
- FT. CAMPBELL

- DIV. OF GROUND WATER
- HOUSING AUTHORITY
- INDUSTRIAL DEV BOARD
- Other...

1. CITY ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2.

1a. COST TO ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2. STREET DEPARTMENT/  
COUNTY HIGHWAY DEPARTMENT:

3.

2a. COST TO STREET/HIGHWAY DEPT.:

Comments Received From Department And They Had No Concerns.

3. DRAINAGE COMMENTS:

4.

3a. DRAINAGE COST:

4. CDE/CEMC:

5.

4a. COST TO CDE/CEMC:

5. CHARTER COMM./BELL SOUTH:

6.

5a. COST TO CHARTER AND/OR BELLSOUTH:

6. FIRE DEPT/EMERGENCY MGT.:

7.

Comments Received From Department And They Had No Concerns.

7. POLICE DEPT/SHERIFF'S OFFICE:

6a. COST FIRE DEPT/EMERGENCY MGT.:

8.

Comments Received From Department And They Had No Concerns.

8. CITY BUILDING DEPARTMENT/  
COUNTY BUILDING DEPARTMENT:

7a. COST TO POLICE DEPT./SHERIFF'S DEPT:

9.

No Comment(s) Received

9. SCHOOL SYSTEM:

ELEMENTARY: 

|           |
|-----------|
| BARKSDALE |
|-----------|

MIDDLE SCHOOL: 

|            |
|------------|
| WEST CREEK |
|------------|

HIGH SCHOOL: 

|            |
|------------|
| WEST CREEK |
|------------|

10.

9a. COST TO SCHOOL SYSTEM:

10. FT. CAMPBELL:

10a. COST TO FT. CAMPBELL:

11. OTHER COMMENTS:

11.

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**PLANNING STAFF'S STUDY AND RECOMMENDATION**

IMPACT OF PROPOSED USE ON Minimal  
SURROUNDING DEVELOPMENT:

**INFRASTRUCTURE:**

WATER SOURCE: CITY

PIPE SIZE:

SEWER SOURCE: CITY

ACCESSIBILITY:

DRAINAGE:  
VARIES

**DEVELOPMENT ESTIMATES:**

**APPLICANT'S ESTIMATES**

**HISTORICAL ESTIMATES**

LOTS/UNITS:

ROAD MILES:

POPULATION:

ELEMENTARY SCHOOL STUDENTS:

MIDDLE SCHOOL STUDENTS:

HIGH SCHOOL STUDENTS:

**APPLICABLE COMPREHENSIVE PLAN ELEMENTS:**

Airport Planning Area: This Planning area is centered around John H. Outlaw Field. The major north-south axis roads are Ft. Campbell Blvd., Tobacco Rd. and Peachers Mill Rd.. Tiny Town Rd. serves as the major east-west connector here. The planning area has vast amounts of open space that has a long history of agricultural and woodland uses.

**STAFF RECOMMENDATION: APPROVAL**

1. The proposed zoning request is consistent with Growth Plan (as in the City) and adopted Land Use Plan.
2. Adequate infrastructure serves the site.
3. No adverse environmental issues were identified relative to this request.
4. Proposed area wide rezoning protects property investments for both the short-term and long-term by verifying that conforming uses fall under the correct zoning classification.

5.



CASE NUMBER: Z 1 2014 MEETING DATE 1/29/2014  
APPLICANT: Regional Planning Commission  
PRESENT ZONING R-4 PROPOSED ZONING R-1A  
TAX PLAT # See Attached PARCEL

GEN. LOCATION Properties located north of Tiny Town Road, west of Pennridge Road and east of Iris Lane (portion of Summerhaven Subdivision)

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**PUBLIC COMMENTS**

None received as of 11:00 a.m. on 1/29/2014 (jhb).

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**RPC MEETING DATE:** 1/29/2014

**CASE NUMBER:** Z - 2 - 2014

**NAME OF APPLICANT:** Edward C

Burchett

**AGENT:**

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**GENERAL INFORMATION**

**PRESENT ZONING:** R-1

**PROPOSED ZONING:** R-2

**EXTENSION OF ZONE**

**CLASSIFICATION:** YES TO THE SOUTH & EAST

**APPLICANT'S STATEMENT FOR PROPOSED USE:** Blend with existing zoning classification in existing subdivision.

**PROPERTY LOCATION:** Located north of the Woodhaven Dr. and Terrier Way intersection and south of the southern terminus of Buckingham Place.

**ACREAGE TO BE REZONED:** 1.09

**DESCRIPTION OF PROPERTY AND SURROUNDING USES:** Single family residential all sides.

**GROWTH PLAN AREA:**

CITY TAX PLAT: 043

**PARCEL(S):** 033.00 p/o

**CIVIL DISTRICT:** 7th

**CITY COUNCIL WARD:** 4/2

**COUNTY COMMISSION DISTRICT:** 15

**PREVIOUS ZONING HISTORY:**  
(to include zoning, acreage and  
action by legislative body)

S-60-2013

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**

**STAFF REVIEW - ZONING**

**DEPARTMENT COMMENTS**

- CITY ENGINEER
- UTILITY DISTRICT
- JACK FRAZIER
- CITY STREET DEPT.
- TRAFFIC ENG. - ST. DEPT.
- COUNTY HIGHWAY DEPT.
- CEMC
- DEPT. OF ELECTRICITY (CDE)
- CHARTER COMM.

- BELL SOUTH
- FIRE DEPARTMENT
- EMERGENCY MANAGEMENT
- POLICE DEPARTMENT
- SHERIFF'S DEPARTMENT
- CITY BUILDING DEPT.
- 1.  COUNTY BUILDING DEPT.
- SCHOOL SYSTEM OPERATIONS
- FT. CAMPBELL

- DIV. OF GROUND WATER
- HOUSING AUTHORITY
- INDUSTRIAL DEV BOARD
- Other...

1. CITY ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2.

1a. COST TO ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2. STREET DEPARTMENT/  
COUNTY HIGHWAY DEPARTMENT:

3.

2a. COST TO STREET/HIGHWAY DEPT.:

Comments Received From Department And They Had No Concerns.

3. DRAINAGE COMMENTS:

4.

3a. DRAINAGE COST:

5.

4. CDE/CEMC:

4a. COST TO CDE/CEMC:

6.

5. CHARTER COMM./BELL SOUTH:

5a. COST TO CHARTER AND/OR BELLSOUTH:

7.

Comments Received From Department And They Had No Concerns.

6. FIRE DEPT/EMERGENCY MGT.:

6a. COST FIRE DEPT/EMERGENCY MGT.:

8.

Comments Received From Department And They Had No Concerns.

7. POLICE DEPT/SHERIFF'S OFFICE:

7a. COST TO POLICE DEPT./SHERIFF'S DEPT:

8. CITY BUILDING DEPARTMENT/  
COUNTY BUILDING DEPARTMENT:

9.

8a. COST TO CITY/COUNTY BLDG. & CODES:

9. SCHOOL SYSTEM:

ELEMENTARY:

MIDDLE SCHOOL:

HIGH SCHOOL:

10.

9a. COST TO SCHOOL SYSTEM:

10. FT. CAMPBELL:

10a. COST TO FT. CAMPBELL:

11. OTHER COMMENTS:

11.

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**PLANNING STAFF'S STUDY AND RECOMMENDATION**

IMPACT OF PROPOSED USE ON Minimal  
SURROUNDING DEVELOPMENT:

**INFRASTRUCTURE:**

WATER SOURCE: CITY

PIPE SIZE:

SEWER SOURCE: CITY

ACCESSIBILITY: WOODHAVEN DR.

DRAINAGE:  
TO THE SOUTH

**DEVELOPMENT ESTIMATES:**

**APPLICANT'S ESTIMATES**

**HISTORICAL ESTIMATES**

LOTS/UNITS:

ROAD MILES:

POPULATION:

ELEMENTARY SCHOOL STUDENTS:

MIDDLE SCHOOL STUDENTS:

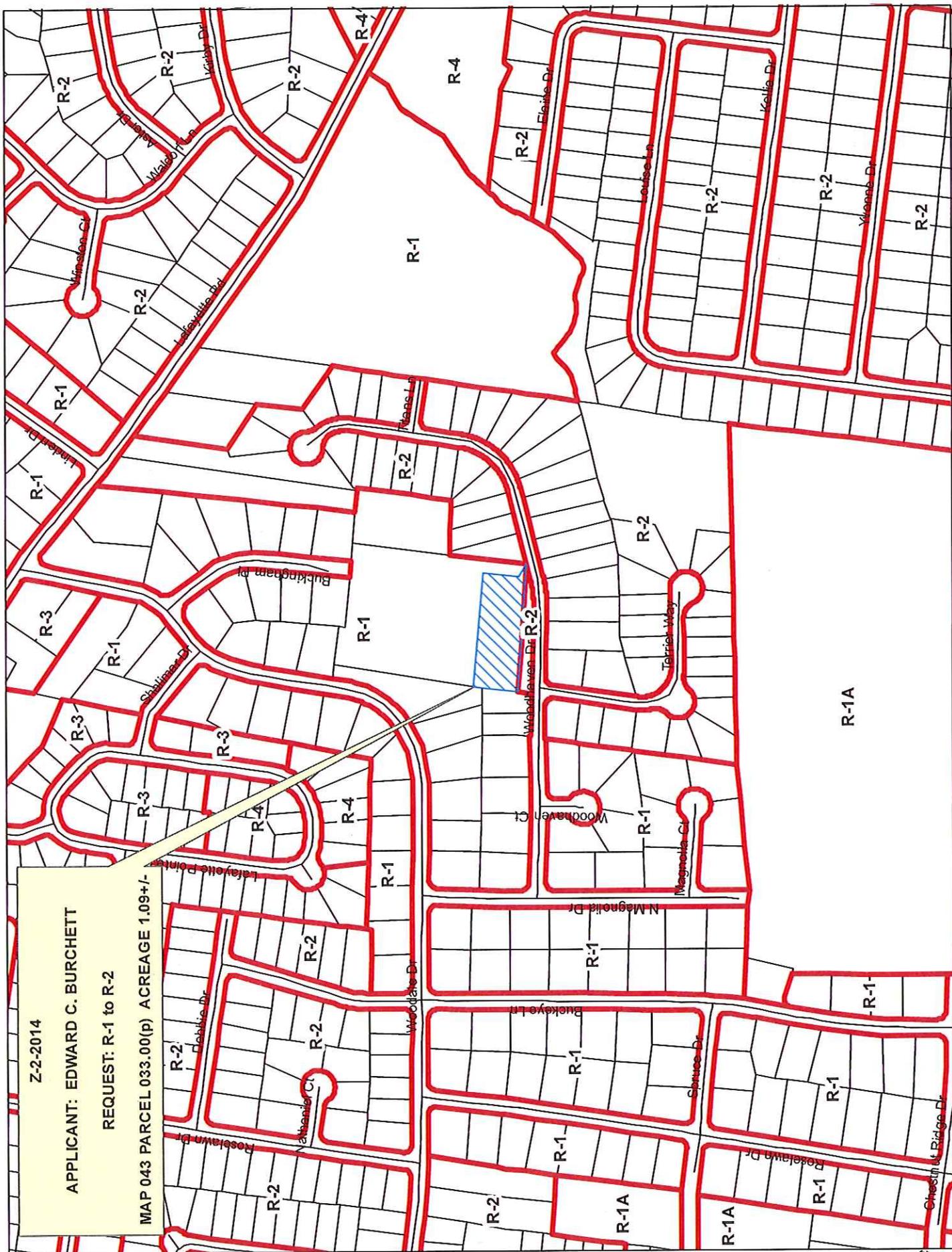
HIGH SCHOOL STUDENTS:

**APPLICABLE COMPREHENSIVE PLAN ELEMENTS:**

Lafayette Road Planning Area - There is considerable room for expansion here with SR 374 (Purple Heart Highway) as a target for residential growth

**STAFF RECOMMENDATION: APPROVAL**

1. The proposed zoning request is consistent with Growth Plan (as in the City) and adopted Land Use Plan.
2. Adequate infrastructure serves the site.
3. No adverse environmental issues were identified relative to this request.
4. Request in an extension of the existing R-2 Single Family zoning to the south..
- 5.



CASE NUMBER: Z 2 2014 MEETING DATE 1/29/2014

APPLICANT: Edward C Burchett

PRESENT ZONING R-1 PROPOSED ZONING R-2

TAX PLAT # 043 PARCEL 033.00 p/o

GEN. LOCATION Located north of the Woodhaven Dr. and Terrier Way intersection and south of the southern terminus of Buckingham Place.

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**PUBLIC COMMENTS**

None received as of 11:00 a.m. on 1/29/2014 (jhb).

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**

**STAFF REVIEW - ZONING**

**RPC MEETING DATE: 1/29/2014**

**CASE NUMBER: Z - 3 - 2014**

**NAME OF APPLICANT: John E And Sue M Goodrich**

**AGENT:**

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**GENERAL INFORMATION**

**PRESENT ZONING: R-3**

**PROPOSED ZONING: C-2**

**EXTENSION OF ZONE**

**CLASSIFICATION: YES- WEST & SOUTH**

**APPLICANT'S STATEMENT Change property zone to C-2 for contractor office building,  
FOR PROPOSED USE:**

**PROPERTY LOCATION: Property located in the northeast quadrant of the Crossland Ave. and Elder Street intersection.**

**ACREAGE TO BE REZONED: 0.43**

**DESCRIPTION OF PROPERTY Two existing vacant lots that have been cleared for future construction.  
AND SURROUNDING USES:**

**GROWTH PLAN AREA:                      CITY    TAX PLAT: 66-K-J                      PARCEL(S): 18.00 & 19.00**

**CIVIL DISTRICT: 12th**

**CITY COUNCIL WARD: 7/6                      COUNTY COMMISSION DISTRICT: 17**

**PREVIOUS ZONING HISTORY: Z-50-2007 / SLSR-25-2012 to the south  
(to include zoning, acreage and  
action by legislative body) Smith & Lurton Subdivision**

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**

**STAFF REVIEW - ZONING**

**DEPARTMENT COMMENTS**

- CITY ENGINEER
- UTILITY DISTRICT
- JACK FRAZIER
- CITY STREET DEPT.
- TRAFFIC ENG. - ST. DEPT.
- COUNTY HIGHWAY DEPT.
- CEMC
- DEPT. OF ELECTRICITY (CDE)
- CHARTER COMM.

- BELL SOUTH
- FIRE DEPARTMENT
- EMERGENCY MANAGEMENT
- POLICE DEPARTMENT
- SHERIFF'S DEPARTMENT
- CITY BUILDING DEPT.
- 1.  COUNTY BUILDING DEPT.
- SCHOOL SYSTEM OPERATIONS
- FT. CAMPBELL

- DIV. OF GROUND WATER
- HOUSING AUTHORITY
- INDUSTRIAL DEV BOARD
- Other...

1. CITY ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2.

1a. COST TO ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2. STREET DEPARTMENT/  
COUNTY HIGHWAY DEPARTMENT:

3.

2a. COST TO STREET/HIGHWAY DEPT.:

Comments Received From Department And They Had No Concerns.

3. DRAINAGE COMMENTS:

4.

3a. DRAINAGE COST:

5.

4. CDE/CEMC:

4a. COST TO CDE/CEMC:

6.

5. CHARTER COMM./BELL SOUTH:

5a. COST TO CHARTER AND/OR BELLSOUTH:

7.

Comments Received From Department And They Had No Concerns.

6. FIRE DEPT/EMERGENCY MGT.:

6a. COST FIRE DEPT/EMERGENCY MGT.:

8.

Comments Received From Department And They Had No Concerns.

7. POLICE DEPT/SHERIFF'S OFFICE:

7a. COST TO POLICE DEPT./SHERIFF'S DEPT:

8. CITY BUILDING DEPARTMENT/  
COUNTY BUILDING DEPARTMENT:

9.

8a. COST TO CITY/COUNTY BLDG. & CODES:

9. SCHOOL SYSTEM:

ELEMENTARY: 

|              |
|--------------|
| NORMAN SMITH |
|--------------|

MIDDLE SCHOOL: 

|          |
|----------|
| ROSSVIEW |
|----------|

HIGH SCHOOL: 

|          |
|----------|
| ROSSVIEW |
|----------|

10.

9a. COST TO SCHOOL SYSTEM:

10. FT. CAMPBELL:

10a. COST TO FT. CAMPBELL:

11. OTHER COMMENTS:

11.

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**PLANNING STAFF'S STUDY AND RECOMMENDATION**

IMPACT OF PROPOSED USE ON Increased traffic, light and noise  
SURROUNDING DEVELOPMENT:

**INFRASTRUCTURE:**

WATER SOURCE: CITY

PIPE SIZE:

SEWER SOURCE: CITY

ACCESSIBILITY: ELDER ST. & CROSSLAND AVE.

DRAINAGE:  
VARIES

**DEVELOPMENT ESTIMATES:**

**APPLICANT'S ESTIMATES**

**HISTORICAL ESTIMATES**

LOTS/UNITS:

ROAD MILES:

POPULATION:

ELEMENTARY SCHOOL STUDENTS:

MIDDLE SCHOOL STUDENTS:

HIGH SCHOOL STUDENTS:

**APPLICABLE COMPREHENSIVE PLAN ELEMENTS:**

South Clarksville Planning Area - South Clarksville is dominated by residential development but is ringed by commercial and light industrial uses. It is near the core of the city and has a well developed transportation network for destinations within its boundaries and other areas of the city. Sufficient infrastructure to support high density development.

**STAFF RECOMMENDATION: APPROVAL**

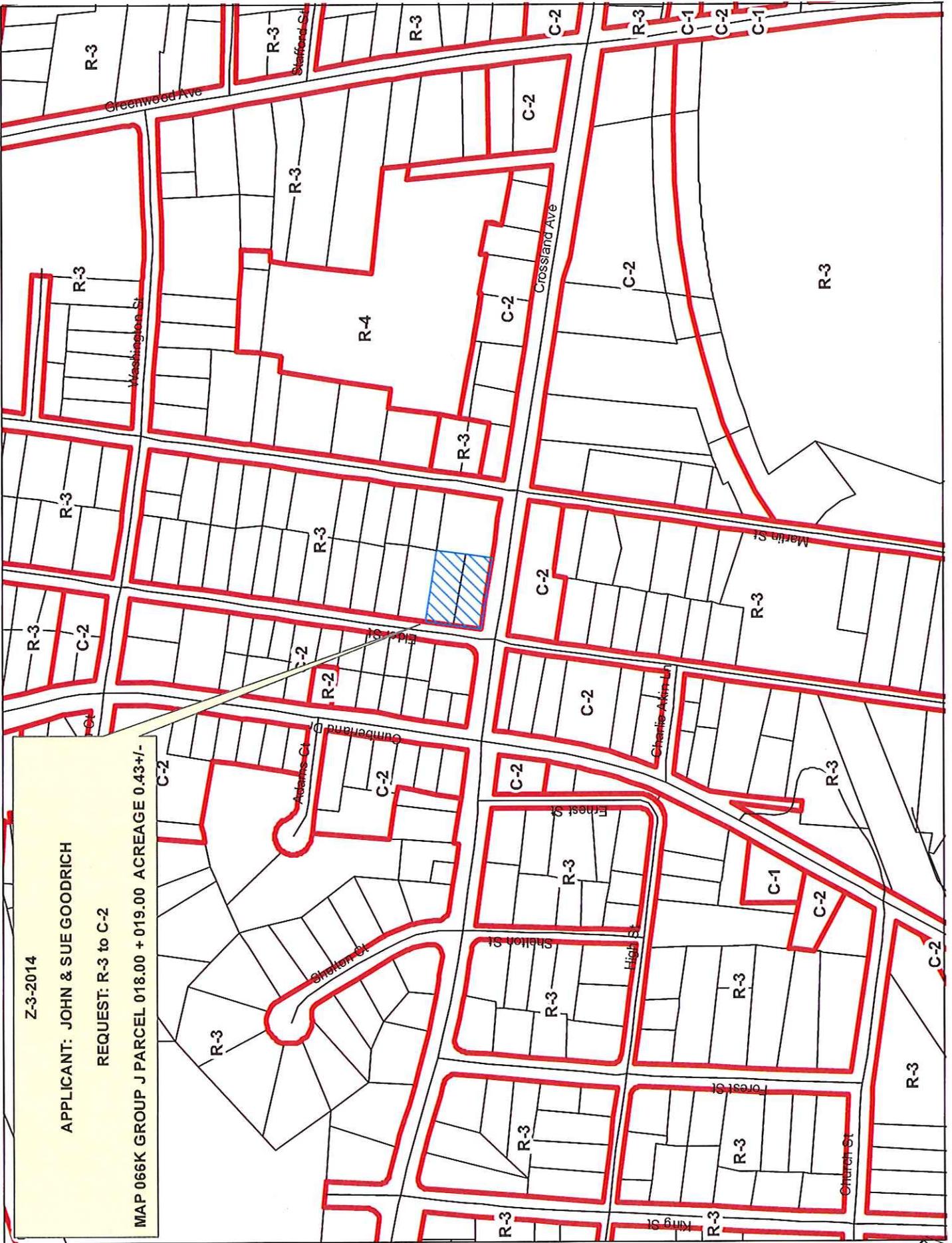
1. The proposed zoning request is consistent with Growth Plan (as in the City) and adopted Land Use Plan.
2. Adequate infrastructure serves the site.
3. No adverse environmental issues were identified relative to this request.
4. The C-2 request is an extension to the C-2 General Commercial district to the west and south.
- 5.

Z-3-2014

APPLICANT: JOHN & SUE GOODRICH

REQUEST: R-3 to C-2

MAP 066K GROUP J PARCEL 018.00 + 019.00 ACREAGE 0.43+/-



CASE NUMBER: Z 3 2014 MEETING DATE 1/29/2014

APPLICANT: John E And Sue M Goodrich

PRESENT ZONING R-3 PROPOSED ZONING C-2

TAX PLAT # 66-K-J PARCEL 18.00 & 19.00

GEN. LOCATION Property located in the northeast quadrant of the Crossland Ave. and Elder Street intersection.

\*\*\*\*\*

**PUBLIC COMMENTS**

None received as of 11:00 a.m. on 1/29/2014 (jhb).

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**RPC MEETING DATE: 1/29/2014**

**CASE NUMBER: Z - 4 - 2014**

**NAME OF APPLICANT:** Billy Mace  
White & Stafford, Llc

**AGENT:**

---

**GENERAL INFORMATION**

**PRESENT ZONING:** C-4

**PROPOSED ZONING:** C-5

**EXTENSION OF ZONE  
CLASSIFICATION:**

**APPLICANT'S STATEMENT FOR PROPOSED USE:** To make property zoning more applicable for proposed future uses.

**PROPERTY LOCATION:** 500 +/- feet north of the Tiny Town Rd. and Heritage Pointe Dr. intersection, fronting on both the east and west side of Heritage Pointe Dr.

**ACREAGE TO BE REZONED:** 10.91 +/-

**DESCRIPTION OF PROPERTY AND SURROUNDING USES:** Vacant C-4 property. Multi-Family Residential to the North; Vacant AG to East; Vacant C-4 to West, C-4 Commercial to South

**GROWTH PLAN AREA:** CITY TAX PLAT: 08 **PARCEL(S):** 13.05, 13.06 & 21.00  
**CIVIL DISTRICT:** 2nd

**CITY COUNCIL WARD:** 8

**COUNTY COMMISSION DISTRICT:** 18

**PREVIOUS ZONING HISTORY:**  
(to include zoning, acreage and action by legislative body)

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**

**STAFF REVIEW - ZONING**

**DEPARTMENT COMMENTS**

- CITY ENGINEER
- UTILITY DISTRICT
- JACK FRAZIER
- CITY STREET DEPT.
- TRAFFIC ENG. - ST. DEPT.
- COUNTY HIGHWAY DEPT.
- CEMC
- DEPT. OF ELECTRICITY (CDE)
- CHARTER COMM.

- BELL SOUTH
- FIRE DEPARTMENT
- EMERGENCY MANAGEMENT
- POLICE DEPARTMENT
- SHERIFF'S DEPARTMENT
- CITY BUILDING DEPT.
- 1.  COUNTY BUILDING DEPT.
- SCHOOL SYSTEM OPERATIONS
- FT. CAMPBELL

- DIV. OF GROUND WATER
- HOUSING AUTHORITY
- INDUSTRIAL DEV BOARD
- Other...

1. CITY ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2.

1a. COST TO ENGINEER/UTILITY DISTRICT:

Comments Received From Department And They Had No Concerns.

2. STREET DEPARTMENT/  
COUNTY HIGHWAY DEPARTMENT:

3.

2a. COST TO STREET/HIGHWAY DEPT.:

Comments Received From Department And They Had No Concerns.

3. DRAINAGE COMMENTS:

4.

3a. DRAINAGE COST:

4. CDE/CEMC:

5.

4a. COST TO CDE/CEMC:

5. CHARTER COMM./BELL SOUTH:

6.

5a. COST TO CHARTER AND/OR BELL SOUTH:

6. FIRE DEPT/EMERGENCY MGT.:

7.

Comments Received From Department And They Had No Concerns.

6a. COST FIRE DEPT/EMERGENCY MGT.:

7. POLICE DEPT/SHERIFF'S OFFICE:

8.

Comments Received From Department And They Had No Concerns.

7a. COST TO POLICE DEPT./SHERIFF'S DEPT:

8. CITY BUILDING DEPARTMENT/  
COUNTY BUILDING DEPARTMENT:

9.

8a. COST TO CITY/COUNTY BLDG. & CODES:

9. SCHOOL SYSTEM:

ELEMENTARY:

MIDDLE SCHOOL:

HIGH SCHOOL:

10.

9a. COST TO SCHOOL SYSTEM:

10. FT. CAMPBELL:

10a. COST TO FT. CAMPBELL:

11. OTHER COMMENTS:

11.

**CLARKSVILLE-MONTGOMERY COUNTY REGIONAL PLANNING COMMISSION**  
**STAFF REVIEW - ZONING**

**PLANNING STAFF'S STUDY AND RECOMMENDATION**

IMPACT OF PROPOSED USE ON Minimal  
SURROUNDING DEVELOPMENT:

**INFRASTRUCTURE:**

WATER SOURCE: CITY

PIPE SIZE:

SEWER SOURCE: CITY

ACCESSIBILITY: HERITAGE POINTE DR.

DRAINAGE:  
VARIES

**DEVELOPMENT ESTIMATES:**

**APPLICANT'S ESTIMATES**

**HISTORICAL ESTIMATES**

LOTS/UNITS:

ROAD MILES:

POPULATION:

ELEMENTARY SCHOOL STUDENTS:

MIDDLE SCHOOL STUDENTS:

HIGH SCHOOL STUDENTS:

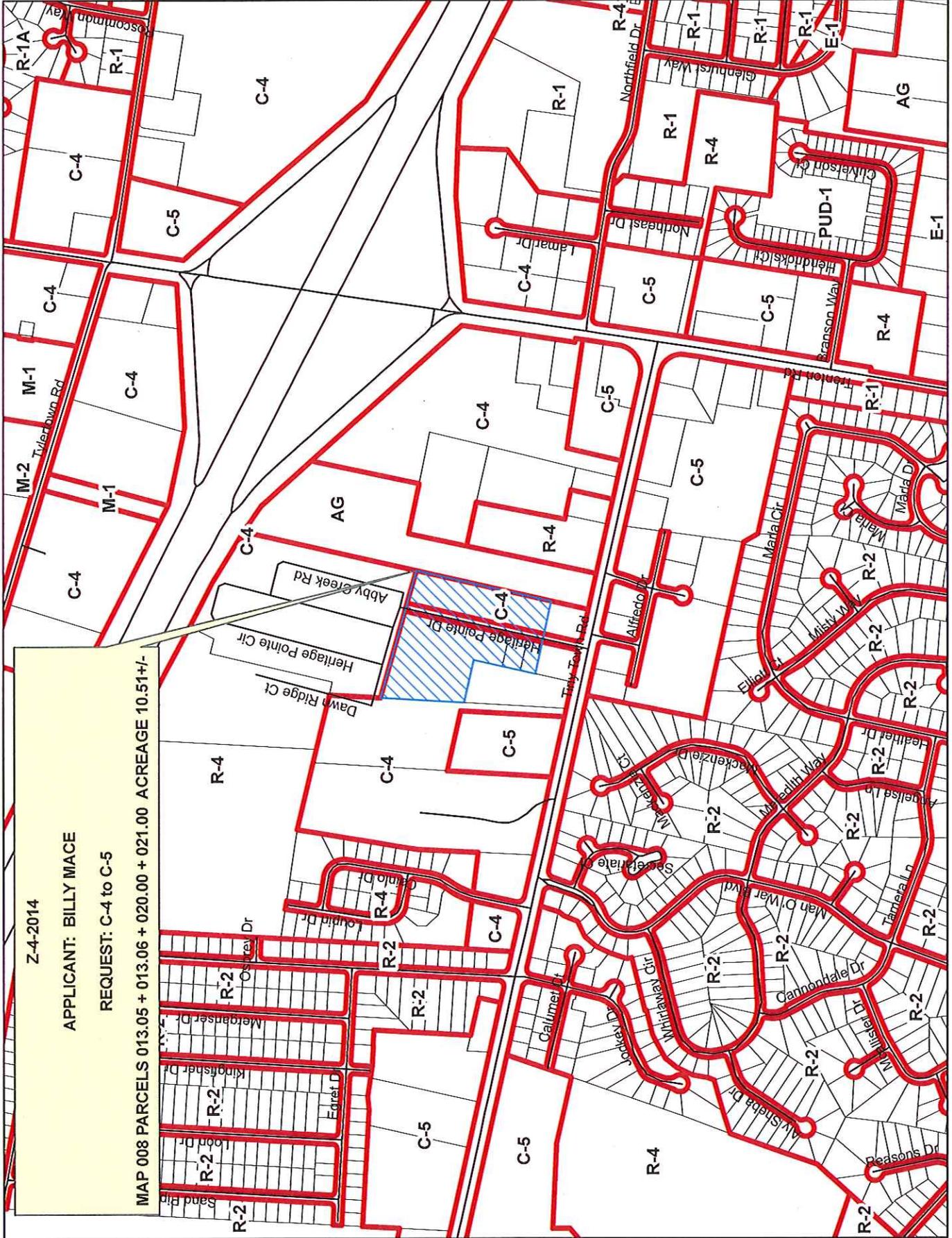
**APPLICABLE COMPREHENSIVE PLAN ELEMENTS:**

Trenton Road Planning Area: The dominant transportation corridor in the area is I-24, strongly supported by Wilma Rudolph Blvd. & 101st Airborne Parkway. Exit 4 I-24 interchange with Trenton Road has seen tremendous growth since 2000.

**STAFF RECOMMENDATION: APPROVAL**

1. The proposed zoning request is consistent with Growth Plan (as in the City) and adopted Land Use Plan.
2. Adequate infrastructure serves the site.
3. No adverse environmental issues were identified relative to this request.
4. The C-5 zoning request will allow goods and services to be provided to the neighboring public in lieu of uses that are more commonly seen at interstate highway interchanges.

5.



Z-4-2014  
 APPLICANT: BILLY MACE  
 REQUEST: C-4 to C-5  
 MAP 008 PARCELS 013.05 + 013.06 + 020.00 + 021.00 ACREAGE 10.51+/-

CASE NUMBER: Z 4 2014 MEETING DATE 1/29/2014

APPLICANT: Billy Mace

PRESENT ZONING C-4 PROPOSED ZONING C-5

TAX PLAT # 08 PARCEL 13.05, 13.06 & 21.00

GEN. LOCATION 500 +/- feet north of the Tiny Town Rd. and Heritage Pointe Dr. intersection,  
fronting on both the east and west side of Heritage Pointe Dr.

\*\*\*\*\*

**PUBLIC COMMENTS**

None received as of 11:00 a.m. on 1/29/2014 (jhb).

ORDINANCE 33-2013-14

AN ORDINANCE AMENDING THE OFFICIAL CODE RELATIVE TO SETTING THE AMOUNT OF THE DIRECTOR OF FINANCE'S PERFORMANCE BOND

*WHEREAS*, The City Council finds that eliminating the requirement for the City to purchase performance bonds for other employees will save the City money, while insurance will adequately protect the City;

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

1. That the Official Code of the City of Clarksville, Tennessee, Title 1 (Administration, Officers, and Personnel), Chapter 5 (Director of Finance), Section 1-505 (Bond Fixed / Fidelity Insurance) is hereby amended by deleting the current language of said Section and substituting therefore the following:

**Sec. 1-505. Bond fixed/fidelity insurance.**

The amount of the director of finance's faithful performance bond or a fidelity insurance policy is hereby fixed at one million dollars (\$1,000,000.00).

*POSTPONED:* November 7, 2013  
*FIRST READING:* January 2, 2014  
*SECOND READING:*  
*EFFECTIVE DATE:*

ORDINANCE 42-2013-14

AN ORDINANCE AMENDING THE 2013-14 GENERAL FUND BUDGET AND THE CAPITAL PROJECTS BUDGET (ORDINANCE 91-2012-13) AUTHORIZING THE CITY OF CLARKSVILLE TO INCREASE FUNDING OF THE CAPITAL PROJECTS BUDGET IN THE AMOUNT OF \$200,000 AND ACCEPTANCE OF A FEDERAL GRANT IN THE AMOUNT OF \$160,000 AND PROVIDE A MATCH OF \$40,000 FOR SANGO ROAD IMPROVEMENTS

*WHEREAS*, the construction of the Sango Road widening project cost will be greater than originally projected, and

*WHEREAS*, the City has been awarded a 80/20 matching Federal grant.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the following Budget Amendments be made:

Capital Project Fund:

|                            |                     |           |           |
|----------------------------|---------------------|-----------|-----------|
| Federal Grant Revenue      | 4041000-33130       | Increase: | \$160,000 |
| Transfer from General Fund | 4041000-39150       | Increase: | \$ 40,000 |
| Engineering Cost           | 40431003-4332-10303 | Increase: | \$ 80,000 |
| Construction Services      | 40431003-4450-10303 | Increase: | \$120,000 |

General Fund:

|                              |               |           |           |
|------------------------------|---------------|-----------|-----------|
| Transfer to Capital Projects | 10470003-4914 | Increase: | \$ 40,000 |
|------------------------------|---------------|-----------|-----------|

*BE IT FURTHER ORDAINED* that the source of funding for this \$40,000 shall be from the fund balance of the General Fund.

*FIRST READING:* January 2, 2014  
*SECOND READING:*  
*EFFECTIVE DATE:*

ORDINANCE 43-2013-14

AN ORDINANCE AMENDING THE 2013-14 PARKS SPECIAL REVENUE BUDGET (ORDINANCE 91-2012-13) AUTHORIZING THE CITY OF CLARKSVILLE PARKS AND RECREATION DEPARTMENT TO INCREASE FUNDING IN THE AMOUNT OF \$15,000 FOR PURCHASE OF A MOBILITY CART FOR LIBERTY PARK

*WHEREAS*, the Parks & Recreation Department wishes to purchase a mobility cart for use at Liberty Park; and

*WHEREAS*, the mobility cart will be use to transport persons with disabilities at Liberty Park; and

*WHEREAS*, the cart is estimated to cost \$15,000.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the following Budget Amendments be made:

Parks Special Revenue Fund Expenditures:

Equipment Purchases 24450004-4740-800 Increase: \$15,000

*BE IT FURTHER ORDAINED* that the source of funding for this \$15,000 shall be from the fund balance of the Parks Special Revenue Fund.

