

**AGENDA**  
**INDUSTRIAL DEVELOPMENT BOARD**

**October 31, 2023 Meeting**

**Sevierville Civic Center – Council Hall**

**2:00 P.M.**

**(Immediately following PBA meeting)**



**AGENDA**  
**INDUSTRIAL DEVELOPMENT BOARD**

**October 31, 2023**

**Sevierville Civic Center – Council Hall**

**2:00 P.M.**

**(Immediately following PBA meeting)**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. MINUTES – *March 29, 2023***

**D. PUBLIC FORUM**

**E. REPORTS**

**F. OLD BUSINESS**

**G. NEW BUSINESS**

1. Election of Officers

2. Consider approval of approval of **Resolution IDB-R-2023-003** – “A Resolution Relating to Payment In Lieu of Tax Transaction Between the Industrial Development Board of The City of Sevierville, Tennessee and PEP35, LLC.” – *Dustin Smith*

**1**

3. Consider approval of **Lease Agreement** with Michael J. Johnson – *Dustin Smith*

**26**

**H. OTHER BUSINESS**

**I. ADJOURNMENT**

**INDUSTRIAL DEVELOPMENT BOARD of the  
CITY OF SEVIERVILLE, TENNESSEE**

**March 29, 2023**

A called meeting of the Industrial Development Board of the City of Sevierville, Tennessee, was held at Sevierville Civic Center, 130 Gary Wade Boulevard, Sevierville, Tennessee, on March 29, 2023 at 2:30 PM.

**There were present and participating at the meeting:**

Robbie Fox, Ex-officio  
Brenda McCroskey, Secretary/Treasurer  
Jim Medlin, Director  
Howard Murrell, Director  
Jessica Ratcliff, Director  
Mike Sutton, Director  
Rodney Tarwater, Vice Chairman  
Andrew Temple, Chairman

**Senior Staff Present:**

Lynn McClurg, CFO/City Recorder  
Bob Moncrief, Project Manager  
Ed Owens, City Attorney  
Bob Parker, Parks & Recreation Director  
Dustin Smith, Deputy City Administrator  
Russell Treadway, City Administrator

Chairman Temple chaired the meeting with Lisa K. Taylor as secretary of the meeting. A motion was made by Director Murrell and seconded by Director Ratcliff to approve the minutes of the December 21, 2021 meeting and to dispense with the reading. Motion carried.

**REPORTS**

Chairman Temple recognized Lynn McClurg, who presented the fiscal year 2022 audit.

**NEW BUSINESS**

Chairman Temple recognized Russell Treadway, who presented a Resolution IDB-R2023-001 A Resolution relating to payment in lieu of tax transaction and related financing for the construction and development of a regional shopping center located on Highway 66 at Old Douglas Dam Road in Sevierville, Tennessee. A motion was made by Vice Chairman Tarwater and seconded by Director Sutton to approve the resolution as presented. Motion carried.

Chairman Temple recognized Russell Treadway, who presented a Resolution IDB-R2023-002 A Resolution relating to payment in lieu of tax transaction between the Industrial Development Board of the City of Sevierville, Tennessee and Kituwah, LLC. A motion was made by Vice Chairman Tarwater and seconded by Director Medlin to approve the resolution as presented. Motion carried.

Chairman Temple recognized Lynn McClurg, who requested approval of transfer of cash received in excess of debt service payments to the city of Sevierville general fund each fiscal year. A motion was made by Director Ratcliff and seconded by Director Murrell to approve the transfer as requested. Motion carried.

There being no further business to discuss, the meeting adjourned at 2:25 PM.

Approved: \_\_\_\_\_  
Andrew Temple, Chairman

Attest: \_\_\_\_\_  
Lisa K. Taylor, Recorder



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## IDB Board Memorandum

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**DATE:** October 31, 2023

**AGENDA ITEM:** Consider approval of **Resolution IDB-R-2023-003** –  
“A Resolution Relating to Payment In Lieu of Tax Transaction Between the  
Industrial Development Board of The City of Sevierville, Tennessee and PEP35, LLC.”

**PRESENTATION:** The Board of Mayor & Aldermen has delegated to the  
Industrial Development Board the authority to acquire title to the project and negotiate  
and enter into a lease agreement which provides for the payment of in lieu of taxes.

The project is a 312-unit multi-family apartment facility for low and moderate-income  
citizens. The project shall be known as Villas at Sevierville and is located on the corner  
of Center View Road and Veterans Boulevard.

**REQUESTED ACTION:** Approval of resolution as presented.

**RESOLUTION IDB-R-2023-003**

**RESOLUTION RELATING TO  
PAYMENT IN LIEU OF TAX TRANSACTION  
BETWEEN THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF SEVEIERVILLE, TENNESSEE AND  
PEP35, LLC**

WHEREAS, the Board of Directors of The Industrial Development Board of the City of Sevierville, Tennessee (the "Board") has met pursuant to proper notice; and

WHEREAS, to induce Pep35, LLC, a Tennessee limited liability company or a successor or affiliate thereof (the "Company"), to cause the acquisition of certain real property and construction thereon of an approximately 312-unit multi-family housing facility (the "Project") located in the City of Sevierville (the "Property"), the Board will acquire the Property, and the Board will lease the Property to the Company on the terms and conditions set forth in the Lease referenced herein; and

WHEREAS, the Board of Mayor and Aldermen of the City of Sevierville, Tennessee (the "City") has delegated to the Board the authority to acquire title to the Project and negotiate and enter into a lease agreement with the Company which provides for the payment in lieu of taxes, pursuant to Resolution R-2022-020, dated September 19, 2022; and

WHEREAS, there has been submitted to the Board a form of Lease (the "Lease") between the Board and the Company, which provides certain payments in lieu of tax as provided therein and which the Board proposes to execute to carry out the transaction described above, a copy of which instrument shall be filed with the records of the Board.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF SEVIERVILLE, TENNESSEE:

1. It is hereby found and determined that the acquisition and ownership of the Project will promote industry, trade, commerce and housing in the State of Tennessee and will increase the availability of affordable housing and employment in the City of Sevierville, Tennessee.

2. The Chairman or Vice Chairman of the Board is hereby authorized and directed to execute, and the Secretary or Assistant Secretary of the Board is authorized to attest, and either is authorized and directed to deliver the Lease to the Company.

3. The Board is hereby authorized and directed to own the Project pursuant to the terms of the Lease.

4. The Lease shall be in substantially the form submitted, which is hereby approved, with such completions, omissions, insertions and changes as may be approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.

5. The officers of the Board are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without

limitation, executing such documents as any lender of the Company may request to preserve their liens on the Project.

6. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

7. All other acts of the officers of the Board which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

I hereby certify that attached hereto is a resolution of The Industrial Development Board of the City of Sevierville, Tennessee, duly and lawfully adopted by its Board of Directors on \_\_\_\_\_, 2023, at a meeting at which a quorum was acting throughout and I furthermore certify that such resolution has not been amended or modified in any respect.

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF SEVIERVILLE, TENNESSEE**

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Andrew Temple, Chairman

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Brenda McCroskey, Treasurer

36075883.1

LEASE

FROM

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF SEVIERVILLE, TENNESSEE

(a public nonprofit corporation organized and existing under the laws of the  
State of Tennessee)

TO

PEP35, LLC

(a Florida limited liability company)

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LEASE

DATED AS OF DECEMBER 31, 2023

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This instrument prepared by:  
BASS, BERRY & SIMS PLC (GMM)  
900 S. Gay Street, Suite 1700  
Knoxville, Tennessee 37902

**LEASE**

This Lease, made and entered into as of the 31<sup>st</sup> day of December, 2023, by and between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF SEVIERVILLE, TENNESSEE, a public nonprofit corporation organized and existing under the laws of the State of Tennessee (“Lessor”), and PEP35, LLC, a Florida limited liability company (“Lessee”).

