

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A CERTIFICATE OF CONSIDERATION, AND ANY OTHER DOCUMENTS NECESSARY, AND TO ACCEPT A DEED FOR THE PROPERTY LOCATED AT 2401 RICHMOND ROAD, FOR CONSTRUCTION OF A WET WEATHER STORAGE FACILITY, AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$1,820,000.00, PLUS USUAL AND APPROPRIATE CLOSING COSTS.

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BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to execute a certificate of consideration, and any other documents necessary, and to accept a Deed for the property located at 2401 Richmond Road, for construction of a wet weather storage facility.

Section 2 – That an amount, not to exceed the sum of \$1,820,000.00, be and hereby approved for payment to the owner of the property, plus usual and appropriate closing costs, all from account # 4003-303408-92811, at the time of closing.

Section 3 – That this Resolution shall become effective on the date of its passage.

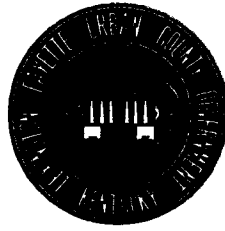
PASSED URBAN COUNTY COUNCIL: February 26, 2015

\_\_\_\_\_  
MAYOR



ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL



Lexington-Fayette Urban County Government  
DEPARTMENT OF ENVIRONMENTAL QUALITY AND PUBLIC WORKS

Jim Gray  
Mayor

David L. Holmes  
Commissioner

To: Mayor Jim Gray  
Urban County Council

From: Vernon Azevedo, P.E.  
Remedial Measures Program Manager

Date: January 16, 2015

Re: Property Acquisition  
2401 Richmond Road  
**CONSENT DECREE**

The request is hereby made for consideration of the purchase of property known as 2401 Richmond Road for the purpose of siting and constructing a wet weather storage facility in accordance with the terms of the Consent Decree and authorizing payment of \$2,024,475.50 to cover the purchase price and associated legal fees.

Funding is budgeted in 4003 303408 3466 92811 LFUCG WH7TANK\_2014 CONSENT\_DE.

Questions regarding this memorandum should be directed to Vernon Azevedo at 859-425-2438.

Pc: Sally Hamilton, CAO  
Glenn Brown, Deputy CAO  
David Holmes, Commissioner  
Charles Martin, P.E., Division of Water Quality  
Keith Horn, Department of Law  
File

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY AND PUBLIC WORKS  
DIVISION OF WATER QUALITY

MEMORANDUM OF  
UNDERSTANDING

Project Name: West Hickman (WH) 7 Wet Weather Storage (WWS)  
Address: 2399 and 2401 Richmond Road, Lexington, KY 40502  
DB: 2984 Page: 638 Cabinet Slide: Cab B / Slide 562  
PVA Parcel ID: Lot:  
Subdivision:

Southland Christian Church of Lexington, Kentucky, Inc (SCC) and LMP, LLC (LMP):

This Memorandum of Understanding contains all of the representations, terms and conditions that will be included in a formal agreement between SCC, LMP, and the Lexington Fayette Urban County Government ("LFUCG") and upon which SCC, LMP, and LFUCG will rely in completing the proposed transaction. LFUCG IS NOT BOUND BY THIS MEMORANDUM OF UNDERSTANDING UNLESS AND UNTIL IT IS APPROVED BY THE URBAN COUNTY COUNCIL.

The total consideration to be paid for the property is one million nine hundred twenty thousand dollars and no cents (\$1,920,000.00). This consideration includes the following terms and conditions:

"See attached "Terms and Conditions for Transfer of Property known as 2401 Richmond Road, Lexington, KY 40502" *And "Agreement (REVISOR) TO TERMS & CONDITIONS Known as 2401 Richmond Road, Lexington, KY 40502. City 10/23/2014 VA 10/23/14*

SCC and LMP are not bound by this Memorandum of Understanding unless and until it is approved by the Board of SCC and LMP.

PLEASE PRINT THE FOLLOWING INFORMATION:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Social Security No.: \_\_\_\_\_  
Amount of Check: \$ \_\_\_\_\_  
Phone Number \_\_\_\_\_

Name: LMP, LLC  
Address: 5001 Harrodsburg Rd, Nicholasville KY 40356  
Social Security No.: EIN 61-6013200  
Amount of Check: \$ \_\_\_\_\_  
Phone Number c/o Craig Avery 859-619-8292

The above, together with the attachments represent all of the terms and conditions of the proposed agreement. These terms and conditions were reached without coercion, threats or other promises by either the Property Owner or the Negotiator(s) representing LFUCG. The LFUCG Negotiator(s) certifies that he has no direct, indirect, present or contemplated interest in the property and in no way benefits from this acquisition.