*FIRST READING:* January 2, 2013

*SECOND READING:*

*EFFECTIVE DATE:*

ORDINANCE 45-2012-13

AMENDING THE ZONING ORDINANCE AND MAP OF THE CITY OF CLARKSVILLE, APPLICATION OF THE REGIONAL PLANNING COMMISSION FOR ZONE CHANGE ON PORTIONS OF MILLER ESTATES SUBDIVISION AND CROSS POINTE SUBDIVISION

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Zoning Ordinance and Map of the City of Clarksville, Tennessee are hereby amended by designating the zone classification of the property described in Exhibit A, currently zoned R-4 Multiple Family Residential District, as R-2 Single Family Residential District.

*PUBLIC HEARING:* January 2, 2014  
*FIRST READING:* January 2, 2014  
*SECOND READING:*  
*EFFECTIVE DATE:*

EXHIBIT A

Property located south and west of Jack Miller Boulevard, further identified as County Tax Map (see below), parcels (see below), 39.57 +/- acres:

|         |   |
|---------|---|
| 019 J-A | 12-29, 19.01-19.06, 20.01, 21.01, 22.01, 23.01, 30-40 |
| 019 G-A | 1-29  |
| 019 G-B | 1-48, 52-64   |
| 019 H-E | 1-21  |

RESOLUTION 22-2013-14

A RESOLUTION RENEWING A RETAIL LIQUOR STORE CERTIFICATE OF COMPLIANCE FOR RAMESH KASETTY

*WHEREAS*, Ramesh Kasetty, has applied for a Certificate of Compliance from the City of Clarksville according to regulations of the Tennessee Alcoholic Beverage Commission, for the operation of Caddy's Discount Liquors currently located at 2206-B Madison Street; and

*WHEREAS*, the applicant(s) who is/are to be in actual charge of said business has/have not been convicted of a felony within a ten year period immediately preceding the date of the application and, if a corporation, that the executive officers, or those in control, have not been convicted of a felony within a ten year period immediately preceding the date of the application; and further that it is the undersigned's opinion that the applicant will not violate any provisions of *Tennessee Code Annotated, Title 57, Chapter 3*;

*WHEREAS*, the applicant(s) has/have secured a location which complies with all restrictions of the laws, ordinances, or resolutions;

*WHEREAS*, the applicant(s) has/have complied with the residency provision;

*WHEREAS*, the issuance of this license will not exceed the numerical limit established in City Code Sec. 2-205.

*BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Clarksville City Council hereby approves a Certificate of Compliance for Ramesh Kasetty for operation of Caddy's Discount Liquors located at 2206B Madison Street, Clarksville, Tennessee.

*ADOPTED:*

RESOLUTION 23-2013-14

A RESOLUTION APPROVING A RETAIL LIQUOR STORE CERTIFICATE OF COMPLIANCE FOR TODD E. MORRIS (MULLIGAN'S)

*WHEREAS*, Todd E. Morris, has applied for renewal of the Certificate of Compliance from the City of Clarksville according to regulations of the Tennessee Alcoholic Beverage Commission, for the operation of Mulligan's currently located at 225 Wilma Rudolph Boulevard; and

*WHEREAS*, the applicant(s) who is/are to be in actual charge of said business has/have not been convicted of a felony within a ten year period immediately preceding the date of the application and, if a corporation, that the executive officers, or those in control, have not been convicted of a felony within a ten year period immediately preceding the date of the application; and further that it is the undersigned's opinion that the applicant will not violate any provisions of *Tennessee Code Annotated, Title 57, Chapter 3*;

*WHEREAS*, the applicant(s) has/have secured a location which complies with all restrictions of the laws, ordinances, or resolutions;

*WHEREAS*, the applicant(s) has/have complied with the residency provision;

*WHEREAS*, the issuance of this license will not exceed the numerical limit established in City Code Sec. 2-205.

*BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Clarksville City Council hereby renews the Certificate of Compliance for Todd E. Morris for operation of Mulligan's located at 2255 Wilma Rudolph Boulevard, Clarksville, Tennessee.

*ADOPTED:*



**CLARKSVILLE CITY COUNCIL  
REGULAR SESSION  
JANUARY 2, 2014**

**MINUTES**

**CALL TO ORDER**

The regular session of the Clarksville City Council was called to order by Mayor Kim McMillan on Thursday, January 2, 2014, at 7:00 p.m. in City Council Chambers, 106 Public Square, Clarksville, Tennessee.

A prayer was offered by Councilman Jeff Burkhart; the Pledge of Allegiance was led by Mayor Pro Tem James Lewis.

**ATTENDANCE**

**PRESENT:** Kip McNeill (1), Deanna McLaughlin (2), James Lewis, Mayor Pro Tem (3), Valerie Guzman (5), Marc Harris (6), Geno Grubbs (7), David Allen (8), Joel Wallace (9), Bill Summers (10), Kaye Jones (11), Jeff Burkhart (12)

**ABSENT:** Wallace Redd (4)

**PLANNING COMMISSION PUBLIC HEARING**

Councilman Grubbs made a motion to conduct a public hearing to receive comments regarding requests for zone change. The motion was seconded by Councilman Lewis. There was no objection.

**ORDINANCE 45-2013-14** (First Reading) Amending the Zoning Ordinance and Map of the City of Clarksville, application of the Regional Planning Commission for zone change on portions of Miller Estates Subdivision and Cross Point Subdivision from R-4 Multiple Family Residential District to R-2 Single Family Residential District

There were no comments in support of or in objection to this request.

Councilman Grubbs made a motion to revert to regular session. The motion was seconded by Councilman Harris. There was no objection.

## ZONING

The recommendation of the Regional Planning Staff and Commission were for approval of **ORDINANCE 45-2013-14**. Councilman Grubbs made a motion to adopt this ordinance on first reading. The motion was seconded by Councilman Harris. The following vote was recorded:

AYE: Allen, Burkhart, Grubbs, Guzman, Harris, Jones, Lewis, McLaughlin, McNeill, Summers, Wallace

The motion to adopt this ordinance on first reading passed.

## CONSENT AGENDA

*All items in this portion of the agenda are considered to be routine and non-controversial by the Council and may be approved by one motion; however, a member of the Council may request that an item be removed for separate consideration under the appropriate committee report:*

1. **ORDINANCE 31-2013-14** (Second Reading) Authorizing transfer of funds to create a new capital project for a new police north precinct
2. **ORDINANCE 34-2013-14** (Second Reading) Amending the Official Code relative to backflow prevention testing fees and grease management inspection fees
3. **ORDINANCE 35-2013-14** (Second Reading) Authorizing exercise of right of eminent domain for acquisition of easements for the Main Lift Station Gravity Sewer Upgrade Project
4. **ORDINANCE 36-2013-14** (Second Reading) Accepting donation of property from Gordon Seay for Fire Station #11
5. **ORDINANCE 37-2013-14** (Second Reading) Amending the FY14 Information Technology budget for a video playback system and additional servers
6. **ORDINANCE 38-2013-14** (Second Reading) Amending the Zoning Ordinance and Map of the City of Clarksville, application of Regional Planning Commission for zone change at Highway 75 & Highway 41-A South, portions of Bellgar Subdivision and Bellshire Subdivision from R-4 Multiple Family Residential District to R-1A Single Family Residential District and R-2D Two Family Residential District
7. **ORDINANCE 40-2013-14** (Second Reading) Amending the Zoning Ordinance and Map of the City of Clarksville, application of Jimmy Randolph for zone change on property at S.R. 374 & Evans Road from RM-1 Single Family Mobile Home Residential District to C-5 Highway & Arterial Commercial District
8. **ORDINANCE 41-2013-14** (Second Reading) Amending the FY14 Garage Operating Budget to transfer funds for purchase of a welder, air compressor motor, and oil separators

9. Approval of Minutes: December 5<sup>th</sup>

10. Approval of Board Appointments:

Economic & Community Development Board: Jeff Burkhart – January 2014 through December 2016; Melinda Shepard – January 2014 through June 2017; Douglas Heimbeck – January 2014 through June 2015

Parking Authority: Wallace Redd – January 2014 through December 2014; Mitch Robinson – January 2014 through December 2017

Councilman Burkhart made a motion to adopt the Consent Agenda. The motion was seconded by Councilman Summers. Councilman Burkhart voted “nay” on **ORDINANCE 36-2013-14**. Councilman Burkhart abstained from voting on **ORDINANCE 31-2013-14**. Councilwoman Jones voted “nay” on **ORDINANCE 35-2013-14**. Councilman McNeill voted “nay” on **ORDINANCE 31-2013-14**. The following vote was recorded:

AYE: Allen, Burkhart, Grubbs, Guzman, Harris, Jones, Lewis, McLaughlin, McNeill, Summers, Wallace

The motion to adopt the Consent Agenda as noted passed.

#### COMMUNITY DEVELOPMENT COMMITTEE

*David Allen, Chair*

Councilman Allen said contractors had begun installing the splash pad in Pettus Park at a total project cost of \$57,493. He announced a new low-to-moderate income housing project for Ward 3. Councilman Allen said new sidewalk construction was underway along New Providence Boulevard in the Cedar Court area totaling \$57,037 and drainage improvements were being made in Summit Heights in the amount of \$28,995.

#### FINANCE COMMITTEE

*Joel Wallace, Chair*

**ORDINANCE 33-2013-14** (First Reading; Postponed November 7<sup>th</sup>) Amending the Official Code relative to Director of Finance Performance Bond

The recommendation of the Finance Committee was for approval of this ordinance. Councilman Wallace made a motion to adopt this ordinance on first reading and noted proposed changes. The motion was seconded by Councilman Harris. The following vote was recorded:

AYE: Allen, Burkhart, Grubbs, Guzman, Harris, Jones, Lewis, McLaughlin, McNeill, Summers, Wallace

The motion to adopt this ordinance on first reading passed.

**ORDINANCE 42-2013-13** (First Reading) Amending the FY14 Capital Projects Budget for Sango Road Improvements

The recommendation of the Finance Committee was for approval of this ordinance. Councilman Wallace made a motion to adopt this ordinance on first reading. The motion was seconded by Councilman Lewis. The following vote was recorded:

AYE: Allen, Burkhart, Grubbs, Guzman, Harris, Jones, Lewis, McLaughlin, McNeill, Summers, Wallace

The motion to adopt this ordinance on first reading passed.

**ORDINANCE 43-2013-14** (First Reading) Amending the FY14 Parks Special Revenue Budget for purchase of a mobility cart for Liberty Park

The recommendation of the Finance Committee was for approval of this ordinance. Councilman Wallace made a motion to adopt this ordinance on first reading. The motion was seconded by Councilman Lewis. The following vote was recorded:

AYE: Allen, Burkhart, Grubbs, Guzman, Harris, Jones, Lewis, McLaughlin, McNeill, Summers, Wallace

The motion to adopt this ordinance on first reading passed.

**GAS & WATER COMMITTEE**

*Jeff Burkhart, Chair*

No report.

**PARKS, RECREATION, GENERAL SERVICES**

*Valerie Guzman*

On behalf of Chairman Wallace Redd, Councilwoman Guzman said community centers were undergoing maintenance.

Councilwoman Guzman announced Lynn Carter as the winner of the “Walk with Me Tennessee” program.

**PUBLIC SAFETY COMMITTEE**

(Building & Codes, Fire, Police)

*Geno Grubbs, Chair*

Councilman Grubbs shared the following department statistics: Clarksville Fire & Rescue – 902 responses during December, 9,801 during 2013; Building & Codes Enforcement Division – 4,211 cases during 2013; Building & Codes Construction Division – 21,435 inspections during 2013; Building & Codes Abatement Program – 564 work orders during 2013; Building & Codes Administration – 773 single-family permits during 2013; Clarksville Police – 10,822 calls during December.

## STREET COMMITTEE

*James Lewis, Chair*

Councilman Lewis said the Street Department completed 150 work orders during December and a total of 3,000 for the year.

## TRANSPORTATION COMMITTEE

*Marc Harris, Chair*

Councilman Harris reported 266 persons were transported during the “Warm Souls program and 105 persons were transported during New Year’s Eve “Operation Safe Ride.”

Clarksville Transit system transported 56,624 passengers during December. The Clarksville-Nashville Express transported 4,009 passengers.

Councilman Harris said the City Garage completed 322 work orders with unleaded fuel at a cost of \$3.03 and diesel fuel at \$3.05 per gallon.

Councilman Harris wished a speedy recovery to CTS Director Jimmy Smith following his recent back surgery.

## MAYOR AND STAFF REPORTS

City Attorney Lance Baker said if there were no objections, he would file an amicus brief on behalf of the City of Clarksville involving litigation against the City of Red Bank, Tennessee, for an alleged violation of the Tennessee Human Rights Act. There were no objections.

In response to Councilwoman Jones’ question, Mayor McMillan said the City of Clarksville would work closely with the American Red Cross to assist anyone in need of shelter during extreme cold weather.

Mayor McMillan wished everyone a Happy New Year.

## ADJOURNMENT

The meeting adjourned at 7:22 p.m.

ORDINANCE 44-2013-14

AN ORDINANCE AMENDING THE 2013-14 CLARKSVILLE GENERAL FUND OPERATING BUDGET (ORDINANCE 91-2012-13) AND THE CLARKSVILLE PARKING AUTHORITY FUND BUDGET (ORDINANCE 86-2012-13) AUTHORIZING THE PARKING AUTHORITY TO INCREASE THE PARKING AUTHORITY BUDGET BY \$166,431 FOR THE PURCHASE OF VEHICLE SENSORS AND PARKING METER MECHANISMS THAT WILL ACCEPT DEBIT AND CREDIT CARD PAYMENTS

*WHEREAS,* the Parking Authority Board recommends installing vehicle sensors and the purchase and replacement of parking meter mechanisms that will accept debit and credit cards.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the following General Fund adjustment be made:

|               |                                    |          |          |
|---------------|------------------------------------|----------|----------|
| 100390-39140  | Transfer in from Parking Authority | Increase | \$77,056 |
| 10415103-4610 | Operating Expense                  | Increase | \$62,835 |
| 10415103-4530 | Communication Expense              | Increase | \$11,821 |
| 10415103-4807 | Credit Card Fees                   | Increase | \$ 2,400 |

That the following Parking Authority Fund adjustments be made:

|               |                                 |          |          |
|---------------|---------------------------------|----------|----------|
| 11AC -1650    | Machinery & Equipment Purchases | Increase | \$89,375 |
| 11410003-4150 | Management Fee                  | Increase | \$77,056 |

*BE IT FURTHER ORDAINED:*

That the \$166,431 funding for the vehicle sensors and parking meter mechanisms come from the Parking Authority Fund balance.

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

ORDINANCE 46-2013-14

AN ORDINANCE OF THE CITY OF CLARKSVILLE AUTHORIZING USE OF EMINENT DOMAIN FOR ACQUISITION OF EASEMENTS FOR THE STREET DEPARTMENT INTERSECTION MODIFICATION UTILITY RELOCATION PROJECT

*WHEREAS*, the Clarksville City Council finds it to be in the public interest to acquire easements affecting certain real properties as described in Collective Exhibit A attached hereto (hereinafter, the “Properties”) for the purpose of construction of the Street Department Intersection Modification Utility Relocation Project.

*WHEREAS*, it may not be possible to effectively negotiate timely easement acquisitions with the affected owners of the Properties for the required construction of the Street Department Intersection Modification Utility Relocation Project.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That, if negotiation efforts are not timely or effective, the City of Clarksville, Tennessee is hereby authorized to exercise the right of eminent domain and institute condemnation actions in the appropriate court for acquisition of any and all necessary property rights from affected owners of the Properties described specifically in Collective Exhibit A attached hereto for construction of the Street Department Intersection Modification Utility Relocation Project.

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

# **Collective Exhibit A**

File No. 20060887

BT

This instrument was prepared by **R. Mitchell Ross** of the law firm of Rudolph, Ross, Hogan, Ragland & Peay, 107 North Third Street, Post Office Box 925, Clarksville, Tennessee 37041-0925.

**MAIL TAX STATEMENTS TO:**

**OWNER AND PROPERTY ADDRESS:**

**Trustees of Cross & Crown Baptist Church  
P. O. Box 31491  
Clarksville, Tennessee 37040**

**Trustees of Cross & Crown Baptist Church  
1220 Hazelwood Road  
Clarksville, Tennessee 37040**

**Edward Ottinger and wife  
Roxanna Ottinger**

Joyce B. Sawyer, Register  
Montgomery County Tennessee  
Rec #: 126540  
Rec'd: 10.00 Instrument #: 706738  
State: 518.00 Recorded  
Clerk: 1.00 7/13/2006 at 3:01 PM  
EDP: 2.00 in Volume  
Total: 531.00 **1111**  
Pgs 1796-1797

**TO: CASH WARRANTY DEED**

**Jerry Lucas and Frank Whitaker as Trustees of Cross & Crown Baptist Church**

**FOR A CASH CONSIDERATION**, this day in hand paid, the receipt of which is acknowledged, **Edward Ottinger and Roxanna Ottinger**, as **Grantor** and in this deed called the "**Grantor**", has this day bargained and sold and does transfer and convey unto **Jerry Lucas and Frank Whitaker as Trustees of Cross & Crown Baptist Church**, **Grantee** and in this deed called the "**Grantee**", in fee simple absolute, **Grantee's** successors and assigns forever, the following described real estate, together with any and all improvements located on the real estate, situated in the Second (2nd) Civil District of Montgomery County, Tennessee, to-wit:

**Volume  
1111 Pgs 1796**

**BEGINNING AT NEW IRON PIN** in the southern margin Hazelwood Road, said iron pin is located South 80 degrees 19 minutes 45 seconds West 235.32 feet from the centerline intersection of Trenton Road and Hazelwood Road; thence leaving said margin of Hazelwood Road, South 07 degrees 24 minutes 43 seconds West 243.85 feet to a new iron pin; thence South 86 degrees 37 minutes 25 seconds West 205.46 feet to a new iron pin; thence North 08 degrees 33 minutes 55 seconds East 244.53 feet to a new iron pin in the southern margin of Hazelwood Road; thence along said margin of Hazelwood Road, North 86 degrees 32 minutes 17 seconds East 200.51 feet to the point of beginning containing 1.12 acres according to a survey prepared by Weakley Brothers dated 6/27/2006 and having a job No. of 06-265

This being a portion of the same real estate conveyed to **Grantor** by deed of record in ORBV 1022, Page 2758, in the Register's Office for Montgomery, Tennessee. The map, group and parcel number assigned to the above described real estate by the Assessor of Property for Montgomery County, Tennessee is 17-38.

**TO HAVE AND TO HOLD** said real estate together with any and all improvements thereon unto **Grantee**, in fee simple absolute, **Grantee's** successors and assigns forever.

**GRANTOR COVENANTS** that **Grantor** is lawfully seized and possessed of said real estate; that **Grantor** has a good and lawful right to convey the same; that this real estate is unencumbered; and, that **Grantor** will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

POSSESSION will be given upon delivery of this deed.

THE REAL ESTATE AD VALOREM TAXES for the current year are to be pro-rated between the parties.

IN WITNESS WHEREOF, Grantor has affixed Grantor's signature on this the 10th day of July, 2006.

GRANTOR:

*Edward Ottinger* by *Roxanna Ottinger* Attorney in Fact  
Edward Ottinger By Roxanna Ottinger as Attorney in Fact

*Roxanna Ottinger*  
Roxanna Ottinger

STATE OF TENNESSEE  
COUNTY OF MONTGOMERY

Personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, ROXANNA OTTINGER, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that, pursuant to Power of Attorney of record in ORBV 1111, Page 1794 ROMCT, the Attorney-in-fact for EDWARD OTTINGER (herein called the "Maker"); or a constituent of the Maker and authorized by the Maker or by its constituent, the constituent being authorized by the Maker, to execute this instrument as the free act and deed of the Maker on this 10th day of July, 2006.

*[Signature]*  
NOTARY PUBLIC SEAL

8/14/2006  
COMMISSION EXPIRES

STATE OF TENNESSEE  
COUNTY OF MONTGOMERY

Personally appeared before me, the undersigned Notary Public of the State and County aforesaid, Roxanna Ottinger, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained on this 10th day of July, 2006.

*[Signature]*  
NOTARY PUBLIC SEAL

8/14/2006  
COMMISSION EXPIRES

STATE OF TENNESSEE  
COUNTY OF MONTGOMERY

As required by Tennessee Code Annotated Section 67-4-409 (a)(6)(A), the undersigned being Grantee, Grantee's agent or a trustee acting for Grantee, after first being duly sworn, makes oath that the actual consideration for this transfer or the value of the property transferred, whichever is greater, is \$140,000.00.

SWORN AND SUBSCRIBED TO before me on this the 10th day of July, 2006.

*[Signature]*  
NOTARY PUBLIC SEAL  
Commission expires: 8/14/2006

**PAMELA TAYLOR HAYES**

TO: QUITCLAIM DEED

**PAUL COOPER ET AL**

THIS QUITCLAIM DEED OF REALTY, executed as of the 17<sup>th</sup> day of November, 2000, by Grantor, **PAMELA TAYLOR HAYES**, to Grantees, **PAUL COOPER, PAMELA TAYLOR HAYES and PEGGY C. HUDDLESTON**, Witnesseth:

That Grantor does hereby quitclaim and convey unto Grantees, all of Grantor's right, title and interest, in and to certain realty situated in the **SECOND (2nd)** Civil District of Montgomery County, Tennessee, and being bounded and described as follows:

BEGINNING at an iron pin located in the southern right of way margin of Hazelwood Road, a 50-foot public right of way, said iron pin being located 0.58 miles +/- west of Trenton Road; thence S 04° 56' 19" W 891.11' to an iron pin; thence N 85° 48' 41" W 252.60' to an iron pin; thence with a fence and the eastern line of the John J. Stanton property (ORBV 604, PG 2393, ROMCT) N 04° 56' 19" E 833.51' to an iron pin in the southern right of way margin of Hazelwood Road; thence with the southern right of way margin of Hazelwood Road N 81° 22' 52" E 259.82' to the point of beginning, containing 5.00 acres +/-, according to a survey by Ben Robert Weakley, TRLS #1457 of Weakley Brothers, P.O. Box 3409, 2121 Old Ashland City Road, Clarksville, Tennessee 37043, dated November 1, 1999, Job No. 99-660, and being designated as a portion of Map and Parcel No. 17-36, on the Maps of the Assessor of Property for Montgomery County, Tennessee.

This being the same realty conveyed to Pamela Taylor Hayes by deed of record in Official Record Book Volume 733, Page 2223, in the Register's Office for Montgomery County, Tennessee.

IN WITNESS WHEREOF, Grantor has executed this quitclaim deed of realty as of the date written first herein.

  
\_\_\_\_\_  
**PAMELA TAYLOR HAYES**

GRANTOR

Prepared by:  
John R. Brice  
BATSON, NOLAN, BRICE,  
HARVEY & WILLIAMSON  
622 Madison Street  
Clarksville, TN 37040

205594

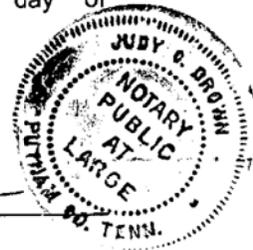
STATE OF TENNESSEE )  
 )  
COUNTY OF MONTGOMERY )

Personally appeared before me, the undersigned, a Notary Public in and for the State and County aforesaid, **PAMELA TAYLOR HAYES**, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that she executed the within instrument for the purposes therein contained.

Witness my hand and seal at office this the 17 day of Nov, 2000.

My Commission Expires: 10-25-2004.

Judy C. Brown  
Notary Public



Property Owners Name and Address:

**Ms. Peggy Huddleston**  
1380 Hazelwood Road  
Clarksville, TN 37042

Person or Entity Responsible for Payment of Property Taxes:

**Same/Owner**

STATE OF TENNESSEE, MONTGOMERY COUNTY

The actual consideration given for this conveyance is \$ 0.

Jessie Nolan  
Affiant

Subscribed and sworn to before me this the 21 day of November, 2000

Julie A. Chadwick  
Notary Public (Register of Montgomery County, Tennessee)

My Commission Expires: 9/13/04

j:\deed\cooperhayes qcd\jrb\jo

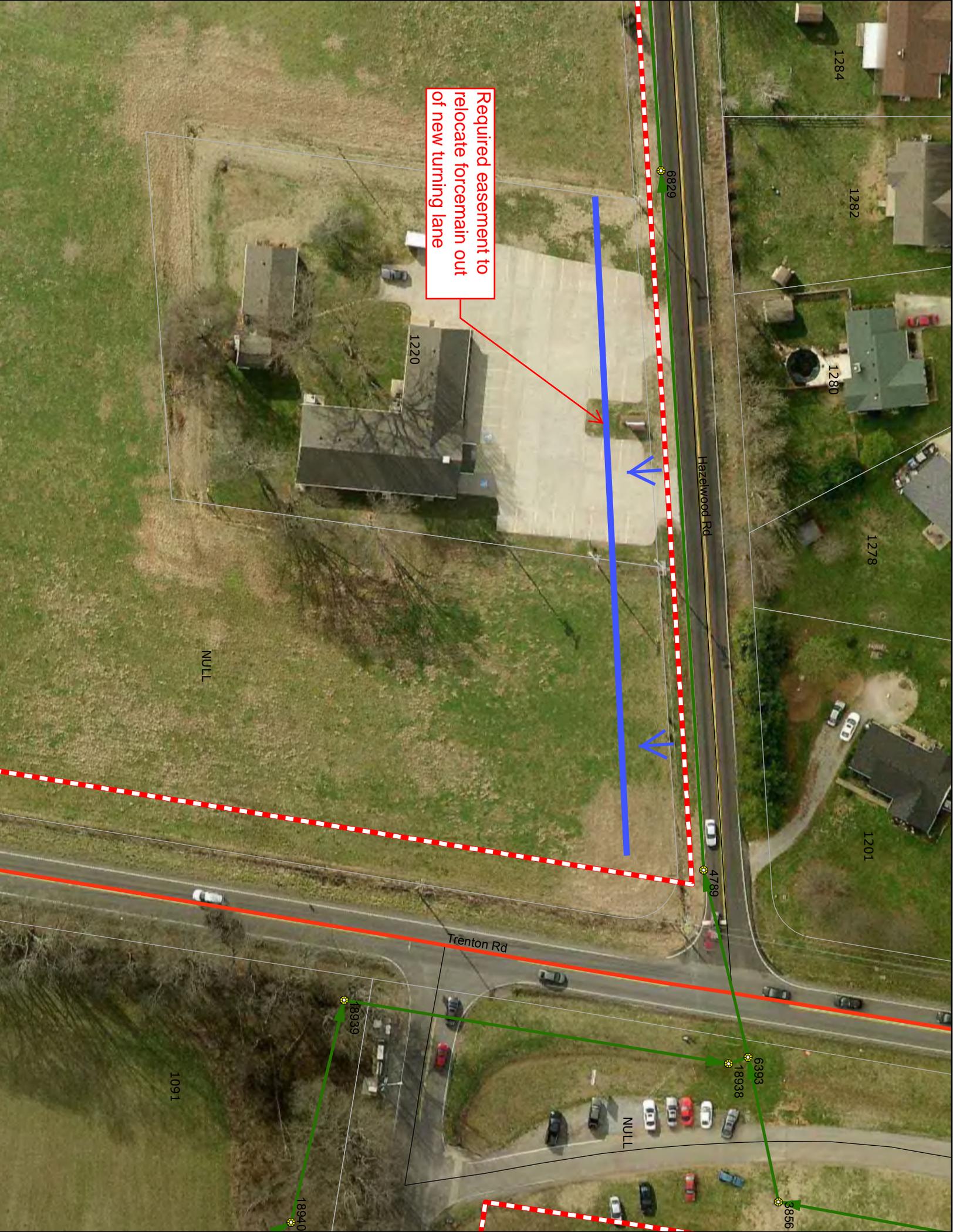


**VOL. 0762 PAGE 1160**

JOYCE B. NORFLEET  
REGISTER OF DEEDS  
MONTGOMERY, CO TN

11-21-2000 2:49

SATX \_\_\_\_\_ CF \_\_\_\_\_  
SBTX \_\_\_\_\_ CF \_\_\_\_\_  
COMPUTER FEE 2.00  
RECORDING FEE \_\_\_\_\_  
RECEIPT NO. 6963-005



Required easement to relocate forcemain out of new turning lane

1220

NULL

Trenton Rd

Hazelwood Rd

1284

1282

1280

1278

1201

1091

NULL

6829

4789

18939

6393

18938

18940

3856

ORDINANCE 47-2013-14

AN ORDINANCE AMENDING THE 2013-14 PARKS SPECIAL REVENUE BUDGET (ORDINANCE 91-2012-13) AUTHORIZING THE CITY OF CLARKSVILLE TO DECREASE THE REVENUES OF THE PARKS SPECIAL REVENUE BUDGET IN THE AMOUNT OF \$57,601 AND INCREASE THE EXPENDITURES OF THE PARKS SPECIAL REVENUE BUDGET IN THE AMOUNT OF \$248,134.

*WHEREAS*, the Parks Special Revenue Fund is required to spend Program revenues for Program expenditures; and,

*WHEREAS*, an internal audit report dated October 29, 2013 recommended the Parks Special Revenue funds be spent in accordance with Resolution 76-2010-11 which defines the order of spending as follows: restricted, committed, assigned and unassigned; and,

*WHEREAS*, the funds of the Parks Special Revenue Fund are committed, and, therefore should be spent in order to be in compliance with the City Code and the City spending policy; and,

*WHEREAS*, the Parks and Recreation Department is seeking permission to spend an additional \$248,134 for needed special revenue related improvements during the FY2014 and anticipate a decrease in revenue of \$57,601.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the following Budget Amendments be made:

Parks Special Revenue Fund:

|                  |                  |           |            |
|------------------|------------------|-----------|------------|
| Revenues         | 2445000-various  | Decrease: | \$ 57,601  |
| Expenditures     | 24450003-various | Increase: | \$ 248,134 |
| (see attachment) |                  |           |            |

*BE IT FURTHER ORDAINED* that the source of funding for the increase of expenditures above revenues in the net amount of \$305,735 shall be from the fund balance of the Parks Special Revenue Fund.

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

## PARKS SPECIAL REVENUE AMENDMENT BY PROGRAM

|                             | REVENUES           | EXPENDITURES      |
|-----------------------------|--------------------|-------------------|
| 207 SOCCER                  | 13,375             | 51,831            |
| 811 SOFTBALL                | 1,063              | 88,789            |
| 811A SOFTBALL-ADULT         | (4,500)            | 32,740            |
| 810 TENNIS                  | 250                | 14,795            |
| 870 QCRR                    |                    | 14,838            |
| 813 CROW                    |                    | 19,382            |
| 815 BURT COBB               |                    | 30,027            |
| 814 KLEEMAN                 | (6,140)            | 17,044            |
| 800 LIBERTY PARK            |                    | (181)             |
| 820 MCGREGOR                |                    | 3,063             |
| 819 PROGRAMMING FACILITIES  | 2,000              | 26,522            |
| DOME DOME                   | 3,083              | 10,475            |
| 830 PARKS AFTER DARK        | (5,150)            | -                 |
| CHOC CHOCOLATE AFFAIR       | 9,350              | -                 |
| BARK BARK PARK              | (800)              | 30                |
| HMADE HANDMADE HOLIDAYS     | 5,900              | -                 |
| ATHM ATHLETIC MISC.         | (1,355)            | (127)             |
| FLAGY FLAG FOOTBALL         | (10,065)           | (12,065)          |
| FTDEF FT DEFIANCE           |                    | 7,463             |
| COC CHRISTMAS ON CUMBERLAND | 1,100              | 1,649             |
| DOWNT DOWNTOWN HOLIDAYS     | (1,075)            | -                 |
| JULY3 JULY 3RD              | (16,150)           | 4,058             |
| OTHER OTHER                 | (15,000)           | (15,000)          |
| RFEST RIVERFEST             | (33,487)           | (47,199)          |
| <b>TOTALS</b>               | <b>\$ (57,601)</b> | <b>\$ 248,134</b> |

ORDINANCE 48-2013-14

AN ORDINANCE AMENDING THE 2013-14 GENERAL FUND BUDGET (ORDINANCE 91-2012-13) AUTHORIZING THE CITY OF CLARKSVILLE TO INCREASE FUNDING IN THE AMOUNT OF \$40,000 AND ACCEPTANCE OF FEDERAL AND STATE GRANTS IN THE AMOUNT OF \$35,000 TO COMPLETE FEMA/TEMA HAZARD MITIGATION ACQUISITION AND DEMOLITION PROJECT

*WHEREAS*, FEMA has requested the removal of concrete driveways and pads on the Hazard Mitigation home buyouts; and

*WHEREAS*, the cost of concrete removal on these projects is estimated to be \$40,000; and

*WHEREAS*, the Federal Government will reimburse the city 75% of actual cost and the State of Tennessee will reimburse the city 12.5% of actual cost; and

*WHEREAS*, the City of Clarksville's share of these expenditures will be 12.5%; estimate to be \$5,000.

*NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the following Budget Amendments be made:

General Fund:

|                       |                     |           |          |
|-----------------------|---------------------|-----------|----------|
| Federal Grant Revenue | 100330-33130-FL10A  | Increase: | \$18,750 |
| Federal Grant Revenue | 100330-33130-FL10B  | Increase: | \$11,250 |
| State Grant Revenue   | 100330-33410-FL10A  | Increase: | \$ 3,125 |
| State Grant Revenue   | 100330-33410-FL10B  | Increase: | \$ 1,875 |
| Other Expenditures    | 10460003-4800-FL10A | Increase: | \$25,000 |
| Other Expenditures    | 10460003-4800-FL10B | Increase: | \$15,000 |

*BE IT FURTHER ORDAINED* that the City of Clarksville's share in the amount of \$5,000 shall be from the fund balance of the General Fund.

*FIRST READING:*

*SECOND READING:*

*EFFECTIVE DATE:*

RESOLUTION 21-2013-14

A RESOLUTION AUTHORIZING A FIREWORKS DISPLAY DURING THE BEST OF CLARKSVILLE EVENT

*WHEREAS*, the City of Clarksville received a request from Justin Grant, Fuse Fireworks & Shows, to conduct a fireworks display on October 2, 2014, at 7:00 p.m. at Two Rivers Center; and

*WHEREAS*, this fireworks display would be conducted during the annual Best of Clarksville event benefiting the March of Dimes.

*NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Clarksville City Council hereby authorizes Fuse Fireworks & Shows to conduct a fireworks display on October 2, 2014, at 7:00 p.m. at Two Rivers Center during the annual Best of Clarksville event.

*ADOPTED:*



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January 8, 2014

Dear Mr. Williams,

Fuse Fireworks and Shows is requesting approval to conduct a fireworks display for the 2014 Best of Clarksville. We are currently awaiting approval from the Public Safety Committee meeting and February session of the City Council. The event will be held Two Rivers Center on Thursday, October 2. The fireworks will start at 7:00 PM. This particular show will be similar to previous shows and last approximately 15 minutes.

Only Class "C" fireworks will be used in the display. Specification details of Class "C" fireworks are enclosed with this document. Briefly stated, they are the same fireworks that can be purchased by any consumer over the age of 16 without any permits in the State of Tennessee. They are also the same fireworks that are legal to shoot within the city limits of Clarksville from July 1 through July 5 without any permits.

This show will be under my supervision at all times including setup, firing and clean up. My insurance certificate is also attached to this document. The maximum diameter shell used in this show will be 1", which requires a 70' fall out area. We will have a 80' fall out area for extra security.

A handwritten signature in blue ink that reads "Justin Grant". The signature is fluid and cursive, with the first name "Justin" and last name "Grant" clearly legible.

Justin Grant  
Fuse Fireworks and Shows



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## Consumer Fireworks

“Consumer Fireworks” describes the type of fireworks permitted for sale to consumers in a number of states, including Alabama, Texas, Mississippi, Oklahoma, and Missouri. Individual states may impose restrictions on specific categories of items within the “consumer fireworks” definition.