W I T N E S S E T H:

WHEREAS, Lessor is a public nonprofit corporation and public instrumentality of Sevierville, Tennessee, and is authorized under Sections 7-53-101 to 7-53-317, inclusive, Tennessee Code Annotated, as amended (the “Act”), to acquire, whether by purchase, exchange, gift lease, or otherwise, and to own, lease and dispose of properties for certain purposes identified in the Act; and

WHEREAS, in order to encourage Lessee to construct on the Leased Premises (as defined below) the Buildings (as defined below) consisting of approximately 312 units of affordable rental housing, thereby furthering the purposes of the Act, Lessor desires to lease to Lessee and Lessee desires to rent from Lessor the Leased Premises on the terms and conditions set forth herein; and

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the Leased Premises;

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

**ARTICLE I.**

Definitions

Section 1.01 In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

“Abatement Period” shall mean the ten (10) year period commencing on the next occurring January 1 following the Completion Date.

“Acquisition Deed” shall mean the deed pursuant to which Lessor acquires title to the Leased Land.

“Act” shall have the meaning set forth in the Recitals above.

“Basic Rent” shall mean the amounts described in Section 4.01.

“Buildings” shall mean the Buildings to be constructed on the Leased Land by Lessee pursuant to Article XI.

“City” shall mean the City of Sevierville, Tennessee.

“Completion Date” shall mean the earlier of (i) December 31, 2026 or (ii) the date that a certificate of occupancy is issued for the Improvements. Lessee shall provide a certificate to Lessor evidencing the Completion Date no later than thirty (30) days after the occurrence of the Completion Date.

“County” shall mean Sevier County, Tennessee.

“Force Majeure” means fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the applicable party’s reasonable control. Where this Lease expressly provides that a party’s obligations are subject to Force Majeure, then delay or non-performance on the part of such party will be excused upon the occurrence and during the continuance of such event of Force Majeure, provided that such party promptly gives the other party written notice of the occurrence and abatement of such event of Force Majeure.

“Lease” shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

“Leased Land” shall mean the real property described in Exhibit A attached hereto.

“Leased Property” shall mean the Leased Land, together with the Buildings and other improvements now existing or hereinafter constructed thereon.

“Lessee” shall mean Pep35, LLC, a Florida limited liability company.

“Lessor” shall mean The Industrial Development Board of the City of Sevierville, Tennessee, a Tennessee public nonprofit organized under the Act.

“Rent” shall be broadly interpreted to mean all charges payable by a tenant with respect to the use or occupancy of a Unit under a lease or otherwise, including charges for utilities.

“Rent Restrictions” shall have the meaning set forth in Section 7.05.

“Rent Restrictions Achievement Percentage” shall mean, for any period, the actual percentage of rented Units in compliance with the Rent Restrictions for such period, divided by 100%.

“Tax Year” shall mean each annual period beginning on January 1 of each year and ending on December 31 of that year.

“Term” shall mean the term described in Article III.

“Unit” shall mean an individual apartment unit rented or available for rent to the general public within one of the Buildings.

**ARTICLE II.**  
Representations of Lessee

Section 2.01 Lessee makes the following representations and warranties to induce Lessor to enter into this Lease:

(a) Lessee is a limited liability company duly formed, existing and in good standing under the laws of the State of Florida and is authorized to do business in the State of Tennessee, has full power and authority to enter into this Agreement and to perform all obligations contained herein and therein,

and has, by proper action, been duly authorized to execute and deliver this Lease and, when executed and delivered by the parties thereto, this Lease will constitute the valid and binding obligation of Lessee enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of Lessee threatened, against or affecting Lessee in any court or before any governmental authority, arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Lessee, or the ability of Lessee to perform its obligations under this Lease. Lessee is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to Lessee that would constitute an Event of Default under this Lease, as defined in Article XIII, or which, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) To the knowledge of Lessee, and in reliance upon, and except as disclosed in, an independent third-party report obtained by Lessee, there are no substances, materials, wastes, pollutants or contaminants located on the Leased Property that are regulated under any environmental law or regulation except those materials and substances that are maintained in compliance with such laws and regulations, and Lessee shall not permit material quantities of such substances, materials, wastes, pollutants or contaminants to exist on the Leased Property during the Term of this Lease except in compliance with such laws and regulations.

### **ARTICLE III.**

#### **Lease Term**

Subject to the provisions contained in this Lease, this Lease shall be in full force and effect for a Term commencing on the date hereof and ending on the last day of the Abatement Period, unless previously terminated as provided herein or extended pursuant to the provisions hereof.

Notwithstanding the foregoing, the Term of this Lease may be terminated upon exercise by Lessee of the purchase option described in Article XIV hereof.

### **ARTICLE IV.**

#### **Rent**

**Section 4.01 Basic Rent.** Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent on each January 1 during the Term, the sum of \$1.00. Lessor acknowledges that Lessee has prepaid the Basic Rent for the Term on the date hereof.

**Section 4.02 Additional Rent.** Lessee agrees to pay, as additional rent, all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay (including, without limitation, the

obligations in Article XI hereof), with the costs thereof to be amortized over the Term of this Lease. Without limiting the foregoing, Lessor and Lessee recognize that the Leased Property has been conveyed to Lessor subject to or contemporaneously with the execution of a deed of trust securing the financing of the acquisition and construction of the Leased Property. Lessee agrees to make all payments of debt service relating to such financing, and such payments due during the term of this Lease shall constitute additional rent hereunder. Lessor will execute and deliver commercially reasonable documents pledging its interest in the Leased Property, by joinder or otherwise, in connection with Lessee's financing or refinancing of the Leased Property. In the event of any failure on the part of Lessee to pay any amounts, liabilities or obligations described in this paragraph, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of the Basic Rent.

## **ARTICLE V.**

### Compliance with Laws; Permitted Contests; Lessee's Acceptance of Leased Property; Reports; Net Lease

Section 5.01 Compliance with Laws. Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become lawfully applicable to the Leased Property, the repair and alteration thereof, and the use or manner of use of the Leased Property, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

Section 5.02 Permitted Contests. Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in Section 5.01, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

Section 5.03 Acceptance of Leased Property. Lessee acknowledges that, as between Lessor and Lessee, it has examined the Land described in Exhibit A attached hereto and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, including, without limitation, the environmental and soil conditions, as of the first day of the term of this Lease, and accepts the same in said condition and state; that no representations as to the condition or state thereof have been made by representatives of Lessor; and that in entering into this Lease, Lessee is relying solely upon its own examination thereof.

Section 5.04 Net Lease. This is a "net lease" and the Basic Rent, additional rent and all other sums payable hereunder to or for the account of Lessor shall be paid promptly and without set off, counterclaim, abatement, suspension, deduction, diminution or defense.

Section 5.05 Reports. On or before each January 31, commencing with January 31 following the Completion Date, Lessee shall provide Lessor with a written report, in such form as shall be reasonably requested by Lessor (the "Annual Performance Report"), that includes the following:

- (a) A comparison of the Rent charged with respect to each Unit on the Leased Property and Lessor's calculation of 30% of 120% of the area median income provided by Lessor in accordance with Section 7.05 hereof;
- (b) The work address where the residents of each Unit are employed; and
- (c) The length of time that the residents have resided in each Unit.

**ARTICLE VI.**  
**Title and Tax Benefits**

**Section 6.01** **No Conveyance of Title by Lessor.** Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, pledge, encumber or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Property to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease unless such conveyance is consented, in writing, to by Lessee and its mortgagee. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Property except for any such lien, encumbrance or charge otherwise created by this Lease or consented to by Lessee.

