

SETTLEMENT AGREEMENT AND RELEASE

This **Settlement Agreement and Release** (“Agreement”) is entered into by and between The Metropolitan Government of Nashville and Davidson County, Tennessee (“Metropolitan Government”), on behalf of The Farmers’ Market, and B&B Laser, LLC (“B&B Laser”), said parties collectively hereinafter referred to as “the Settling Parties,” as of the Effective Date, defined below.

I. RECITALS

WHEREAS, on June 1, 2020 a fire (“the Subject Incident”) occurred at the Nashville Farmers’ Market during construction repair operations conducted by B&B Laser, which resulted in damage to the building and its contents.

WHEREAS, Metropolitan Government leases real property from the State of Tennessee and is the owner of personal property, both of which were damaged as a result of the fire, and fire suppression efforts, and Metropolitan Government has sole and complete responsibility to maintain the grounds and buildings in a state of good repair and therefore has sole and complete authority to compromise any claims for damages sustained as a result of the Subject Incident.

WHEREAS, Metropolitan Government sought to recover from B&B Laser, and its liability insurer, Cincinnati Insurance Company, for damage to the building, its contents, repairs, and business interruption loss as a result of the Subject Incident.

WHEREAS, the Settling Parties have reached a settlement of any and all claims, demands, and/or causes of action that Metropolitan Government and/or the Nashville Farmers Market asserted, or could have asserted against B&B Laser, The Cincinnati Insurance Company, and all

of their current and/or former insurers, directors, officers, fiduciaries, employees, agents, successors, assigns, and/or any or all other entities for damages or losses directly or indirectly sustained as a result of the Subject Incident.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, undertakings, obligations, and/or commitments hereinafter set forth, intending to be legally bound, the Settling Parties do hereby covenant and agree as follows:

II. TERMS AND CONDITIONS

1. **Condition Precedent to Settlement.** Nothing in this Agreement shall become binding on either party unless and until The Metropolitan Council of The Metropolitan Government approves the resolution that will be filed with The Metropolitan Council in connection with this Agreement.

2. **Payment.** In exchange for the consideration provided under this Agreement, Two Hundred Sixty-Five Thousand and No/100 Dollars (\$265,000.00) shall be paid by or on behalf of B&B Laser to The Metropolitan Government within fifteen (15) days after this Agreement is fully executed by the Settling Parties, or the condition precedent described in ¶I above is fulfilled, whichever comes later.

3. **Release.** In exchange for the consideration provided under this Agreement, the adequacy and sufficiency of which Metropolitan Government hereby acknowledges, Metropolitan Government agrees as follows:

Release of Liability. Metropolitan Government, for itself and the Nashville Farmers' Market hereby **RELEASES AND FOREVER DISCHARGES**, to the maximum extent permitted by law and without reservation or exception, B&B Laser, The Cincinnati Insurance Company and their directors, officers, fiduciaries, employees, agents, attorneys, successors, assigns, insurers,

and/or any and all other persons or entities affiliated with B&B Laser or The Cincinnati Insurance Company (“Releasees”) from any and all claims, known or unknown, suspected or unsuspected, that Metropolitan Government, or anyone acting on its behalf, holds or owns, or has at any time before this date held or owned, against the Releasees, which claims include but are not limited to any and all claims asserted, or that could have been asserted, against the Releasees for any injury, damage or loss arising out of the Subject Incident.

4. Sole Responsibility for Payment.

Metropolitan Government represents that it is the sole lawful holder of any claims arising from the damage to the real property, improvements, and contents allegedly damaged by the Subject Incident. Metropolitan Government shall be responsible for paying all parties involved in the cleanup, repair, construction and refitting of the areas damaged by the fire, including all contractors, subcontractors, architects, suppliers, vendors, project management personnel and claims consultants, including all parties identified in the damage documentation that was submitted by or on behalf of Metropolitan Government in connection with settlement discussions and the mediation of the claims arising from the Subject Incident.

5. Covenant Not To Sue. Metropolitan Government agrees never to file, institute, direct or maintain against any of the Releasees any suit, charge, claim, proceeding or any action in or before any court, administrative agency, arbitration panel or other body or tribunal asserting, directly or indirectly, any claim that is released and compromised by this Agreement.

6. Assignment or Transfer. Metropolitan Government represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any other person or entity, in whole or in part, voluntarily, involuntarily, or by operation of law, any right, claim or interest related to the property damaged or claims that were asserted, or could have been asserted, against

the Releasees, and that Metropolitan Government has sole, complete and an unencumbered right, title and interest in the claims released under this Agreement, and that Metropolitan Government is the sole lessee of the real property and sole owner of the personal property that was damaged by the subject fire.