The term “consumer fireworks” refers to fireworks that produce visible and/or audible effects through the burning or explosion of chemical mixtures. “Consumer fireworks” may produce a shower of sparks, may propel burning pellets (“stars”) into the air, may propel inserts into the air which burst to produce visible and/or audible effects, or the devices themselves may rise into the air and produce visible and/or audible effects. All “consumer fireworks” must be approved for transportation by the U.S. Department of Transportation, and are classed as DOT Division 1.4G (UN 0336). All “consumer fireworks” must fully comply with the fireworks construction, labeling, and performance regulations of the United States Consumer Product Safety Commission (CPSC).

The effects from a “consumer fireworks” will occur from ground level to one hundred feet in the air or higher, depending on the type of device that is ignited.

Categories of “consumer fireworks” include ground-based devices such as fountains, ground spinners, and wheels. Aerial devices include roman candles, mines and shells (either single or multiple tubes), sky rockets, and missiles. Other “consumer fireworks” include helicopters and firecrackers.

Allowed audible effects in “consumer fireworks” include whistle effects and a mild “crackling” effect, as well as “report”, which is a firecracker-type of explosive effect either at ground level or in the air. Aerial reports are limited by CPSC regulation to a maximum of 130 milligrams (0.013 grams or two grains) of chemical composition per report, while ground-based reports are limited to 50 milligrams of powder.

The sub-category of “consumer fireworks” that consists of ground-based devices that produce a shower of sparks, colored flame, crackling effect, or smoke as their pyrotechnic effects are known as “safe and sane” fireworks. “Safe and sane” fireworks do not produce a report, rise into the air, or propel inserts or stars into the air.



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## Firing Details

Fuse Fireworks and Shows will conduct this display with the highest level of care and safety. The information below describes how the fireworks in the display will be properly fired. All fireworks used in the show are defined as Class "C" (1.4G) explosives, meet the CPSC guidelines, and do not exceed 1.5" in diameter. Water buckets will be at the firing station in the event of an emergency. Gas grill lighters will be used to ignite the fireworks, in order for the people lighting the fireworks to maintain a safe distance from the item.

### **Aerial Repeaters**

These items are commonly referred to as "cakes" that repeat a various number of shot after being lit just once. There are two different sub-categories of aerial repeaters: 200 gram repeaters and 500 gram repeaters. The 200 gram aerial repeaters will shoot up to 125' into the air, and the 500 gram aerial repeaters will shoot up to 250' in the air. All "cakes" will be centered on a piece of plywood to ensure a solid and flat surface. All "cakes" will be surrounded by concrete blocks to prevent the item from tipping over.

### **Reloadables - NOT USED IN THIS SHOW**

These are kits that contain 1 tube and 6 reloadable shells. Each shell is loaded one at a time into the tube and will shoot approximately 125' into the air and explode into a color break. The tube will be placed on a piece of plywood to ensure a solid and flat surface. The tube will also be surrounded by concrete blocks to prevent the tube from tipping over.

### **Ground Fountains - NOT USED IN THIS SHOW**

These are classified as "safe and sane" items, meaning they produce little if any noise. They stay grounded and shower up. The sparks produced by these fountains stay within a 10' radius and are generally safe for kids. The fountains will be placed on a piece of plywood and surrounded by concrete blocks to prevent the fountain from tipping over.



---

January 8, 2014

Clarksville Fire Department  
802 Main Street  
Clarksville, TN 37040  
(931) 645-7456

Chief Michael E. Roberts,

Fuse Fireworks and Shows is requesting approval to conduct a fireworks display within the city limits. The date is scheduled for October 2, 2014 around 7:00 PM at Two Rivers Center for the Best of Clarksville.

The event is currently pending the approval of the February session of the City Council. If the event is approved, Fuse Fireworks and Shows would like to request the Clarksville Fire Department to be on site in the event of an emergency.

More information, including a detailed schedule of events and maps of the event, are available upon request.

A handwritten signature in blue ink that reads "Justin Grant". The signature is fluid and cursive, with the first name "Justin" and last name "Grant" clearly legible.

Justin Grant  
Fuse Fireworks and Shows



---

## Display Specifications

Event: Fireworks Display at the Best of Clarksville

Date: October 2, 2014

Location: Two River Center  
700 North Riverside Drive  
Clarksville, TN 37040

Contact: Justin Grant  
Fuse Fireworks and Shows  
3371 Highway 41-A South  
Clarksville, TN 37043  
(931) 546-9624 showroom  
(865) 603-2264 cell phone

Schedule: This fireworks display is for the annual Best of Clarksville benefiting the March of Dimes. The fireworks display signify the event of the event, just before the winners are announced.



---

## Preparation and Safety

All fireworks in the display come directly from the Fuse Fireworks and Shows showroom. They are defined as Consumer Fireworks, according to NFPA 1123 1.4.20.1, and can be legally purchased in the state of Tennessee by anyone over the age of sixteen (16).

The fireworks will be used according to the instructions on the warning labels on the product, as well as the manufacturer (TNT Fireworks).

Inspect all items – ensure they are in good working order. Look for any damage or leaking.

Read the instructions for every item. This is required for the safety of the person shooting the show and your audience. This is also important for the performance of the items. Some items like fan shaped aerals will have instructions on what side should face the audience. This pre-planning will ensure safety, optimum effect and presentation.

Remove any cello packaging, locate fuses and remove any fuse covers. Make sure Glo-Fuze items get proper light before sundown.

Unwind the fuse on all reloadable shell items in advance. This will make them easier to handle in the dark.

Plan your firing order. Shoot the smallest items first. Then move on to ground level fountains, spinners, crackers and wheels. Build your show literally from the ground up. Next, add some small rockets, roman candles and winged items. Then build up to larger items like aerial cakes, reloadable shells, and large stick rockets. Finally, add your large aerial repeaters and then the grand finale 500 gram aerial repeaters.

Once you have chosen your shoot order, sequentially line up your items prior to sundown. Place them in a box and keep them a safe distance from the shoot site. Keep the box covered at all times.

Make sure you shoot area is flat and solid. If you are shooting from grass, it is recommended to place a 4' x 8' piece of plywood over the grass area. This will ensure your shoot surface is flat and solid.

If you are going to pre-set your show, follow these safety tips:

Keep your fireworks separated.

Make sure you can light your fireworks without standing over any unlit item.

Ensure all fuses are facing the same direction if possible.

**IMPORTANT: Never leave pre-set fireworks area unattended!**

Use buckets full of sand or dirt to safely place your roman candles and bottle rockets.

As you are setting up, pay attention to the wind direction and have the spectators positioned upwind from the launch site so the smoke blows away from the crowd instead of towards them.

The audience will be able to view the fireworks show from within the area marked in blue.

The fireworks will be fired from the area marked in yellow.

## Maps and Diagrams



- Blue area indicates spectator viewing.
- Yellow indicates area roped off for fireworks.
- Fall out area allowed is 80' (70' required for items used in the show).

## Maps and Diagrams



- Blue area indicates spectator viewing.
- Yellow indicates area roped off for fireworks.
- Fall out area allowed is 80' (70' required for items used in the show).



---

## Display Shoot List

All fireworks are defined as Consumer Fireworks by NFPA 1123 and approved by the United States CPSC

| Item Name           | DOT Class | Powder Charge | Diameter |
|---------------------|-----------|---------------|----------|
| Purple People Eater | 1.4G      | 200           | 0.75"    |
| Texas Cyclone       | 1.4G      | 200           | 0.50"    |
| Radioactive         | 1.4G      | 200           | 0.75"    |
| War Hog Motorcycle  | 1.4G      | 200           | 0.75"    |
| Turning Heads       | 1.4G      | 200           | 0.75"    |
| After Burner        | 1.4G      | 200           | 0.75"    |
| Burn Out            | 1.4G      | 200           | 1.00"    |
| About Time          | 1.4G      | 200           | 1.00"    |
| Outta Control       | 1.4G      | 500           | 1.00"    |
| Yikes               | 1.4G      | 500           | 1.00"    |
| Proud               | 1.4G      | 500           | 1.00"    |
|                     |           |               |          |

3 shells for each item will be used in this show.



---

Attached a separate file:

- Insurance Certificate



# CERTIFICATE OF LIABILITY INSURANCE

11/1/2013

DATE (MM/DD/YYYY)  
9/11/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|   |                                    |                             |
|---|------------------------------------|-----------------------------|
| <b>PRODUCER</b> Lockton Companies, LLC<br>3280 Peachtree Road NE, Suite 800<br>Atlanta GA 30305<br>(404) 460-3600 | <b>CONTACT NAME:</b> _____         |                             |
|   | <b>PHONE (A/C, No, Ext):</b> _____ | <b>FAX (A/C, No):</b> _____ |
| <b>E-MAIL ADDRESS:</b> _____  |                                    |                             |
| <b>INSURER(S) AFFORDING COVERAGE</b>  |                                    | <b>NAIC #</b>               |
| <b>INSURER A:</b> Scottsdale Insurance Company  |                                    | 41297                       |
| <b>INSURER B:</b> _____   |                                    |                             |
| <b>INSURER C:</b> _____   |                                    |                             |
| <b>INSURER D:</b> _____   |                                    |                             |
| <b>INSURER E:</b> _____   |                                    |                             |
| <b>INSURER F:</b> _____   |                                    |                             |

**COVERAGES**                      **CERTIFICATE NUMBER: 12359885**                      **REVISION NUMBER: XXXXXXXX**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSR | SUBR WVD | POLICY NUMBER  | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|-----------|----------|----------------|-------------------------|-------------------------|--|
| A        | <b>GENERAL LIABILITY</b><br><input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> <b>CLAIMS-MADE</b> <input checked="" type="checkbox"/> <b>OCCUR</b><br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC | N         | N        | CPS1612503     | 11/1/2012               | 11/1/2013               | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMPIOP AGG \$ 2,000,000<br>\$ |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS   |           |          | NOT APPLICABLE |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX<br>BODILY INJURY (Per person) \$ XXXXXXXX<br>BODILY INJURY (Per accident) \$ XXXXXXXX<br>PROPERTY DAMAGE (Per accident) \$ XXXXXXXX<br>\$  |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$  |           |          | NOT APPLICABLE |                         |                         | EACH OCCURRENCE \$ XXXXXXXX<br>AGGREGATE \$ XXXXXXXX<br>\$   |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N<br>If yes, describe under DESCRIPTION OF OPERATIONS below   |           | N/A      | NOT APPLICABLE |                         |                         | <input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER<br>E.L. EACH ACCIDENT \$ XXXXXXXX<br>E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX<br>E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.  
 PRODUCT LIABILITY FOR TNT BRAND PRODUCTS ONLY

**CERTIFICATE HOLDER****CANCELLATION**

|   |  |
|---|--|
| <b>12359885</b><br><br>FUSE FIREWORKS AND SHOWS<br>JUSTIN GRANT<br>2324 LOCK B ROAD NORTH<br>CLARKSVILLE TN 37043 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|   | AUTHORIZED REPRESENTATIVE<br><br>  |

RESOLUTION 24-2013-14

A RESOLUTION AUTHORIZING AND APPROVING THE SUB-LEASE OF THE RESTAURANT LEASE PROPERTY AT LIBERTY PARK

*WHEREAS*, the Clarksville City Council has previously found that the public good will be served by the construction, installation, and professional operation of a public restaurant at Liberty Park, which will increase the tax base of surrounding properties, generate additional sales tax, and provide additional employment opportunities, and generally increase the utility and attractiveness of Liberty Park; and

*WHEREAS*, the City and Cumberland Tavern, LLC, (entity name later changed to Liberty Park Grill, LLC; entity name again later changed to Liberty Park Development, LLC) have previously entered into a long term ground lease which was authorized and approved by the Clarksville City Council by adoption of RESOLUTION 32-2011-12 on December 20, 2011, as amended by Addendum One as approved by the Clarksville City Council by adoption of Resolution 8-2012-13 on August 2, 2012; and as further amended by Addendum Two as approved by the Clarksville City Council by adoption of Resolution 3-2013-14 on August 1, 2013; and

*WHEREAS*, the Lessee, Liberty Park Development, LLC (formerly named Liberty Park Grill, LLC; which was formerly named Cumberland Tavern, LLC in the original Restaurant Lease) desires to sub-lease all or a portion of the restaurant property (restaurant to be built in accordance with the Lease Agreement) to a new entity owned by the same principals, Bob McManus and Darby Campbell.

*NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:*

That the Lessee, Liberty Park Development, LLC (formerly named Liberty Park Grill, LLC; which was formerly named Cumberland Tavern, LLC in the original Restaurant Lease) is authorized to sub-lease all or a portion of the restaurant property at Liberty Park, as described in the Restaurant Lease, to sub-lessee Liberty Park Grill, LLC, a new entity owned by the same principals, Bob McManus and Darby Campbell, said sub-lease agreement between Liberty Park Development, LLC and Liberty Park Grill, LLC, being approved is attached hereto as Exhibit A.

*ADOPTED:*

# SUBLEASE

## FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE AND PROFESSIONAL MANAGEMENT OF A RESTAURANT AT LIBERTY PARK

This Sublease (the "Sublease") is made and entered into as of the \_\_\_\_ day of February, 2014, by and between Liberty Park Development, LLC, hereinafter referred to SubLessor and Liberty Park Grill, LLC, hereinafter referred to as "SubLessee."

### ARTICLE 1 - BACKGROUND

**1.1 Liberty Park Project.** The City of Clarksville, Tennessee (the "City") constructed a premier, national quality, urban park entitled Liberty Park located at mile marker 126 along the Cumberland River, approximately half-way between Nashville and the confluence of the Cumberland River (Lake Barkley) with the Tennessee River (Kentucky Lake). The park project is situated upon 144 acres of land partly owned by the City, and partly owned by the United States, Department of the Army, Corps of Engineers (hereafter "USACE"), which part has been leased to the City through a long-term, renewable lease.

**1.2 Subleased Premises Intent.** To attract the public to Liberty Park, and to increase surrounding property values and thereby increase the tax base for same, the City entered into a lease agreement with SubLessor on December 22, 2011, for the development, construction, operation and maintenance of a full service, high quality restaurant, located within the Liberty Park area, as the same was amended by Addendum One on August 2, 2012 and as further amended on August 1, 2013 (as amended, the "Lease"). SubLessee, whose principals include restaurant developers, owners and operators, desire to construct and install a full service, high quality restaurant and to operate and maintain the same through a long term sublease of a portion of the property under the Lease to SubLessor from the City, and to provide professional restaurant management services and conduct full service restaurant operations, and to pay rent to SubLessor therefor, all as more fully described herein.

SubLessor's original legal name was Cumberland Tavern, LLC, which was changed to Liberty Park Grill, LLC and has subsequently been changed to Liberty Park Development, LLC. Notwithstanding anything to the contrary in this Sublease, nothing in this Sublease has any effect on the rights and responsibilities of the City or SubLessor under the Lease and the terms and conditions of the Lease remain in full force and effect. For avoidance of doubt, this Sublease describes the rights and responsibilities of Sublessor and Sublessee as between and among themselves and does not affect the rights or responsibilities under such Lease. If there are any inconsistencies between the terms of this Sublease and the terms of the Lease, as between the City and SubLessor, the terms of the Lease shall prevail.

**1.3 Restaurant Name.** The parties agree that the restaurant shall be called the "Liberty Park Grill." SubLessee may change the name of the restaurant upon prior written notice to SubLessor.

**1.4 Objectives for SubLessee's Performance.** SubLessor and SubLessee agree that the primary objectives for SubLessee's performance under this Sublease are: (1) to construct, operate and maintain a full service, high quality restaurant as generally indicated in **Exhibit B**; and (2) to maximize the public use of the restaurant as well as the revenues to be received by SubLessor and the return on SubLessee's operations therefrom. Whenever approvals from the Mayor or the City are required under this SubLease, it is SubLessor's responsibility to use best efforts to obtain such approvals under the Lease.

## **ARTICLE 2: Definitions**

**2.1 Mayor.** "Mayor" shall mean the Mayor of the City or his / her designee.

**2.2 Restaurant.** "Restaurant" shall mean the public eating establishment within the Subleased Premises as described in **Exhibit A** and, as the property is developed pursuant to this Sublease any improvements located thereon from time to time during the term hereof.

**2.3 Gross Receipts.**

**2.3.1** "Gross Receipts" shall mean the total of the Gross Sales (whether for cash or credit or partly for cash and credit) of the SubLessee and each and every occupant, sub-lessee, assignee, licensee, concessionaire, and permittee from business operations conducted on the Subleased Premises of any type, and shall include, but not be limited to:

- a. the full price charged for any and all goods, merchandise, food, beverages and services sold upon or from the Subleased Premises;
- b. all receipts from sales made by means of vending machines or other coin or token operated devices located in or upon the Subleased Premises;
- c. all amounts charged for services performed upon or from the Subleased Premises;
- d. all amounts charged by SubLessee for sales occurring or arising as a result of solicitation off the Subleased Premises by personnel operating from the Subleased Premises or reporting to or under the supervision of any employee of any occupant, sub-lessees, and licensees, of the Subleased Premises;
- e. all amounts charged for any internet, mail, telephone, or other orders taken;
- f. the amounts of all deposits not refunded to purchasers;
- g. the amounts of money or other in kind consideration paid by third parties for promotions made in conjunction with the SubLessee, occupants, sub-lessees or licensees;
- h. the receipt from any other business conducted upon or from the Subleased Premises; and

- i. all sublease revenues.

**2.3.2** For the purposes of the preceding, any installment or credit sale shall be treated as a sale for the full price charged at the time the sale is made and no deduction shall be allowed for uncollectible credit accounts.

**2.3.3** SubLessee covenants that the business of each occupant, sub-lessee, assignee, licensee, concessionaire, and permittee shall be conducted so that a dated sales check or invoice shall be prepared for each sale on the Subleased Premises and production of such records as SubLessee customarily maintains related thereto shall be made as the records of the SubLessee are so required herein.

**2.3.4** Gross Receipts shall not include:

- a. license fees and sales taxes collected for direct remittance to a taxing authority generated by the sale of goods and services;
- b. cash discounts allowed or taken on sales;
- c. the amount of any sales or use tax required by law to be included in or added to the purchase price, and collected from the consumer or purchaser and paid by SubLessee;
- d. the proceeds from any financing for the construction of the Restaurant Improvements or working capital for the Restaurant.

**2.3.5** In the case of vending machines, Gross Receipts shall be the total amount taken by the vending machines after rental payments, sales and excise taxes.

**2.3.6** The Gross Receipts shall be the property of SubLessee, its sub-lessees, assignees, licensees, concessionaires, and permittees, respectively, subject to SubLessee's obligation to pay rent based on the Gross Receipts as set forth in **Article 8**.

**2.3.7** For the purposes of the preceding, occupant, sub-lessee, assignee, licensee, concessionaire, and permittee shall mean each and every person or entity permitted by SubLessee to occupy the Subleased Premises.

**2.4 Sublease Revenues.** "Sublease Revenues" shall mean the total amount of rent collected by SubLessee from any further sub-lessees who sub-lease the Subleased Premises or any part thereof from SubLessee.

**2.5 Maintenance Standards.** "Maintenance Standards" shall mean standards for maintaining the Restaurant in good working condition, consistent with industry standards for restaurants of comparable quality and shall include the requirements of **Articles 5 and 10**.

**2.6 Operating Year.** The first “Operating Year” shall commence on January 1, 2014, and shall run therefrom until the end of the calendar year. Each “Operating Year” thereafter shall be a calendar year covering the period between January 1 and December 31 of each year

**2.7 Subleased Premises.** “Subleased Premises” shall mean the real property as shown in **Exhibit A**, and all related buildings, facilities, structures, utilities and infrastructure in, under or upon same, including but not limited to, any parking spaces, which together comprise the “Subleased Premises,” and any improvements located thereon from time to time during the term hereof, together with all easements, rights of way and licenses reasonably necessary to ingress, egress, utilities and signage necessary or appropriate to construct, maintain and operate the Restaurant.

**2.8 Restaurant Improvements.** “Restaurant Improvements” shall mean all buildings, facilities, structures, infrastructure and utilities constructed or installed by, or to be constructed or installed by SubLessee, or at SubLessee’s direction, as generally specified in **Exhibit B**.

### **ARTICLE 3 - SUBLEASED PREMISES**

#### **3.1 Subleased Premises.**

**3.1.1** SubLessor hereby leases to SubLessee, and SubLessee subleases from SubLessor, those certain Subleased Premises situated in Clarksville, Montgomery County, Tennessee, and more particularly described and shown in **Exhibit A**, for the purpose of developing, constructing, installing, operating, and maintaining a professional, full service, high quality public restaurant, for rent and other consideration as set forth more fully herein.

**3.1.2** SubLessor represents that the realty conveyed and the SubLessee represents that the constructed Restaurant and all related facilities are or will be in material compliance with all applicable federal, state and local environmental and hazardous substance laws, rules and regulations.

**3.1.3** SubLessee shall make no demand upon SubLessor for any initial or later construction of any improvement, or development, maintenance or alteration of the Subleased Premises during the term of this Sublease except as expressly provided in this Sublease.

**3.1.4** SubLessee acknowledges that it has made personal inspection of the Subleased Premises and the surrounding area and accepts same in its’ “as is” condition as of the effective date of this Sublease. Excepted from the “as is” acceptance are any previously existing environmental hazards, whether discovered before or after the effective date of this Sublease, not attributable to any fault or negligence, or intentional acts or omissions of SubLessee or its’ employees, agents, sub-lessees, or assignees, which shall be the sole responsibility or liability of SubLessor as between the parties hereto.

**3.2 Improvements and Equipment to be Provided by SubLessee.** Restaurant Improvements required to be constructed, installed or otherwise provided by SubLessee pursuant to this Sublease are as generally described in **Article 9** and **Exhibit B**. All Restaurant Improvements shall be at

SubLessee's sole expense. All Restaurant Improvements shall be constructed in accordance with all applicable building codes and regulations. All Restaurant Improvements shall be subject to the approval of SubLessor, which approval shall not be unreasonably withheld, delayed or conditioned. SubLessee shall use reasonable and good faith efforts to diligently pursue completion of construction or installation of such Restaurant Improvements on a timely basis as described herein and in **Exhibit B**, subject to delays beyond the reasonable control of SubLessee.

### **3.3 Ownership and Disposition of Improvements on Termination of Sublease.**

#### **3.3.1 Improvements.**

a. Ownership of all Restaurant Improvements (excluding any removable restaurant maintenance or service equipment, which shall remain the property of SubLessee) constructed, installed or acquired by SubLessee and placed upon the Subleased Premises, and all alterations or additions thereto, shall be titled in the City as provided in the Lease and become a part of the real property leased by the City to SubLessor and subleased from SubLessor to SubLessee upon completion and installation of same upon the Subleased Premises.

b. If this SubLease for any reason is terminated prior to the expiration of the Initial Term, or if the term of this SubLease is not renewed at the end of the Initial Term, or at the end of the first, second, or third Renewal Term(s), as is provided for herein, SubLessor shall pay to SubLessee, for the Restaurant Improvements constructed, installed or acquired by SubLessee and placed upon the Subleased Premises, and all alterations or additions thereto, subject to **Article 14**, an amount determined by the City and SubLessor under the Lease.

c. Notwithstanding any provision of this **subsection 3.3.1** to the contrary, if this Sublease is not renewed after the Initial Term or at the end of any subsequent Renewal Term because of a default by SubLessee which has not been cured within any applicable grace or cure period, or if this Sublease is terminated at any time after the Initial Term of this Sublease as a result of SubLessee's default under this Sublease which is not cured within any applicable grace or cure period, then all Restaurant Improvements constructed or installed by SubLessee and placed upon the Subleased Premises, and all alterations or additions thereto (except for any removable restaurant maintenance or service equipment) shall be the sole property of SubLessor without payment to SubLessee of any amount therefor, subject to the provisions of **Article 14**. In such event, SubLessor shall pay to SubLessee an amount equal to the fair market value for any removable restaurant maintenance or service equipment, in the manner provided in subparagraph b. above.

d. Upon the expiration of any fourth Renewal Term, all Restaurant Improvements constructed or installed by SubLessee and placed upon the Subleased Premises, and all alterations or additions thereto (except for any removable restaurant maintenance or service equipment), shall be the sole property of the City as provided in the Lease without payment to SubLessee of any amount therefor, subject to the provisions of **Article 14**. City, either directly or through SubLessor, shall have the option to pay to SubLessee an amount equal to the fair market value for any removable restaurant maintenance or service equipment, in the manner provided in subparagraph b. above, or to require SubLessee to remove any removable restaurant maintenance

or service equipment from the Subleased Premises. SubLessor shall give SubLessee at least ninety (90) days written notice prior to the expiration of any fourth Renewal Term of SubLessor's option decision.

### **3.3.2 Annual Reports, Plans and Reviews.**

**A.** To maintain the aesthetic standards and quality required by SubLessor with respect to the Subleased Premises, SubLessee shall submit to SubLessor thirty (30) days prior to the commencement of each Operating Year after the Certificate of Occupancy has been obtained, an annual report describing any Improvements made during the previous year and plans for any Improvements, upgrading or other changes proposed for the following year, for review by SubLessor. SubLessor may use such annual report during its yearly inspection of the Subleased Premises. Further, as more fully described below, any proposed plans for Improvements exceeding a cost of ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00) shall not be implemented, nor shall capital projects be started, without prior written request from SubLessee and the prior written approval from SubLessor. Any written request for approval of improvements as required herein shall be separately provided by SubLessee to SubLessor from any required annual report.

**B.** SubLessor shall conduct an annual review of the restaurant operations in accordance with the maintenance standards as described in **Articles 5 and 10**. The annual review shall become a part of the permanent record that will assist SubLessor in determining SubLessee's fulfillment of and compliance with the Sublease requirements. If for any reason SubLessor shall not conduct said annual review, the same is not a breach of SubLessor's duties herein, nor damage to the SubLessee, and not a waiver for the same to be conducted subsequently.

## **ARTICLE 4 - TERM**

**4.1 Initial Term.** The "Initial Term" of this Sublease shall commence on January 1, 2014 and continue up to and including December 31, 2038.

**4.2 Renewal Terms.** Except as otherwise provided below, the Initial Term of this Sublease may be extended for four (4) additional periods of ten (10) years each ("Renewal Term(s)") beyond the Initial Term, each Renewal Term subject to SubLessor's approval, upon SubLessee providing written notice to SubLessor at least one hundred and eighty (180) calendar days prior to the expiration of the Initial Term or any subsequent Renewal Term of its intention to exercise the option to renew the Sublease. However, in no event shall SubLessee be entitled to renew the term of this Sublease unless SubLessee shall have timely performed all of its' obligations hereunder, and is not in default in the performance of any of the terms, provisions or conditions herein, upon the date of expiration of the Initial Term or any subsequent Renewal Term. All Renewal Terms, if any, shall continue on the terms, provisions and conditions herein, including the payment of rent as set forth in **Article 8**.

**4.3 Holding Over.** If SubLessee holds over beyond the expiration of the Initial Term, or any subsequent Renewal Term, with consent, express or implied, of SubLessor, such holding over shall only be from month-to-month, subject to the conditions of this Sublease, and shall not be a

renewal hereof, and shall be at the maximum allowable compensation provided herein, calculated for the number of months and/or days held over, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

**4.4 Mutual Termination.** The parties may, upon mutual agreement expressed in writing, during the Initial Term of this Sublease, or during any subsequent Renewal Term, on not less than one hundred eighty (180) days' notice prior to termination, dissolve and terminate this Sublease and the relationship of the parties. SubLessor shall not be liable for completion of any construction, installation or renovation of Restaurant Improvements initiated by SubLessee, or its sub-lessees, assignees, licensees, concessionaires or permittees, and SubLessor shall be held harmless and indemnified therefrom.

## **ARTICLE 5 - SUBLESSEE'S BASIC SERVICE OBLIGATIONS**

**5.1 Days and Hours of Operation.** The Restaurant shall be open to the public as SubLessee shall determine in its reasonable business judgment.

### **5.2 Building and Equipment Maintenance Services.**

**5.2.1** SubLessee shall, at its expense, keep and maintain the Subleased Premises, including but not limited to, the Restaurant, and all other buildings, structures, improvements, fixtures, trade fixtures, appurtenances, equipment and utility systems which may now or hereafter exist on or in the Subleased Premises, in good, operable, usable and sanitary order and repair and in a good, safe and first-class condition throughout the term of this SubLease, timely providing for such repairs, replacements, rebuilding and restoration as may be required to comply with the requirements of this SubLease. All such repairs and/or any modifications or additions to the facilities exceeding ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00) must be approved by SubLessor, in writing, prior to implementation by SubLessee.

**5.2.2** Should SubLessee fail, after thirty (30) days' written notice from SubLessor of the need to cure its non-performance of obligations under this section, SubLessor may enter upon the Subleased Premises and perform SubLessee's obligations. Notwithstanding the preceding sentence, in the event of an unsafe situation or emergency, SubLessor may immediately enter upon the Subleased Premises without notice to SubLessee to perform such repairs, replacement, rebuilding and/or restoration as necessary. On demand by SubLessor, SubLessee shall reimburse SubLessor for the reasonable costs, direct or indirect, incurred by SubLessor under this section as determined by SubLessor.

**5.2.3** SubLessor shall not have any duty to make, nor shall it be called upon to make, any improvements, repairs, replacements, rebuilding or restoration whatsoever to the Subleased Premises or any structures, improvements, fixtures, trade fixtures, appurtenances, equipment or utilities on the Subleased Premises during the term of this Sublease. The parties specifically acknowledge that the cost of any maintenance of the Subleased Premises is solely the responsibility of the SubLessee and its failure to maintain the same is a material breach of this Sublease. All maintenance costs paid by SubLessee shall be deemed additional rental for

purposes of computing any real property or other tax which may be due or payable to the maximum extent permitted by law.

**5.3 Grounds Maintenance Services.** During the term of this Sublease, SubLessee shall provide grounds maintenance services for the Subleased Premises, including but not limited to, the obligation to mow, edge, and trim grass, bushes, plants, and vegetation, as well as to provide weed, disease and pest control, litter control and rubbish removal, parking lot sweeping, tree maintenance, and maintenance of any irrigation systems. SubLessee shall replace or change any supplies, materials or procedure used by SubLessee that are found objectionable by SubLessor, based on a commercially reasonable standard, within ten (10) days' notice to SubLessee from SubLessor's request for such replacement or change.

**5.3.1 Standards.** All maintenance work shall be performed in accordance with high quality industry-wide maintenance standards for comparable first-class restaurants located around the southeast to maintain the aesthetic level and proper condition of the Restaurant.

**5.3.2 Restaurant Personnel.** SubLessee shall provide and maintain in its employ a Restaurant manager and sufficient personnel to perform all operations necessary to operate and maintain a full service Restaurant. Upon request by SubLessor, SubLessee shall remove any employee or agent of SubLessee as deemed necessary by SubLessor, for reasonable cause.

**5.3.3 Equipment, Supplies and Materials.** SubLessee, at its sole cost and expense, shall furnish all necessary equipment, supplies and material of good quality and in sufficient quantity to fulfill the requirements of this Sublease and to accomplish an acceptable and professional level of maintenance.

## **ARTICLE 6 - SUBLESSEE'S OPERATING RESPONSIBILITIES**

**6.1 Compliance with Laws.** SubLessee shall comply with all municipal ordinances and all state and federal laws and regulations applicable to restaurant operations. SubLessee shall not knowingly permit any illegal activities to be conducted on the Subleased Premises. If any permits or licenses are required for restaurant operations or any construction authorized by this Sublease, SubLessee shall obtain all such required permits or licenses from the appropriate agency before undertaking the regulated activity.

**6.2 Compliance with Rules and Regulations.** SubLessee shall not knowingly or intentionally fail to comply with any rules and regulations set forth by any governmental body, agency or instrumentality, as such may be amended from time to time.

**6.3 SubLessee's Obligation to Refrain from Discrimination.** SubLessee shall not discriminate against any person or group of persons on account of race, color, creed, religion, ancestry, national origin, gender or disability in the execution of any activities in this Sublease. Neither SubLessee itself, nor any person claiming under or through it, shall establish or permit any practice of discrimination in the hiring of staff, selection of vendors and contractors, or in the access to and use of the Restaurant facilities or in the execution of any other activity as permitted through this Sublease.

**6.4 Signs.** SubLessee shall not post signs of any kind, nature or size, other than customary signage for directional purposes, traffic control, parking, no littering, fuel and trash points, restroom locations, etc., and any signs required by any applicable federal, state or local laws or regulations, upon the Subleased Premises without the prior written approval of SubLessor. SubLessor shall be responsible for maintenance of the entrance signs located at the entrance to Liberty Park along Highway 48/13 and along the Cumberland River at Freedom Point, and reference to the Restaurant may be added to these signs if practicable and at SubLessee's sole expense. In addition, SubLessee may install, at its sole expense, promotional or advertising signage on pylons or monuments customarily used for advertising high quality restaurants, in accordance with any applicable laws or regulations pertaining to signage, upon written approval of SubLessor as to its aesthetic design.

**6.5 Public Use; Marketing.** SubLessee shall use all reasonable efforts to market and promote the Restaurant, and to effectively secure the financial and operating success of the Restaurant.

**6.6 Utilities.** SubLessor shall be responsible for, and shall provide utilities to the property line of the Subleased Premises, to include water, sewer, gas and electrical service, necessary for the construction, installation and operation of the Restaurant Improvements. SubLessee shall be responsible for, and shall provide and pay for, all utilities serving the Subleased Premises from the property line, including but not limited to, water, gas, heat, light, power, telephone and internet service, electricity, sewer and trash removal and other public utilities of every kind furnished to the Subleased Premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the Subleased Premises and all activities conducted thereon, and SubLessor shall have no responsibility of any kind for any thereof. SubLessee waives any and all claims against SubLessor for compensation for loss or damage caused by defect, deficiency or impairment of any utility system, including but not limited to, water or irrigation system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires, telephone or internet service, light, power, sewer and trash removal serving the Subleased Premises.

**6.7 Public Safety.** SubLessee shall immediately correct any unsafe condition on the Subleased Premises, as well as any unsafe practices occurring thereon. SubLessee shall use reasonable efforts to summon emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on the Subleased Premises. SubLessee shall cooperate fully with SubLessor in the investigation of any accidental injury or death, or pertaining to any crime or violation of law, occurring on the Subleased Premises, including a prompt written report regarding all major injuries or deaths and deliver such to SubLessor. Upon written request, SubLessee shall submit to SubLessor a report pertaining to any injury which may occur on the Subleased Premises, including minor injuries, major injuries and deaths, in addition to the immediate report of all major injuries and deaths. A major injury is one attended to by, or requiring the service of, emergency personnel.

## **6.8 Use of Facilities: Restrictions; Uses Prohibited; No Waste and Nuisance.**

**6.8.1** SubLessee shall obtain SubLessor's prior written approval of its policies and procedures regarding the frequency and circumstances under which any events or activities requiring the exclusive use of the Subleased Premises or any designated portion thereof may occur.

**6.8.2** SubLessee shall not use, or permit the Subleased Premises, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the Subleased Premises are hereby subleased; and no use shall be made or permitted to be made of the Subleased Premises, or acts done, which will cause a cancellation of any insurance policy covering the Subleased Premises, or any of the improvements located on the Subleased Premises, or any part thereof, nor shall SubLessee sell, or permit to be kept, used, or sold, in or about the Subleased Premises, any article which may be prohibited by the standard form of fire insurance policies. SubLessee shall, at its sole cost, comply with all requirements, pertaining to the Subleased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as herein provided, covering any improvements and appurtenances at any time located on the Subleased Premises.

**6.8.3** During the term of this Sublease, SubLessee intends to comply with all applicable laws affecting the Subleased Premises. If Lessee's failure to comply with any applicable law results in any penalty on SubLessor or an expressed threat of forfeiture affecting SubLessor's title to the Subleased Premises or any part thereof, such failure on SubLessee's part shall be deemed a default by SubLessee pursuant to Section 18.1.3 of this Sublease. SubLessee shall not knowingly or intentionally commit, or suffer to be committed, any waste on the Subleased Premises, or any nuisance.