**Section 6.02** **Tax Benefits.** During the Term, Lessee shall be entitled to all benefits under federal and state tax laws attributable to the ownership of the Leased Property. Lessor shall execute and deliver other and further certificates, documents, and amendments to this Lease as reasonably requested by Lessee to confirm and establish that Lessee is the owner of the Leased Property for federal income and state franchise and excise tax purposes.

**Section 6.03** **Taxation of Improvements.** This Lease is intended to be a lawful agreement between the Lessee and Lessor, as an instrumentality of a local government, for payments in lieu of taxes and therefore, the Buildings are assessed solely to Lessor and are subject to all applicable exemptions, all in accordance with Tennessee Code Annotated § 67-5-502(d).

**ARTICLE VII.**  
**Taxes and Other Charges, Rent Levels**

**Section 7.01** **Taxes and Other Governmental Charges.** Lessee agrees, subject to the provisions of Section 7.04, to pay and discharge, as additional rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Property or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

**Section 7.02** **Lessee Subrogated to Lessor's Rights.** To the extent of any payments of additional rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such additional rent so paid by Lessee.

**Section 7.03** **Utility Services.** Lessee agrees that Lessor is not, nor shall it be, required to furnish to Lessee or any other user of the Leased Property any gas, water, sewer, electricity, light, heat, power or any other facilities, equipment, labor, materials or services of any kind pursuant to this Lease and Lessee agrees that it shall pay all costs and expenses related to the foregoing.

Section 7.04    Payments in Lieu of Taxes.

(a)    Recognition of Tax Status. Lessee recognizes that under present law, including specifically the Act, the properties owned by Lessor are exempt from all taxation in the State of Tennessee.

(b)    Administrative Provisions. In furtherance of the agreements in this Section, it is agreed by and between the parties hereto that Lessee, in cooperation with Lessor, shall cause all of the Leased Property, including but not limited to, the Leased Land, the Buildings and each expansion of any Building to be valued and assessed separately by the assessor or other official or officials charged with the responsibility of assessing privately owned property in the area where the Leased Property is located at the time such privately owned property is valued or assessed. Lessee, in cooperation with Lessor, shall cause to be applied to the appropriate taxable value of each such portion of the Leased Property the tax rate or rates that would be applicable for state and local tax purposes if the property were then privately owned, and shall cause the county trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to Lessor and Lessee a statement of the taxes which would otherwise then be chargeable to each such portion of the Leased Property. The right is reserved to Lessee to the same extent as if Lessee were the owner of the Leased Property to contest the validity or amount of any such assessment. Notwithstanding the foregoing, Lessee shall only be required to obtain the valuation and assessment required by this subsection for those Tax Years, if any, or any portion thereof as to which Lessee is required, for any reason, to make a payment in lieu of tax that is equal to or proportionate to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee.

(c)    Payments in Lieu of Taxes. For each Tax Year prior to the Abatement Period, Lessee shall make annual payment in lieu of taxes to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee. For each Tax Year during the Abatement Period, Lessor shall not be required to make any payment in lieu of taxes.

Amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within such Tax Year. Any payment due with respect to a Tax Year that is not paid prior to the termination or expiration of this Lease shall not be extinguished as a result of such termination or expiration and shall survive such termination or expiration.

Notwithstanding anything to the contrary contained in this Section, this Lease shall not be extended except pursuant to an amendment in writing and executed by both the Lessor and Lessee. Such reduction in taxes otherwise payable shall not apply with regard to any other tax assessed against Lessee, its income, its other real property or its personalty. In the event Lessee assumes ownership of the Leased Property, Lessee shall begin paying all applicable ad valorem and other taxes directly to the City and the County, as assessed, but shall not make, from the date of such acquisition, any in lieu payments with respect to such property other than those payments that were unpaid at the time of such acquisition.

Notwithstanding anything to the contrary contained in this Section, in the event that Lessee fails to complete the construction of the Buildings in accordance with Article XI hereof, then Lessee shall make a payment in lieu of taxes with respect to each Tax Year remaining in the Term on behalf of the Lessor to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee.

(d)    Credit for Taxes Paid. Nothing contained in this Section 7.04 is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Property were owned by Lessee. It is accordingly understood and agreed that the

amount payable by Lessee in any year under the provisions of this Section 7.04 shall be reduced by the amount of any ad valorem taxes lawfully levied upon the Leased Property or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee pursuant to the requirements of Section 7.01 hereof to the City and the County and to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.04 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.04 shall be reduced by such excess amount.

(e) Timing of Payments. Each payment in lieu of taxes required by this Section 7.04 with respect to any Tax Year or partial Tax Year, to the extent payable for the benefit of the City, shall be due on or before the last day on which ad valorem taxes are payable to the City with respect to such Tax Year, and, to the extent payable for the benefit of the County, shall be due on or before the last day on which ad valorem taxes are due and payable to the County with respect to such Tax Year. The obligation to make any such payments shall survive the termination of this Lease.

(f) Reports. On behalf of Lessor, Lessee shall, during the term of this Lease, submit on or before October 1 of each year to the Tennessee State Board of Equalization the annual report required to be submitted by it.

(g) Payment Upon Termination or Expiration. Upon the termination of this Lease for any reason during a Tax Year, Lessee shall pay a pro-rated amount of the payments in lieu of taxes, if any, required by this Section 7.04 for the period that this Lease is in effect and for which no payments in lieu of taxes have been made up to the date of such termination.

(h) Cessation of Business. Except in the event Lessee shall terminate this Lease pursuant to Article IX of this Lease, in the event Lessee ceases the active operation (excluding temporary cessations due to Force Majeure events) of a workforce housing rental facility at the Leased Property, and notwithstanding any provision herein to the contrary, Lessee shall make payments in lieu of taxes beginning as of the date Lessee ceases such operation equal to the ad valorem taxes that Lessee otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by Lessee. Upon the foreclosure of Lessee's leasehold interest in this Lease or assignment of Lessee's leasehold interest in this Lease without the prior written consent of Lessor, any successor to Lessee's interest hereunder shall, notwithstanding any provisions herein to the contrary, make payments in lieu of taxes beginning as of the date such successor acquires Lessee's leasehold interest hereunder equal to the ad valorem taxes that such successor otherwise would have been required to make with respect to the Leased Property if the Leased Property was owned by such successor.

(i) Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Property or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Property or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

Section 7.05 Covenant as to Rents. Lessee acknowledges that Lessor, in order to encourage the development of workforce housing, has agreed to permit Lessee to make payments in lieu of taxes pursuant to the preceding paragraphs that are less than the ad valorem taxes that otherwise would have been payable

by Lessee if Lessee held title to the Leased Property based upon the Units in the Buildings being subject to the Rent Restrictions, as defined herein. Lessee agrees to not charge Rents for any Unit in the Buildings that exceeds 30% of 120% of the average median income for Sevier County (the "Rent Restrictions"). The average median income shall be determined by Lessor and provided to Lessee from time to time based upon published information made available by the United States Department of Housing and Urban Development ("HUD"). If HUD no longer publishes such information, Lessor may utilize an alternative methodology for determining average median income for Sevier County subject to the approval of Lessee, which approval shall not be unreasonably withheld or delayed. The average median income shall be adjusted for family size based upon the number of bedrooms in each Unit in the Buildings as shown on Exhibit C attached hereto.