This Memorandum of Understanding was prepared and signed this 23<sup>rd</sup> day of October, 2014.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

By: Vernon Azevedo

Vernon Azevedo, PE  
Remedial Measures Program Manager

PROPERTY OWNERS' SIGNATURES

Evan Mossbauer  
Evan Mossbauer, President  
Southland Christian Church of  
Lexington, Ky, Inc. And  
LMP, LLC

**Amendment (Revised) to  
Terms and Conditions for Transfer of Property  
Known As  
2401 Richmond Road, Lexington, KY 40502  
From Southland Christian Church of Lexington, Kentucky, Inc. a Kentucky  
Non-Profit Corporation  
And  
LMP, LLC a Kentucky Limited Liability Company  
To  
Lexington Fayette Urban County Government  
200 E. Main Street, Lexington, KY 40507**

LFUCG made an offer for the purchase 2401 Richmond Road on September 18, 2014 with various terms and conditions that have been negotiated over the last year. This Amendment is in addition to those terms and conditions.

1. Terms and Conditions for Transfer of Property, Section 5, first bullet to be amended to: Paving of the Home Depot access easement including along 2399 Richmond Road parcel.
2. Acceptance of additional Restricted Uses included in the Southland and LMP, LLC LOI with purchaser of 2399 Richmond Road(Panda Express), as follows: ***Seller shall not allow any real property leased or owned by Seller (including any parent, subsidiary or affiliated entity or agent) within the Restricted Area on or after the Closing to be used (i) for the sale of Asian Food or for a "Noodles & Company", or (ii) in a way which interferes with access to the Property or visibility of the Property (including Buyer's building and signs) (collectively, the "Restrictive Covenants"). The term "Asian Food" includes, without limitation, Chinese, Japanese (including sushi), Vietnamese, Thai, Hawaiian, Mongolian, and Korean foods. In addition, Asian Food that is (i) cooked in a wok, (ii) food generally recognized as Chinese food, (iii) soy sauce-based food, and (IV) presented in a buffet format is also restricted. The term "Restricted Area" is defined as real property Seller (including any parent, subsidiary or affiliated entity or agent) leases, owns or owned on or after the Closing within the Shopping Center which is adjacent to the southeastern exterior boundary of the Property as designated by the cross-hatched area shown on Exhibit "C1." Seller shall execute and deliver to Buyer at the Closing a Declaration of Restrictive Covenant suitable for recording which embodies those restrictive uses set out above. Seller as defined above is Southland Christian Church or LMP, LLC or its successors or assigns. This Paragraph 2 solely pertains to the access and visibility of 2399 Richmond Road, not any other parcel within the Lexington Mall***

VA 10-23-14  
10-23-14

development plan or Southland Christian Church property. The contemplated tank project has been specifically developed in a manner that the current design meets the criteria above.

3. LFUCG has agreed to purchase the property as is. Because of the anticipated schedule for construction of the tank project, Southland is required to complete the stream construction work mandated by the Conditional Letter of Map Revision issued by FEMA. It is estimated this construction work will result in Southland incurring \$100,000 expense that would have been incurred by LFUCG. This amount is to be added to the purchase price, resulting in an amended purchase price of \$2,020,000.
4. LFUCG will complete the Woodhill Trunk Sewer construction along the Home Depot access easement by July 1, 2015, which includes saw-cutting existing pavement and repairing pavement to existing condition. (As stated elsewhere, LFUCG will add a surface paving course on the Home Depot access easement roadway immediately after completion of the tank construction. If the tank is not constructed, LFUCG will repave this roadway by no later than July 1, 2016.)