**6.9 Meetings.** Representatives of SubLessee and SubLessor and, if appropriate, the City shall meet according to a schedule to be determined by the parties and at such other times as may be required by SubLessor to review SubLessee's performance under this Sublease and to discuss any problems or matter as determined by SubLessor or the City.

**6.10 Trade Fixtures.** SubLessee, at its own expense, shall provide and install all equipment and trade fixtures required by this Sublease. Upon the expiration or earlier termination of this Sublease, said equipment and trade fixtures shall be the property of SubLessee, and SubLessee shall have the right to remove same.

**6.11 Prices: Goods and Services.** SubLessee shall at all times maintain a complete list or schedule of the prices charged for all goods and services supplied to the public on or from the Subleased Premises. Such list or schedule of the prices shall be provided to SubLessor upon request. Such prices shall be fair and reasonable based on the following considerations: that the Restaurant operation is intended to serve the needs of the public for the goods and services supplied at a fair and reasonable cost and that the prices charged should be comparable to prices charged for similar goods and services by other full service Restaurants within the southeastern region of the United States.

**6.12 Abandonment of Subleased Premises.** SubLessee shall not vacate or abandon the Subleased Premises at any time during the term hereof. If SubLessee shall abandon, vacate or surrender the Subleased Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to it and left on the Subleased Premises shall be deemed to be abandoned, at the option of SubLessor, except such property as may be encumbered to SubLessor, and subject to **Article 14.**

## **ARTICLE 7 - SUBLESSOR'S COVENANTS AND REPRESENTATIONS**

**7.1 Quiet Enjoyment.** SubLessor covenants that so long as SubLessee is in the rightful possession of the Subleased Premises and is not in default under this Sublease, SubLessee shall quietly hold, occupy and enjoy the Subleased Premises throughout the term hereof, free from hindrance, ejection or disturbance by SubLessor or any other party claiming under, through, or by right of SubLessor. SubLessor agrees to pay and discharge any payments and charges and, at its expense, prosecute all appropriate actions, judicial or otherwise, necessary to assure such free and quiet occupation, but in no event shall SubLessor be liable to SubLessee for any lost profits.

**7.2 Governmental Agencies.** SubLessor has no knowledge of any existing conditions in or about the Subleased Premises or otherwise which violate any city, county, state or federal law, ordinance or regulation, including but not limited to, regulations related to zoning and use of the Subleased Premises, and SubLessor has not received any notice, written or otherwise, from any governmental agency requiring the correction of any condition with respect to the Subleased Premises that might be in violation of any law, ordinance or regulation.

**7.3 Title to the Real Property, Personal Property and Improvements.** SubLessor has good leasehold rights to the real property, personal property and improvements, free and clear of all liens, claims and encumbrances of any nature, which constitute the Subleased Premises hereunder.

**7.4 Litigation, Claims or Proceedings.** There are no existing or pending actions, suits, litigation, claims, proceedings or governmental investigations with respect to any aspect of any of the Subleased Premises, nor, to the knowledge of SubLessor, have any such actions, suits, litigation, claims, proceedings or governmental investigations been threatened or asserted.

**7.5 Permits.** SubLessor and SubLessee shall cooperate fully with one another as necessary to enable the proper party to procure and/or transfer and maintain all licenses, permits or authorizations necessary for the operation of the Subleased Premises. Upon the termination of this Sublease, any permits or licenses will be transferred, as permitted by law, to SubLessor, and any expenses incurred with respect thereto shall be an Operating Expense of SubLessee, subject to **Article 14.**

**7.6 Warranties.** SubLessee will maintain all warranties, guarantees, and maintenance contracts on the equipment and furnishings of the Subleased Premises and will endeavor to cause the reimbursement of expenses for maintenance, repair and replacement, and for labor and materials associated with all warranted or guaranteed equipment and furnishings utilized in the operation of the Subleased Premises.

**7.7 Violation of Sublease.** Neither the execution and delivery of this Sublease by SubLessor nor SubLessor's performance of its obligations hereunder will result in a violation or breach of any term or provision(s) or constitute a default or accelerate the performance required under any other agreement or document to which SubLessor is a party or is otherwise bound or to which the Subleased Premises, or any part thereof, is subject, and will not constitute a violation of any law, ruling, regulation or order to which SubLessor is subject.

## **ARTICLE 8 - RENTAL PAYMENTS**

**8.1 Rent to SubLessor.** SubLessee agrees to pay to SubLessor as rent a "Minimum Guaranteed Rent" and a "Gross Receipts Percentage Rent" for each Operating Year, and in addition thereto, after the second Operating Year in which rent is paid hereunder, "Escalator Rent", as set forth below, provided, however, that no rent shall be due or payable under this Article 8 until the month following the month in which SubLessee obtains a Certificate of Occupancy for the Restaurant.

**8.1.1 Minimum Guaranteed Rent.** Beginning the month after the month in which the SubLessee obtains a Certificate of Occupancy for the Restaurant (and prorated for such Operating Year), SubLessee shall pay to SubLessor as Minimum Guaranteed Rent the amount of TWENTY THOUSAND DOLLARS and ZERO CENTS (\$20,000.00) annually, said amount to be payable in monthly installments in the amount of (\$1,666.67) per month, payable on or before the first day of each month during the Initial Term (except as provided above) or any subsequent Renewal Term of this Sublease, without notice or demand from SubLessor, and without any set-off, which are hereby expressly waived by SubLessee. Any Minimum Guaranteed Rent due for a partial month shall be prorated. Beginning the third Operating Year in which rent is paid hereunder, SubLessee shall pay to SubLessor as Minimum Guaranteed Rent the amount of TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) annually, said amount to be payable in monthly installments in the amount of (\$2,083.33) per month, payable as described above.

**8.1.2 Gross Receipts Percentage Rent.** In addition to Minimum Guaranteed Rent, SubLessee shall pay an additional amount as rent to SubLessor, denominated as "Gross Receipts Percentage Rent," equal to:

A. one percent (1%) of Gross Receipts between TWO MILLION FOUR HUNDRED THOUSAND AND ONE DOLLARS AND ZERO CENTS (\$2,400,001.00) and THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00);

B. one point five percent (1.5%) of Gross Receipts between THREE MILLION AND ONE DOLLARS AND ZERO CENTS (\$3,000,001.00) and THREE MILLION AND FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$3,500,000.00);

C. two percent (2%) of Gross Receipts between THREE MILLION AND FIVE HUNDRED THOUSAND AND ONE DOLLARS AND ZERO CENTS (\$3,500,000.00) and FOUR MILLION DOLLARS AND ZERO CENTS (\$4,000,000.00);

D. two point five percent (2.5%) of Gross Receipts over FOUR MILLION AND ONE DOLLARS and ZERO CENTS (\$4,000,001.00)

for each Operating Year during the Initial Term or any subsequent Renewal Term of this Sublease. The Gross Receipts Percentage Rent for any partial year shall be prorated based on the actual number of calendar days that SubLessee subleases the Subleased Premises during such year.

**8.1.3 Escalator Rent.** After the second Operating Year in which rent is paid hereunder, in addition to the Minimum Guaranteed Rent and any Gross Receipts Percentage Rent required to be paid by SubLessee, for any given Operating Year, SubLessee shall also pay as an additional rental sum to be denominated as “Escalator Rent,” an amount equal to two percent (2%) of the previous Operating Years total rental payments paid by SubLessee, but only if the total Gross Receipts for such Operating Year, equal or exceed the total Gross Receipts for the previous Operating Year.

**8.2 Rental Payments Due; Gross Receipts Report.** SubLessee shall make rental payments to SubLessor on a monthly basis on or before the first day of the month, with respect to the Minimum Guaranteed Rent for each Operating Year. Payments shall be made in the name of SubLessor and addressed to SubLessor at the address provided in the Notice provisions or such other address as SubLessor may provide to SubLessee in writing. SubLessee shall include with its’ payment a revenue, sales and rent report in form satisfactory to SubLessor which shall include a statement of Gross Receipts by source categories and such other pertinent information as SubLessor may reasonably require. Payments of Gross Receipts Percentage Rent and Escalator Rent, if any, shall be paid within ninety (90) days after the end of the applicable Operating Year. If any payment of rent due under this Article 8 is not paid by the due date, SubLessor shall provide SubLessee written notice of such failure to pay rent and SubLessee shall have ten (10) calendar days to cure such rental payment default.

**8.3 Interest on Unpaid Rent.** Rent due pursuant to this **Article 8** which is not immediately paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum, compounded annually. Except as described in Section 8.2, notice of late payment is not required but may be provided by SubLessor to SubLessee.

**8.4 Late Charge.** SubLessee acknowledges a late payment by SubLessee to SubLessor of any rent payment required by this **Article 8** will cause SubLessor to incur costs not contemplated by this Sublease, the exact amount of which costs is extremely difficult and impractical to fix. Such costs include, without limitation, legal fees, administrative processing and accounting charges. Therefore, if any installment of rent or payment due from SubLessee is not received prior to or on the date when due, SubLessee shall pay to SubLessor an additional sum of five percent (5%) of the overdue portion of the rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs SubLessor will incur by reason of late payment by SubLessee. Acceptance of any late charge shall not prevent SubLessor from exercising any of the other rights and remedies available to SubLessor.

**8.5 Cost of Insurance Deemed Additional Rental.** The cost of insurance required to be carried by SubLessee as provided in **Article 12** shall be deemed to be additional rental hereunder.

## ARTICLE 9 - CONSTRUCTION OF NEW RESTAURANT FACILITIES

**9.1 Purpose.** SubLessee shall construct the Restaurant Improvements in accordance with the requirements of this Sublease, said Restaurant Improvements being more fully described in **Exhibit B**. For the construction of any new building, structure or improvement, SubLessee shall follow the requirements contained herein.

**9.2 Plans and Specifications.** SubLessee shall, at SubLessee's sole expense, prepare plans and specifications for any new building, structure or improvement the cost of which is in excess of ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00), to be erected on the Subleased Premises. Such plans and specifications shall be submitted to SubLessor for the prior written approval by SubLessor. SubLessor shall not unreasonably withhold such approval, and in the event of disapproval, SubLessor shall give to SubLessee an itemized statement of reasons therefor within sixty (60) days after the same are submitted to SubLessor. Prior to the commencement of any such work, SubLessee shall furnish SubLessor with a good and sufficient surety bond(s) guaranteeing the completion of such building, structure or improvement (Performance Bond) and the payment of all bills therefor (Payment Bond).

**9.3 Alterations, Improvements and Changes Permitted.** SubLessee shall have the right to make such alterations, improvements and changes to any building, structure or improvement which may from time to time be on the Subleased Premises as SubLessee may deem necessary, or to replace any such building, structure or improvement with a new one of at least equal value, provided that prior to making any structural alterations, improvements or changes, or to replacing any such building, structure or improvement, SubLessee shall obtain written approval of plans and specifications therefor from SubLessor, which approval SubLessor shall not unreasonably withhold, provided that the value of the building, structure or improvement shall not be diminished and the structural integrity of the building, structure or improvement shall not be adversely affected by any such alterations, improvements or changes, or that any proposed new building, structure or improvement is at least equal in value to the one which it is to replace, as the case may be. In the event of disapproval, SubLessor shall give to SubLessee an itemized statement of reasons therefor. SubLessee will in no event make any alterations, improvements or other changes of any kind to any building, structure or improvement on the Subleased Premises that will decrease the value of such building, structure or improvement or that will adversely affect the structural integrity of the building, structure or improvement. Prior to commencing any work that will cost in excess of ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00), SubLessee shall furnish SubLessor, on demand, with a good and sufficient surety bond(s) insuring the completion of such work (Performance Bond) and the payment of all bills therefor (Payment Bond).

## ARTICLE 10 - REPAIRS AND DESTRUCTION OF IMPROVEMENTS

**10.1 Maintenance of Improvements.** SubLessee shall, throughout the term of this Sublease, at its own cost, and without any expense to SubLessor, keep and maintain the Subleased Premises, including all Restaurant Improvements of every kind which may be a part thereof, and all appurtenances thereto, including sidewalks adjacent thereto, in good, sanitary and neat order, condition and repair, and, except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause

whatsoever. SubLessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Subleased Premises or any buildings or improvements thereon except as set out in this Sublease. SubLessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws, regulations and deed restrictions affecting the Subleased Premises, the improvements thereon or any activity or condition on or in such Subleased Premises and the Restaurant, ingress, egress, utilities and signage necessary or appropriate to construct, maintain and operate a Restaurant as otherwise set out herein.

**10.2 Damage to and Destruction of Improvements.** The damage, destruction or partial destruction of any Restaurant Improvement which is a part of the Subleased Premises shall not release SubLessee from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, SubLessee shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Without limiting such obligations of SubLessee, it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to SubLessee for such repair or replacement.

**10.3 Damage or Destruction Occurring Toward End of Term.** Anything to the contrary in the immediately preceding paragraphs of this Article notwithstanding, in case of destruction of the Restaurant Improvements on the Subleased Premises or damage thereto from any cause so as to make them un-tenantable occurring during the last two (2) years of the Initial Term or any Renewal Term hereof, SubLessee, if not then in default hereunder, may elect to terminate this Sublease by written notice served on SubLessor within sixty (60) days after the occurrence of such damage or destruction. In the event of such termination, there shall be no obligation on the part of SubLessee to repair or restore the Restaurant Improvements and, subject to **Article 14**, SubLessor shall have the right to receive any proceeds collected under any insurance policies covering such Restaurant Improvements or any part thereof; provided, however, SubLessee shall cause to be removed any debris existing after any such casualty or loss and shall have the right to use insurance proceeds to pay for such removal. On such termination, rent, taxes, assessments and any other sums payable by SubLessee to SubLessor hereunder shall be prorated as of the termination date, and in the event any rent, taxes or assessments shall have been paid in advance, SubLessor shall rebate the same for the unexpired period for which payment shall have been made.

**10.4 Election Not to Terminate.** If, in the event of such destruction or damage during the last two (2) years of the Initial term or any Renewal Term hereof, SubLessee does not elect to terminate this Sublease, the proceeds of all insurance covering such damage or destruction shall be made available to SubLessee for such repair or replacement, and SubLessee shall be obligated to repair or rebuild the Restaurant Improvements as above provided.

## **ARTICLE 11 - BUSINESS RECORDS**

**11.1 Types of Records.** SubLessee shall maintain a method of accounting for all the receipts, revenues, sales, and expenses in connection with the Restaurant, which shall correctly and accurately reflect the Gross Receipts and disbursements received or made by SubLessee from the Restaurant. SubLessee shall establish and implement adequate internal controls for Restaurant operations. The system of accounting, including bank accounts established for the Restaurant,

shall be separate from the accounting system used for any other business operated by SubLessee. Such method shall include the keeping of the following documents for a period of three (3) years following the creation of such record:

- a. Regular books of account such as general ledgers;
- b. Journals including supporting and underlying documents such as vouchers, bank statements, etc.;
- c. State and Federal income tax returns and sales tax returns and other documents proving payment of sums shown;
- d. Sales records, including weekly sales cash reports (which shall be retained so that day-to-day sales can be identified and records must be maintained and available on site for inspection at all reasonable times upon prior notice); and
- e. Any other accounting records that SubLessor, in its' reasonable discretion, deems necessary for proper reporting of receipts.

**11.2 Audit of Records.** All documents, books and accounting records kept by SubLessee pursuant to this Article 11 shall be open for inspection by SubLessor at any reasonable time during the Term of this Lease and for at least three (3) years thereafter. In addition, SubLessor or its' authorized representative may, from time to time, conduct an audit of the books of the SubLessee and observe the operation of the business. If the report of Gross Receipts or any part thereof made by SubLessee to SubLessor shall be found to be less than the amount of Gross Receipts disclosed by such audit or observation, SubLessee shall pay to SubLessor within thirty (30) days after billing any additional rental amounts as disclosed by any such audit. If the discrepancy exceeds ten percent (10%), SubLessee shall also pay the cost of the audit.

**11.3 Annual Report.** SubLessee shall submit the front page of its federal tax return prepared and signed by an independent certified public accountant to substantiate the Gross Receipts reported to SubLessor by SubLessee, along with a reconciliation of the rental payments based thereon prepared by a certified public accountant. Such information shall be delivered to SubLessor within One Hundred Twenty (120) days of the close of each Operating Year occurring during the Term of this Sublease.

**11.4 Public Records.** SubLessee acknowledges that all information obtained by SubLessor in connection with the provision of records to SubLessor or with SubLessor's inspection of the financial records of SubLessee or of any audit in connection to the Restaurant operations may be subject to public inspection and / or reproduction as public records in accordance with the State "Open Records" law.

## **ARTICLE 12 - INDEMNITY and INSURANCE**

**12.1 Indemnity.**

**12.1.1** SubLessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by SubLessee or by any person whomsoever may at any time be using or occupying or visiting the Subleased Premises, or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of SubLessee or of any occupant, sub-tenant, visitor or user of any portion of the Subleased Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and SubLessee shall indemnify SubLessor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. SubLessee hereby waives all claims against SubLessor for damages to the building and improvements that are hereafter placed or built on the Subleased Premises and to the property of SubLessee in, on or about the Subleased Premises, and for injuries to persons or property in or about the Subleased Premises, from any cause arising at any time.

**12.1.2** SubLessee shall indemnify, hold harmless and assume the defense of, in any actions at law or in equity, SubLessor, its officers, employees, and agents from all claims, losses, damages, including property damage, personal injury, including death, and liability of every kind, nature and description arising from or connected with the use or occupancy of the Subleased Premises by SubLessee or performance of this Sublease by SubLessee or any person directly under the control of SubLessee. Acceptance of insurance certificates or policy endorsements required under this Sublease does not relieve SubLessee from liability under this **Article 12**. This **Article 12** shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims of damages.

**12.2 Insurance.** During the term of this Sublease, SubLessee shall obtain and maintain in full force and effect as a cost of the operation the following insurance coverage:

**12.2.1 Workers' Compensation Insurance.** Full workers' compensation insurance necessary in connection with the performance of this Sublease to protect SubLessee and its employees under the Tennessee Workers' Compensation Act. Such insurance shall relieve SubLessor from all responsibility therefor.

**12.2.2 Liability Insurance.** Broad form property damage, personal injury, automobile, employers and comprehensive form liability insurance with carrier(s) acceptable to SubLessor in the amount of One Million Dollars (\$1,000,000.00) for injury to or death of any one person, and Five Million Dollars (\$5,000,000.00) for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of Five Million Dollars (\$5,000,000.00) insuring against all liability of SubLessee and its authorized representatives arising out of and in connection with SubLessee's use or occupancy of the Subleased Premises; provided that (1) SubLessor, its officers, agents and employees shall be added as additional insureds to the policy, (2) the policy shall stipulate that this insurance shall operate as primary insurance, and (3) the policy shall stipulate that no other insurance affected by SubLessor or other named insureds will be called upon to cover a loss covered thereunder. All public liability insurance and property damage insurance shall insure performance by SubLessee of the indemnity provisions of Section 12.1. SubLessee shall file with SubLessor, within fifteen (15) days of the execution of this Sublease, endorsements to its insurance policy that shall provide for the above requirements. Such insurance shall specifically insure SubLessee against all liability assumed by

it hereunder, as well as liability imposed by law, and shall insure both SubLessor and SubLessee but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for SubLessor and SubLessee.

**12.2.3 SubLessee's Fire and other loss Insurance.** SubLessee, as an operating expense, shall maintain and keep on all its personal property, SubLessee's improvements, and alterations in, on or about the Subleased Premises, including but not limited to, buildings and other improvements, a policy of standard fire and extended or other coverage insurance (including but not limited to Fire, Wind, and Vandalism, with sprinkler damage, vandalism and malicious mischief endorsements), to the extent of One Hundred percent (100%) of their full replacement value, without reduction for depreciation of SubLessee's improvements or alterations if damaged, with loss payable to SubLessor and SubLessee as their interests may appear. Any loss adjustment shall require the written consent of both SubLessor and SubLessee. In the event of an insured loss, SubLessee agrees to use the insurance proceeds to replace and repair the insured loss to the extent required under this Sublease.

**12.3 Certificate of Insurance.** SubLessee shall provide to SubLessor, within thirty (30) days of the execution of this Sublease, and prior to engaging in any operation or activity set forth in this Sublease, certificate(s) of insurance which shall provide that no cancellation, major change in coverage or non-renewal by the insurance company will be made during the Term of this Sublease, without thirty (30) days' written notice to SubLessor prior to the effective date of such cancellation or change in coverage.

**12.4 SubLessor's Right to Pay Premiums on Behalf of SubLessee.** All of the policies of insurance referred to in this section shall be written in form satisfactory to SubLessor and by insurance companies satisfactory to SubLessor. SubLessee shall pay all of the premiums therefor and deliver such policies, or certificates thereof, to SubLessor, and in the event of the failure of SubLessee, either to effect such insurance in the names herein called for or to pay the premiums therefor or to deliver such policies, or certificates thereof, to SubLessor, SubLessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable to SubLessor with the next installment of rental, and failure to repay the same shall carry with it the same consequence as failure to pay any installment of rental. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to SubLessor, that it will give to SubLessor sixty (60) days' written notice before the policy or policies in question shall be altered or cancelled. SubLessor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by SubLessee.

**12.5 Definition of Full Replacement Value.** The term "full replacement value" of improvements, as used herein, shall mean the actual replacement cost thereof from time to time less exclusions provided in the normal fire insurance policy. In the event either party believes that the full replacement value (that is to say, the then replacement cost less exclusions) has increased or decreased, it shall have the right, but, except as provided below, only at intervals of not less than two (2) years, to have such full replacement value re-determined by the fire insurance company which is then carrying the largest amount of fire insurance carried on the Subleased Premises (hereinafter referred to as "impartial appraiser"). The party desiring to have the full replacement value so re-determined by such impartial appraiser shall forthwith on submission of

such determination to such impartial appraiser give written notice thereof to the other party hereto. The determination of such impartial appraiser shall be final and binding on the parties hereto, and SubLessee shall forthwith increase (or may decrease) the amount of the insurance carried pursuant to this section as the case may be, to the amount so determined by the impartial appraiser. Such determination shall be binding for a period of two (2) years, and until superseded by agreement between the parties hereto or by a subsequent redetermination by an impartial appraiser. SubLessee shall pay the fee, if any, of the impartial appraiser. If during any such two (2) year period SubLessee shall have made improvements to the Subleased Premises, SubLessor may have such full replacement value re-determined at any time after such improvements are made, regardless of when the full replacement value was last determined.

**12.6 Adjustment of Coverage.** In the event that SubLessor shall at any time reasonably determine, on a commercially reasonable basis, based on inflation or based on insurance limits customarily maintained by owners and operators of similar property to the Restaurant, that the limits of the personal injury or property damage public liability insurance then carried is insufficient, SubLessor shall raise the limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus raised. The expenses of such determination, if any, shall be borne by the SubLessee.

**12.7 Blanket Insurance Policies.** Notwithstanding anything to the contrary contained in this section, SubLessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by SubLessee; provided, however, that the coverage afforded SubLessor will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Sublease by reason of the use of such blanket policy of insurance, and provided further that the requirements of the foregoing **Article 12** are otherwise satisfied.

**12.8 Cost of Insurance Deemed Additional Rental.** The cost of insurance required to be carried by SubLessee in this **Article 12** shall be deemed to be additional rental as is provided by **Article 8**.

### **ARTICLE 13 - PROHIBITION OF INVOLUNTARY ASSIGNMENT; EFFECT OF BANKRUPTCY OR INSOLVENCY**

**13.1 Prohibition of Involuntary Assignment.** Neither this Sublease nor the leasehold estate of SubLessee nor any interest of SubLessee hereunder in the Subleased Premises or in the building or improvements thereon shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever (except through statutory merger or consolidation, or devise, or intestate succession) and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

**13.2 Effect of Bankruptcy.** Without limiting the generality of the provisions of the preceding **Section 13.1**, SubLessee agrees that in the event any proceedings under the Bankruptcy Code or any amendment thereto be commenced by or against SubLessee, such event shall be deemed to constitute a breach of this Sublease by SubLessee and shall, at the election of SubLessor, but not otherwise, without notice or entry or other action of SubLessor terminate this Sublease and also all

rights of SubLessee under this Sublease and in and to the Subleased Premises and also all rights of any and all persons claiming under SubLessee.

**ARTICLE 14 - ENCUMBRANCE OF SUBLESSOR'S INTEREST,  
NON-DISTURBANCE AND ATTORNMENT**

**14.1 No Subordination of Fee Interest.** SubLessee shall not have the right, at any time during the Initial Term or any subsequent Renewal Term of this Sublease, to subject the fee interest of SubLessor in the Subleased Premises, or any part or parts thereof, including all rights and easements appurtenant thereto, to any one or more mortgages, liens, deeds of trust or other encumbrances of such fee interest.

**14.2 Mortgages of SubLessee's Interest.** SubLessee, and every successor and assign of SubLessee (including, but not limited to, any sub-lessee of SubLessee, but only with SubLessor's prior written consent, not unreasonably withheld) are hereby given the right by SubLessor in addition to any other rights herein granted, without SubLessor's prior written consent, to mortgage their interests in this Sublease, or any part or parts thereof, and assign the Sublease, or any part or parts thereof, and any further sub-lease(s) as collateral security for such mortgage(s), upon the conditions that (i) all rights acquired under such mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Sublease and to all rights and interests of SubLessor herein, none of which covenants, conditions or restrictions is or shall be waived by SubLessor by reason of the right given so to mortgage such interest in this Sublease, except as expressly provided herein and (ii) the proceeds of any such financing shall be used solely to pay costs and expenses related to the construction or installation of Restaurant Improvements or operation of the Restaurant. If SubLessee and/or SubLessee's successors and assigns (including, but not limited to, any sub-lessee of SubLessee, but only with SubLessor's prior written consent, not unreasonably withheld) shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such mortgage(s) shall, within thirty (30) days of its execution, send to SubLessor a true copy thereof, together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage(s), SubLessor agrees that, so long as any such leasehold mortgage(s) shall remain unsatisfied of record or until notice of satisfaction is given by the holder(s) to SubLessor, the following provisions shall apply:

**14.2.1** There shall be no cancellation, termination or modification of this Sublease by joint action of SubLessor and SubLessee without the prior written consent in writing of the leasehold mortgagee(s).

**14.2.2** SubLessor shall, upon serving SubLessee with any notice of default, simultaneously serve a copy of such notice upon the holder(s) of such leasehold mortgage(s). The leasehold mortgagee(s) shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and SubLessor shall accept such performance by or at the instigation of such leasehold mortgagee(s) as if the same had been performed by SubLessee.

**14.2.3** Anything herein contained notwithstanding, while such leasehold mortgage(s) remains unsatisfied of record, or until written notice of satisfaction is given by the holder(s) to SubLessor, if any default shall occur which, pursuant to any provision of this Sublease, entitles

SubLessor to terminate this Sublease, and if, before the expiration of thirty (30) days from the date of service of notice of termination upon such leasehold mortgagee(s), such leasehold mortgagee(s) shall have notified SubLessor of its desire to nullify such notice and shall have paid to SubLessor all rent and additional rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Sublease, if any are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event SubLessor shall not be entitled to terminate this Sublease and any notice of termination theretofore given shall be void and of no effect.

**14.2.4** SubLessor agrees that the name of the leasehold mortgagee(s) may be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by SubLessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this SubLease, including **Section 14.2.7**, and that the leasehold mortgage(s) or collateral document shall so provide.

**14.2.5** SubLessor and SubLessee agree that in the event of a default under any leasehold mortgage, and the transfer of the Sublease pursuant to any foreclosure under any leasehold mortgage (or any transfer in lieu of foreclosure), then the assignee or transferee of SubLessee’s right under the Sublease shall be subject to SubLessor’s reasonable approval. Any such assignee or transferee must be experienced in the operation of Restaurants (or employ a management company experienced in operating Restaurants). If SubLessor does not approve any such proposed assignee or transferee which is experienced in operating restaurants (or has employed a management company experienced in operating restaurants), then SubLessor shall either (i) purchase all of the Restaurant Improvements constructed or installed by SubLessor at the fair market value of such Restaurant Improvements, or (ii) SubLessor shall operate the Restaurant or select the operator for the Restaurant, in which case SubLessor shall assume the indebtedness owed by SubLessee to the leasehold mortgagee and/or shall pay such indebtedness in full. The fair market value of the Restaurant Improvements will be determined in accordance with **Section 14.4** below.

**14.2.6** SubLessor agrees that, in the event of termination of this Sublease by reason of any default by SubLessee, if SubLessor does not exercise its rights under **sub-section 14.2.5 (i)** or **(ii)** above, SubLessor will enter into a new lease of the Subleased Premises with the leasehold mortgagee(s) or its nominee(s), for the remainder of the Term, effective as of the date of such termination, at the rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Sublease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Subleased Premises, provided:

a. Any new lease or transfer for such mortgagee(s) or its nominee(s) is subject to SubLessor’s prior written approval, which approval shall include the requirement that the mortgagee or its nominee (or its management company which will operate the Restaurant) is experienced in operating restaurants and the mortgagee(s) or its nominee must have the financial ability to perform its obligations under the Sublease.

b. Said mortgagee(s) or its nominee(s) shall make written request upon SubLessor for such new lease within fifteen (15) days after the date of such termination and

such written request is accompanied by payment to SubLessor of (A) sums then due SubLessor under this Sublease; and (B) a written, enforceable agreement by which leasehold mortgagee or its nominee agrees to be bound by the terms, provisions and conditions hereof, in form reasonably satisfactory to SubLessor.

c. Said leasehold mortgagee(s) or its nominee(s) shall pay to SubLessor, at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof be due pursuant to this Sublease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which SubLessor shall have been subjected by reason of such default.

d. Said leasehold mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained to be performed on SubLessee's part and shall further remedy any other conditions which SubLessee under the terminated lease was obligated to perform under the terms of this Sublease.

e. Such new lease shall be expressly made subject to the rights, if any, of SubLessor under the terminated lease.

f. The new subLessee under such new lease shall have the same right, title and interest in and to the Restaurant Improvements on the Subleased Premises as the original SubLessee had under the terminated lease.

**14.2.7** The proceeds from any insurance policies or arising from a condemnation are to be held by any leasehold mortgagee(s) and distributed pursuant to the provisions of this Sublease, but the leasehold mortgagee(s) may reserve its right to apply to the mortgage debt all, or any part, of SubLessee's share of such proceeds pursuant to such mortgage(s).

**14.2.8** SubLessor shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee(s) an agreement prepared at the sole cost and expense of SubLessee, in form reasonably satisfactory to such leasehold mortgagee(s), between SubLessor, SubLessee and leasehold mortgagee(s), agreeing to all of the provisions of this **Article 14**. The term "mortgage," whenever used herein, shall include whatever security instruments are used in the locale of the Subleased Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code. The term "mortgage," whenever used herein, shall also include any instruments required in connection with a sale-leaseback transaction.

**14.3 Estoppel Certificate.** At any time and from time to time, but not less than twenty (20) days subsequent to the receipt of a written request by either of them from the other, SubLessor and SubLessee agree to execute, acknowledge and deliver to the requesting party a statement in writing certifying (i) that this Sublease is unmodified and is in full force and effect (or if there have been such modifications, that the same is in full force and effect as modified, and stating the modification); (ii) the date to which the rent and other charges have been paid; and (iii) that no notice has been received of any default which has not been cured and, to the best of its knowledge and belief, no default exists (or, if there has been notice or a default exists, a description of same). It is intended that any such statement delivered pursuant to this section may be relied upon by any

prospective purchaser of the fee, any mortgagee or assignee of any mortgage upon the fee or leasehold interest in the Subleased Premises, or any assignee of SubLessee if such assignment is approved by SubLessor as otherwise herein allowed.

#### **14.4 Fair Market Value.**

**14.4.1** For purposes of this Sublease, "Fair Market Value" of the Restaurant Improvements shall be determined on a going concern basis by an MAI appraiser experienced in valuing properties similar to the Restaurant with such appraiser to be selected jointly by SubLessee and SubLessor (or if SubLessee shall have defaulted under any mortgage, then the MAI appraiser shall be jointly selected by any mortgagee(s) and SubLessor). If the parties cannot agree on an appraiser, then each party shall select a qualified MAI appraiser experienced in valuing commercial property similar to the Restaurant to independently appraise the fair market value of the Improvements. If such appraisals determine a value which does not vary by more than twenty percent (20%), then the fair market value shall be the average of the two appraisals. If the fair market value of the Restaurant Improvements determined by the two appraisers varies by more than twenty percent (20%), then the two appraisers so selected shall appoint a third appraiser who shall conduct the appraisal of the fair market value of the Improvements.

**14.4.2** If the third appraiser determines a value within the range of values determined by the first two appraisers, the final fair market value will be the average of the third appraisal and that of the other appraisal that was closest to that of the third appraisal. If the third appraiser determines a value higher than the value determined by either of the first two appraisers, the final fair market value will be the higher of the values determined by the first two appraisers. If the third appraiser determines a value lower than the value determined by either of the first two appraisers, the final fair market value will be the lower of the values determined by the two appraisers. In any event, the final fair market value will not be higher than the higher of the first two appraisals or lower than the lower of the first two appraisals.

### **ARTICLE 15 - SUBLETTING AND ASSIGNMENT**

**15.1 Sub-Lease by SubLessee.** SubLessee may not sublet the Subleased Premises in whole or in part without SubLessor's prior written consent (which shall not be unreasonably withheld or delayed) with the exception of subleases to vendors in the ordinary course of Restaurant operations. The making of any such sublease shall not release SubLessee from, or otherwise affect in any manner, any of SubLessee's obligations hereunder. SubLessee may allow independent private service companies to enter and conduct business on the Subleased Premises for the benefit of the SubLessee's customers on an as-needed basis without a formal sub-lease or license agreement, provided that the service is occasional and incidental to the SubLessee's operation and that any compensation paid to SubLessee is included in Gross Receipts.

**15.2 Assignment by SubLessee.** SubLessee may assign this Sublease to any entity in which either SubLessee, Darby Campbell, or Bob McManus is an owner and a manager. The parties acknowledge that SubLessor is entering into this Sublease due to the experience of principals Darby Campbell and Bob McManus and their direct involvement in the management of the operating entity. Any other assignment or transfer of this Sublease, or any interest herein, shall require the prior written consent of SubLessor (except as otherwise may be provided in **Article**

14), which shall not be unreasonably withheld or delayed. Consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Any such assignment without such consent shall be void, and shall, at the option of SubLessor, terminate this Sublease.

## ARTICLE 16 - TAXES AND ASSESSMENTS

**16.1 Taxes as Additional Rental.** As additional rental hereunder, SubLessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed, or which may become a lien or charge on or against the land hereby demised, or any part thereof, the leasehold or SubLessee herein, the Subleased Premises described herein, any building or buildings, or any other improvements now or hereafter thereon, or on or against SubLessee's estate hereby created which may be a subject of taxation, or on or against SubLessor by reason of its ownership of the fee underlying this Sublease, during the entire term hereof, excepting only those taxes hereinafter specifically excepted.

**16.2 Assessments Affecting Improvements.** Specifically and without in any way limiting the generality of the foregoing, SubLessee shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which any such assessments or levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, SubLessee may elect either mode of payment and its election shall be binding on SubLessor. If, by making any such election to pay in installments, any of such installments shall be payable after the termination of this Sublease or any Renewal Term thereof, such unpaid installments shall be prorated as of the date of termination, and amounts payable after such date shall be paid by SubLessor. All of the taxes and charges under this **Article 16** shall be prorated at the commencement and expiration of the Initial Term or any Renewal Term hereof, as applicable.