In connection with the foregoing, if the percentage of the actual number of rented Units in the Buildings in compliance with the Rent Restrictions is less than 100% of the total number of rented Units in the Buildings for any Tax Year as of the end of such Tax Year, Lessee shall pay to Lessor, for the benefit of the City and the County, an additional payment in lieu of taxes with respect to such Tax Year in an amount equal to (i) the ad valorem taxes that would otherwise be payable to the City and the County with respect to the Leased Property for such Tax Year if the Leased Property were owned by Lessee, multiplied by (ii) 1 minus the Rent Restrictions Achievement Percentage calculated for such Tax Year (each, an "Additional PILOT Payment"). Lessor shall calculate the amount of the Additional PILOT Payment, if any, and pay such amount to Lessor within 30 days after the applicable report under Section 5.05 is due.

Section 7.06 Employment. Lessee shall use all reasonable efforts to lease the Units to residents employed in the City and the County. Lessee shall use all reasonable efforts to ensure that at least 80% of the residents of the Units are employed in the County and that at least 50% of the residents of the Units are employed in the City. If any Annual Performance Report shall demonstrate that Lessee shall not have achieved such percentages of employment, Lessee shall demonstrate to Lessor's reasonable satisfaction that Lessee has a marketing plan designed to increase such percentages of employment.

## **ARTICLE VIII.**

### **Maintenance and Repair**

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Property or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Property in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

Lessee shall keep and maintain in good order, condition and repair (including any such repair as is required due to fire, storm or other casualty) the Leased Property and every part thereof and any and all appurtenances thereto. Lessee shall save Lessor harmless on account of claims for mechanics and materialmen's liens in connection with any work by Lessee, and any such liens shall exist only against Lessee's leasehold interest and shall be discharged, by bond or otherwise, within sixty (60) days after filing. Lessee shall keep and maintain the Leased Property in accordance with all directions, rules and regulations of the proper officials of the government agencies having jurisdiction, at the sole cost and expense of Lessee, provided that Lessee shall not be required to repair or restore the Leased Property following material damage from a fire or other casualty except that Lessor may require Lessee to remove any debris from the Leased Property following a fire or other casualty.

**ARTICLE IX.**  
Condemnation

If during the Term, all or any part of the Leased Property be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the entire award for the taking. If title to or control of all of the Leased Property shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Property shall be taken as to result in rendering a substantial part of the Leased Property untenable or of materially reduced value to Lessee, Lessee may terminate this Lease and exercise the purchase option purchase to Article XIV by giving written notice to the Lessor and thereafter shall have no further liability hereunder except as specifically provided herein, provided, as a condition of such termination, Lessor may require Lessee to remove all or a portion of the improvements from the remaining portion of the Leased Property.

**ARTICLE X.**  
Insurance and Indemnification

Section 10.01 Insurance. Lessee shall carry commercial general liability insurance covering the Leased Property and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure all improvements on the Leased Property at their full replacement value, with Lessor being included as an additional insured, and Lessee shall provide evidence of same to Lessor. Each policy described above shall not be canceled without first giving Lessor not less than thirty (30) days prior written notice. Lessee shall provide to Lessor evidence of all insurance policies contemplated by this Section, including, upon request, annual certificates of continued coverage.

Section 10.02 Indemnification. Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Property or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Property, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, (iv) the failure of the Acquisition Deed to convey title to the Leased Land to Lessor on the date hereof other than as described in the Acquisition Deed, (v) any disputes, demands or claims related to the title of the Leased Land or any liens or other encumbrances affecting the Leased Land (other than claims originating from an action in violation of Section 6.01 hereof), or (vi) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Property and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to indemnify any of the Indemnified Parties in the event of any acts of gross negligence or willful misconduct or intentional misconduct of any of the Indemnified Parties or for any claim or liability which the Indemnified Parties was not given the opportunity to contest. The indemnification provided shall survive termination of this Lease.

## **ARTICLE XI.**

### **Construction of Improvements; Alterations**

Lessee shall have the right to construct buildings and other improvements on the Leased Land from time to time and to make additions to and alterations of any such buildings and improvements and any existing buildings and improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance covering all persons employed in connection with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Property.

Lessee covenants and agrees at its expense to cause the construction of apartment buildings and improvements to be located on the Leased Land as have been described to Lessor in connection requesting Lessor to acquire and lease the Leased Property (the "Buildings"), and in connection therewith, Lessee agrees to incur capital expenditures for the acquisition of the Leased Land and the renovation of the Buildings in an aggregate amount of not less than \$65,000,000. It is understood and agreed that the Buildings, together with all other improvements or fixtures from time to time placed on the Leased Land, shall become the property of Lessor and part of the Leased Property, subject to the purchase option set forth in Article XIV. The cost of the construction of the Buildings borne by Lessee shall be treated as additional rent payable by Lessee under this Lease. Lessee agrees to complete the construction of the Buildings prior to the Completion Date, provided that such time period shall be extended in the event of an event of Force Majeure.

## **ARTICLE XII.**

### **Subletting, Assignments and Mortgaging**

Section 12.01 Except for leases in the ordinary course of business or otherwise desirable for operation of an apartment complex (including without limitation, residential leases to tenants at the Leased Property), Lessee shall not have the right to sublet the Leased Premises or assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor, such approval not to be unreasonably withheld, conditioned or delayed.

Section 12.02 Notwithstanding Section 12.01 hereof, Lessee is hereby given the right, at any time and from time to time, to mortgage its leasehold estate in the Leased Property, provided that any such leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder. As used in this Section and throughout this Lease, the noun "mortgage" shall include a deed of trust, the verb "mortgage" shall include the creation and delivery of a deed of trust, the word "mortgagee" shall include the beneficiary under a deed of trust, and the terms "foreclose" or "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.

Section 12.03 Any mortgagee, lender or other holder of similar rights must comply with the requirements described in the Lease.

Section 12.04 If a mortgagee shall have given Lessor a written notice specifying the name and mailing address of the mortgagee, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless (i) Lessor shall have given the mortgagee a copy of its written notice to Lessee of such Event of Default addressed to the mailing address last furnished by the mortgagee, and (ii) any applicable cure period afforded mortgagee shall have expired.

**ARTICLE XIII.**  
Events of Default; Termination

If any one or more of the following events (herein called “Events of Default”) shall happen:

- (a) if Lessee fails to maintain the commercial general liability insurance required by Section 9.01; or
- (b) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof, and such default shall continue for more than thirty (30) days after Lessee’s receipt of written notice of such default to Lessee from Lessor; or
- (c) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof, other than that referred to in the foregoing subdivisions (a) and (b), and such default shall continue for sixty (60) days after Lessor shall have given Lessee written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 60-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence);

then in any such event Lessor at any time thereafter and while such Event of Default shall continue may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default and a date of termination of this Lease not less than ninety (90) days after the giving of such notice. Upon such termination, Lessor shall have the right, but not the obligation, to enter upon the Leased Property and repossess the Leased Property. This termination right is subject to Lessee’s right to purchase the Leased Property pursuant to Section 14.01 and at any time during or within 30 days after the term of this Lease, Lessee may exercise its right in Section 14.01 to purchase the Leased Property without regard to whether an Event of Default has occurred.

**ARTICLE XIV.**  
Purchases and Purchase Prices

Section 14.01 Option to Purchase. Lessee (and upon an event of default under any mortgage, such mortgagee) shall have an irrevocable and exclusive option to purchase the Leased Property as a whole or any part thereof at any time during the Term or within thirty (30) days after the termination or expiration of the Lease for the amount provided in Section 14.03. To exercise such option Lessee or mortgagee shall (i) give Lessor at least ten (10) days’ prior written notice of its intent to exercise any option granted pursuant to this Section 14.01, which notice shall state the purchase date, and (ii) comply with the provisions of Section 14.03 hereof. The option to be exercised by Lessee or mortgagee hereunder may be exercised whether or not a default or Event of Default has occurred hereunder.