VA 10-23-14  
CWS 10-23-14  
2

**Terms and Conditions for Transfer of Property  
Known As  
2401 Richmond Road, Lexington, KY 40502  
From  
Southland Christian Church of Lexington, Kentucky, Inc., a Kentucky Non-Profit  
Corporation  
And  
LMP, LLC, a Kentucky Limited Liability Company  
Both with the Address of  
5001 Harrodsburg Road, Nicholasville, KY 40356  
To  
Lexington Fayette Urban County Government  
200 E. Main Street, Lexington, KY 40507**

**Purpose**

It is acknowledged and agreed between the parties that

- Southland Christian Church / LMP LLC (SCC) own two parcels known as 2399 and 2401 Richmond Road, Lexington, KY.
- SCC desires to sell the two parcels consistent with its mission and with all deed restrictions and covenants
- Lexington Fayette Urban County Government (LFUCG) has agreed to terms for settlement of a lawsuit brought by the United States Environmental Protection Agency (EPA) and the Kentucky Energy and Environment Cabinet (EEC) for violations of the Clean Water Act. Those terms are memorialized in the Consent Decree between EPA, EEC and LFUCG.
- LFUCG, in order to comply with the terms outlined in the Consent Decree, desires to purchase property known as 2401 Richmond Road, Lexington, KY 40502, per the proposed amended plat amendment (Figure No. 1A: 14<sup>th</sup> Amendment Final Development Plan, Strand Associates and No. 1B: Revised Plat, Southland Christian Church of Lexington KY, Inc. and Lexington Mall Properties, LLC, 2399 and 2401 Richmond Road, September 2014, Strand Associates), to construct, own, operate, and maintain a wet weather storage (WWS) facility at that location.
- The proposed WWS facility is unique from other WWS facilities to be constructed by LFUCG due to its location at the intersection of Richmond Road and New Circle Road and corresponding exposure to public opinion. Considerations contained herein reflect the unique character of the proposed WWS project, the mission of SCC, and the anticipated reception of the public to this project.

The Terms and Conditions contained herein represent the result of ongoing negotiations that have occurred between representatives of SCC and LFUCG. The negotiations have occurred over the period September 4, 2013 through May 16, 2014.

**SCC Representatives:**

- Craig Avery, SCC
- Stephen Dawahare, SCC
- Kurt Braun, SCC

**LFUCG Representative:**

- Vernon Azevedo, LFUCG

**Referenced Property**

2401 Richmond Road, Lexington, KY 40502

Total Acreage: 3.33 acres +/-

Total Usable Acreage: 1.92 acres +/-

Note: Actual acreage adjusted based upon information provided by SCC and Strand Associates per a pending sale of 2399 Richmond Road. This information is not yet recorded.

**Appraised Value**

The appraised value of the property as determined by

Will Berkley

Berkley Appraisal Company

Lexington, KY

is one million nine hundred twenty thousand dollars and no cents (\$1,920,000.00; \$1,000,000/usable acre). The appraisal is dated November 20, 2013; LFUCG authorized and paid for the appraisal. The appraiser conducted an independent appraisal. Acreage based upon revised plat provided by SCC and Strand Associates, September 2014 (Figure No. 1B).

**Purchase Price**

The agreed purchase price for the referenced property is

One million nine hundred twenty thousand dollars and no cents (\$1,920,000).

The parties acknowledge that the purchase price represents a \$200,000 investment (price reduction) by SCC for the SCC required architectural enhancements and improvements to the WWS facility.

**Commitments by SCC**

1. To the best of its knowledge, SCC has the right to transfer of title to LFUCG without challenge or opposition by Home Depot or other owner/occupants of Mall Properties as

is covered by any previous agreements relating to the referenced properties, i.e., the Saul Agreement and amendments thereto. SCC acknowledges and agrees that the MOU is contingent upon a title search and review by counsel for LFUCG to confirm fee simple ownership of the property and identify any restrictions, liens, encumbrances or other considerations that may exist on the property.

2. SCC acknowledges and agrees to the proposed use of the referenced properties for a WWS facility by LFUCG and agrees that the proposed use is consistent with the deed restrictions and covenants and that SCC will not oppose the proposed use.
3. SCC will furnish all previous environmental studies, evaluations, reports, and documentation as have been prepared for the referenced properties by Shield Environmental or others and relating to underground storage tanks (USTs) or other hazardous chemicals or substances more specifically petroleum related chemicals or compounds and asbestos. SCC will provide documentation of No Further Action (NFA) required relating to USTs and asbestos. Such information shall be provided separately and confidentially and addressed to Keith Horn, LFUCG Law Department.
4. SCC shall proceed to re-plat the property per Attachment No. 1B and shall incur all costs associated with such re-platting. SCC shall provide LFUCG a copy of the signed/approved plat with the referenced, re-platted parcels and citations as to Deed Book, Page, Plat Cabinet and Slide.
5. SCC agrees to waive any and all Common Area Maintenance (CAM) Agreement assessments for the referenced property.
6. SCC agrees to the architectural improvements and enhancements listed in "Commitments by LFUCG".
7. SCC is selling the property "As is".