**16.3 Taxes Excepted.** In the event SubLessor or SubLessee shall be required to pay any real estate taxes (or payments in lieu of taxes) or any other tax that might become due on account of ownership of the Subleased Premises herein, the leasehold or the leasehold improvements, SubLessor shall pay same and SubLessee shall not be required to pay any such tax or taxes and SubLessor shall hold SubLessee harmless therefrom, but expressly excluding any personal property taxes that may become due related to any personalty, equipment, or other moveable, tangible personal property owned by SubLessee which shall be paid by SubLessee.

**16.4 Contesting Taxes.** If SubLessee shall in good faith desire to contest the validity or amount of any tax, assessment, levy or other governmental charge herein agreed to be paid by SubLessee, SubLessee shall be permitted to do so, and to defer payment of such tax charge, the validity or amount of which SubLessee is so contesting, until final determination of the contest, on giving to SubLessor written notice thereof prior to the commencement of any such contest, which shall be at least sixty (60) days prior to delinquency, and on protecting SubLessor on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate or governmental charge, and from any costs, liability or damage arising out of any such contest.

**16.5 Disposition of Rebates.** All rebates on account of any such taxes, rates, levies, charges or assessments required to be paid and paid by SubLessee under the provisions hereof shall belong to SubLessee, and SubLessor will, on the request of SubLessee, execute any receipts, assignments or other acquittance that may be received by SubLessor.

**16.6 Receipts.** SubLessee shall obtain and deliver to SubLessor receipts or duplicate receipts for all taxes, assessments and other items required hereunder to be paid by SubLessee, promptly on payment thereof.

## **ARTICLE 17 - LIENS**

**17.1 SubLessee's Duty to Keep Subleased Premises Free of Liens.** SubLessee shall keep all of the Subleased Premises and every part thereof and all buildings and other improvements at any time located thereon, other than mortgages or liens on SubLessee's interest which are authorized under **Article 14** of this Sublease, free and clear of any and all mechanics', materialmen's and other liens for or arising out of or in connection with work or labor done, services performed or materials, supplies, or appliances used or furnished for or in connection with any operations of SubLessee, any alteration, improvement or repairs or additions which SubLessee may make or permit or cause to be made, or any work or construction, by, for or permitted by SubLessee on or about the Subleased Premises, or any obligations of any kind incurred by SubLessee, and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and to indemnify SubLessor against all such liens and claims of liens and suits or other proceedings pertaining thereto.

**17.2 Contesting Liens.** If SubLessee desires to contest any such lien, it shall notify SubLessor of its intention to do so within ten (10) days after the filing of such lien. In such case, and provided that SubLessee shall on demand protect SubLessor by a good and sufficient surety bond against any such lien and any cost, liability or damage arising out of such contest, SubLessee shall not be in default hereunder until ten (10) days after the final determination of the validity thereof, within which time SubLessee shall satisfy and discharge such lien to the extent held valid; but the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, and such delay shall be a default of SubLessee hereunder. In the event of any such contest, SubLessee shall protect and indemnify SubLessor against all loss, expense and damage resulting therefrom.

## **ARTICLE 18 – DEFAULT AND REMEDIES**

### **18.1 SubLessee's Default.**

**18.1.1** Except for a failure to pay rent when due, the notice and cure periods for which are governed by **Article 8**, SubLessee shall not be deemed to be in default hereunder unless SubLessor shall first give to SubLessee written notice of such default within thirty (30) days of SubLessor's discovery of said default, and SubLessee fails to cure such default within thirty (30) days of receipt of said notice or, where SubLessee's default cannot reasonably be cured within thirty (30) days, SubLessee fails to commence to cure within that period.

**18.1.2** Subject to **Section 18.1.1**, the occurrence of any one or more of the following events shall constitute a default and breach of this Sublease by SubLessee:

- a. SubLessee's abandonment or vacation of the Subleased Premises; or
- b. SubLessee's failure to pay any rent, interest or late charges as required to be paid by SubLessee under **Article 8**; or
- c. SubLessee's failure to promptly and fully keep and perform, or a violation by SubLessee of, any of the covenants, conditions or agreements contained in this Sublease where such failure continues for thirty (30) days after written notice from SubLessor to SubLessee; or
- d. The levy of a writ of attachment or execution on this Sublease or on any of the property of SubLessee located on the Subleased Premises which is not released or terminated within thirty (30) days; or
- e. The making by SubLessee of a general assignment for the benefit of creditors, or of an arrangement, composition, extension or adjustment with its creditors; or
- f. The filing by or against SubLessee of a petition for relief or other proceeding under the federal bankruptcy laws or state or other insolvency laws; or
- g. The failure of SubLessee to pay any other sum of money due hereunder; or
- h. The failure of SubLessee to construct and maintain facilities as required herein; or
- i. The failure of SubLessee to make, maintain or provide records as required herein; or
- j. The failure of SubLessee to perform any other material provision of this Sublease.

**18.2 SubLessor's Remedies:** Subject to **Article 14**, in the event of SubLessee's default hereunder, which has not been cured within the time allowed therefor under this Sublease, and in addition to any other rights or remedies SubLessor may have under this Sublease, SubLessor may elect:

**18.2.1 Right of Re-entry.** In addition to the other rights or remedies it may have, SubLessor shall have the immediate right of re-entry and may remove all persons and property from the Subleased Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of SubLessee. Should SubLessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, SubLessor may either terminate this Sublease or it may re-let the Subleased Premises as provided herein. No such re-entry or taking possession of the Subleased Premises by SubLessor shall be construed as an election on the part of SubLessor to terminate this Sublease unless a written notice of such intention is given to SubLessee or unless the termination thereof is decreed by a court of competent jurisdiction.

**18.2.2 SubLessor's Right to Re-let.** SubLessor may from time to time, without terminating this Sublease, re-let the Subleased Premises or any part thereof, to any other third party, for such term or terms and at such rental or rentals and on such other terms and conditions as SubLessor in its' reasonable discretion may, in good faith, deem advisable with the right to make reasonable alterations and repairs to the Subleased Premises. On each such re-letting (a) SubLessee shall be immediately liable to pay to SubLessor, in addition to any indebtedness other than rent due hereunder, the reasonable expenses of such re-letting and of such alterations and repairs, incurred by SubLessor, and the amount, if any, by which the Minimum Guaranteed Rent specified in this Sublease for the period of such re-letting (up to but not beyond the remainder of the Initial Term of this Sublease, or any Renewal Term, as applicable) exceeds the amount agreed to be paid as rent for the Subleased Premises by any third party for such period on such re-letting; or (b) at the option of SubLessor, rents received by SubLessor from such re-letting shall be applied first, to the payment of any indebtedness, other than rent due hereunder from SubLessee to SubLessor; second, to the payment of any expenses of such re-letting and of such alterations and repairs; third, to the payment of Minimum Guaranteed Rent due and unpaid hereunder, and the residue, if any, shall be held by SubLessor and applied in payment of future Minimum Guaranteed Rent as the same may become due and payable hereunder. If SubLessee has been credited with any rent to be received by such re-letting under option (a) hereof, and such rent shall not be promptly paid to SubLessor by the new tenant, or if such rentals received from such re-letting under option (b) hereof during any month are less than that to be paid during that month by SubLessee hereunder, SubLessee shall pay any such deficiency to SubLessor. Such deficiency shall be calculated and paid monthly.

**18.2.3 Termination.** Notwithstanding any such re-letting without termination, SubLessor may at any time elect to terminate this Sublease for such previous uncured breach. Should SubLessor at any time terminate this Sublease for any uncured breach, SubLessor may recover from SubLessee the damages incurred by reason of such uncured breach, including the cost of recovering the Subleased Premises, and including the present value at the time of such termination of the excess, if any, of the amount of Minimum Guaranteed Rent specified in this Sublease for the remainder of the Initial Term, or any Renewal Term, as applicable, over (i) the then reasonable rental value of the Subleased Premises for the remainder of the Initial Term, or any Renewal Term, as applicable, plus (ii) the value of the Restaurant Improvements, all of which amounts shall be immediately due and payable by SubLessee to SubLessor.

**18.2.4 SubLessor's Right to Perform.** If SubLessee, by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default hereunder and such failure shall continue for a period of thirty (30) days after written notice from SubLessor specifying the nature of the act or things to be done or performed, then SubLessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing, including entering on the Subleased Premises for such purposes, if SubLessor shall so elect, and SubLessor shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to SubLessee on account thereof, and SubLessee shall repay to SubLessor on demand the entire expense thereof, including compensation to the agents and employees of SubLessor. Any act or thing done by SubLessor pursuant to this section shall not be or be construed as a waiver of any such default by SubLessee, or as a waiver of any covenant,

term or condition herein contained or the performance thereof, or of any other right or remedy of SubLessor.

**18.2.5 Certain Damages.** Notwithstanding anything to the contrary in this Sublease, in no event shall SubLessee be liable, and SubLessor shall not claim any damages for lost profits or consequential damages.

**18.3 Partial Payment; Allocation of Payments.** No payment by SubLessee or receipt by SubLessor of a lesser amount than the rent and charges provided for in this Sublease shall be deemed to be other than on account of the earliest due rent or charges. No endorsement or statement on any check or letter accompanying any check or payment shall be an accord and satisfaction, and SubLessor may accept any such check or payment without prejudice to SubLessor's right to recover the balance of the rent and charges due hereunder or pursue any other remedy provided in the Sublease or by law. SubLessor shall have the right in its discretion to apply any payment received from SubLessee to any account or other payment obligations of SubLessee then delinquent.

**18.4 SubLessor's Default and SubLessee's Remedies.** If SubLessor fails to perform any covenant, condition or agreement contained in this Sublease within thirty (30) days after written notice from SubLessee specifying such default or, where SubLessor's default cannot reasonably be cured within thirty (30) days, SubLessor fails to commence to cure within that period, then SubLessor shall be liable to SubLessee for any damages sustained by SubLessee as a result of SubLessor's breach, including, but not limited to, payments to any mortgagee as a result of acceleration of or other payments under SubLessee's financing for the Restaurant Improvements, but excluding lost profits or consequential damages. SubLessee shall not have the right to terminate this Sublease or to withhold, reduce or offset any amount against any payments of rents or charges due and payable under this Sublease, except as may be specifically provided herein. SubLessee shall not have, and hereby waives, any claim against SubLessor for money damages arising by reason of any refusal, withholding or delay by SubLessor in giving any such consent, approval or statement of satisfaction. SubLessor will not unreasonably withhold any such consent, approval or statement of satisfaction. SubLessee's only remedies for any such refusal, withholding or delay shall be an action for specific performance, injunction or declaratory judgment.

**18.5 Interest.** Any rent, charges or other payments not paid when due under this Sublease shall bear interest from the date they become due until paid at the rate of ten percent (10%) per annum, compounded annually.

## **ARTICLE 19 – RESERVED**

## **ARTICLE 20 - EFFECT OF EMINENT DOMAIN**

**20.1 Effect of Total Condemnation.** In the event the entire Subleased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Sublease shall terminate and expire as of the date of such taking, and SubLessee shall thereupon be released from any liability thereafter accruing hereunder and SubLessee shall receive

all condemnation awards applicable to the improvements constructed or installed and paid for by SubLessee on the Subleased Premises as set forth in **Section 20.3** below.

## **20.2 Effect of Partial Condemnation.**

**20.2.1** In the event a portion of the Subleased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by SubLessee, SubLessee shall have the right to terminate this Sublease as of the date of such taking on giving to SubLessor written notice of such termination within thirty (30) days after SubLessor has notified SubLessee in writing that the property has been so appropriated or taken and SubLessee shall receive all condemnation awards applicable to the Restaurant Improvements constructed or installed and paid for by SubLessee on the Subleased Premises as set forth in **Section 20.3** below.

**20.2.2** In the event of such partial taking and SubLessee does not so terminate this Sublease, then this Sublease shall continue in full force and effect as to the part not taken, and the rental to be paid by SubLessee during the remainder of the term, shall continue at the same amount required at the time of such partial taking for the remainder of the applicable Operating Year as determined pursuant to **Article 8** herein, and thereafter shall be adjusted from time to time as is required pursuant to **Article 8** herein.

## **20.3 Condemnation Award.**

**20.3.1** In the event of the termination of this Sublease by reason of the total or partial taking of the Subleased Premises by eminent domain, then in any such condemnation proceedings SubLessor and SubLessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result thereof.

**20.3.2** In the event of a partial taking of the Subleased Premises and this Sublease is not terminated, then SubLessee shall have the right to make claim against the condemning or taking authority for only the un-amortized cost of the Restaurant Improvements constructed or installed on the Subleased Premises by SubLessee and located thereon at the time of the taking or appropriation, which Restaurant Improvements shall be deemed to have been amortized in equal annual amounts over the period commencing with the date of completion of such Restaurant Improvements at an assumed interest rate equal to twelve percent (12%) per year.

## **ARTICLE 21 - MISCELLANEOUS PROVISIONS**

**21.1 Waiver.** The waiver by SubLessor of, or the failure of SubLessor to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by SubLessor shall not be deemed to be a waiver of any preceding breach by SubLessee of any term, covenant, or condition of this Sublease, other than the failure of SubLessee to pay the particular rental so accepted, regardless of SubLessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Sublease shall be deemed to have been waived by SubLessor, unless such waiver be in writing by SubLessor.

**21.2 Transfer of Security.** If any security is given by SubLessee to secure the faithful performance of all or any of the covenants of this Sublease on the part of SubLessee, SubLessor may transfer or deliver the security, as such, to the purchaser of the reversion, in the event that the reversion be sold, and thereupon SubLessor shall be discharged from any further liability in reference thereto.

**21.3 Independent Contractor.** It is understood by and between the parties hereto that SubLessee, and its' employees or agents, in the performance of this Sublease, shall act as, and be, an independent contractor and not an agent or employee of SubLessor. The parties agree and acknowledge neither have any intention to create a joint venture or partnership relation between SubLessor and SubLessee and the same is hereby expressly disclaimed by both.

**21.4 Timely Implementation.** The parties hereto agree to immediately and diligently proceed with their respective duties as set forth herein to the end that the Restaurant will be managed and operated in a satisfactory manner.

**21.5 Factors Beyond SubLessee's Control.** SubLessee is not responsible for damages and will not be in default or deemed to be in default by reason of abnormally inclement weather, flooding, hail, earth slides, strikes, lockouts, war, rebellion, insurrection, acts of terrorism, or acts of God, or the failure of SubLessor to furnish timely information or to approve or disapprove SubLessee's work promptly, or delay or faulty performance of SubLessor, other contractors or governmental agencies, or any other delays beyond SubLessee's reasonable control.

**21.6 Surrender.** Upon expiration of the Term hereof, or earlier termination or cancellation as herein provided, SubLessee shall peaceably vacate the Subleased Premises and any and all improvements located herein and deliver up the same to SubLessor in a reasonably good condition, ordinary wear and tear excepted, subject to the other provisions of this Sublease, including compensation from SubLessor as provided herein. The voluntary or other surrender of this Sublease by SubLessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of SubLessor, terminate all or any existing subleases or sub-tenancies (unless otherwise agreed by SubLessor in writing), or may, at the option of SubLessor, operate as an assignment to it of any or all such subleases or sub-tenancies.

**21.7 Administration.** SubLessor shall be responsible for the administration of this Sublease on behalf of SubLessor and shall be assisted therein by those officers and employees of SubLessor having duties in connection with the administration thereto.

**21.8 Attorneys' Fees.** If any action at law or in equity shall be brought to recover any rent under this Sublease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Sublease, or for the recovery of the possession of the Subleased Premises, the parties shall be responsible for their own costs and attorneys' fees and shall not be allowed to recover same from the other party.

**21.9 Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, certified mail. Any notice, demand, request, consent,

approval, or communication that either party desires or is required to give to the other party shall be addressed to the party for whom intended as follows:

**LIBERTY PARK DEVELOPMENT, LLC:**

President  
300 Letterman Road  
Knoxville, TN 37919

And copy to:

7100B Kingston Pike  
Knoxville, TN 37919  
Attention: Robert T. McManus

GENTRY, TIPTON, & MCLEMORE, P.C.  
900 South Gay Street, Suite 2300  
Knoxville, TN 37902  
Attention: John G. Brock

**LIBERTY PARK GRILL, LLC:**

President  
7100B Kingston Pike  
Knoxville, TN 37919

And copy to:

300 Letterman Rd.  
Knoxville, TN 37919  
Attention: Darby Campbell

GENTRY, TIPTON & MCLEMORE, PC  
900 South Gay Street, Suite 2300  
Knoxville, TN 37902  
Attention: John G. Brock

Either party may change its address by notifying the other party of the change of address. Notice shall be effective when received. Notice shall be deemed received within seventy-two (72) hours from the time of mailing if mailed by United States Postal Service certified mail.

**21.10 Exhibits.** All exhibits referred to in this Sublease, are attached hereto and incorporated herein by reference.

**21.11 Number and Gender.** Whenever the singular is used in this Sublease and when required by the context, the same shall include the plural, and the masculine gender shall include the

feminine and neuter genders, and the word “person” shall include corporation, partnership, firm, association, or any other legal entity.

**21.12 Captions.** The captions appearing after the section number designations of this Sublease are for convenience only and are not a part of this Sublease and do not in any way limit or amplify the terms and provisions of this Sublease and shall have no effect upon the construction or interpretation of any part of this Sublease.

**21.13 Covenants and Conditions.** Each term and each provision, including, without limitation, the obligation for the payment of rent, to be performed by SubLessee or SubLessor as the case may be, shall be construed to be both a covenant and a condition of this Sublease.

**21.14 Binding.** Except as otherwise provided herein, each of the terms, covenants, and conditions of this Sublease shall extend to, and be binding on and shall inure to the benefit of not only SubLessor and SubLessee but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Sublease reference is made to either SubLessor or SubLessee, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed, and all of the parties hereto shall be jointly and severally liable hereunder.

**21.15 Interpretation.** This Sublease shall be construed and interpreted in accordance with the laws of the State of Tennessee without reference to its conflicts of laws principles. The language in all parts of this Sublease shall be in all cases construed simply according to its fair meaning, and not strictly for or against SubLessor.

**21.16 Entire Agreement.** This Sublease, and any exhibits or addenda attached hereto and forming a part hereof, set forth all the covenants, agreements and conditions between SubLessor and SubLessee concerning the Subleased Premises, to include any improvements, and there are no covenants, agreements or conditions either oral or written between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon SubLessor or SubLessee unless reduced to writing and signed by the party to be charged with the same.

**21.17 Time of the Essence.** Time is of the essence of this Sublease, and of each and every covenant, term, condition, and provision hereof.

**21.18 Authorization.** Each of the parties has obtained all consents and approvals necessary for the execution of this Sublease by its duly authorized representatives, who have the power and necessary legal capacity to enter into this Sublease and to bind the parties hereunder.

## **ARTICLE 22 - LIST OF EXHIBITS**

**Exhibit A** – Subleased Premises Survey and Legal Description

**Exhibit B** – SubLessee’s Restaurant Improvement Development Obligations and Plan

**Exhibit C – Plans Regarding Public Access Road and Perpetual Travel Easement**

**ARTICLE 23 - MEMORANDUM OF LEASE**

SubLessor and SubLessee agree to execute and record a memorandum of this Sublease in the Register's Office of Montgomery County, Tennessee evidencing the terms of this Sublease, which memorandum of Sublease shall include, without limitation, a description of the term of the Sublease and any renewal of extension options set forth herein.

**ARTICLE 24 - PUBLIC ACCESS ROAD and TRAVEL EASEMENT**

**24.1 Construction of Public Access Road.** SubLessee agrees to build a public access road (Public Access Road") in the area depicted with hash marks on **Exhibit C -1** attached hereto, at SubLessee's expense. Such Public Access Road will include curbs and gutters and meet the specifications required by law. This Public Access Road shall be conveyed to the City as provided in the Lease upon completion and dedicated to the public use, and SubLessee agrees to execute any required bond(s) in connection therewith. Upon dedication, the City shall maintain this Public Access Road as part of its road maintenance program.

**24.2 NonExclusive Perpetual Travel Easement.** SubLessor hereby grants SubLessee a nonexclusive perpetual easement ("Travel Easement") between the Public Access Road and the Subleased Premises. The location of the Travel Easement is generally depicted and highlighted on **Exhibit C-2**, attached hereto. SubLessor may relocate the Travel Easement in its reasonable discretion. This Travel Easement shall be in recordable form and shall be recorded in the Register's Office of Montgomery County, Tennessee. The Travel Easement will be at least twenty-five (25) feet wide. SubLessor acknowledges the Travel Easement is necessary for SubLessee to have access to the Subleased Premises in order to construct the Restaurant Improvements and to operate and maintain the Restaurant as provided in this Sublease. SubLessee will build an access road along the Travel Easement, at SubLessee's expense .

**24.3 Further Specifications.** Any additional specifications or agreements between SubLessor and SubLessee regarding the Public Access Road and the Travel Easement will be in writing.

**24.4 Access to Public Roadways.** Notwithstanding anything contained on Exhibit A to the contrary, any access to the Subleased Premises from a public roadway is subject to the approval of the appropriate regulatory authorities.

**NOTHING FURTHER THIS PAGE**

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

**LIBERTY PARK DEVELOPMENT, LLC**

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By: Darby A. Campbell  
Title: President

**LIBERTY PARK GRILL, LLC**

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By: Robert T. McManus  
Title: President

# SUBLEASE AGREEMENT

## FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE AND PROFESSIONAL MANAGEMENT OF A RESTAURANT AT LIBERTY PARK

This ~~SubLease~~ (the "Sublease") Agreement, is made and ~~executed~~entered into as of the \_\_\_\_\_ day of ~~January~~February, 2014, by and between ~~THE CITY OF CLARKSVILLE~~Liberty Park Development, LLC, hereinafter referred to as ~~"City SubLessor"~~"City SubLessor" or ~~"Lessor"~~, and ~~Cumberland Tavern~~Liberty Park Grill, LLC, hereinafter referred to as ~~"SubLessee."~~

### ARTICLE 1 - BACKGROUND

**1.1 Liberty Park Project.** ~~The City of Clarksville, Tennessee (the "City") is in the final stages of the development and construction of~~constructed a premier, national quality, urban park entitled Liberty Park located at mile marker 126 along the Cumberland River, approximately half-way between Nashville and the confluence of the Cumberland River (Lake Barkley) with the Tennessee River (Kentucky Lake). The park project is situated upon 144 acres of land partly owned by the City, and partly owned by the United States, Department of the Army, Corps of Engineers (hereafter "USACE"), which part has been leased to the City through a long-term, renewable lease.

**1.2 ~~Commercial Development Restaurant Lease Area~~Subleased Premises Intent.** To attract the public to Liberty Park, and to increase surrounding property values and thereby increase the tax base for same, the City ~~desires to~~ entered into ~~an~~a lease agreement with ~~Lessee~~SubLessor on December 22, 2011, for the development, construction, operation and maintenance of a full service, high quality restaurant, located within the Liberty Park area, as the same was amended by Addendum One on August 2, 2012 and as further amended on August 1, 2013 (as amended, the "Lease") on real property within the City of Clarksville, County of Montgomery, State of Tennessee, which is more particularly described in Exhibit A (Commercial Development Restaurant Lease Area). ~~Lessee~~SubLessee, whose principals include ~~a~~ restaurant developers, owners and operators, desires to construct and install a full service, high quality restaurant and to operate and maintain the same through a long term sublease of a portion of the property under the ~~Lease~~ to SubLessor from the City, and to provide professional restaurant management services and conduct full service restaurant operations, and to pay rent to ~~the City~~SubLessor therefor, all as more fully described herein.

SubLessor's original legal name was Cumberland Tavern, LLC, which was changed to Liberty Park Grill, LLC and has subsequently been changed to Liberty Park Development, LLC. Notwithstanding anything to the contrary in this Sublease, nothing in this Sublease has any effect on the rights and responsibilities of the City or SubLessor under the Lease and the terms and conditions of the Lease remain in full force and effect. For avoidance of doubt, this Sublease describes the rights and responsibilities of Sublessor and Sublessee as between and among themselves and does not affect the rights or responsibilities under such Lease. If there are any

inconsistencies between the terms of this Sublease and the terms of the Lease, as between the City and SubLessor, the terms of the Lease shall prevail.

**1.3 Restaurant Name.** The parties agree that the restaurant shall be called the “~~Riverside Tavern~~Liberty Park Grill.” SubLessee may change the name of the restaurant upon prior written notice to SubLessor.

**1.4 Objectives for SubLessee’s Performance.** ~~City~~SubLessor and SubLessee agree that the primary objectives for SubLessee’s performance under this SubLease are: (1) to construct, operate and maintain a full service, high quality restaurant as generally indicated in **Exhibit B**; and (2) to maximize the public use of the restaurant as well as the revenues to be received by ~~City~~SubLessor and the return on SubLessee’s operations therefrom. Whenever approvals from the Mayor or the City are required under this SubLease, it is SubLessor’s responsibility to use best efforts to obtain such approvals under the Lease.

## ARTICLE 2: Definitions

**2.1 Mayor.** “Mayor” shall mean the Mayor of the City or his / her designee.

**2.2 Restaurant.** “Restaurant” shall mean the public eating establishment within the ~~Commercial Development Restaurant Lease Area~~Subleased Premises as described in **Exhibit A** and, as the property is developed pursuant to this SubLease, any improvements located thereon from time to time during the term hereof.

### **2.3 Gross Receipts.**

**2.3.1** “Gross Receipts” shall mean the total of the Gross Sales (whether for cash or credit or partly for cash and credit) of the SubLessee and each and every occupant, sub-lessee, assignee, licensee, concessionaire, and permittee from business operations conducted on the ~~Premises~~Subleased Premises of any type, and shall include, but not be limited to:

- a. the full price charged for any and all goods, merchandise, food, beverages and services sold upon or from the ~~Premises~~Subleased Premises;
- b. all receipts from sales made by means of vending machines or other coin or token operated devices located in or upon the ~~Premises~~Subleased Premises;
- c. all amounts charged for services performed upon or from the ~~Premises~~Subleased Premises;
- d. all amounts charged by SubLessee for sales occurring or arising as a result of solicitation off the ~~Premises~~Subleased Premises by personnel operating from the ~~Premises~~Subleased Premises or reporting to or under the supervision of any employee of any occupant, sub-lessees, and licensees, of the ~~Premises~~Subleased Premises;
- e. all amounts charged for any internet, mail, telephone, or other orders taken;

- f. the amounts of all deposits not refunded to purchasers;
- g. the amounts of money or other in kind consideration paid by third parties for promotions made in conjunction with the SubLessee, occupants, sub-lessees or licensees; ~~and~~
- h. the receipt from any other business conducted upon or from the ~~PremisesSubleased~~ Premises; and
- i. all sublease revenues.

**2.3.2** For the purposes of the preceding, any installment or credit sale shall be treated as a sale for the full price charged at the time the sale is made and no deduction shall be allowed for uncollectible credit accounts.

**2.3.3** SubLessee covenants that the business of each occupant, sub-lessee, assignee, licensee, concessionaire, and permittee shall be conducted so that a dated sales check or invoice shall be prepared for each sale on the ~~PremisesSubleased~~ Premises and production of such records as SubLessee customarily maintains related thereto shall be made as the records of the SubLessee are so required herein.

**2.3.4** Gross ~~R~~Receipts shall not include:

- a. license fees and sales taxes collected for direct remittance to a taxing authority generated by the sale of goods and services;
- b. cash discounts allowed or taken on sales;
- c. the amount of any sales or use tax required by law to be included in or added to the purchase price, and collected from the consumer or purchaser and paid by SubLessee;
- d. the proceeds from any financing for the construction of the Restaurant Improvements or working capital for the Restaurant.

**2.3.5** In the case of vending machines, Gross Receipts shall be the total amount taken by the vending machines after rental payments, sales and excise taxes.

**2.3.6** The Gross Receipts shall be the property of SubLessee, its sub-lessees, assignees, licensees, concessionaires, and permittees, respectively, subject to SubLessee's obligation to pay rent based on the Gross Receipts as set forth in **Article 8**.

**2.3.7** For the purposes of the preceding, occupant, sub-lessee, assignee, licensee, concessionaire, and permittee shall mean each and every person or entity permitted by SubLessee to occupy the ~~PremisesSubleased~~ Premises.

**2.4 Sublease Revenues.** “Sublease Revenues” shall mean the total amount of rent collected by SubLessee from any further sub-lessees who sub-lease the PremisesSubleased Premises or any part thereof from SubLessee.

**2.5 Maintenance Standards.** “Maintenance Standards” shall mean standards for maintaining the Restaurant in good working condition, consistent with industry standards for restaurants of comparable quality and shall include the requirements of **Articles 5 and 10**.

**2.6 Operating Year.** The first “Operating Year” shall commence on January 1, 201~~2~~4, and shall run therefrom until the end of the calendar year. Each “Operating Year” thereafter shall be a calendar year covering the period between January 1 and December 31 of each year, ~~except that the last year of the Initial Term of this lease shall be a partial year and shall run from January 1, 2034 up to and including October 31, 2034.~~

**2.7 PremisesSubleased Premises.** “Premises” (or “~~Leased Premises,~~” or “~~Demised Premises,~~” or “~~Commercial Development Restaurant Lease Area~~”) “Subleased Premises” shall mean the real property as shown in **Exhibit A**, and all related buildings, facilities, structures, utilities and infrastructure in, under or upon same, including but not limited to, any parking spaces, which together comprise the “~~Commercial Development Restaurant Lease AreaSubleased Premises,~~” and any improvements located thereon from time to time during the term hereof, together with all easements, rights of way and licenses reasonably necessary to ingress, egress, utilities and signage necessary or appropriate to construct, maintain and operate the Restaurant. ~~The following are expressly excluded from the Premises:~~

a. ~~the “public access road,” which is located outside of the Premises but contiguous thereto, the rights and obligations to which are described in Article 24 and Exhibit C.~~

**2.8 Restaurant Improvements.** “Restaurant Improvements” shall mean all buildings, facilities, structures, infrastructure and utilities constructed or installed by, or to be constructed or installed by SubLessee, or at SubLessee’s direction, as generally specified in **Exhibit B**.

### ARTICLE 3 - PREMISESSUBLEASED PREMISES

#### 3.1 Leased PremisesSubleased Premises.

**3.1.1** CitySubLessor hereby leases to SubLessee, and SubLessee subleases from CitySubLessor, those certain PremisesSubleased Premises situated in Clarksville, Montgomery County, Tennessee, and more particularly described and shown in **Exhibit A**, for the purpose of developing, constructing, installing, operating, and maintaining a professional, full service, high quality public restaurant, for rent and other consideration as set forth more fully herein.

**3.1.2** ~~The CitySubLessor~~ represents that the realty conveyed and the SubLessee represents that the constructed Restaurant and all related facilities are or will be in material compliance with all applicable federal, state and local environmental and hazardous substance laws, rules and regulations.

**3.1.3** SubLessee shall make no demand upon CitySubLessor for any initial or later construction of any improvement, or development, maintenance or alteration of the PremisesSubleased Premises during the term of this SubLease except as expressly provided in this SubLease.

**3.1.4** SubLessee acknowledges that it has made personal inspection of the PremisesSubleased Premises and the surrounding area and accepts same in its' "as is" condition as of the effective date of this SubLease. Excepted from the "as is" acceptance are any previously existing environmental hazards, whether discovered before or after the effective date of this SubLease, not attributable to any fault or negligence, or intentional acts or omissions of SubLessee or its' employees, agents, sub-lessees, or assignees, which shall be the sole responsibility or liability of ~~the CitySubLessor~~ as between the parties hereto.

**3.2 Improvements and Equipment to be Provided by SubLessee.** Restaurant Improvements required to be constructed, installed or otherwise provided by SubLessee pursuant to this SubLease are as generally described in **Article 9** and **Exhibit B**. All Restaurant Improvements shall be at SubLessee's sole expense. All Restaurant Improvements shall be constructed in accordance with all applicable building codes and regulations. All Restaurant Improvements shall be subject to the approval of ~~the MayorSubLessor~~, which approval shall not be unreasonably withheld, delayed or conditioned. SubLessee shall use reasonable and good faith efforts to diligently pursue completion of construction or installation of such Restaurant Improvements on a timely basis as described herein and in **Exhibit B**, subject to delays beyond the reasonable control of SubLessee.

**3.3 Ownership and Disposition of Improvements on Termination of SubLease.**

**3.3.1 Improvements.**

a. Ownership of all Restaurant Improvements (excluding any removable restaurant maintenance or service equipment, which shall remain the property of SubLessee) constructed, installed or acquired by SubLessee and placed upon the PremisesSubleased Premises, and all alterations or additions thereto, shall be titled in the City ~~SubLessor as provided in the Lease~~ and become a part of the real property leased by the City ~~SubLessor to SubLessor and subleased from SubLessor to SubLessee~~ upon completion and installation of same upon the PremisesSubleased Premises.

b. If this SubLease for any reason is terminated prior to the expiration of the Initial Term, or if the term of this SubLease is not renewed at the end of the Initial Term, or at the end of the first, second, or third Renewal Term(s), as is provided for herein, CitySubLessor shall pay to SubLessee, for the Restaurant Improvements constructed, installed or acquired by SubLessee and placed upon the PremisesSubleased Premises, and all alterations or additions thereto, subject to **Article 14**, ~~a mutually agreed upon amount, or if the parties cannot mutually agree to an amount, then an amount which shall be determined as provided below by the City and SubLessor under the Lease.~~

~~e. In the event that an amount cannot be agreed upon, then the parties shall each appoint a single appraiser, which such two (2) appraisers shall use their best efforts to jointly appoint a single qualified appraiser, known to both to be well qualified in appraising restaurants and restaurant operations, to determine the fair market value of the Restaurant Improvements constructed, installed or acquired by Lessee and placed upon the Premises, and all alterations or additions thereto, on a “going concern basis,” subject to Article 14, which shall be the amount paid by the City to Lessee for the Restaurant Improvements. The decision of the appraiser regarding the fair market value shall be final.~~

dc. Notwithstanding any provision of this **subsection 3.3.1** to the contrary, if this SubLease is not renewed after the Initial Term or at the end of any subsequent Renewal Term because of a default by SubLessee which has not been cured within any applicable grace or cure period, or if this SubLease is terminated at any time after the Initial Term of this SubLease as a result of SubLessee's default under this SubLease which is not cured within any applicable grace or cure period, then all Restaurant Improvements constructed or installed by SubLessee and placed upon the PremisesSubleased Premises, and all alterations or additions thereto (except for any removable restaurant maintenance or service equipment) shall be the sole property of SubLessor without payment to SubLessee of any amount therefor, subject to the provisions of **Article 14**. In such event, CitySubLessor shall pay to SubLessee an amount equal to the fair market value for any removable restaurant maintenance or service equipment, in the manner provided in subparagraphs b. and e. above (~~except that the fair market value of same shall not be determined on a “going concern” basis~~), subject to the provisions of **Article 14**.

ed. Upon the expiration of any fourth Renewal Term, all Restaurant Improvements constructed or installed by SubLessee and placed upon the PremisesSubleased Premises, and all alterations or additions thereto (except for any removable restaurant maintenance or service equipment), shall be the sole property of the City as provided in the LeaseSubLessor without payment to SubLessee of any amount therefor, subject to the provisions of **Article 14**. City, either directly or through SubLessor, shall have the option to pay to SubLessee an amount equal to the fair market value for any removable restaurant maintenance or service equipment, in the manner provided in subparagraphs b. and e. above (~~except that the fair market value of same shall not be determined on a “going concern” basis~~), or to require SubLessee to remove any removable restaurant maintenance or service equipment from the PremisesSubleased Premises. CitySubLessor shall give SubLessee at least ninety (90) days written notice prior to the expiration of any fourth Renewal Term of CitySubLessor's option decision.