Section 14.02 Granting of Easements. From time to time during the Term, Lessee shall have the right, at Lessee’s expense, to cause Lessor (i) to grant easements affecting the Leased Land, (ii) to dedicate or convey, as required, portions of the Leased Land for road, highway and utilities and other public purposes, and (iii) to execute petitions to have the Leased Land or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district. Lessor shall also promptly execute and deliver estoppels, joinders, non-disturbance agreements and other documents required in connection with Lessee’s use, financing, and refinancing of the Leased Property.

Section 14.03 Exercise of Option.

(a) To exercise any option contained in Section 14.01, Lessee shall pay, or cause to be paid, on or prior to the purchase date, as the purchase price the sum of (i) \$1.00 plus (ii) any other amounts that are then due or that have accrued under this Lease (including, without limitation, any amounts due upon termination or expiration of this Lease), but excluding any amounts required to be expended pursuant to Article XI.

(b) On the purchase date for the purchase of the Leased Property pursuant to Section 14.01, this Lease shall terminate and Lessor shall convey Lessor's interest in the Leased Property to Lessee (or its assigns) by quitclaim deed and/or bill of sale, as appropriate, without warranty of any type. The form of the quitclaim pursuant to which property will be conveyed pursuant to this Section shall be in the forms attached hereto as Exhibit B. Lessee shall pay all expenses relating to such conveyance.

**ARTICLE XV.**  
Miscellaneous

Section 15.01 Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 15.02 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 15.03 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by a nationally recognized overnight courier service, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the Lessor:

The Industrial Development Board of the City of Sevierville, Tennessee  
120 Gary Wade Boulevard  
Sevierville, Tennessee 37862  
Attention: Chairman

To the Lessee:

Pep35, LLC  
405 Golfway West Drive  
St. Augustine, Florida 32095  
Attention: Charles Johnson

Section 15.04 Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 15.05 Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 15.06 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 15.07 Expenses. Lessee shall pay all costs and expenses of Lessor in connection with the preparation, negotiation and execution of this Lease and the performance hereof, including the reasonable fees and expenses of Lessor's attorneys. In addition, in the event that Lessor shall be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor the reasonable value of said attorneys' fees, and any other reasonable expenses incurred by Lessor as a result of such default.

Section 15.08 No Liability of Officers, Etc. No recourse under or upon any obligation, covenants or agreement contained in this Lease shall be had against any incorporator, members, director or officer, as such, past, present or future, of Lessor, either directly or through the Lessor. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by Lessee as a condition of and consideration for the execution of this Lease.

Section 15.09 No Liability of City, County, Officers, Etc. The City, County and the officers and agents of the City and County shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City, County or the officers or agents of the City or County, within the meaning of any constitutional or statutory provision whatsoever.

Section 15.10 Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Property and the payments to be made pursuant to this Lease, and Lessee shall not have any recourse against any other assets of Lessor.

Section 15.11 Interest. In addition to all other amounts payable under this Lease, Lessee shall also pay interest on any payment due hereunder that is not paid on the date such payment is due until paid at the interest rate, as it may vary from time to time, that the City would impose on a delinquent tax payment during the period such payment was due.

Section 15.12 Cost Benefit Analysis. Attached hereto as Exhibit D is the analysis of the costs and benefits of the payment-in-lieu of tax provisions of this Lease required by the Tennessee Code Annotated § 7-53-305(b).

[Signatures appear on following page.]

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the date and year first above written.

LESSOR:

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF SEVIERVILLE, TENNESSEE**, a  
public nonprofit corporation organized and existing under  
the laws of the State of Tennessee

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

LESSEE:

**PEP35, LLC**,  
a Florida limited liability company

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

EXHIBIT A

Legal Description of Leased Land

Situated in the Fourth Civil District of Sevier County, Tennessee and being a part of the property conveyed to Rex Rainwater and Anna Marshall Rainwater by a Warranty Deed on September 28, 1948, in Deed Book 101, page 87, in the Register's Office at Sevierville, Tennessee, and more particularly described as follows:

BEGINNING at a found 1/2-inch iron pin and cap, stamped "Site Inc 1301", located at the southwest corner of the property herein described, also being the southeast corner of Sevier Solid Waste, Inc. tract described in Deed Book 468, page 5 in said Register's Office at Sevierville;

THENCE North 22 degrees 17 minutes 40 seconds West 240.83 feet along the East line of said Sevier Solid Waste, Inc. tract to a found 1/2-inch iron pin and cap;

THENCE continuing along the East line of said Sevier Solid Waste, Inc. tract North 11 degrees 26 minutes 23 seconds West 632.34 feet to a found 1/2-inch iron pin and cap, said point being the common corner between the subject tract, said Sevier Solid Waste, Inc. tract, and the Glenna M. Semmer tract, as described in Deed Book 504, page 677 in said Register's Office;

THENCE North 77 degrees 15 minutes 45 seconds East 1097.25 feet along the south line of said Glenna M. Semmer tract to a found 1/2-inch iron pin and cap, stamped "Site Inc 1301", located on the southerly line of said Glenna M. Semmer Tract, also being on the westerly right-of-way of S.R. 446 (Veteran's Boulevard);

THENCE South 04 degrees 44 minutes 49 seconds West 410.53 feet along said westerly right-of-way of S.R. 446 (Veteran's Boulevard) to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said westerly right-of-way of S.R. 446 (Veteran's Boulevard) South 08 degrees 29 minutes 30 seconds West 180.82 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said westerly right-of-way of S.R. 446 (Veteran's Boulevard) South 04 degrees 44 minutes 49 seconds West 97.69 feet to a found 1/2-inch iron pin and cap, stamped "Site Inc 1301", said point also being on the northern right-of-way of Center View Road;

THENCE along a non-tangent curve to the left, having a radius of 446.25 feet, an arc length of 141.08 feet, subtended by a long chord having a bearing of South 57 degrees 10 minutes 38 seconds West, a chord length of 140.49 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road South 48 degrees 57 minutes 17 seconds West 183.79 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road along a curve to the right, having a radius of 652.82 feet, an arc length of 168.82 feet, subtended by a long chord having a bearing of South 56 degrees 37 minutes 59 seconds West, a chord length of 168.35 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road along a curve to the right, having a radius of 314.19 feet, an arc length of 105.56 feet, subtended by a long chord having a bearing of South 74 degrees 13 minutes 44 seconds West, a chord length of 105.06 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road South 84 degrees 13 minutes 30 seconds West 75.75 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road along a curve to the left, having a radius of 383.59 feet, an arc length of 130.42 feet, subtended by a long chord having a bearing of South 74 degrees 31 minutes 14 seconds West, a chord length of 129.80 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road South 64 degrees 48 minutes 57 seconds West 40.42 feet to a set 5/8-inch iron pin and cap, stamped "R. Murphy 3277";

THENCE continuing along said northern right-of-way of Center View Road along a curve to the right, having a radius of 949.06 feet, an arc length of 53.89 feet, subtended by a long chord having a bearing of South 66 degrees 10 minutes 46 seconds West, a chord length of 53.85 feet to the beginning and containing 17.9032 acres.

This description was prepared by Richard Murphy, TN RLS #3277 of Qk4, Inc. on February 2, 2022.

EXHIBIT B

This Instrument Prepared By:  
G. Mark Mamantov, Attorney  
BASS, BERRY & SIMS PLC  
1700 Riverview Tower  
900 South Gay Street  
Knoxville, Tennessee 37902

QUITCLAIM DEED

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between:

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF SEVIERVILLE, TENNESSEE, a public nonprofit corporation organized and existing under the laws of the State of Tennessee.

First Party, and

PEP35, LLC, a Florida limited liability company.