#### **Commitments by LFUCG**

1. LFUCG agrees to the deed restrictions and covenants (copies attached) to the property and to the restricted use of the property for a WWS facility only. For planning purposes, the volume of the WWS facility is 4.0 million gallons. The final size of the WWS facility will be determined during design.
2. LFUCG agrees to incorporate architectural improvements and enhancements to the WWS facility consistent with the Park Setting (Green) architectural enhancement concept developed in concert with SCC. Figure Nos. 2A, 2B, and 2C represent that concept. The Total Opinion of Project Costs for the WWD and Park Setting architectural enhancement is \$18,967,000.



3. LFUCG acknowledges and agrees to the following architectural design elements and considerations:
  - WWS tank will be fully covered for odor control and aesthetics
  - Appurtenant structures will include a diversion structure, pump station, water storage tank (stored water for cleaning of the WWS), and return structure all of which will be enclosed in an architecturally designed fence. Appurtenant structures to be located at the east end of the proposed WWS facility.
  - Park Setting design will have a maximum elevation of 990+/- ft (top of tank) with two feet of soil cover.
  - Architectural and security lighting.
  - Security fencing other than for appurtenant structures to be determined in design
  - LFUCG will reserve, in the design contract for the WWS facilities, a professional services fee for architectural services and name EOP Architects as a subconsultant for architectural design elements including landscape architecture for the WWS facilities.
4. LFUCG acknowledges and agrees to the following deed restrictions:
  - Reservation of the Access Easement for Home Depot for shipping and deliveries
5. LFUCG agrees to the following site improvements:
  - Paving of the Home Depot access easement
  - Stormwater management for runoff from the SCC and Home Depot properties, i.e., curb and gutter along the south side of the Home Depot access easement and on-site stormwater collection and conveyance system per Figure No. 3: Rough Grading and Erosion Control Plan (Strand Drawing S17 dated 12-17-13).
6. LFUCG agrees to the following maintenance requirements:
  - Maintenance of the Home Depot access easement with respect to paving, resurfacing, patching and snow removal
  - Maintenance of the green space, including Park Setting, for mowing, weed removal and control, and related services will be by special contract with SCC. Such shall be billed monthly and at cost. Tree trimming and replacement, shrub trimming and replacement, mulching, and related services will be billed separately and at cost. Required maintenance services shall be that which is consistent with the goals of SCC and its mission.

**Reference Documents (attached)**

- Deed, dated December 20, 2010 between Southland Christian Church of Lexington, Kentucky, Inc. and Lexington Mall Properties.
- Special Warranty Deed, dated September 27, 2010 between Saul Holdings Limited Partnership and Southland Christian Church of Lexington, Kentucky, Inc.

- Restriction of Use/Covenant Not To Compete for Lots 1, 2401 Richmond, 8, and 2399 Richmond Road of the Lexington Mall Property (Southland Christian Church) As Shown In Plat Cabinet R, Slide 99, In The Office Of Fayette County Clerk, dated April 7, 2014.
- Declaration of Common Area Maintenance Agreement, Easement, and Restrictions Applicable To The Lexington Mall Property (Southland Christian Church), LMP, LLC, 2401 Richmond Road, Lots 7, 8 and 2399 Richmond Road.
- Amended Final Plat of Lexington Mall, Plat Cabinet B, (Slide) 562.
- Deed, dated November 22, 2013 between Convenience Stores Leasing & Management, LLC and LMP, LLC.
- First Amendment To Amended and Restated Agreement, dated February 13, 2011 between Southland Christian Church, Lexington, Kentucky, Inc, Saul Holdings Limited Partnership, Lexington Mall Properties, Inc, and Home Depot U.S.A., Inc.
- Amended And Restated Agreement, dated September 22, 2005 between Saul Holdings Limited Partnership and Home Depot U.S.A., Inc.
- Summary of Appraisal Report of 2399 & 2401 Richmond Road, dated November 20, 2013, prepared by Berkley Appraisal Company, Lexington, Kentucky.
- Opinion of Project Costs for Park Setting – prepared by Hazen and Sawyer
- Meeting Summaries dated:
  - September 4, 2013
  - September 23, 2013
  - December 4, 2013
  - December 12, 2013
  - January 15, 2014
  - January 24, 2014
  - February 12, 2014
  - March 6, 2014
  - April 9, 2014
  - April 18, 2014
  - May 1, 2014
  - May 8, 2014
  - May 16, 2014