### **3.3.2 Annual Reports, Plans and Reviews.**

A. To maintain the aesthetic standards and quality required by CitySubLessor with respect to the PremisesSubleased Premises, SubLessee shall submit to CitySubLessor thirty (30) days prior to the commencement of each Operating Year after the Certificate of Occupancy has been obtained, an annual report describing any Improvements made during the previous year and plans for any Improvements, upgrading or other changes proposed for the following year, for review by CitySubLessor. CitySubLessor may use such annual report during its yearly inspection of the Leased PremisesSubleased Premises. Further, as more fully described below, any proposed plans for Improvements exceeding a cost of ONE HUNDRED THOUSAND DOLLARS

and ZERO CENTS (\$100,000.00) shall not be implemented, nor shall capital projects be started, without prior written request from SubLessee and the prior written approval from CitySubLessor. Any written request for approval of improvements as required herein shall be separately provided by SubLessee to CitySubLessor from any required annual report.

B. CitySubLessor shall conduct an annual review of the restaurant operations in accordance with the maintenance standards as described in **Articles 5 and 10**. The annual review shall become a part of the permanent record that will assist CitySubLessor in determining SubLessee's fulfillment of and compliance with the SubLease requirements. If for any reason ~~the CitySubLessor~~ shall not conduct said annual review, the same is not a breach of ~~the CitySubLessor~~'s duties herein, nor damage to the SubLessee, and not a waiver for the same to be conducted subsequently.

#### ARTICLE 4 - TERM

**4.1 Initial Term.** The "Initial Term" of this SubLease shall commence on January 1, 2012~~4~~ and continue up to and including December 31, 2038.

**4.2 Renewal Terms.** Except as otherwise provided below, the Initial Term of this SubLease may be extended for four (4) additional periods of ten (10) years each ("Renewal Term(s)") beyond the Initial Term, each Renewal Term subject to CitySubLessor's approval, upon SubLessee providing written notice to ~~the CitySubLessor~~ at least one hundred and eighty (180) calendar days prior to the expiration of the Initial Term or any subsequent Renewal Term of its intention to exercise the option to renew the SubLease. However, in no event shall SubLessee be entitled to renew the term of this SubLease unless SubLessee shall have timely performed all of its' obligations hereunder, and is not in default in the performance of any of the terms, provisions or conditions herein, upon the date of expiration of the Initial Term or any subsequent Renewal Term. All Renewal Terms, if any, shall continue on the terms, provisions and conditions herein, including the payment of rent as set forth in **Article 8**.

**4.3 Holding Over.** If SubLessee holds over beyond the expiration of the Initial Term, or any subsequent Renewal Term, with consent, express or implied, of ~~the CitySubLessor~~, such holding over shall only be from month-to-month, subject to the conditions of this SubLease, and shall not be a renewal hereof, and shall be at the maximum allowable compensation provided herein, calculated for the number of months and/or days held over, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

**4.4 Mutual Termination.** The parties may, upon mutual agreement expressed in writing, during the Initial Term of this SubLease, or during any subsequent Renewal Term, on not less than one hundred eighty (180) days' notice prior to termination, dissolve and terminate this SubLease and the relationship of the parties. CitySubLessor shall not be liable for completion of any construction, installation or renovation of Restaurant Improvements initiated by SubLessee, or its sub-lessees, assignees, licensees, concessionaires or permittees, and CitySubLessor shall be held harmless and indemnified therefrom.

#### ARTICLE 5 - SUBLESSEE'S BASIC SERVICE OBLIGATIONS

**5.1 Days and Hours of Operation.** The Restaurant shall be open to the public as SubLessee shall determine in its reasonable business judgment.

**5.2 Building and Equipment Maintenance Services.**

**5.2.1** SubLessee shall, at its expense, keep and maintain the PremisesSubleased Premises, including but not limited to, the Restaurant, and all other buildings, structures, improvements, fixtures, trade fixtures, appurtenances, equipment and utility systems which may now or hereafter exist on or in the PremisesSubleased Premises, in good, operable, usable and sanitary order and repair and in a good, safe and first-class condition throughout the term of this SubLease, timely providing for such repairs, replacements, rebuilding and restoration as may be required to comply with the requirements of this SubLease. All such repairs and/or any modifications or additions to the facilities exceeding ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00) must be approved by ~~the Mayor~~SubLessor, in writing, prior to implementation by SubLessee.

**5.2.2** Should SubLessee fail, after thirty (30) days' written notice from CitySubLessor of the need to cure its non-performance of obligations under this section, CitySubLessor may enter upon the PremisesSubleased Premises and perform SubLessee's obligations. Notwithstanding the preceding sentence, in the event of an unsafe situation or emergency, CitySubLessor may immediately enter upon the PremisesSubleased Premises without notice to SubLessee to perform such repairs, replacement, rebuilding and/or restoration as necessary. On demand by CitySubLessor, SubLessee shall reimburse CitySubLessor for the reasonable costs, direct or indirect, incurred by CitySubLessor under this section as determined by ~~the Mayor~~SubLessor.

**5.2.3** CitySubLessor shall not have any duty to make, nor shall it be called upon to make, any improvements, repairs, replacements, rebuilding or restoration whatsoever to the PremisesSubleased Premises or any structures, improvements, fixtures, trade fixtures, appurtenances, equipment or utilities on the PremisesSubleased Premises during the term of this SubLease. The parties specifically acknowledge that the cost of any maintenance of the PremisesSubleased Premises is solely the responsibility of the SubLessee and ~~his~~ failure to maintain the same is a material breach of this SubLease. All maintenance costs paid by SubLessee shall be deemed additional rental for purposes of computing any real property or other tax which may be due or payable to the maximum extent permitted by law.

**5.3 Grounds Maintenance Services.** During the term of this SubLease, SubLessee shall provide grounds maintenance services for the PremisesSubleased Premises, including but not limited to, the obligation to mow, edge, and trim grass, bushes, plants, and vegetation, as well as to provide weed, disease and pest control, litter control and rubbish removal, parking lot sweeping, tree maintenance, and maintenance of any irrigation systems. SubLessee shall replace or change any supplies, materials or procedure used by SubLessee that are found objectionable by ~~the Mayor~~SubLessor, based on a commercially reasonable standard, within ten (10) days' notice to SubLessee from ~~the Mayor~~SubLessor's request for such replacement or change.

**5.3.1 Standards.** All maintenance work shall be performed in accordance with high quality industry-wide maintenance standards for comparable first-class restaurants located around the southeast to maintain the aesthetic level and proper condition of the Restaurant.

**5.3.2 Restaurant Personnel.** SubLessee shall provide and maintain in its employ a Restaurant manager and sufficient personnel to perform all operations necessary to operate and maintain a full service Restaurant. Upon request by ~~the Mayor~~SubLessor, SubLessee shall remove any employee or agent of SubLessee as deemed necessary by ~~the Mayor~~SubLessor, for reasonable cause.

**5.3.3 Equipment, Supplies and Materials.** SubLessee, at its sole cost and expense, shall furnish all necessary equipment, supplies and material of good quality and in sufficient quantity to fulfill the requirements of this SubLease and to accomplish an acceptable and professional level of maintenance.

## ARTICLE 6 - SUBLESSEE'S OPERATING RESPONSIBILITIES

**6.1 Compliance with Laws.** SubLessee shall comply with all municipal ordinances and all state and federal laws and regulations applicable to restaurant operations. SubLessee shall not knowingly permit any illegal activities to be conducted on the ~~Premises~~Subleased Premises. If any permits or licenses are required for restaurant operations or any construction authorized by this SubLease, SubLessee shall obtain all such required permits or licenses from the appropriate agency before undertaking the regulated activity.

**6.2 Compliance with Rules and Regulations.** SubLessee shall not knowingly or intentionally fail to comply with any rules and regulations set forth by any governmental body, agency or instrumentality, as such may be amended from time to time.

**6.3 SubLessee's Obligation to Refrain from Discrimination.** SubLessee shall not discriminate against any person or group of persons on account of race, color, creed, religion, ancestry, national origin, gender or disability in the execution of any activities in this SubLease. Neither SubLessee itself, nor any person claiming under or through it, shall establish or permit any practice of discrimination in the hiring of staff, selection of vendors and contractors, or in the access to and use of the Restaurant facilities or in the execution of any other activity as permitted through this SubLease.

**6.4 Signs.** SubLessee shall not post signs of any kind, nature or size, other than customary signage for directional purposes, traffic control, parking, no littering, fuel and trash points, restroom locations, etc., and any signs required by any applicable federal, state or local laws or regulations, upon the ~~Premises~~Subleased Premises without the prior written approval of ~~the Mayor~~SubLessor. ~~City~~SubLessor shall be responsible for maintenance of the entrance signs located at the entrance to Liberty Park along Highway 48/13 and along the Cumberland River at Freedom Point, and reference to the Restaurant may be added to these signs if practicable and at SubLessee's sole expense. In addition, SubLessee may install, at its sole expense, promotional or advertising signage on pylons or monuments customarily used for advertising high quality

restaurants, in accordance with any applicable laws or regulations pertaining to signage, upon written approval of ~~the Mayor~~SubLessor as to its aesthetic design.

**6.5 Public Use; Marketing.** SubLessee shall use all reasonable efforts to market and promote the Restaurant, and to effectively secure the financial and operating success of the Restaurant.

**6.6 Utilities.** SubLessor shall be responsible for, and shall provide utilities to the property line of the ~~Premises~~Subleased Premises, to include water, sewer, gas and electrical service, necessary for the construction, installation and operation of the Restaurant Improvements. SubLessee shall be responsible for, and shall provide and pay for, all utilities serving the ~~Premises~~Subleased Premises from the property line, including but not limited to, water, gas, heat, light, power, telephone and internet service, electricity, sewer and trash removal and other public utilities of every kind furnished to the ~~Premises~~Subleased Premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the ~~Premises~~Subleased Premises and all activities conducted thereon, and CitySubLessor shall have no responsibility of any kind for any thereof. SubLessee waives any and all claims against CitySubLessor for compensation for loss or damage caused by defect, deficiency or impairment of any utility system, including but not limited to, water or irrigation system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires, telephone or internet service, light, power, sewer and trash removal serving the ~~Premises~~Subleased Premises.

**6.7 Public Safety.** SubLessee shall immediately correct any unsafe condition on the ~~Premises~~Subleased Premises, as well as any unsafe practices occurring thereon. SubLessee shall use reasonable efforts to summon emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on the ~~Premises~~Subleased Premises. SubLessee shall cooperate fully with CitySubLessor in the investigation of any accidental injury or death, or pertaining to any crime or violation of law, occurring on the ~~Premises~~Subleased Premises, including a prompt written report regarding all major injuries or deaths and deliver such to ~~the Mayor~~SubLessor. Upon written request, SubLessee shall submit to ~~the Mayor~~SubLessor a report pertaining to any injury which may occur on the ~~Premises~~Subleased Premises, including minor injuries, major injuries and deaths, in addition to the immediate report of all major injuries and deaths. A major injury is one attended to by, or requiring the service of, emergency personnel.

**6.8 Use of Facilities: Restrictions; Uses Prohibited; No Waste and Nuisance.**

**6.8.1** SubLessee shall obtain ~~the Mayor~~SubLessor's prior written approval of its policies and procedures regarding the frequency and circumstances under which any events or activities requiring the exclusive use of the ~~Premises~~Subleased Premises or any designated portion thereof may occur.

**6.8.2** SubLessee shall not use, or permit the ~~Premises~~Subleased Premises, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the ~~Premises~~Subleased Premises are hereby subleased; and no use shall be made or permitted to be made of the ~~Premises~~Subleased Premises, or acts done, which will cause a cancellation of any

insurance policy covering the ~~PremisesSubleased Premises~~, or any of the improvements located on the ~~PremisesSubleased Premises~~, or any part thereof, nor shall ~~Sub~~Lessee sell, or permit to be kept, used, or sold, in or about the ~~PremisesSubleased Premises~~, any article which may be prohibited by the standard form of fire insurance policies. ~~Sub~~Lessee shall, at its sole cost, comply with all requirements, pertaining to the ~~PremisesSubleased Premises~~, of any insurance organization or company, necessary for the maintenance of insurance, as herein provided, covering any improvements and appurtenances at any time located on the ~~PremisesSubleased Premises~~.

**6.8.3** During the term of this ~~Sub~~lease, ~~Sub~~Lessee intends to comply with all applicable laws affecting the ~~PremisesSubleased Premises~~. If Lessee's failure to comply with any applicable law results in any penalty on ~~the CitySubLessor~~ or an expressed threat of forfeiture affecting ~~the CitySubLessor's~~ title to the ~~PremisesSubleased Premises~~ or any part thereof, such failure on ~~Sub~~Lessee's part shall be deemed a default by ~~Sub~~Lessee pursuant to Section 18.1.3 of this ~~Sub~~lease. ~~Sub~~Lessee shall not knowingly or intentionally commit, or suffer to be committed, any waste on the ~~PremisesSubleased Premises~~, or any nuisance.

**6.9 Meetings.** Representatives of ~~Sub~~Lessee and ~~CitySubLessor and, if appropriate, the City~~ shall meet according to a schedule to be determined by the ~~two~~ parties and at such other times as may be required by ~~CitySubLessor~~ to review ~~Sub~~Lessee's performance under this ~~Sub~~lease and to discuss any problems or matter as determined by ~~CitySubLessor or the City~~.

**6.10 Trade Fixtures.** ~~Sub~~Lessee, at its own expense, shall provide and install all equipment and trade fixtures required by this ~~Sub~~lease. Upon the expiration or earlier termination of this ~~Sub~~lease, said equipment and trade fixtures shall be the property of ~~Sub~~Lessee, and ~~Sub~~Lessee shall have the right to remove same.

**6.11 Prices: Goods and Services.** ~~Sub~~Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods and services supplied to the public on or from the ~~PremisesSubleased Premises~~. Such list or schedule of the prices shall be provided to ~~the MayorSubLessor~~ upon request. Such prices shall be fair and reasonable based on the following considerations: that the Restaurant operation is intended to serve the needs of the public for the goods and services supplied at a fair and reasonable cost and that the prices charged should be comparable to prices charged for similar goods and services by other full service Restaurants within the southeastern region of the United States.

**6.12 Abandonment of ~~PremisesSubleased Premises~~.** ~~Sub~~Lessee shall not vacate or abandon the ~~PremisesSubleased Premises~~ at any time during the term hereof. If ~~Sub~~Lessee shall abandon, vacate or surrender the ~~PremisesSubleased Premises~~, or be dispossessed by process of law, or otherwise, any personal property belonging to it and left on the ~~PremisesSubleased Premises~~ shall be deemed to be abandoned, at the option of ~~CitySubLessor~~, except such property as may be encumbered to ~~CitySubLessor~~, and subject to **Article 14**.

## ARTICLE 7 - ~~CITYSUBLESSOR'S COVENANTS AND REPRESENTATIONS~~

**7.1 Quiet Enjoyment.** ~~CitySubLessor~~ covenants that so long as ~~Sub~~Lessee is in the rightful possession of the ~~PremisesSubleased Premises~~ and is not in default under this ~~Sub~~lease,

SubLessee shall quietly hold, occupy and enjoy the PremisesSubleased Premises throughout the term hereof, free from hindrance, ejection or disturbance by CitySubLessor or any other party claiming under, through, or by right of CitySubLessor. CitySubLessor agrees to pay and discharge any payments and charges and, at its expense, prosecute all appropriate actions, judicial or otherwise, necessary to assure such free and quiet occupation, but in no event shall CitySubLessor be liable to SubLessee for any lost profits.

**7.2 Governmental Agencies.** CitySubLessor has no knowledge of any existing conditions in or about the PremisesSubleased Premises or otherwise which violate any city, county, state or federal law, ordinance or regulation, including but not limited to, regulations related to zoning and use of the PremisesSubleased Premises, and CitySubLessor has not received any notice, written or otherwise, from any governmental agency requiring the correction of any condition with respect to the PremisesSubleased Premises that might be in violation of any law, ordinance or regulation.

**7.3 Title to the Real Property, Personal Property and Improvements.** CitySubLessor has good ~~and indefeasible title and / or leasehold~~ rights to the real property, personal property and improvements, free and clear of all liens, claims and encumbrances of any nature, which constitute the PremisesSubleased Premises hereunder.

**7.4 Litigation, Claims or Proceedings.** There are no existing or pending actions, suits, litigation, claims, proceedings or governmental investigations with respect to any aspect of any of the PremisesSubleased Premises, nor, to the knowledge of CitySubLessor, have any such actions, suits, litigation, claims, proceedings or governmental investigations been threatened or asserted.

**7.5 Permits.** CitySubLessor and SubLessee shall cooperate fully with one another as necessary to enable the proper party to procure and/or transfer and maintain all licenses, permits or authorizations necessary for the operation of the PremisesSubleased Premises. Upon the termination of this SubLease, any permits or licenses will be transferred, as permitted by law, to CitySubLessor, and any expenses incurred with respect thereto shall be an Operating Expense of SubLessee, subject to **Article 14**.

**7.6 Warranties.** SubLessee will maintain all warranties, guarantees, and maintenance contracts on the equipment and furnishings of the PremisesSubleased Premises and will endeavor to cause the reimbursement of expenses for maintenance, repair and replacement, and for labor and materials associated with all warranted or guaranteed equipment and furnishings utilized in the operation of the PremisesSubleased Premises.

**7.7 Violation of SubLease.** Neither the execution and delivery of this SubLease by CitySubLessor nor CitySubLessor's performance of its obligations hereunder will result in a violation or breach of any term or provision(s) or constitute a default or accelerate the performance required under any other agreement or document to which CitySubLessor is a party or is otherwise bound or to which the PremisesSubleased Premises, or any part thereof, is subject, and will not constitute a violation of any law, ruling, regulation or order to which CitySubLessor is subject.

## ARTICLE 8 - RENTAL PAYMENTS

**8.1 Rent to CitySubLessor.** SubLessee agrees to pay to CitySubLessor as rent a “Minimum Guaranteed Rent” and a “Gross Receipts Percentage Rent” for each Operating Year, and in addition thereto, after the second Operating Year in which rent is paid hereunder, “Escalator Rent”, as set forth below, provided, however, that no rent shall be due or payable under this Article 8 until the month following the month in which SubLessee obtains a Certificate of Occupancy for the Restaurant.

**8.1.1 Minimum Guaranteed Rent.** Beginning the month after the month in which the SubLessee obtains a Certificate of Occupancy for the Restaurant (and prorated for such Operating Year), SubLessee shall pay to CitySubLessor as Minimum Guaranteed Rent the amount of TWENTY THOUSAND DOLLARS and ZERO CENTS (\$20,000.00) annually, said amount to be payable in monthly installments in the amount of (\$1,666.67) per month, payable on or before the first day of each month during the Initial Term (except as provided above) or any subsequent Renewal Term of this SubLease, without notice or demand from CitySubLessor, and without any set-off, which are hereby expressly waived by SubLessee. Any Minimum Guaranteed Rent due for a partial month shall be prorated. Beginning the third Operating Year in which rent is paid hereunder, SubLessee shall pay to CitySubLessor as Minimum Guaranteed Rent the amount of TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00) annually, said amount to be payable in monthly installments in the amount of (\$2,083.33) per month, payable as described above.

**8.1.2 Gross Receipts Percentage Rent.** In addition to Minimum Guaranteed Rent, SubLessee shall pay an additional amount as rent to ~~the~~ CitySubLessor, denominated as “Gross Receipts Percentage Rent,” equal to:

A. one percent (1%) of Gross Receipts between TWO MILLION FOUR HUNDRED THOUSAND AND ONE DOLLARS AND ZERO CENTS (\$2,400,001.00) and THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00);

B. one point five percent (1.5%) of Gross Receipts between THREE MILLION AND ONE DOLLARS AND ZERO CENTS (\$3,000,001.00) and THREE MILLION AND FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$3,500,000.00);

C. two percent (2%) of Gross Receipts between THREE MILLION AND FIVE HUNDRED THOUSAND AND ONE DOLLARS AND ZERO CENTS (\$3,500,000.00) and FOUR MILLION DOLLARS AND ZERO CENTS (\$4,000,000.00);

D. two point five percent (2.5%) of Gross Receipts over FOUR MILLION AND ONE DOLLARS and ZERO CENTS (\$4,000,001.00)

for each Operating Year during the Initial Term or any subsequent Renewal Term of this SubLease. The Gross Receipts Percentage Rent for any partial year shall be prorated based on the actual number of calendar days that SubLessee subleases the PremisesSubleased Premises during such year.

**8.1.3 Escalator Rent.** After the second Operating Year in which rent is paid hereunder, in addition to the Minimum Guaranteed Rent and any Gross Receipts Percentage Rent required to

be paid by SubLessee, for any given Operating Year, SubLessee shall also pay as an additional rental sum to be denominated as "Escalator Rent," an amount equal to two percent (2%) of the previous Operating Years total rental payments paid by SubLessee, but only if the total Gross Receipts for such Operating Year, equal or exceed the total Gross Receipts for the previous Operating Year.

**8.2 Rental Payments Due; Gross Receipts Report.** SubLessee shall make rental payments to CitySubLessor on a monthly basis on or before the first day of the month, with respect to the Minimum Guaranteed Rent for each Operating Year. Payments shall be made in the name of CitySubLessor of Clarksville and addressed to CitySubLessor of Clarksville, Department of Finance, One Public Square, Clarksville, Tennessee 37040, at the address provided in the Notice provisions or such other address as the CitySubLessor may provide to SubLessee in writing. SubLessee shall include with its' payment a revenue, sales and rent report in form satisfactory to the CitySubLessor which shall include a statement of Gross Receipts by source categories and such other pertinent information as the CitySubLessor may reasonably require. Payments of Gross Receipts Percentage Rent and Escalator Rent, if any, shall be paid within ninety (90) days after the end of the applicable Operating Year. If any payment of rent due under this Article 8 is not paid by the due date, CitySubLessor shall provide SubLessee written notice of such failure to pay rent and SubLessee shall have ten (10) calendar days to cure such rental payment default.

**8.3 Interest on Unpaid Rent.** Rent due pursuant to this **Article 8** which is not immediately paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum, compounded annually. Except as described in Section 8.2, notice of late payment is not required but may be provided by CitySubLessor to SubLessee.

**8.4 Late Charge.** SubLessee acknowledges a late payment by SubLessee to CitySubLessor of any rent payment required by this **Article 8** will cause CitySubLessor to incur costs not contemplated by this SubLease, the exact amount of which costs is extremely difficult and impractical to fix. Such costs include, without limitation, legal fees, administrative processing and accounting charges. Therefore, if any installment of rent or payment due from SubLessee is not received prior to or on the date when due, SubLessee shall pay to CitySubLessor an additional sum of five percent (5%) of the overdue portion of the rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs CitySubLessor will incur by reason of late payment by SubLessee. Acceptance of any late charge shall not prevent CitySubLessor from exercising any of the other rights and remedies available to CitySubLessor.

**8.5 Cost of Insurance Deemed Additional Rental.** The cost of insurance required to be carried by SubLessee as provided in **Article 12** shall be deemed to be additional rental hereunder.

## ARTICLE 9 - CONSTRUCTION OF NEW RESTAURANT FACILITIES

**9.1 Purpose.** SubLessee shall construct the Restaurant Improvements in accordance with the requirements of this SubLease, said Restaurant Improvements being more fully described in **Exhibit B**. For the construction of any new building, structure or improvement, SubLessee shall follow the requirements contained herein.

**9.2 Plans and Specifications.** SubLessee shall, at SubLessee's sole expense, prepare plans and specifications for any new building, structure or improvement the cost of which is in excess of ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00), to be erected on the PremisesSubleased Premises. Such plans and specifications shall be submitted to ~~the CitySubLessor~~ for the prior written approval by ~~the CitySubLessor~~. ~~The CitySubLessor~~ shall not unreasonably withhold such approval, and in the event of disapproval, ~~the CitySubLessor~~ shall give to SubLessee an itemized statement of reasons therefor within sixty (60) days after the same are submitted to ~~the CitySubLessor~~. Prior to the commencement of any such work, SubLessee shall furnish SubLessor with a good and sufficient surety bond(s) guaranteeing the completion of such building, structure or improvement (Performance Bond) and the payment of all bills therefor (Payment Bond).

**9.3 Alterations, Improvements and Changes Permitted.** SubLessee shall have the right to make such alterations, improvements and changes to any building, structure or improvement which may from time to time be on the PremisesSubleased Premises as SubLessee may deem necessary, or to replace any such building, structure or improvement with a new one of at least equal value, provided that prior to making any structural alterations, improvements or changes, or to replacing any such building, structure or improvement, SubLessee shall obtain written approval of plans and specifications therefor from ~~the CitySubLessor~~, which approval ~~the CitySubLessor~~ shall not unreasonably withhold, provided that the value of the building, structure or improvement shall not be diminished and the structural integrity of the building, structure or improvement shall not be adversely affected by any such alterations, improvements or changes, or that any proposed new building, structure or improvement is at least equal in value to the one which it is to replace, as the case may be. In the event of disapproval, ~~the CitySubLessor~~ shall give to SubLessee an itemized statement of reasons therefor. SubLessee will in no event make any alterations, improvements or other changes of any kind to any building, structure or improvement on the PremisesSubleased Premises that will decrease the value of such building, structure or improvement or that will adversely affect the structural integrity of the building, structure or improvement. Prior to commencing any work that will cost in excess of ONE HUNDRED THOUSAND DOLLARS and ZERO CENTS (\$100,000.00), SubLessee shall furnish ~~the CitySubLessor~~, on demand, with a good and sufficient surety bond(s) insuring the completion of such work (Performance Bond) and the payment of all bills therefor (Payment Bond).

## ARTICLE 10 - REPAIRS AND DESTRUCTION OF IMPROVEMENTS

**10.1 Maintenance of Improvements.** SubLessee shall, throughout the term of this SubLease, at its own cost, and without any expense to ~~CitySubLessor~~, keep and maintain the PremisesSubleased Premises, including all Restaurant Improvements of every kind which may be a part thereof, and all appurtenances thereto, including sidewalks adjacent thereto, in good, sanitary and neat order, condition and repair, and, except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. ~~CitySubLessor~~ shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the PremisesSubleased Premises or any buildings or improvements thereon except as set out in this SubLease. SubLessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws, regulations and deed restrictions affecting the PremisesSubleased Premises, the improvements thereon or any activity or condition on or in such

[PremisesSubleased Premises](#) and the Restaurant, ingress, egress, utilities and signage necessary or appropriate to construct, maintain and operate a Restaurant as otherwise set out herein.

**10.2 Damage to and Destruction of Improvements.** The damage, destruction or partial destruction of any Restaurant Improvement which is a part of the [PremisesSubleased Premises](#) shall not release [SubLessee](#) from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, [SubLessee](#) shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Without limiting such obligations of [SubLessee](#), it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to [SubLessee](#) for such repair or replacement.

**10.3 Damage or Destruction Occurring Toward End of Term.** Anything to the contrary in the immediately preceding paragraphs of this Article notwithstanding, in case of destruction of the Restaurant Improvements on the [PremisesSubleased Premises](#) or damage thereto from any cause so as to make them un-tenantable occurring during the last two (2) years of the Initial Term or any Renewal Term hereof, [SubLessee](#), if not then in default hereunder, may elect to terminate this [SubLease](#) by written notice served on [CitySubLessor](#) within sixty (60) days after the occurrence of such damage or destruction. In the event of such termination, there shall be no obligation on the part of [SubLessee](#) to repair or restore the Restaurant Improvements and, subject to **Article 14**, [CitySubLessor](#) shall have the right to receive any proceeds collected under any insurance policies covering such Restaurant Improvements or any part thereof; provided, however, [SubLessee](#) shall cause to be removed any debris existing after any such casualty or loss and shall have the right to use insurance proceeds to pay for such removal. On such termination, rent, taxes, assessments and any other sums payable by [SubLessee](#) to [CitySubLessor](#) hereunder shall be prorated as of the termination date, and in the event any rent, taxes or assessments shall have been paid in advance, [CitySubLessor](#) shall rebate the same for the unexpired period for which payment shall have been made.

**10.4 Election Not to Terminate.** If, in the event of such destruction or damage during the last two (2) years of the Initial term or any Renewal Term hereof, [SubLessee](#) does not elect to terminate this [SubLease](#), the proceeds of all insurance covering such damage or destruction shall be made available to [SubLessee](#) for such repair or replacement, and [SubLessee](#) shall be obligated to repair or rebuild the Restaurant Improvements as above provided.

## ARTICLE 11 - BUSINESS RECORDS

**11.1 Types of Records.** [SubLessee](#) shall maintain a method of accounting for all the receipts, revenues, sales, and expenses in connection with the Restaurant, which shall correctly and accurately reflect the Gross Receipts and disbursements received or made by [SubLessee](#) from the Restaurant. [SubLessee](#) shall establish and implement adequate internal controls for Restaurant operations. The system of accounting, including bank accounts established for the Restaurant, shall be separate from the accounting system used for any other business operated by [SubLessee](#). Such method shall include the keeping of the following documents for a period of three (3) years following the creation of such record:

- a. Regular books of account such as general ledgers;

b. Journals including supporting and underlying documents such as vouchers, bank statements, etc.;

c. State and Federal income tax returns and sales tax returns and other documents proving payment of sums shown;

d. Sales records, including weekly sales cash reports (which shall be retained so that day-to-day sales can be identified and records must be maintained and available on site for inspection at all reasonable times upon prior notice); and

e. Any other accounting records that ~~the CitySubLessor~~, in its' reasonable discretion, deems necessary for proper reporting of receipts.

**11.2 Audit of Records.** All documents, books and accounting records kept by SubLessee pursuant to this Article 11 shall be open for inspection by CitySubLessor at any reasonable time during the Term of this Lease and for at least three (3) years thereafter. In addition, ~~the CitySubLessor~~ or its' authorized representative may, from time to time, conduct an audit of the books of the SubLessee and observe the operation of the business. If the report of Gross Receipts or any part thereof made by SubLessee to CitySubLessor shall be found to be less than the amount of Gross Receipts disclosed by such audit or observation, SubLessee shall pay to CitySubLessor within thirty (30) days after billing any additional rental amounts as disclosed by any such audit. If the discrepancy exceeds ten percent (10%), SubLessee shall also pay the cost of the audit.

**11.3 Annual Report.** SubLessee shall submit the front page of its federal tax return prepared and signed by an independent certified public accountant to substantiate the Gross Receipts reported to ~~the CitySubLessor~~ by SubLessee, along with a reconciliation of the rental payments based thereon prepared by a certified public accountant. Such information shall be delivered to ~~the CitySubLessor~~ within One Hundred Twenty (120) days of the close of each Operating Year occurring during the Term of this SubLease.

**11.4 Public Records.** SubLessee acknowledges that all information obtained by ~~the CitySubLessor~~ in connection with the provision of records to ~~the CitySubLessor~~ or with CitySubLessor's inspection of the financial records of SubLessee or of any audit in connection to the Restaurant operations may be subject to public inspection and / or reproduction as public records in accordance with the State "Open Records" law.

## ARTICLE 12 - INDEMNITY and INSURANCE

### 12.1 Indemnity.

**12.1.1** CitySubLessor shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by SubLessee or by any person whomsoever may at any time be using or occupying or visiting the ~~PremisesSubleased Premises~~, or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of SubLessee or of any occupant, sub-tenant, visitor or user of any portion of the ~~PremisesSubleased Premises~~, or shall

result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and SubLessee shall indemnify CitySubLessor against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage. SubLessee hereby waives all claims against CitySubLessor for damages to the building and improvements that are hereafter placed or built on the PremisesSubleased Premises and to the property of SubLessee in, on or about the PremisesSubleased Premises, and for injuries to persons or property in or about the PremisesSubleased Premises, from any cause arising at any time.

**12.1.2** SubLessee shall indemnify, hold harmless and assume the defense of, in any actions at law or in equity, CitySubLessor, its officers, employees, ~~and agents and elected officials and appointive boards~~ from all claims, losses, damages, including property damage, personal injury, including death, and liability of every kind, nature and description arising from or connected with the use or occupancy of ~~Premises~~ the Subleased Premises by SubLessee or performance of this SubLease by SubLessee or any person directly under the control of SubLessee. Acceptance of insurance certificates or policy endorsements required under this SubLease does not relieve SubLessee from liability under this **Article 12**. This **Article 12** shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims of damages.

**12.2 Insurance.** During the term of this SubLease, SubLessee shall obtain and maintain in full force and effect as a cost of the operation the following insurance coverage:

**12.2.1 Workers' Compensation Insurance.** Full workers' compensation insurance necessary in connection with the performance of this SubLease to protect SubLessee and its employees under the Tennessee Workers' Compensation Act. Such insurance shall relieve CitySubLessor from all responsibility therefor.

**12.2.2 Liability Insurance.** Broad form property damage, personal injury, automobile, employers and comprehensive form liability insurance with carrier(s) acceptable to CitySubLessor in the amount of One Million Dollars (\$1,000,000.00) for injury to or death of any one person, and Five Million Dollars (\$5,000,000.00) for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of Five Million Dollars (\$5,000,000.00) insuring against all liability of SubLessee and its authorized representatives arising out of and in connection with SubLessee's use or occupancy of the PremisesSubleased Premises; provided that (1) CitySubLessor, its officers, agents and employees shall be added as additional insureds to the policy, (2) the policy shall stipulate that this insurance shall operate as primary insurance, and (3) the policy shall stipulate that no other insurance affected by CitySubLessor or other named insureds will be called upon to cover a loss covered thereunder. All public liability insurance and property damage insurance shall insure performance by SubLessee of the indemnity provisions of Section 12.1. SubLessee shall file with ~~the~~ MayerSubLessor, within fifteen (15) days of the execution of this SubLease, endorsements to its insurance policy that shall provide for the above requirements. Such insurance shall specifically insure SubLessee against all liability assumed by it hereunder, as well as liability imposed by law, and shall insure both CitySubLessor and SubLessee but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for CitySubLessor and SubLessee.

**12.2.3 SubLessee's Fire and other loss Insurance.** SubLessee, as an operating expense, shall maintain and keep on all its personal property, SubLessee's improvements, and alterations in, on or about the ~~Premises~~Subleased Premises, including but not limited to, buildings and other improvements, a policy of standard fire and extended or other coverage insurance (including but not limited to Fire, Wind, and Vandalism, with sprinkler damage, vandalism and malicious mischief endorsements), to the extent of One Hundred percent (100%) of their full replacement value, without reduction for depreciation of SubLessee's improvements or alterations if damaged, with loss payable to ~~City~~SubLessor and SubLessee as their interests may appear. Any loss adjustment shall require the written consent of both ~~City~~SubLessor and SubLessee. In the event of an insured loss, SubLessee agrees to use the insurance proceeds to replace and repair the insured loss to the extent required under this ~~Sub~~Lease.

**12.3 Certificate of Insurance.** SubLessee shall provide to ~~City~~SubLessor, within thirty (30) days of the execution of this ~~Sub~~Lease, and prior to engaging in any operation or activity set forth in this ~~Sub~~Lease, certificate(s) of insurance which shall provide that no cancellation, major change in coverage or non-renewal by the insurance company will be made during the Term of this ~~Sub~~Lease, without thirty (30) days' written notice to ~~City~~SubLessor prior to the effective date of such cancellation or change in coverage.

**12.4 ~~City~~SubLessor's Right to Pay Premiums on Behalf of SubLessee.** All of the policies of insurance referred to in this section shall be written in form satisfactory to ~~City~~SubLessor and by insurance companies satisfactory to ~~City~~SubLessor. SubLessee shall pay all of the premiums therefor and deliver such policies, or certificates thereof, to ~~City~~SubLessor, and in the event of the failure of SubLessee, either to effect such insurance in the names herein called for or to pay the premiums therefor or to deliver such policies, or certificates thereof, to ~~City~~SubLessor, ~~City~~SubLessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable to ~~City~~SubLessor with the next installment of rental, and failure to repay the same shall carry with it the same consequence as failure to pay any installment of rental. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to ~~City~~SubLessor, that it will give to ~~City~~SubLessor sixty (60) days' written notice before the policy or policies in question shall be altered or cancelled. ~~City~~SubLessor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by SubLessee.