Second Party,

WITNESSETH: that said First Party, for and in consideration of the sum of ONE DOLLAR (\$1.00) cash and other good and valuable considerations in hand paid by Second Party, the receipt and sufficiency of which is hereby acknowledged, has quitclaimed and does hereby quitclaim unto the said Second Party the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A AND MADE A PART HEREOF.

THIS CONVEYANCE is made subject to applicable easements, restrictions and building set back lines of record.

TOGETHER with all the estate, right, title and interest of the First Party therein, with the hereditaments and appurtenances thereto appertaining releasing all claims therein.

In this instrument in every case the plural shall include the singular and vice-versa and each gender the others.

IN WITNESS WHEREOF, this instrument has been executed on behalf of First Party by its duly authorized officer on the day and year first above written.

THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF SEVIERVILLE, TENNESSEE

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



EXHIBIT C

Family Size Adjustment for Unit Size

One Bedroom – Average Median Income for Family of Two (2)

Two Bedroom – Average Median Income for Family of Four (4)

Three Bedroom – Average Median Income for Family of Six (6)

**EXHIBIT D**

**Cost Benefit Analysis**

<b>Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax</b>												
This form should be included with every PILOT agreement submitted to the Comptroller's Office at <a href="https://www.comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/property-tax-incentive-programs.html">https://www.comptroller.tn.gov/boards/state-board-of-equalization/sboe-services/property-tax-incentive-programs.html</a>												
<b>Instructions: Complete fields shaded gray. Additional comments and information about costs or benefits associated with the project may be attached.</b>												
Date:		12/31/23		Person Completing the Form:		G. Mark Mamantov						
				Title:		Attorney						
Lessor:		The Industrial Development Board of the City of Sevierville, Tennessee										
Lessee:		Pep35, LLC										
Describe Abatement Term:		See attached										
Lease Term Begin Date:		12/31/23		Lease Term End Date:		See attached.						
Comments/Description:		The purpose of the PILOT lease is to encourage Lessee to acquire certain real property and construct multi-family housing facilities thereof in the City of Sevierville, Tennessee.										
Industry Group (drop down box):		53 Real Estate and Rental and Leasing										
NAICS Code (drop down box):		530000 Other Real Estate and Rental and Leasing										
<b>Step 1</b>	10	x	\$22.00	x	2080	=	\$457,600	x	2.065	\$945,036		
	Number of New Jobs		Average Hourly Wage		Hours		Direct Income		Earnings multiplier*	Total New Direct, Indirect & Induced Income		
<b>Step 2</b>	10	x	2.4936	=	24.9							
	Number of New Jobs		Employment multiplier*		Total Number of New Direct, Indirect & Induced Jobs							
<b>Step 3</b>	\$945,036	x	0.0942	=	\$89,022	x	.606*	=	\$53,948	x	0.162	\$8,740
	Direct, Indirect & Induced Income				New Total Annual State Tax				New Annual State Sales Tax			New Annual Local Sales Tax
Total New Direct, Indirect & Induced Jobs:		24.9		<b>First Full Year of Service*</b>				PILOT Payment County:		\$0		
Total Direct, Indirect & Induced Income:		\$ 945,035.52		PILOT Payment City:				\$0		* Please attach essential terms relating to PILOT, including term and method of calculation.		
Total of New Annual State & Local Sales Tax:		\$ 62,687.04		Clawback? Yes or No:				Yes				
<b>Estimated Project Cost:</b>		Personal Property:		\$ -		<b>Delegation Resolution(s)</b>						
		Real Property:		\$ 65,000,000.00		Date of County Resolution:				N/A		
		Total Project Cost:		\$ 65,000,000.00		Date of City Resolution:				9/19/22		
*RIMS II employment and income multipliers for the State of Tennessee								Revised 4/2/19 (CERT)				

Schedule to Cost Benefit Analysis

Lessor: The Industrial Development Board of the City of Sevierville, Tennessee

Lessee: Pep35, LLC

Term: Commencing on December, 2023, and ending on the last day of the Abatement Period

PILOT Payments: For each Tax Year prior to the Abatement Period, Lessee shall make annual payment in lieu of taxes to the City and the County in an amount equal to the ad valorem taxes that would otherwise be payable with respect to the Leased Property if such Leased Property were owned by Lessee. For each Tax Year during the Abatement Period, Lessor shall not be required to make any payment in lieu of taxes.

Any term not defined in the preceding paragraph shall have the meaning assigned by that certain Lease by and between Lessor and Lessee, dated as of December 31, 2023.

36075592.2



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## IDB Board Memorandum

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**DATE:** October 31, 2023

**AGENDA ITEM:** Consider approval of Lease Agreement with Michael J. Johnson

**PRESENTATION:** The Board of Mayor and Aldermen has quit claimed property depicted in the attached exhibit at 101 Main Street to the Industrial Development Board for the purpose of entering into a lease agreement with Michael J. Johnson for nine (9) parking spaces.

**REQUESTED ACTION:** Request approval of the Lease Agreement

## LEASE AGREEMENT

THIS **LEASE AGREEMENT** (the “**Lease**”) is effective as of the **31st day of October, 2023**, by and between the **Industrial Development Board of the City of Sevierville, Tennessee** (“**Lessor**”), and **Michael J. Johnson** (“**Lessee**”).

### WITNESSETH:

**Whereas**, Lessor is the owner of property containing nine (9) parking spaces and adjoining property, more particularly described in that Quit-Claim Deed recorded October 24, 2023, in Book 6409, Page 505, in the Register’s Office for Sevier County, Tennessee (the “**Premises**”). Lessor lawfully is in possession of the Premises and has full right to lease the Premises as contemplated herein; and,

**Whereas**, Lessee is the owner of the property known as **Central Flats @101**, more particularly described in that General Warranty Deed recorded September 15, 2016, in Book 4792, Page 189, in the Register's Office for Sevier County, Tennessee (“**Lessee’s Property**”); and,

**Whereas**, the Premises and Lessee’s Property share a common boundary line; and,

**Whereas**, Lessor and Lessee wish to enter into a lease whereby Lessee shall maintain the Premises for use as a parking lot.

**Now, therefore**, for and in consideration of the mutual promises contained herein, and the sum of \$1,080.00 per year cash, in hand paid, the receipt and adequacy of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lease.** Lessor hereby leases to Lessee the Premises, as described in the aforesaid Quit-Claim Deed, and as shown on the drawing attached hereto as Exhibit “**A**”. Lessee shall have the exclusive right to use the Premises for parking. Lessee may erect signage indicating that the parking spaces are exclusively for Lessee’s use. Lessor also leases to Lessee an easement of ingress and egress to access the Premises as same presently exists.

2. **Term.** The initial term of this Lease shall be twenty (20) years and shall commence on the 31st day of October, 2023 (the “**Effective Date**”) and shall continue through the 31<sup>st</sup> day of October, 2043, unless otherwise extended or terminated pursuant to the terms hereof. Provided no default exists on the part of Lessee, Lessee shall have the option to extend the term of this Lease for six (6) additional five (5) year terms upon the same terms and conditions as contained herein, except that rent shall increase as provided herein. Lessee may exercise its option to extend by providing Lessor with notice at least sixty (60) days prior to expiration of the then current term. If Lessee fails to give said notice, the Lessor may terminate this Lease upon the expiration of the current term, without notice to Lessee.

3. **Rent.** Lessee agrees to pay rent to Lessor for the Premises as follows:

Years 1 - 20	\$1,080/yr.
Rent during any extended term	\$1,080/yr.

4. **Rent Payment: No Notice, Set-off, or Abatement.** The first payment of annual rent shall be due on the Effective Date. Thereafter, annual rent is payable in advance on the same day of the same month annually and shall be payable without notice or demand and without deduction, set-off or abatement.