7. **Attorney Representation.** The Settling Parties represent that they voluntarily entered into this Agreement and that they are not under duress or undue influence. The Settling Parties represent that, in executing this Agreement, they had the opportunity to consult legal counsel of their own selection and that their attorneys have reviewed this Agreement, made any desired changes, and advised their respective clients with respect to the advisability of making the settlement and release provided herein and of executing this Agreement. This Agreement is to be interpreted as having been jointly drafted by all the Settling Parties. This Agreement is not to be construed against any particular Party as the author of any particular language in the Agreement.

8. **Entire Agreement.** This Agreement constitutes the whole and entire agreement reached between the Settling Parties in relation to the subject matter of this Agreement, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with respect to the subject matter herein.

9. **Severability.** If any of the provisions set forth in this Agreement are held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision was never contained herein. However, if any provision of ¶3 and ¶4 of this Agreement is ever declared unenforceable, void, invalid, or voidable as a result of a claim brought by or on behalf of Metropolitan Government, then Metropolitan

Government agrees to voluntarily repay all consideration provided under ¶2 of this Agreement, notwithstanding any law, regulation, or agency interpretation/opinion to the contrary.

10. **Applicable Law.** This Agreement is subject to and governed by the laws of the State of Tennessee, without regard to conflict-of-law rules or principles. The Settling Parties hereby consent that jurisdiction is proper in the State of Tennessee for any action arising out of, under or in connection with this Agreement, and that venue is proper exclusively in Davidson County, Tennessee, for any action arising out of this Agreement.

11. **Counterparts.** This RELEASE may be signed electronically or by one or more counterparts, each of which is deemed an original and all of which together constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email is effective as delivery of an originally executed counterpart of this Agreement.

12. **Further Acts.** In addition to the acts recited in this Agreement, the Settling Parties shall perform, or cause to be performed, on the date of this Agreement or thereafter, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated in this Agreement. Each Party shall execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

13. **Authority.** Each Party represents and warrants that the person signing this Agreement on its behalf is an agent acting within the scope and course of his or her employment and is authorized to sign this Agreement on behalf of the corporate or other organized entity and to bind the corporate or otherwise-organized entity to the terms and conditions of the Agreement, has executed it freely and without duress.

14. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the Settling Parties and their respective heirs, executors, administrators, subsidiaries, affiliates, successors, and assigns.

15. **Modification.** Neither this Agreement, nor any term hereof, may be modified, cancelled, amended, waived, or otherwise altered in any way, in whole or in part, except by way of written agreements signed by the authorized representatives of the Settling Parties and which specifically mentions this Agreement.

16. **Waiver.** No provision of, or breach or default under this Agreement shall be deemed waived, in whole or in part, by the course of conduct of any Settling Party, and the failure of any Settling Party to insist upon strict adherence to any term of this Agreement shall not constitute a waiver of any right arising hereunder or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

17. **Costs.** Except as expressly set forth herein, the Settling Parties shall each bear their own costs and expenses, including attorney, mediator, or any other advisor fees, with respect to matters related to the subject matter of this Agreement, including without limitation the preparation and implementation of this Agreement.

18. **Effective Date.** This Agreement shall become effective upon the execution of this Agreement by all of the Settling Parties and satisfaction of the conditions set forth in ¶ 1.

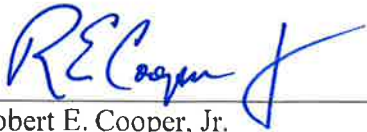
IN WITNESS WHEREOF, the Setting Parties have executed this Agreement as of the date set forth above.

[Remainder of Page Left Intentionally Blank]

METROPOLITAN GOVERNMENT:

**The Department of Law of The Metropolitan
Government of Nashville and Davidson County**

Robert E. Cooper, Jr.
Director of Law



Robert E. Cooper, Jr.
Director of Law
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 3219-6300
Telephone: (615) 862-6378

Dated: _____

B&B LASER, LLC



Daniel P. Berexa
Cornelius & Collins, LLP
511 Union Street, Suite 1500
P.O. Box 190695
Nashville, TN 37219
(615) 244-1440

Attorney for B & B Laser, LLC

Dated: 5/11/2021

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
SIGNATURE PAGE

RECOMMENDED BY:

Charles Kizer
Charles Kizer
Nashville Farmers' Market Interim Executive Director

May 14, 2021
Date

APPROVED BY:

Priscilla Norman
Priscilla Norman
Nashville Farmers' Market Board Chair

May 14, 2021
Date

APPROVED AS TO AVAILABILITY OF FUNDS:

Kevin Crumbo / mcr *TK*
Kevin Crumbo
Director of Finance

May 18, 2021
Date

APPROVED AS TO FORM AND LEGALITY:

R. Alex Dickerson
Assistant Metropolitan Attorney

May 17, 2021
Date

APPROVED AS TO INSURANCE
REQUIREMENTS:

Lora Fox
Director of Insurance
Metropolitan Government

5/17/21
Date

FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:

Metropolitan Clerk

Date