**12.5 Definition of Full Replacement Value.** The term "full replacement value" of improvements, as used herein, shall mean the actual replacement cost thereof from time to time less exclusions provided in the normal fire insurance policy. In the event either party believes that the full replacement value (that is to say, the then replacement cost less exclusions) has increased or decreased, it shall have the right, but, except as provided below, only at intervals of not less than two (2) years, to have such full replacement value re-determined by the fire insurance company which is then carrying the largest amount of fire insurance carried on the ~~Premises~~Subleased Premises (hereinafter referred to as "impartial appraiser"). The party desiring to have the full replacement value so re-determined by such impartial appraiser shall forthwith on submission of such determination to such impartial appraiser give written notice thereof to the other party hereto. The determination of such impartial appraiser shall be final and binding on the parties hereto, and SubLessee shall forthwith increase (or may decrease) the amount of the insurance carried pursuant to this section as the case may be, to the amount so determined by the impartial appraiser. Such determination shall be binding for a period of two (2) years, and until

superseded by agreement between the parties hereto or by a subsequent redetermination by an impartial appraiser. SubLessee shall pay the fee, if any, of the impartial appraiser. If during any such two (2) year period SubLessee shall have made improvements to the PremisesSubleased Premises, CitySubLessor may have such full replacement value re-determined at any time after such improvements are made, regardless of when the full replacement value was last determined.

**12.6 Adjustment of Coverage.** In the event that CitySubLessor shall at any time reasonably determine, on a commercially reasonable basis, based on inflation or based on insurance limits customarily maintained by owners and operators of similar property to the Restaurant, that the limits of the personal injury or property damage public liability insurance then carried is insufficient, CitySubLessor shall raise the limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus raised. The expenses of such determination, if any, shall be borne by the SubLessee.

**12.7 Blanket Insurance Policies.** Notwithstanding anything to the contrary contained in this section, SubLessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by SubLessee; provided, however, that the coverage afforded CitySubLessor will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this SubLease by reason of the use of such blanket policy of insurance, and provided further that the requirements of the foregoing **Article 12** are otherwise satisfied.

**12.8 Cost of Insurance Deemed Additional Rental.** The cost of insurance required to be carried by SubLessee in this **Article 12** shall be deemed to be additional rental as is provided by **Article 8**.

#### **ARTICLE 13 - PROHIBITION OF INVOLUNTARY ASSIGNMENT; EFFECT OF BANKRUPTCY OR INSOLVENCY**

**13.1 Prohibition of Involuntary Assignment.** Neither this SubLease nor the leasehold estate of SubLessee nor any interest of SubLessee hereunder in the PremisesSubleased Premises or in the building or improvements thereon shall be subject to involuntary assignment, transfer or sale, or to assignment, transfer or sale by operation of law in any manner whatsoever (except through statutory merger or consolidation, or devise, or intestate succession) and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

**13.2 Effect of Bankruptcy.** Without limiting the generality of the provisions of the preceding **Section 13.1**, SubLessee agrees that in the event any proceedings under the Bankruptcy Code or any amendment thereto be commenced by or against SubLessee, such event shall be deemed to constitute a breach of this SubLease by SubLessee and shall, at the election of CitySubLessor, but not otherwise, without notice or entry or other action of CitySubLessor terminate this SubLease and also all rights of SubLessee under this SubLease and in and to the PremisesSubleased Premises and also all rights of any and all persons claiming under SubLessee.

**ARTICLE 14 - ENCUMBRANCE OF CITYSUBLESSOR'S INTEREST,  
NON-DISTURBANCE AND ATTORNMENT**

**14.1 No Subordination of Fee Interest.** SubLessee shall not have the right, at any time during the Initial Term or any subsequent Renewal Term of this SubLease, to subject the fee interest of CitySubLessor in the PremisesSubleased Premises, or any part or parts thereof, including all rights and easements appurtenant thereto, to any one or more mortgages, liens, deeds of trust or other encumbrances of such fee interest.

**14.2 Mortgages of SubLessee's Interest.** SubLessee, and every successor and assign of SubLessee (including, but not limited to, any sub-lessee of SubLessee, but only with CitySubLessor's prior written consent, not unreasonably withheld) are hereby given the right by CitySubLessor in addition to any other rights herein granted, without CitySubLessor's prior written consent, to mortgage their interests in this SubLease, or any part or parts thereof, and assign the SubLease, or any part or parts thereof, and any further sub-lease(s) as collateral security for such mortgage(s), upon the conditions that (i) all rights acquired under such mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this SubLease and to all rights and interests of CitySubLessor herein, none of which covenants, conditions or restrictions is or shall be waived by CitySubLessor by reason of the right given so to mortgage such interest in this SubLease, except as expressly provided herein and (ii) the proceeds of any such financing shall be used solely to pay costs and expenses related to the construction or installation of Restaurant Improvements or operation of the Restaurant. If SubLessee and/or SubLessee's successors and assigns (including, but not limited to, any sub-lessee of SubLessee, but only with CitySubLessor's prior written consent, not unreasonably withheld) shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such mortgage(s) shall, within thirty (30) days of its execution, send to CitySubLessor a true copy thereof, together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage(s), CitySubLessor agrees that, so long as any such leasehold mortgage(s) shall remain unsatisfied of record or until notice of satisfaction is given by the holder(s) to CitySubLessor, the following provisions shall apply:

**14.2.1** There shall be no cancellation, termination or modification of this SubLease by joint action of CitySubLessor and LesseeSubLessee without the prior written consent in writing of the leasehold mortgagee(s).

**14.2.2** CitySubLessor shall, upon serving SubLessee with any notice of default, simultaneously serve a copy of such notice upon the holder(s) of such leasehold mortgage(s). The leasehold mortgagee(s) shall thereupon have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and CitySubLessor shall accept such performance by or at the instigation of such leasehold mortgagee(s) as if the same had been performed by SubLessee.

**14.2.3** Anything herein contained notwithstanding, while such leasehold mortgage(s) remains unsatisfied of record, or until written notice of satisfaction is given by the holder(s) to CitySubLessor, if any default shall occur which, pursuant to any provision of this SubLease, entitles CitySubLessor to terminate this SubLease, and if, before the expiration of thirty (30) days from the date of service of notice of termination upon such leasehold mortgagee(s), such leasehold

mortgagee(s) shall have notified [CitySubLessor](#) of its desire to nullify such notice and shall have paid to [CitySubLessor](#) all rent and additional rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this [SubLease](#), if any are then in default, and shall prosecute the same to completion with reasonable diligence, then in such event [CitySubLessor](#) shall not be entitled to terminate this [SubLease](#) and any notice of termination theretofore given shall be void and of no effect.

**14.2.4** [CitySubLessor](#) agrees that the name of the leasehold mortgagee(s) may be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by [SubLessee](#) hereunder on condition that the insurance proceeds are to be applied in the manner specified in this [SubLease](#), including **Section 14.2.7**, and that the leasehold mortgage(s) or collateral document shall so provide.

**14.2.5** [CitySubLessor](#) and [SubLessee](#) agree that in the event of a default under any leasehold mortgage, and the transfer of the [Sublease](#) pursuant to any foreclosure under any leasehold mortgage (or any transfer in lieu of foreclosure), then the assignee or transferee of [SubLessee](#)’s right under the [SubLease](#) shall be subject to [CitySubLessor](#)’s reasonable approval. Any such assignee or transferee must be experienced in the operation of Restaurants (or employ a management company experienced in operating Restaurants). If [CitySubLessor](#) does not approve any such proposed assignee or transferee which is experienced in operating restaurants (or has employed a management company experienced in operating restaurants), then [CitySubLessor](#) shall either (i) purchase all of the Restaurant Improvements constructed or installed by [LesseeSubLessor](#) at the fair market value of such Restaurant Improvements, or (ii) [CitySubLessor](#) shall operate the Restaurant or select the operator for the Restaurant, in which case [CitySubLessor](#) shall assume the indebtedness owed by [SubLessee](#) to the leasehold mortgagee and/or shall pay such indebtedness in full. The fair market value of the Restaurant Improvements will be determined in accordance with **Section 14.4** below.

**14.2.6** [CitySubLessor](#) agrees that, in the event of termination of this [SubLease](#) by reason of any default by [SubLessee](#), if [CitySubLessor](#) does not exercise its rights under **sub-section 14.2.5 (i)** or **(ii)** above, [CitySubLessor](#) will enter into a new lease of the [PremisesSubleased Premises](#) with the leasehold mortgagee(s) or its nominee(s), for the remainder of the Term, effective as of the date of such termination, at the rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this [SubLease](#) is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the [PremisesSubleased Premises](#), provided:

a. Any new lease or transfer for such mortgagee(s) or its nominee(s) is subject to [CitySubLessor](#)’s prior written approval, which approval shall include the requirement that the mortgagee or its nominee (or its management company which will operate the Restaurant) is experienced in operating restaurants and the mortgagee(s) or its nominee must have the financial ability to perform its obligations under the [SubLease](#).

b. Said mortgagee(s) or its nominee(s) shall make written request upon [CitySubLessor](#) for such new lease within fifteen (15) days after the date of such termination and such written request is accompanied by payment to [CitySubLessor](#) of (A)

sums then due CitySubLessor under this SubLease; and (B) a written, enforceable agreement by which leasehold mortgagee or its nominee agrees to be bound by the terms, provisions and conditions hereof, in form reasonably satisfactory to CitySubLessor.

c. Said leasehold mortgagee(s) or its nominee(s) shall pay to CitySubLessor, at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof be due pursuant to this SubLease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which CitySubLessor shall have been subjected by reason of such default.

d. Said leasehold mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained to be performed on SubLessee's part and shall further remedy any other conditions which SubLessee under the terminated lease was obligated to perform under the terms of this SubLease.

e. Such new lease shall be expressly made subject to the rights, if any, of CitySubLessor under the terminated lease.

f. The new subLessee under such new lease shall have the same right, title and interest in and to the Restaurant Improvements on the PremisesSubleased Premises as the original SubLessee had under the terminated lease.

**14.2.7** The proceeds from any insurance policies or arising from a condemnation are to be held by any leasehold mortgagee(s) and distributed pursuant to the provisions of this SubLease, but the leasehold mortgagee(s) may reserve its right to apply to the mortgage debt all, or any part, of SubLessee's share of such proceeds pursuant to such mortgage(s).

**14.2.8** CitySubLessor shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee(s) an agreement prepared at the sole cost and expense of SubLessee, in form reasonably satisfactory to such leasehold mortgagee(s), between CitySubLessor, SubLessee and leasehold mortgagee(s), agreeing to all of the provisions of this **Article 14**. The term "mortgage," whenever used herein, shall include whatever security instruments are used in the locale of the PremisesSubleased Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code. The term "mortgage," whenever used herein, shall also include any instruments required in connection with a sale-leaseback transaction.

**14.3 Estoppel Certificate.** At any time and from time to time, but not less than twenty (20) days subsequent to the receipt of a written request by either of them from the other, CitySubLessor and SubLessee agree to execute, acknowledge and deliver to the requesting party a statement in writing certifying (i) that this SubLease is unmodified and is in full force and effect (or if there have been such modifications, that the same is in full force and effect as modified, and stating the modification); (ii) the date to which the rent and other charges have been paid; and (iii) that no notice has been received of any default which has not been cured and, to the best of its knowledge and belief, no default exists (or, if there has been notice or a default exists, a description of same). It is intended that any such statement delivered pursuant to this section may be relied upon by any prospective purchaser of the fee, any mortgagee or assignee of any mortgage upon the fee or

leasehold interest in the PremisesSubleased Premises, or any assignee of SubLessee if such assignment is approved by CitySubLessor as otherwise herein allowed.

#### **14.4 Fair Market Value.**

**14.4.1** For purposes of this SubLease, "Fair Market Value" of the Restaurant Improvements shall be determined on a going concern basis by an MAI appraiser experienced in valuing properties similar to the Restaurant with such appraiser to be selected jointly by SubLessee and CitySubLessor (or if SubLessee shall have defaulted under any mortgage, then the MAI appraiser shall be jointly selected by any mortgagee(s) and CitySubLessor). If the parties cannot agree on an appraiser, then each party shall select a qualified MAI appraiser experienced in valuing commercial property similar to the Restaurant to independently appraise the fair market value of the Improvements. If such appraisals determine a value which does not vary by more than twenty percent (20%), then the fair market value shall be the average of the two appraisals. If the fair market value of the Restaurant Improvements determined by the two appraisers varies by more than twenty percent (20%), then the two appraisers so selected shall appoint a third appraiser who shall conduct the appraisal of the fair market value of the Improvements.

**14.4.2** If the third appraiser determines a value within the range of values determined by the first two appraisers, the final fair market value will be the average of the third appraisal and that of the other appraisal that was closest to that of the third appraisal. If the third appraiser determines a value higher than the value determined by either of the first two appraisers, the final fair market value will be the higher of the values determined by the first two appraisers. If the third appraiser determines a value lower than the value determined by either of the first two appraisers, the final fair market value will be the lower of the values determined by the two appraisers. In any event, the final fair market value will not be higher than the higher of the first two appraisals or lower than the lower of the first two appraisals.

~~**14.5 Lessee Financing and Lease Termination.** City and Lessee acknowledge and agree that financing, including providing appropriate security interests, is necessary for completing the Restaurant Improvements, and Lessee agrees to use good faith efforts to diligently pursue any required financing. If Lessee has not obtained adequate financing necessary for completing the Restaurant Improvements and provided evidence of same to the City in form satisfactory to the City, on or before September 30, 2012, the City, or Lessee, or both, shall have the right to terminate this Lease upon written notice to the other. Upon such termination, neither party shall have any further liability to the other party regarding this Lease.~~

### **ARTICLE 15 - SUBLETTING AND ASSIGNMENT**

**15.1 Sub-Lease by SubLessee.** SubLessee may not sublet the PremisesSubleased Premises in whole or in part without CitySubLessor's prior written consent (which shall not be unreasonably withheld or delayed) with the exception of subleases to vendors in the ordinary course of Restaurant operations. The making of any such sublease shall not release SubLessee from, or otherwise affect in any manner, any of SubLessee's obligations hereunder. SubLessee may allow independent private service companies to enter and conduct business on the PremisesSubleased Premises for the benefit of the SubLessee's customers on an as-needed basis without a formal sub-lease or license agreement, provided that the service is occasional and incidental to the

SubLessee's operation and that any compensation paid to SubLessee is included in Gross Receipts.

**15.2 Assignment by SubLessee.** SubLessee may assign this SubLease to any entity in which either SubLessee, Darby Campbell, or Bob McManus is an owner and a manager. The parties acknowledge that SubLessor is entering into this SubLease due to the experience of principals Darby Campbell and Bob McManus and their direct involvement in the management of the operating entity. Any other assignment or transfer of this SubLease, or any interest herein, shall require the prior written consent of CitySubLessor (except as otherwise may be provided in **Article 14**), which shall not be unreasonably withheld or delayed. Consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Any such assignment without such consent shall be void, and shall, at the option of CitySubLessor, terminate this SubLease.

## ARTICLE 16 - TAXES AND ASSESSMENTS

**16.1 Taxes as Additional Rental.** As additional rental hereunder, SubLessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed, or which may become a lien or charge on or against the land hereby demised, or any part thereof, the leasehold or SubLessee herein, the PremisesSubleased Premises described herein, any building or buildings, or any other improvements now or hereafter thereon, or on or against SubLessee's estate hereby created which may be a subject of taxation, or on or against CitySubLessor by reason of its ownership of the fee underlying this SubLease, during the entire term hereof, excepting only those taxes hereinafter specifically excepted.

**16.2 Assessments Affecting Improvements.** Specifically and without in any way limiting the generality of the foregoing, SubLessee shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same in cash as they shall fall due and before they shall become delinquent and as required by the act and proceedings under which any such assessments or levies or charges are made by any municipal or political subdivision. If the right is given to pay either in one sum or in installments, SubLessee may elect either mode of payment and its election shall be binding on CitySubLessor. If, by making any such election to pay in installments, any of such installments shall be payable after the termination of this SubLease or any Renewal Term thereof, such unpaid installments shall be prorated as of the date of termination, and amounts payable after such date shall be paid by CitySubLessor. All of the taxes and charges under this **Article 16** shall be prorated at the commencement and expiration of the Initial Term or any Renewal Term hereof, as applicable.

**16.3 Taxes Excepted.** In the event ~~the CitySubLessor~~ or SubLessee shall be required to pay any real estate taxes (or payments in lieu of taxes) or any other tax that might become due on account of ownership of the PremisesSubleased Premises herein, the leasehold or the leasehold improvements, ~~the CitySubLessor~~ shall pay same and SubLessee shall not be required to pay any such tax or taxes and ~~the CitySubLessor~~ shall hold SubLessee harmless therefrom, but expressly excluding any personal property taxes that may become due related to any personalty, equipment,

or other moveable, tangible personal property owned by [SubLessee](#) which shall be paid by [SubLessee](#).

**16.4 Contesting Taxes.** If [SubLessee](#) shall in good faith desire to contest the validity or amount of any tax, assessment, levy or other governmental charge herein agreed to be paid by [SubLessee](#), [SubLessee](#) shall be permitted to do so, and to defer payment of such tax charge, the validity or amount of which [SubLessee](#) is so contesting, until final determination of the contest, on giving to [CitySubLessor](#) written notice thereof prior to the commencement of any such contest, which shall be at least sixty (60) days prior to delinquency, and on protecting [CitySubLessor](#) on demand by a good and sufficient surety bond against any such tax, levy, assessment, rate or governmental charge, and from any costs, liability or damage arising out of any such contest.

**16.5 Disposition of Rebates.** All rebates on account of any such taxes, rates, levies, charges or assessments required to be paid and paid by [SubLessee](#) under the provisions hereof shall belong to [SubLessee](#), and [CitySubLessor](#) will, on the request of [SubLessee](#), execute any receipts, assignments or other acquittance that may be received by [CitySubLessor](#).

**16.6 Receipts.** [SubLessee](#) shall obtain and deliver to [CitySubLessor](#) receipts or duplicate receipts for all taxes, assessments and other items required hereunder to be paid by [SubLessee](#), promptly on payment thereof.

#### ARTICLE 17 - LIENS

**17.1 SubLessee's Duty to Keep PremisesSubleased Premises Free of Liens.** [SubLessee](#) shall keep all of the [PremisesSubleased Premises](#) and every part thereof and all buildings and other improvements at any time located thereon, other than mortgages or liens on [SubLessee's](#) interest which are authorized under **Article 14** of this [SubL](#)ease, free and clear of any and all mechanics', materialmen's and other liens for or arising out of or in connection with work or labor done, services performed or materials, supplies, or appliances used or furnished for or in connection with any operations of [SubLessee](#), any alteration, improvement or repairs or additions which [SubLessee](#) may make or permit or cause to be made, or any work or construction, by, for or permitted by [SubLessee](#) on or about the [PremisesSubleased Premises](#), or any obligations of any kind incurred by [SubLessee](#), and at all times promptly and fully to pay and discharge any and all claims on which any such lien may or could be based, and to indemnify [CitySubLessor](#) against all such liens and claims of liens and suits or other proceedings pertaining thereto.

**17.2 Contesting Liens.** If [SubLessee](#) desires to contest any such lien, it shall notify [CitySubLessor](#) of its intention to do so within ten (10) days after the filing of such lien. In such case, and provided that [SubLessee](#) shall on demand protect [CitySubLessor](#) by a good and sufficient surety bond against any such lien and any cost, liability or damage arising out of such contest, [SubLessee](#) shall not be in default hereunder until ten (10) days after the final determination of the validity thereof, within which time [SubLessee](#) shall satisfy and discharge such lien to the extent held valid; but the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered thereon, and such delay shall be a default of [SubLessee](#) hereunder. In the event of any such contest, [SubLessee](#) shall protect and indemnify [CitySubLessor](#) against all loss, expense and damage resulting therefrom.

## ARTICLE 18 – DEFAULT AND REMEDIES

### 18.1 SubLessee's Default.

**18.1.1** Except for a failure to pay rent when due, the notice and cure periods for which are governed by **Article 8**, SubLessee shall not be deemed to be in default hereunder unless CitySubLessor shall first give to SubLessee written notice of such default within thirty (30) days of CitySubLessor's discovery of said default, and SubLessee fails to cure such default within thirty (30) days of receipt of said notice or, where SubLessee's default cannot reasonably be cured within thirty (30) days, SubLessee fails to commence to cure within that period.

**18.1.2** Subject to **Section 18.1.1**, the occurrence of any one or more of the following events shall constitute a default and breach of this SubLease by SubLessee:

- a. SubLessee's abandonment or vacation of the PremisesSubleased Premises;  
or
- b. SubLessee's failure to pay any rent, interest or late charges as required to be paid by SubLessee under **Article 8**; or
- c. SubLessee's failure to promptly and fully keep and perform, or a violation by SubLessee of, any of the covenants, conditions or agreements contained in this SubLease where such failure continues for thirty (30) days after written notice from CitySubLessor to SubLessee; or
- d. The levy of a writ of attachment or execution on this SubLease or on any of the property of SubLessee located on the premisesSubleased Premises which is not released or terminated within thirty (30) days; or
- e. The making by SubLessee of a general assignment for the benefit of creditors, or of an arrangement, composition, extension or adjustment with its creditors; or
- f. The filing by or against SubLessee of a petition for relief or other proceeding under the federal bankruptcy laws or state or other insolvency laws; or
- g. The failure of SubLessee to pay any other sum of money due hereunder; or
- h. The failure of SubLessee to construct and maintain facilities as required herein; or
- i. The failure of SubLessee to make, maintain or provide records as required herein; or
- j. The failure of SubLessee to perform any other material provision of this SubLease.

**18.2 CitySubLessor's Remedies:** Subject to **Article 14**, in the event of SubLessee's default hereunder, which has not been cured within the time allowed therefor under this SubLease, and in addition to any other rights or remedies CitySubLessor may have under this SubLease, CitySubLessor may elect:

**18.2.1 Right of Re-entry.** In addition to the other rights or remedies it may have, CitySubLessor shall have the immediate right of re-entry and may remove all persons and property from the PremisesSubleased Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of SubLessee. Should CitySubLessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, CitySubLessor may either terminate this SubLease or it may re-let the PremisesSubleased Premises as provided herein. No such re-entry or taking possession of the PremisesSubleased Premises by CitySubLessor shall be construed as an election on the part of CitySubLessor to terminate this SubLease unless a written notice of such intention is given to SubLessee or unless the termination thereof is decreed by a court of competent jurisdiction.

**18.2.2 CitySubLessor's Right to Re-let.** The CitySubLessor may from time to time, without terminating this SubLease, re-let the PremisesSubleased Premises or any part thereof, to any other third party, for such term or terms and at such rental or rentals and on such other terms and conditions as CitySubLessor in its' reasonable discretion may, in good faith, deem advisable with the right to make reasonable alterations and repairs to the PremisesSubleased Premises. On each such re-letting (a) SubLessee shall be immediately liable to pay to CitySubLessor, in addition to any indebtedness other than rent due hereunder, the reasonable expenses of such re-letting and of such alterations and repairs, incurred by CitySubLessor, and the amount, if any, by which the Minimum Guaranteed Rent specified in this SubLease for the period of such re-letting (up to but not beyond the remainder of the Initial Term of this SubLease, or any Renewal Term, as applicable) exceeds the amount agreed to be paid as rent for the PremisesSubleased Premises by any third party for such period on such re-letting; or (b) at the option of CitySubLessor, rents received by CitySubLessor from such re-letting shall be applied first, to the payment of any indebtedness, other than rent due hereunder from SubLessee to CitySubLessor; second, to the payment of any expenses of such re-letting and of such alterations and repairs; third, to the payment of Minimum Guaranteed Rent due and unpaid hereunder, and the residue, if any, shall be held by CitySubLessor and applied in payment of future Minimum Guaranteed Rent as the same may become due and payable hereunder. If SubLessee has been credited with any rent to be received by such re-letting under option (a) hereof, and such rent shall not be promptly paid to CitySubLessor by the new tenant, or if such rentals received from such re-letting under option (b) hereof during any month are less than that to be paid during that month by SubLessee hereunder, SubLessee shall pay any such deficiency to CitySubLessor. Such deficiency shall be calculated and paid monthly.

**18.2.3 Termination.** Notwithstanding any such re-letting without termination, CitySubLessor may at any time elect to terminate this SubLease for such previous uncured breach. Should CitySubLessor at any time terminate this SubLease for any uncured breach, CitySubLessor may recover from SubLessee the damages incurred by reason of such uncured breach, including the cost of recovering the PremisesSubleased Premises, and including the present value at the time of such termination of the excess, if any, of the amount of Minimum

Guaranteed Rent specified in this Sublease for the remainder of the Initial Term, or any Renewal Term, as applicable, over (i) the then reasonable rental value of the PremisesSubleased Premises for the remainder of the Initial Term, or any Renewal Term, as applicable, plus (ii) the value of the Restaurant Improvements, all of which amounts shall be immediately due and payable by SubLessee to CitySubLessor.

**18.2.4 CitySubLessor's Right to Perform.** If SubLessee, by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default hereunder and such failure shall continue for a period of thirty (30) days after written notice from CitySubLessor specifying the nature of the act or things to be done or performed, then CitySubLessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing, including entering on the PremisesSubleased Premises for such purposes, if CitySubLessor shall so elect, and CitySubLessor shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to SubLessee on account thereof, and SubLessee shall repay to CitySubLessor on demand the entire expense thereof, including compensation to the agents and employees of CitySubLessor. Any act or thing done by CitySubLessor pursuant to this section shall not be or be construed as a waiver of any such default by SubLessee, or as a waiver of any covenant, term or condition herein contained or the performance thereof, or of any other right or remedy of CitySubLessor.

**18.2.5 Certain Damages.** Notwithstanding anything to the contrary in this Sublease, in no event shall SubLessee be liable, and CitySubLessor shall not claim any damages for lost profits or consequential damages.

**18.3 Partial Payment; Allocation of Payments.** No payment by SubLessee or receipt by CitySubLessor of a lesser amount than the rent and charges provided for in this Sublease shall be deemed to be other than on account of the earliest due rent or charges. No endorsement or statement on any check or letter accompanying any check or payment shall be an accord and satisfaction, and CitySubLessor may accept any such check or payment without prejudice to CitySubLessor's right to recover the balance of the rent and charges due hereunder or pursue any other remedy provided in the Sublease or by law. CitySubLessor shall have the right in its discretion to apply any payment received from SubLessee to any account or other payment obligations of SubLessee then delinquent.

**18.4 CitySubLessor's Default and SubLessee's Remedies.** If CitySubLessor fails to perform any covenant, condition or agreement contained in this Sublease within thirty (30) days after written notice from SubLessee specifying such default or, where CitySubLessor's default cannot reasonably be cured within thirty (30) days, CitySubLessor fails to commence to cure within that period, then CitySubLessor shall be liable to SubLessee for any damages sustained by SubLessee as a result of CitySubLessor's breach, including, but not limited to, payments to any mortgagee as a result of acceleration of or other payments under SubLessee's financing for the Restaurant Improvements, but excluding lost profits or consequential damages. SubLessee shall not have the right to terminate this Sublease or to withhold, reduce or offset any amount against any payments of rents or charges due and payable under this Sublease, except as may be specifically provided herein. SubLessee shall not have, and hereby waives, any claim against CitySubLessor for money damages arising by reason of any refusal, withholding or delay by CitySubLessor in giving any such consent, approval or statement of satisfaction. CitySubLessor will not

unreasonably withhold any such consent, approval or statement of satisfaction. [SubLessee](#)'s only remedies for any such refusal, withholding or delay shall be an action for specific performance, injunction or declaratory judgment.

**18.5 Interest.** Any rent, charges or other payments not paid when due under this [SubLessee](#) shall bear interest from the date they become due until paid at the rate of ten percent (10%) per annum, compounded annually.

## ARTICLE 19 – RESERVED

### ARTICLE 20 - EFFECT OF EMINENT DOMAIN

**20.1 Effect of Total Condemnation.** In the event the entire [PremisesSubleased Premises](#) shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this [SubLease](#) shall terminate and expire as of the date of such taking, and [SubLessee](#) shall thereupon be released from any liability thereafter accruing hereunder and [SubLessee](#) shall receive all condemnation awards applicable to the improvements constructed or installed and paid for by [SubLessee](#) on the [PremisesSubleased Premises](#) as set forth in **Section 20.3** below.

#### **20.2 Effect of Partial Condemnation.**

**20.2.1** In the event a portion of the [PremisesSubleased Premises](#) shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by [SubLessee](#), [SubLessee](#) shall have the right to terminate this [SubLease](#) as of the date of such taking on giving to [CitySubLessor](#) written notice of such termination within thirty (30) days after [CitySubLessor](#) has notified [SubLessee](#) in writing that the property has been so appropriated or taken and [SubLessee](#) shall receive all condemnation awards applicable to the Restaurant Improvements constructed or installed and paid for by [SubLessee](#) on the [PremisesSubleased Premises](#) as set forth in **Section 20.3** below.

**20.2.2** In the event of such partial taking and [SubLessee](#) does not so terminate this [SubLease](#), then this [SubLease](#) shall continue in full force and effect as to the part not taken, and the rental to be paid by [SubLessee](#) during the remainder of the term, shall continue at the same amount required at the time of such partial taking for the remainder of the applicable Operating Year as determined pursuant to **Article 8** herein, and thereafter shall be adjusted from time to time as is required pursuant to **Article 8** herein.

#### **20.3 Condemnation Award.**

**20.3.1** In the event of the termination of this [SubLease](#) by reason of the total or partial taking of the [PremisesSubleased Premises](#) by eminent domain, then in any such condemnation proceedings [CitySubLessor](#) and [SubLessee](#) shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result thereof.

**20.3.2** In the event of a partial taking of the [PremisesSubleased Premises](#) and this [SubLease](#) is not terminated, then [SubLessee](#) shall have the right to make claim against the condemning or taking authority for only the un-amortized cost of the Restaurant Improvements

constructed or installed on the [PremisesSubleased Premises](#) by [SubLessee](#) and located thereon at the time of the taking or appropriation, which Restaurant Improvements shall be deemed to have been amortized in equal annual amounts over the period commencing with the date of completion of such Restaurant Improvements at an assumed interest rate equal to twelve percent (12%) per year.

## ARTICLE 21 - MISCELLANEOUS PROVISIONS

**21.1 Waiver.** The waiver by [CitySubLessor](#) of, or the failure of [CitySubLessor](#) to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by [CitySubLessor](#) shall not be deemed to be a waiver of any preceding breach by [SubLessee](#) of any term, covenant, or condition of this [SubLease](#), other than the failure of [SubLessee](#) to pay the particular rental so accepted, regardless of [CitySubLessor](#)'s knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this [SubLease](#) shall be deemed to have been waived by [CitySubLessor](#), unless such waiver be in writing by [CitySubLessor](#).

**21.2 Transfer of Security.** If any security is given by [SubLessee](#) to secure the faithful performance of all or any of the covenants of this [SubLease](#) on the part of [SubLessee](#), [CitySubLessor](#) may transfer or deliver the security, as such, to the purchaser of the reversion, in the event that the reversion be sold, and thereupon [CitySubLessor](#) shall be discharged from any further liability in reference thereto.

**21.3 Independent Contractor.** It is understood by and between the parties hereto that [SubLessee](#), and its' employees or agents, in the performance of this [SubLease](#), shall act as, and be, an independent contractor and not an agent or employee of [CitySubLessor](#). The parties agree and acknowledge neither have any intention to create a joint venture or partnership relation between [SubLessor](#) and [SubLessee](#) and the same is hereby expressly disclaimed by both.

**21.4 Timely Implementation.** The parties hereto agree to immediately and diligently proceed with their respective duties as set forth herein to the end that the Restaurant will be managed and operated in a satisfactory manner.

**21.5 Factors Beyond SubLessee's Control.** [SubLessee](#) is not responsible for damages and will not be in default or deemed to be in default by reason of abnormally inclement weather, flooding, hail, earth slides, strikes, lockouts, war, rebellion, insurrection, acts of terrorism, or acts of God, or the failure of [CitySubLessor](#) to furnish timely information or to approve or disapprove [SubLessee](#)'s work promptly, or delay or faulty performance of [CitySubLessor](#), other contractors or governmental agencies, or any other delays beyond [SubLessee](#)'s reasonable control.

**21.6 Surrender.** Upon expiration of the Term hereof, or earlier termination or cancellation as herein provided, [SubLessee](#) shall peaceably vacate the [PremisesSubleased Premises](#) and any and all improvements located herein and deliver up the same to [CitySubLessor](#) in a reasonably good condition, ordinary wear and tear excepted, subject to the other provisions of this [SubLease](#), including compensation from [CitySubLessor](#) as provided herein. The voluntary or other

surrender of this SubLease by SubLessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of CitySubLessor, terminate all or any existing subleases or sub-tenancies (unless otherwise agreed by ~~the CitySubLessor~~ in writing), or may, at the option of CitySubLessor, operate as an assignment to it of any or all such subleases or sub-tenancies.

**21.7 Administration.** ~~The City and the Mayor~~SubLessor shall be responsible for the administration of this SubLease on behalf of CitySubLessor and shall be assisted therein by those officers and employees of CitySubLessor having duties in connection with the administration thereto.

**21.8 Attorneys' Fees.** If any action at law or in equity shall be brought to recover any rent under this SubLease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this SubLease, or for the recovery of the possession of the ~~demised Premises~~Subleased Premises, the parties shall be responsible for their own costs and attorneys' fees and shall not be allowed to recover same from the other party.

**21.9 Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, certified mail. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the party for whom intended as follows:

**THE CITY OF CLARKSVILLE LIBERTY PARK DEVELOPMENT, LLC:**

City Mayor/President  
One Public Square 300 Letterman Road  
Clarksville, TN 37040 Knoxville, TN 37919

And copy to:

7100B Kingston Pike  
Knoxville, TN 37919  
Attention: Robert T. McManus

City Attorney GENTRY, TIPTON, & MCLEMORE, P.C.  
One Public Square 900 South Gay Street, Suite 2300  
Clarksville, TN 37040 Knoxville, TN 37902  
Attention: John G. Brock

**CUMBERLAND TAVERN LIBERTY PARK GRILL, LLC:**

President  
7100B Kingston Pike  
Knoxville, TN 37919  
Attention: Bob McManus

And copy to:

300 Letterman Rd.  
Knoxville, TN 37919  
Attention: Darby Campbell

~~Young, Williams & Kirk~~ GENTRY, TIPTON & MCLEMORE, PC  
~~800900 S. South~~ Gay Street, Suite ~~2021~~2300  
Knoxville, TN 379~~2902~~  
Attention: ~~Mark K. Williams, Esq.~~ John G. Brock

~~Coulter & Justus~~  
~~9717 Cogdill Road, Suite 201~~  
~~Knoxville, TN 37932~~  
Attention: ~~Mark Zuckerman~~

Either party may change its address by notifying the other party of the change of address. Notice shall be effective when received. Notice shall be deemed received within seventy-two (72) hours from the time of mailing if mailed by United States Postal Service certified mail.

**21.10 Exhibits.** All exhibits referred to in this [SubL](#)ease, are attached hereto and incorporated herein by reference.

**21.11 Number and Gender.** Whenever the singular is used in this [SubL](#)ease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word “person” shall include corporation, partnership, firm, association, or any other legal entity.

**21.12 Captions.** The captions appearing after the section number designations of this [SubL](#)ease are for convenience only and are not a part of this [SubL](#)ease and do not in any way limit or amplify the terms and provisions of this [SubL](#)ease and shall have no effect upon the construction or interpretation of any part of this [SubL](#)ease.