5. **Upkeep, Maintenance, and Repair.** The general upkeep, routine maintenance, and repair of the Premises, including the parking lot and adjoining landscaped property, Lessor's standards, as well as the cost of any improvement thereto, shall be solely the responsibility of Lessee and his successors or assigns.

6. **Use.** The Premises shall be used for parking for the benefit of Lessee's hotel guests, commercial tenants, restaurant and rooftop guests and retail customers.

7. **Benefit; Memorandum of Lease.** This Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors or assigns. This Lease shall not be filed for recording, but in lieu thereof, at the request of either party, Lessor and Lessee shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

8. **No Liability.** The Premises are being leased "AS IS." Lessor assumes no responsibility for any damage to person or property arising out of this rental. Lessee shall have access and use the Premises at Lessee's own risk, and Lessor shall have no liability to Lessee on account of any damage or loss occurring to Lessee or his guests, invitees, and/or employees or to any vehicle parked on the Premises. Articles left in vehicles are at the vehicle owner's risk. Lessee understands and expressly agrees that Lessor is not responsible for loss or damage to any vehicle or its contents by fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to Lessee, or any other individual or personal injury of any nature. Lessee also agrees that all damages arising out of, or occurring in connection with, Lessee's use of the Premises, will be the sole responsibility of Lessee.

Lease

9. **Insurance.** Lessee agrees to carry and pay the premium on Commercial General Liability insurance on the Premises during the term of this Lease in the amount of at least One Million dollars (\$1,000,000.00) combined single limit per occurrence, including contract liability coverage for the obligations of Lessee under the indemnity provisions of this Lease. Lessee also agrees to carry a commercial umbrella excess liability insurance policy in the amount of at least

two million dollars (\$2,000,000.00) per occurrence. The policy or policies may be joint landlord and tenant policies, but shall in any event name Lessor as a named insured to the full extent of the coverage with cross-liability endorsement. Lessee shall furnish Lessee with certificates of such insurance coverage showing the date of expiration thereof and certificates of renewal at least ten (10) days before the date of expiration. All such policies shall provide for fifteen (15) days' notice to Lessor before any cancellation.

10. **Indemnification.** Lessee covenants and agrees to indemnify and hold harmless Lessor, and its officers, employees, and agents, from any and all liability for injury to persons (including wrongful death) or loss or damage to property resulting from the use of the Premises by Lessee, his tenants, guests, customers, licensees, invitees and employees, including but not limited to court costs and reasonable attorney's fees and expenses, including costs, fees and expenses of appeals, reasonably incurred by Lessor in connection with such claims, including but not limited to the damages described in Section 8 of this Lease.

11. **Default.** The occurrence of any of the following shall constitute an event of default by Lessee:

(a) Failure by Lessee to pay on the date due in full any rent or other sums payable hereunder, should such failure continue for more than ten (10) days. TIME IS OF THE ESSENCE, and Lessee understands that no waiver, cure period, or excuse for late payment of rent is intended or allowed beyond the ten (10) day period stated herein.

(b) Failure by Lessee to observe or perform any of the terms, covenants, agreements, or conditions contained in this Lease, other than payment of rent or other sums due, for a period of thirty (30) days after written notice from Lessor specifying such default.

(c) The filing by Lessee of a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization, arrangement, readjustment of debts, or any other relief under the bankruptcy act, or any other insolvency act, or any action by Lessee indicating consent, approval, or acquiescence in any such proceeding; the making by Lessee of any general assignment for the benefit of its creditors; or the inability of Lessee, or the admission by Lessee of the inability to pay its debts.

(d) The filing of any involuntary petition in bankruptcy or similar proceeding against Lessee, and the continuation of such proceeding for a period of ninety (90) days undismissed, unbonded, or undischarged.

(e) The insolvency of Lessee.

(f) The desertion or abandonment, or failure to use the Premises as a going business, for any period exceeding thirty (30) consecutive days, regardless of whether Lessee

continues to pay all rent required by this Lease.

(g) Attachment of the Lessee's interest in the Premises, if not satisfied or dissolved within thirty (30) days.

(h) The assignment, subletting, or mortgaging of the Premises without the prior written consent of Lessor.

(i) Any construction, change, or alteration on the Premises without the prior written consent of Lessor.

(j) The attachment of all or substantially all of the assets of Lessee.

(k) The desertion or abandonment, or failure to use Lessee's Property as a going business as operated by Lessee as of the Effective Date, for any period exceeding thirty (30) consecutive days, regardless of whether Lessee continues to pay all rent required by this Lease.

12. **Remedies:** Lessor, to the extent permitted by law, may take any one or more of the remedial steps set forth below, when there exists an event of default by Lessee:

(a) Lessor may, at its option, declare all installments of rent for the remainder of the current term of this Lease to be immediately due and payable.

(b) Lessor may re-enter and take possession of the Premises without terminating this Lease, and re-lease the Premises in its entirety for the account of Lessee, holding Lessee liable for the difference in rent and other amounts actually paid by the new tenant, and the rents and other amounts payable by Lessee hereunder.

(c) Lessor may terminate this Lease.

(d) Lessor may take whatever action at law or in equity it may deem necessary or desirable to collect the rent and other amounts then due and thereafter to become due, or to enforce performance of any obligation, agreement, or covenant of this Lease, and in connection with such action, may recover all damages to Lessor for Lessee's violation or breach of this Lease.

(e) No remedy reserved to Lessor hereunder is intended to be exclusive, and each and every remedy shall be cumulative. No delay or omission to exercise any right or power accruing to Lessor upon any default by Lessee shall impair any such right or shall be construed to be a waiver thereof.

(f) Lessee shall pay Lessor as additional damages in the event of breach of this Lease

the reasonable fees and expenses of any attorneys employed by Lessor for the collection of rent or the enforcement of performance of this Lease, and such other expenses so incurred by Lessor, including but not limited to court costs.

(g) Lessor may have any vehicles towed from the Premises, at Lessee's expense and without further notice to Lessee.

13. **Notices.** All notices or communications permitted or required under this Lease to be served on Lessor shall be in writing and served on Lessor at the following address:

Industrial Development Board of the City of Sevierville  
Attn: \_\_\_\_\_  
120 Gary Wade Blvd.  
Sevierville, TN 37862

Service may be by personal delivery, by overnight delivery by a nationally recognized courier service or by U.S. Certified Mail, Return Receipt Requested, to the above address as set forth above, or to such other address as Lessor may specify by proper notice to Lessee.

All such notices or communications to Lessee may also be by personal delivery, by overnight delivery by a nationally recognized courier service or by U.S. Certified Mail, Return Receipt Requested, to the address set forth below or to such other address as Lessee may specify by proper notice to Lessor:

Michael J. Johnson  
P.O. Box 1570  
Kodak, TN 37764

Service as set forth in this Section shall be deemed to be complete when personally delivered and shall be deemed complete the day after depositing with an overnight courier service or the third (3rd) day following mailing with proper postage prepaid.

14. **Assignment; Sublease.** This Lease may not be assigned by Lessee without Lessor's prior written consent, which may not be unreasonably withheld or delayed. Lessee may not sublease the Premises without Lessor's written consent, which may not be unreasonably withheld or delayed.

15. **No Modifications; Complete Agreement.** This Lease contains all the terms, conditions, and representations between the parties with respect to the subject matter covered herein. Lessee agrees that he has executed this Lease after examining, or having had an opportunity to examine, the Premises and without relying upon any representation on the part of Lessor as to the condition of the Premises.

16. **Captions.** The captions of this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Lease, or in any way affect the interpretation or construction of the terms and conditions of this Lease.

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

18. **Governing Law; Attorney's Fees.** This Lease shall be governed by and construed and enforced in accordance with the internal laws of the State of Tennessee without regard to its rules as to conflicts of laws. If any litigation is filed related to this Lease, then the non-prevailing party shall pay all reasonable costs, attorney fees and expenses that shall be made or incurred by the prevailing party in enforcing the terms and conditions of the Lease.

**IN WITNESS WHEREOF**, the undersigned have entered into this Lease effective the day and date first above written.

LESSOR:

LESSEE:

The Industrial Development Board of the  
City of Sevierville, Tennessee

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_

Michael J. Johnson

DATE: \_\_\_\_\_

STATE OF TENNESSEE        )  
  ) ss:  
COUNTY OF SEVIER         )

Before me, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be \_\_\_\_\_ of The Industrial Development Board of the City of Sevierville, Tennessee, the within named bargainer, a corporation, and that he/she as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/herself as \_\_\_\_\_.

WITNESS my hand and official seal at office, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE        )  
  ) ss:  
COUNTY OF SEVIER         )

Personally appeared before me, the undersigned authority, a Notary Public, **Michael J. Johnson**, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

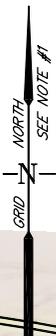
WITNESS my hand and official seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

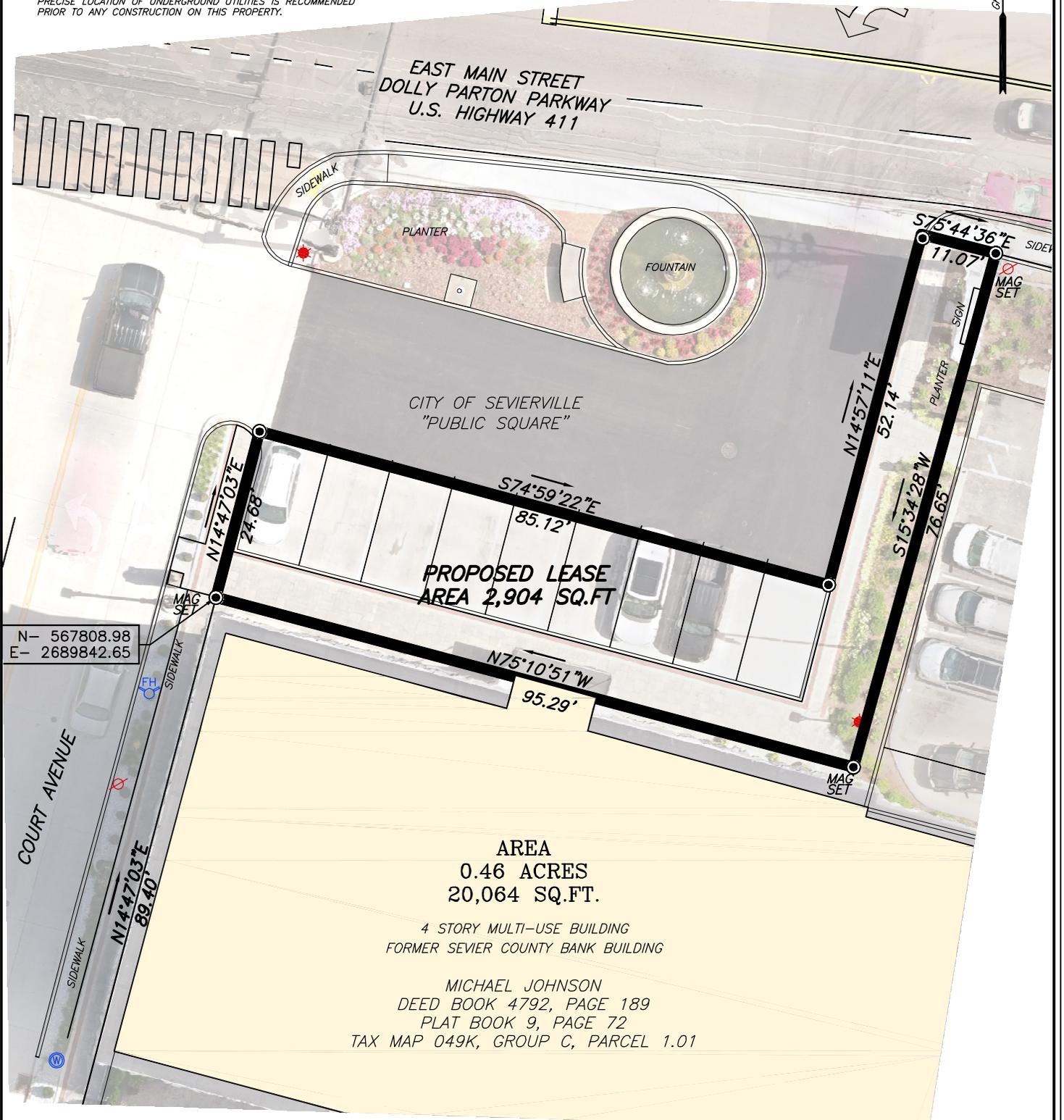
**EXHIBIT A**  
**SURVEY FOR:**  
**'PUBLIC SQUARE'**  
**LEASE AREA**

**LEGEND**

- IRON PIN FOUND
- IRON PIN SET
- UNMONUMENTED POINT
- PROPERTY LINE
- POWER POLE
- ▭ ASPHALT
- ▭ CONCRETE
- ▭ BUILDING/STRUCTURE
- ▭ SEWER LINE EASEMENT



- NOTES:**
- BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH.
  - PARCEL NUMBERS PERTAIN TO SEVIER COUNTY TAX MAPS.
  - UNDERGROUND UTILITY LOCATIONS WERE TAKEN FROM FIELD LOCATIONS AND/OR APPROPRIATE GOVERNING AGENCIES AND ARE APPROXIMATE. PRECISE LOCATION OF UNDERGROUND UTILITIES IS RECOMMENDED PRIOR TO ANY CONSTRUCTION ON THIS PROPERTY.



N- 567808.98  
 E- 2689842.65

**AREA**  
 0.46 ACRES  
 20,064 SQ.FT.

4 STORY MULTI-USE BUILDING  
 FORMER SEVIER COUNTY BANK BUILDING

MICHAEL JOHNSON  
 DEED BOOK 4792, PAGE 189  
 PLAT BOOK 9, PAGE 72  
 TAX MAP 049K, GROUP C, PARCEL 1.01

CURRENT OWNER:

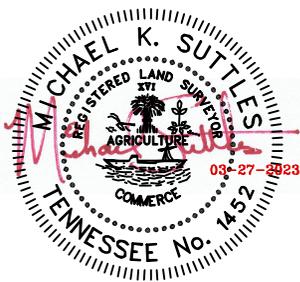
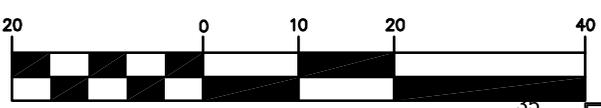
**CITY OF SEVIERVILLE**

LEASE AREA FOR:

**101 MAIN STREET  
 CENTRAL FLATS  
 MARKLEY PROPERTY  
 101 COURT AVE.  
 CITY OF SEVIERVILLE  
 DISTRICT 5 OF SEVIER COUNTY, TENNESSEE**

TAX MAP 049K, GROUP C, PARCEL 1.01  
 SCALE 1" = 20' DATE: 27 MARCH 2023

**GRAPHIC SCALE**



*Michael Suttles*

**LAND SURVEYING SERVICES**

3208 TEASTER LANE  
 PIGEON FORGE, TN 37863  
 PHONE: (865) 804-4500

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