**21.13 Covenants and Conditions.** Each term and each provision, including, without limitation, the obligation for the payment of rent, to be performed by [SubLessee](#) or [CitySubLessor](#) as the case may be, shall be construed to be both a covenant and a condition of this [SubL](#)ease.

**21.14 Binding.** Except as otherwise provided herein, each of the terms, covenants, and conditions of this [SubL](#)ease shall extend to, and be binding on and shall inure to the benefit of not only [CitySubLessor](#) and [SubLessee](#) but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this [SubL](#)ease reference is made to either [CitySubLessor](#) or [SubLessee](#), the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed, and all of the parties hereto shall be jointly and severally liable hereunder.

**21.15 Interpretation.** This [SubL](#)ease shall be construed and interpreted in accordance with the laws of the State of Tennessee without reference to its conflicts of laws principles. The language

in all parts of this Sublease shall be in all cases construed simply according to its fair meaning, and not strictly for or against CitySubLessor.

**21.16 Entire Agreement.** This Sublease, and any exhibits or addenda attached hereto and forming a part hereof, set forth all the covenants, agreements and conditions between CitySubLessor and SubLessee concerning the PremisesSubleased Premises, to include any improvements, and there are no covenants, agreements or conditions either oral or written between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon CitySubLessor or SubLessee unless reduced to writing and signed by the party to be charged with the same.

**21.17 Time of the Essence.** Time is of the essence of this Sublease, and of each and every covenant, term, condition, and provision hereof.

**21.18 Authorization.** Each of the parties has obtained all consents and approvals necessary for the execution of this Sublease by its duly authorized representatives, who have the power and necessary legal capacity to enter into this Sublease and to bind the parties hereunder.

#### ARTICLE 22 - LIST OF EXHIBITS

**Exhibit A** – ~~Commercial Development Lease Area~~Subleased Premises Survey and Legal Description

**Exhibit B** – SubLessee’s Restaurant Improvement Development Obligations and Plan

**Exhibit C** – Plans Regarding Public Access Road and Perpetual Travel Easement

~~**Exhibit D** – Lessee’s Right of First Refusal on Remaining Commercial Property~~

#### ARTICLE 23 - MEMORANDUM OF LEASE

~~The~~ CitySubLessor and SubLessee agree to execute and record a memorandum of this Sublease in the Register’s Office of Montgomery County, Tennessee evidencing the terms of this Sublease, which memorandum of Sublease shall include, without limitation, a description of the term of the Sublease and any renewal of extension options set forth herein.

#### ARTICLE 24 - PUBLIC ACCESS ROAD and TRAVEL EASEMENT

**24.1 Construction of Public Access Road.** SubLessee agrees to build a public access road (Public Access Road”) in the area depicted with hash marks, ~~as highlighted~~ on **Exhibit C -1** attached hereto, at SubLessee’s expense. Such Public Access Road will include curbs and gutters and meet the specifications required by law. This Public Access Road shall be conveyed to the CitySubLessor ~~as provided in the Lease~~ upon completion and dedicated to the public use, and SubLessee agrees to execute any required bond(s) in connection therewith. Upon dedication, the City shall maintain this Public Access Road as part of its road maintenance program.

**24.2 NonExclusive Perpetual Travel Easement.** ~~CitySubLessor shall~~hereby grants SubLessee a nonexclusive perpetual easement (“Travel Easement”) ~~over the “Remaining Commercial Property”~~between the Public Access Road and the Subleased Premises. ~~The location of the Travel Easement as is~~ generally depicted and highlighted on **Exhibit C-2**, attached hereto. SubLessor may relocate the Travel Easement in its reasonable discretion. This Travel Easement shall be in recordable form and shall be recorded in the Register’s Office of Montgomery County, Tennessee. The Travel Easement will be at least twenty-five (25) feet wide. SubLessor acknowledges ~~the~~ Travel Easement is necessary for SubLessee to have access to the PremisesSubleased Premises in order to construct the Restaurant Improvements and to operate and maintain the Restaurant as provided in this SubLease. ~~The Travel Easement may be moved or altered as mutually agreed upon by the parties.~~ SubLessee will build an access road along the Travel Easement, at SubLessee’s expense ~~(except as otherwise provided below) which will not include curbs or gutters and may eventually be used for other purposes, such as parking.~~ If Lessee does not exercise its right of first refusal described in **Article 25**, and the ~~Remaining Commercial Property~~ depicted and highlighted on **Exhibit D** is developed by a third party, Lessee agrees that the City may agree with any such third party that the Public Access Road and the Travel Easement may be used by such third party provided that such third party agrees to pay fifty percent (50%) of the actual costs Lessee incurs in completing the Public Access Road and the access road across the Travel Easement, which costs will be recorded and maintained in Lessee’s records provided to City upon completion of same.

**24.3 Further Specifications.** Any additional specifications or agreements between CitySubLessor and ~~the~~SubLessee regarding the Public Access Road and the Travel Easement will be in writing.

**24.4 Access to Public Roadways.** Notwithstanding anything contained on Exhibit A to the contrary, any access to the Subleased Premises from a public roadway is subject to the approval of the appropriate regulatory authorities.

#### **ARTICLE 25 – REMAINING COMMERCIAL PROPERTY FUTURE DEVELOPMENT AND LESSEE RIGHT OF FIRST REFUSAL**

~~City grants Lessee a right of first refusal to purchase the land immediately adjacent to the Commercial Development Restaurant Lease Area (denominated “Remaining Commercial Property”) and depicted in the highlighted portion of the drawing attached hereto as **Exhibit D**. If the City (a) receives an offer from a third party to develop such property or, (b) determines to seek bids or offers for the development of such property, City shall provide Lessee with written notice of the offer or of its intent to seek such bids or offers. Lessee will have a period of one hundred twenty (120) days in which to exercise its right of first refusal by providing written notice to City.~~

**NOTHING FURTHER THIS PAGE**

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

~~THE CITY OF CLARKSVILLE~~  
LIBERTY  
PARK DEVELOPMENT, LLC

← - - - Formatted: Left

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By: ~~Kim McMillan~~Darby A. Campbell  
Title: ~~Mayor, City of Clarksville, TN~~President  
  
"City"

~~CUMBERLAND TAVERN~~  
LIBERTY PARK  
GRILL, LLC

---

By: ~~Bob~~Robert T. McManus  
Title: President

"Lessee"



# Exhibit A

## Lease Area Description for a portion of the Liberty Park LLC Property, US HWY 13/48, 3.40+/-ac

Being a lease area of land located in the 12<sup>th</sup> Civil District in the City of Clarksville, in the County of Montgomery, TN, being a portion of the Liberty Park LLC property as recorded in ORV 1259, Page 1796 ROMCT, said lease area being more fully described as being located west of Ashland City Road, north of Zinc Plant Road, southwest of Riverside Drive, west of and adjacent to US HWY 13/48, said lease area being more particularly described as follows;

Commencing at a concrete monument (N: 794341.6222, E: 1566610.4999) in the north right of way of US HWY 13/48, lying South 77 degrees 58 minutes 25 seconds West for 423.90 feet from the intersection of the US HWY 13/48 and Riverside Drive, thence along HWY 13/48 right of way, South 57 degrees 54 minutes 38 seconds West for 26.03 feet to the "True Point of Beginning", also being the east corner of herein described lease area;

Thence continuing along north right of way, on a curve to the left having a radius of 1351.32 feet, an arc length of 493.86 feet, a delta of 20 degrees 56 minutes 23 seconds, chord bearing of South 46 degrees 53 minutes 55 seconds West for 491.12 feet to a point being the southeast corner of herein described lease area;

Thence leaving north right of way on a new lease line for the next 11 calls:  
North 90 degrees 00 minutes 00 seconds West for 70.00 feet to a point, to the south corner of herein described lease area;  
North 35 degrees 56 minutes 40 seconds East for 85.50 feet to a point;  
North 21 degrees 07 minutes 18 seconds West for 209.31 feet to a point;  
North 68 degrees 52 minutes 43 seconds East for 60.00 feet to a point;  
North 21 degrees 07 minutes 18 seconds West for 190.48 feet to a point;  
North 73 degrees 06 minutes 52 seconds East for 132.78 feet to a point;  
North 64 degrees 58 minutes 35 seconds East for 125.04 feet to a point;  
North 54 degrees 27 minutes 55 seconds East for 118.43 feet to a point;  
North 48 degrees 43 minutes 35 seconds East for 56.86 feet to a point, being the north corner of herein described lease area;  
South 12 degrees 28 minutes 41 seconds West for 155.85 feet to a point;  
South 34 degrees 46 minutes 38 seconds East for 211.62 feet to the "True Point of Beginning".

Said parcel containing 3.40 acres, (148,142.37 sq. ft.) more or less.

Said parcel being subject to all easements, right of ways, conveyances, covenants, and restrictions of record and not of record.

## **EXHIBIT B**

### **SUBLEASE**

#### **FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE AND PROFESSIONAL MANAGEMENT OF THE "RIVERSIDE TAVERN"**

##### **General**

Regarding construction of the Restaurant on the premises, Lessee shall construct a restaurant consisting of no less than 5,000 square feet (excluding any patio area) with a minimum total seating capacity of 150 indoor seats. The Premises will include a minimum of 110 parking spaces serving the Restaurant.

##### **Floor Plan**

The floor plan will generally follow the Seating and Equipment Plan, attached hereto as **Exhibit B-1**, scaled as appropriate for the space to be constructed. This plan may be further amended as set forth in the final plans and specifications.

##### **Proposed Schedule**

Initial construction on the Restaurant Improvements is scheduled to start on or before December 30, 2013. The Restaurant is planned to be completed on or before May 1, 2014.

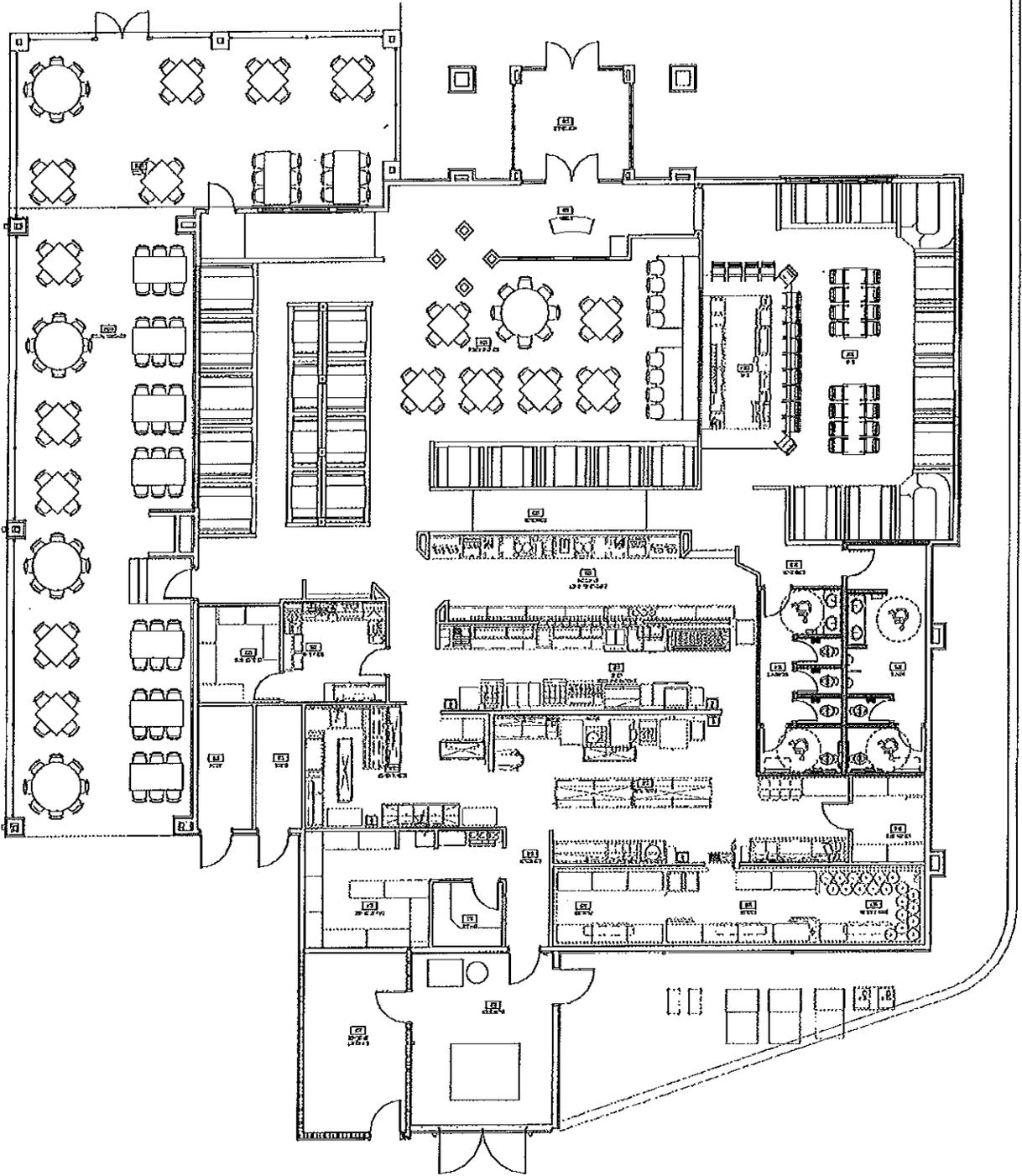
##### **Utilities**

The parties agree that the City shall provide utilities as is described in the Lease, **Section 6.6**, to be run from the nearest currently active utility tap point to within 100 feet of the main building pad of the Restaurant Improvements, or as otherwise mutually agreed upon by the parties. The parties agree that the utility requirements of Lessee shall be for a water line, sewer line, 1200 amp electric service, and a gas line, the sizes of which shall be consistent with similar commercial developments.

Lessee will be responsible for all storm-water requirements at its expense. The parties agree that a detention/retention basin will not be required on site, but Lessee will comply with all water quality requirements imposed by law.

**EXHIBIT B**  
**FLOOR PLAN**

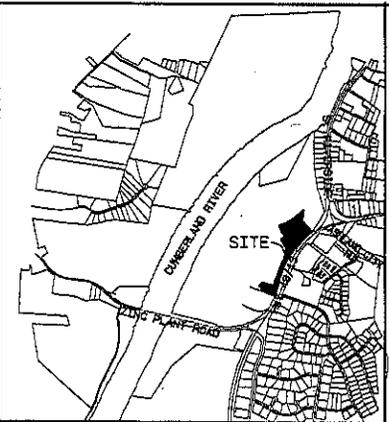
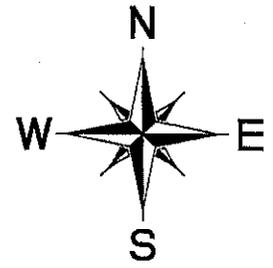
# Exhibit B



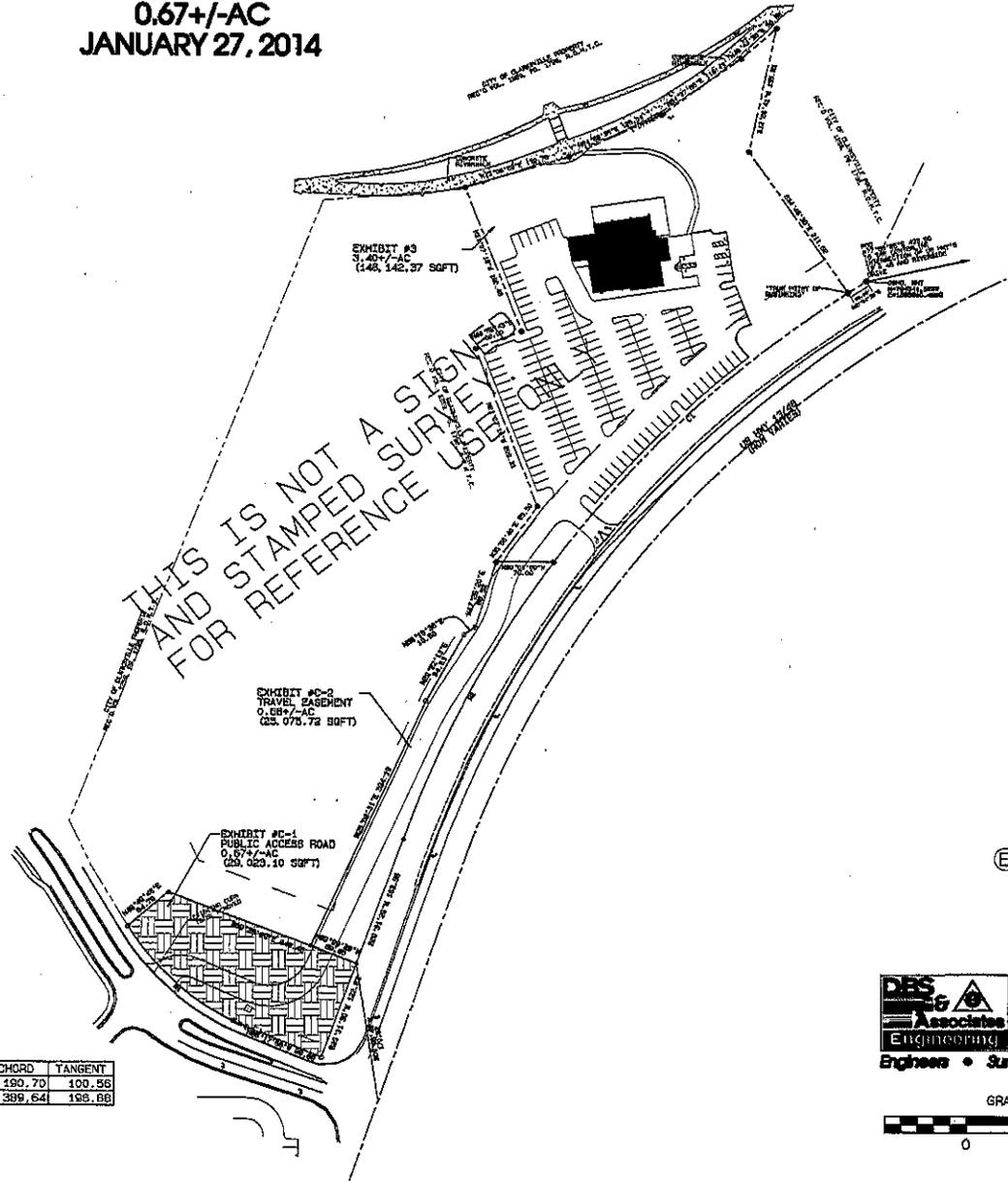
**EXHIBIT C-1**

**PUBLIC ACCESS ROAD**

**GRAPHIC DEPICTION OF  
PUBLIC ACCESS ROAD OF THE  
LIBERTY PARK, LLC PROPERTY  
0.67+/-AC  
JANUARY 27, 2014**



**VICINITY MAP  
(NOT TO SCALE)**



THIS IS NOT A SURVEY  
AND STAMPED FOR REFERENCE

EXHIBIT #3  
3.42+/-AC  
(148, 142.37 SQFT)

EXHIBIT #C-2  
TRAVEL EASEMENT  
0.89+/-AC  
(38, 075.72 SQFT)

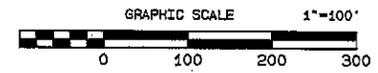
EXHIBIT #C-1  
PUBLIC ACCESS ROAD  
0.67+/-AC  
(27, 023.10 SQFT)

EXHIBIT #C-1

EXHIBIT CURVE TABLE

| LINE | ARC    | CHORD BEARING | RADIUS  | DELTA     | CHORD  | TANGENT |
|------|--------|---------------|---------|-----------|--------|---------|
| R1   | 194.06 | N49°46'03"W   | 300.00  | 37°03'47" | 190.70 | 103.56  |
| R2   | 381.01 | S26°08'22"W   | 4351.32 | 15°34'43" | 389.64 | 193.88  |

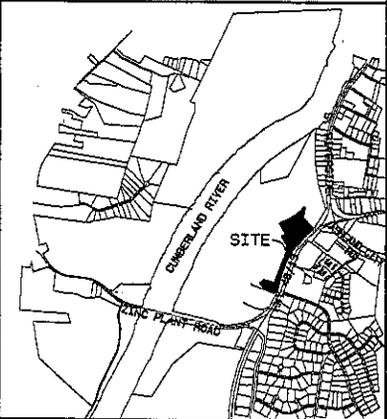
**DES Associates Engineering**  
 330 North Second Street  
 P.O. Box 949  
 Clarksville, TN 37041-0949  
 Ph # 931-647-8200  
 Fax # 931-647-7325 www.desap.com  
 Engineers • Surveyors • Planners



Plotted: Jan 27, 2014 15:57:24 Mon  
 P:\31060.PC (The Tavern) \Liberty Park Exhibit 1.dwg

**EXHIBIT C-2**

**TRAVEL EASEMENT**



VICINITY MAP  
(NOT TO SCALE)

GRAPHIC DEPICTION OF  
TRAVEL EASEMENT OF THE  
LIBERTY PARK, LLC PROPERTY  
0.58+/-AC  
JANUARY 27, 2014

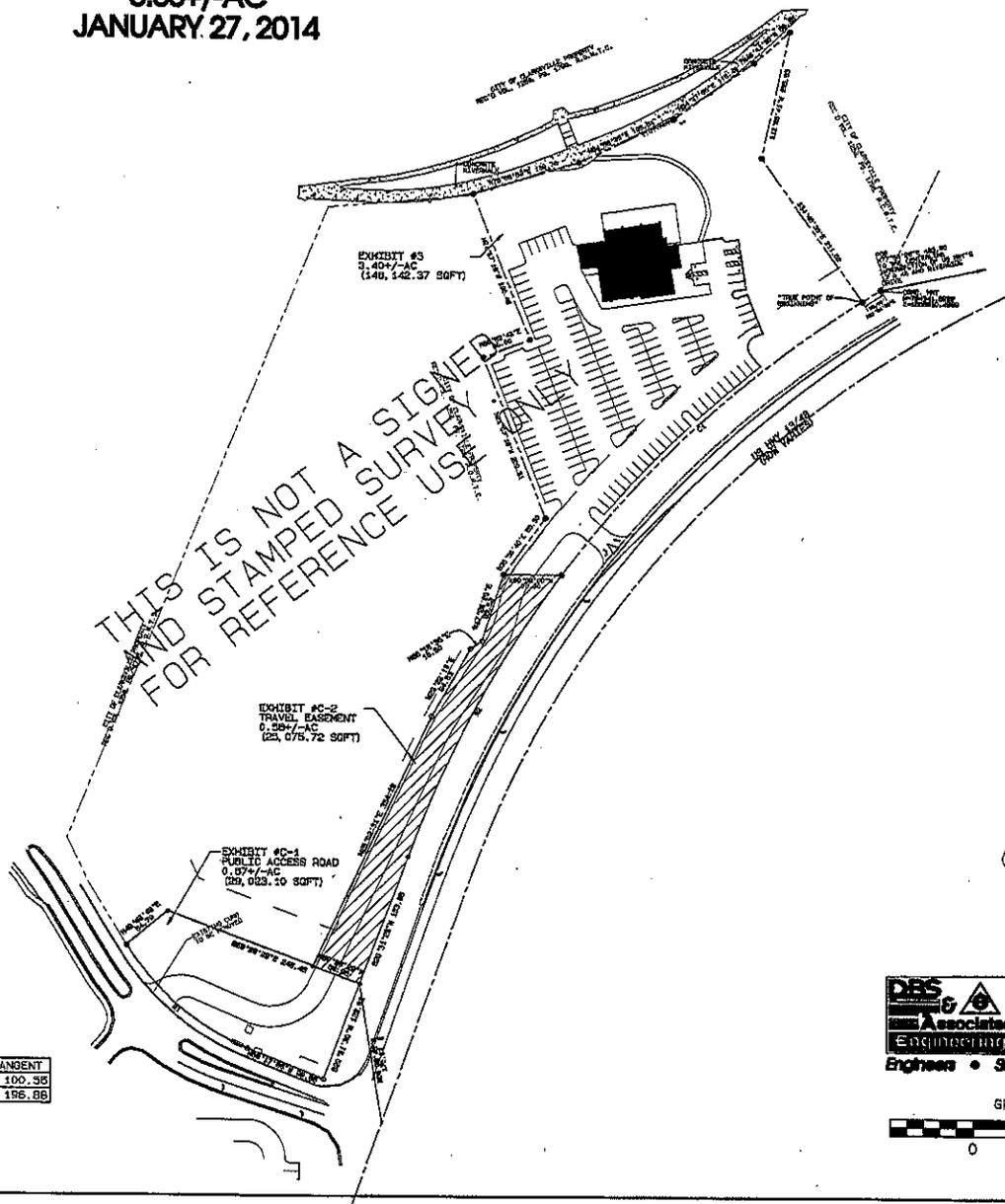
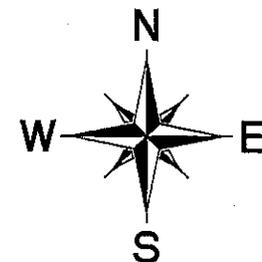
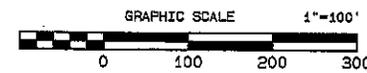


EXHIBIT #C-2

EXHIBIT CURVE TABLE

| LINE | ARC    | CHORD BEARING | RADIUS  | DELTA     | CHORD  | TANGENT |
|------|--------|---------------|---------|-----------|--------|---------|
| R1   | 194.08 | N49°28'03"W   | 300.00  | 37°03'47" | 190.70 | 100.58  |
| R2   | 391.01 | S26°08'22"W   | 1351.32 | 16°34'49" | 386.64 | 186.88  |


**DBS Engineering Associates**  
 330 North Second Street  
 P.O. Box 949  
 Clarksville, IN 37041-0949  
 Tel # 631-647-0250  
 Fax # 631-647-7135 www.dbsengr.com  
 Engineers • Surveyors • Planners



Plotted: Jan 27, 2014 18:57:25 Mon  
P:\31000 NC (The Tavern) \Liberty Park 6-111.pro

**REPORT ON DEBT OBLIGATION**  
(Pursuant to Tennessee Code Annotated Section 9-21-151)

|   |   |  |
|---|---|--|
| <b>1. Public Entity:</b>  |   |  |
| Name:   | <u>City of Clarksville, Tennessee</u>                     |  |
| Address:  | <u>One Public Square</u><br><u>Clarksville, TN 37040</u>  |  |
| Debt Issue Name:  | <u>Electric System Rev Ref Bonds, Series 2014</u>         |  |
| If disclosing initially for a program, attach the form specified for updates, indicating the frequency required   |   |  |
| <b>2. Face Amount:</b> \$ <u>3,215,000</u>  |   |  |
| Premium/Discount:   | \$ <u>126,288.95</u>                                      |  |
| <b>3. Interest Cost:</b> <u>2.045283</u> %  |   |  |
| <input checked="" type="checkbox"/> Tax-exempt  | <input type="checkbox"/> Taxable                          |  |
| <input checked="" type="checkbox"/> TIC   | <input type="checkbox"/> NIC                              |  |
| <input type="checkbox"/> Variable:  | Index _____ plus _____ basis points; or                   |  |
| <input type="checkbox"/> Variable:  | Remarketing Agent _____                                   |  |
| <input type="checkbox"/> Other:   | _____   |  |
| <b>4. Debt Obligation:</b>  |   |  |
| <input type="checkbox"/> TRAN   | <input type="checkbox"/> RAN                              | <input type="checkbox"/> CON           |
| <input type="checkbox"/> BAN  | <input type="checkbox"/> CRAN                             | <input type="checkbox"/> GAN           |
| <input checked="" type="checkbox"/> Bond  | <input type="checkbox"/> Loan Agreement                   | <input type="checkbox"/> Capital Lease |
| If any of the notes listed above are issued pursuant to Title 9, Chapter 21, enclose a copy of the executed note with the filing with the Office of State and Local Finance ("OSLF"). |   |  |
| <b>5. Ratings:</b>  |   |  |
| <input type="checkbox"/> Unrated  |   |  |
| Moody's   | <u>Aa2</u>  |  |
| Standard & Poor's   | _____   |  |
| Fitch   | _____   |  |
| <b>6. Purpose:</b>  |   |  |
|   | <b>BRIEF DESCRIPTION</b>                                  |  |
| <input type="checkbox"/> General Government _____ %   | _____   |  |
| <input type="checkbox"/> Education _____ %  | _____   |  |
| <input type="checkbox"/> Utilities _____ %  | _____   |  |
| <input type="checkbox"/> Other _____ %  | _____   |  |
| <input checked="" type="checkbox"/> Refunding/Renewal <u>100</u> %  | <u>Refunding outstanding 2004 Bonds</u>                   |  |
| <b>7. Security:</b>   |   |  |
| <input type="checkbox"/> General Obligation   | <input type="checkbox"/> General Obligation + Revenue/Tax |  |
| <input checked="" type="checkbox"/> Revenue   | <input type="checkbox"/> Tax Increment Financing (TIF)    |  |
| <input type="checkbox"/> Annual Appropriation (Capital Lease Only)  | <input type="checkbox"/> Other (Describe): _____          |  |
| <b>8. Type of Sale:</b>   |   |  |
| <input type="checkbox"/> Competitive Public Sale  | <input type="checkbox"/> Interfund Loan _____             |  |
| <input checked="" type="checkbox"/> Negotiated Sale   | <input type="checkbox"/> Loan Program _____               |  |
| <input type="checkbox"/> Informal Bid   |   |  |
| <b>9. Date:</b>   |   |  |
| Dated Date:   | <u>01/29/2014</u>   |  |
| Issue/Closing Date:   | <u>01/29/2014</u>   |  |

**REPORT ON DEBT OBLIGATION**

(Pursuant to Tennessee Code Annotated Section 9-21-151)

**10. Maturity Dates, Amounts and Interest Rates \*:**

| Year | Amount     | Interest Rate | Year | Amount | Interest Rate |
|------|------------|---------------|------|--------|---------------|
| 2014 | \$ 285,000 | 2.000 %       |      | \$     | %             |
| 2015 | \$ 290,000 | 2.000 %       |      | \$     | %             |
| 2016 | \$ 300,000 | 2.000 %       |      | \$     | %             |
| 2017 | \$ 300,000 | 4.000 %       |      | \$     | %             |
| 2018 | \$ 325,000 | 2.000 %       |      | \$     | %             |
| 2019 | \$ 325,000 | 2.000 %       |      | \$     | %             |
| 2020 | \$ 325,000 | 2.500 %       |      | \$     | %             |
| 2021 | \$ 345,000 | 3.000 %       |      | \$     | %             |
| 2022 | \$ 355,000 | 3.000 %       |      | \$     | %             |
| 2023 | \$ 365,000 | 3.000 %       |      | \$     | %             |
|      | \$         | %             |      | \$     | %             |

If more space is needed, attach an additional sheet.

If (1) the debt has a final maturity of 31 or more years from the date of issuance, (2) principal repayment is delayed for two or more years, or (3) if debt service payments are not level throughout the retirement period, then a cumulative repayment schedule (grouped in 5 year increments out to 30 years) including this and all other entity debt secured by the same source **MUST BE PREPARED AND ATTACHED**. For purposes of this form, debt secured by an ad valorem tax pledge and debt secured by a dual ad valorem tax and revenue pledge are secured by the same source. Also, debt secured by the same revenue stream, no matter what lien level, is considered secured by the same source.

\* This section is not applicable to the Initial Report for a Borrowing Program.

**11. Cost of Issuance and Professionals:**

No costs or professionals

|                                     | AMOUNT<br><small>(Round to nearest \$)</small> | FIRM NAME                    |
|-------------------------------------|--|------------------------------|
| Financial Advisor Fees              | \$   |                              |
| Legal Fees                          | \$ 20,000                                      | Bass, Berry & Sims PLC       |
| Bond Counsel                        | \$   |                              |
| Issuer's Counsel                    | \$   |                              |
| Trustee's Counsel                   | \$   |                              |
| Bank Counsel                        | \$   |                              |
| Disclosure Counsel                  | \$   |                              |
| Paying Agent Fees                   | \$ 1,250                                       | Regions Bank                 |
| Registrar Fees                      | \$   |                              |
| Trustee Fees                        | \$   |                              |
| Remarketing Agent Fees              | \$   |                              |
| Liquidity Fees                      | \$   |                              |
| Rating Agency Fees                  | \$ 12,000                                      | Moody's                      |
| Credit Enhancement Fees             | \$   |                              |
| Bank Closing Costs                  | \$   |                              |
| Underwriter's Discount <u>0.60%</u> | 19,290   | Wiley Bros.- Aintree Capital |
| Take Down                           | \$   |                              |
| Management Fee                      | \$   |                              |
| Risk Premium                        | \$   |                              |
| Underwriter's Counsel               | \$   |                              |
| Other expenses                      | \$   |                              |
| Printing and Advertising Fees       | \$ 500   |                              |
| Issuer/Administrator Program Fees   | \$   |                              |
| Real Estate Fees                    | \$   |                              |
| Sponsorship/Referral Fee            | \$   |                              |
| Other Costs                         | \$ 3,000                                       | Miscellaneous                |
| <b>TOTAL COSTS</b>                  | <b>\$ 56,040</b>                               |                              |

**REPORT ON DEBT OBLIGATION**  
(Pursuant to Tennessee Code Annotated Section 9-21-151)

**12. Recurring Costs:**

No Recurring Costs

|                                | AMOUNT<br>(Basis points/\$) | FIRM NAME<br>(If different from #11) |
|--------------------------------|-----------------------------|--------------------------------------|
| Remarketing Agent              |                             |                                      |
| Paying Agent / Registrar       | \$750.00                    | Regions Bank (annual payment)        |
| Trustee                        |                             |                                      |
| Liquidity / Credit Enhancement |                             |                                      |
| Escrow Agent                   |                             |                                      |
| Sponsorship / Program / Admin  |                             |                                      |
| Other                          |                             |                                      |

**13. Disclosure Document / Official Statement:**

None Prepared

EMMA link \_\_\_\_\_ or

Copy attached

**14. Continuing Disclosure Obligations:**

Is there an existing continuing disclosure obligation related to the security for this debt?  Yes  No

Is there a continuing disclosure obligation agreement related to this debt?  Yes  No

If yes to either question, date that disclosure is due April 30 of each yr

Name and title of person responsible for compliance David Johns, CFO of Clarksville Dept. of Electricity

**15. Written Debt Management Policy:**

Governing Body's approval date of the current version of the written debt management policy 02/02/2012

Is the debt obligation in compliance with and clearly authorized under the policy?  Yes  No

**16. Written Derivative Management Policy:**

No derivative

Governing Body's approval date of the current version of the written derivative management policy \_\_\_\_\_

Date of Letter of Compliance for derivative \_\_\_\_\_

Is the derivative in compliance with and clearly authorized under the policy?  Yes  No

**17. Submission of Report:**

To the Governing Body: on 2/6/2014 and presented at public meeting held on 2/6/2014

Copy to Director to OSLF: on 2/7/2014 either by:

Mail to: 505 Deaderick Street, Suite 1600  
James K. Polk State Office Building  
Nashville, TN 37243-1402

OR  Email to: StateAndLocalFinance.PublicDebtForm@cot.tn.gov

**18. Signatures:**

|       | AUTHORIZED REPRESENTATIVE                 | PREPARER                      |
|-------|---|-------------------------------|
| Name  | <u>Kim McMillan</u>                       | <u>Jeffrey Oldham</u>         |
| Title | <u>Mayor</u>                              | <u>Member</u>                 |
| Firm  |   | <u>Bass, Berry &amp; Sims</u> |
| Email | <u>kim.mcmillan@cityofclarksville.com</u> | <u>joldham@bassberry.com</u>  |
| Date  | <u>01/29/2014</u>                         | <u>01/29/2014</u>             |