

JCPS Board of Education
March 22, 2016

Explanation of proposed Industrial Revenue Bond (IRB) with Payment In Lieu In Taxes (PILOT) as respects one apartment community at the former Mercy Academy site on E. Broadway and one mixed apartment and retail development along Baxter Ave. and E. Broadway



EDWARDS COMMUNITIES

c/o Ryan Szymanski, President and Jon Wood, Vice President

Development Legal Counsel: Bardenwerper Talbott & Roberts, PLLC

Bond Counsel: Rubin and Hayes

Land Planners, Landscape Architects & Engineers: Gresham Smith & Partners

Architecture & Design: Brian Kent Jones Architects, Inc.

**PROPOSED JCPS
IRB/PILOT FINANCIAL
PLAN**

Summary of Proposed PILOT to JCPS

2.8.16 Proposal from Edwards Communities Development Company

Mercy

<u>Period</u>	<u>Tax Year</u>	<u>Payable</u>	<u>PVA @ 100% all costs ⁽¹⁾</u>	<u>PVA per PILOT</u>	<u>Lvlle Metro School Dist at Full PVA</u>	<u>Lvlle Metro School Dist per PILOT</u>	<u>Lvlle Metro School Dist Participation \$</u>	<u>Current RE tax proceeds to Lvlle Schools ⁽¹⁾</u>	<u>Proposed PILOT in excess of current taxes</u>
Year 1	2018	2019	21,200,000	2,750,000	150,520	19,525	130,995	5,984	13,541
Year 2	2019	2020	21,730,000	2,750,000	154,283	19,525	134,758	6,134	13,391
Year 3	2020	2021	22,273,250	2,750,000	158,140	19,525	138,615	6,287	13,238
Year 4	2021	2022	22,830,081	2,750,000	162,094	19,525	142,569	6,444	13,081
Year 5	2022	2023	23,400,833	2,750,000	166,146	19,525	146,621	6,605	12,920
Year 6	2023	2024	23,985,854	5,300,000	170,300	37,630	132,670	6,770	30,860
Year 7	2024	2025	24,585,500	5,300,000	174,557	37,630	136,927	6,940	30,690
Year 8	2025	2026	25,200,138	5,300,000	178,921	37,630	141,291	7,113	30,517
Year 9	2026	2027	25,830,141	10,600,000	183,394	75,260	108,134	7,291	67,969
Year 10	2027	2028	26,475,895	10,600,000	187,979	75,260	112,719	7,473	67,787
Year 11	2028	2029	27,137,792	27,137,792	192,678	192,678	-	7,660	185,018
Year 12	2029	2030	27,816,237	27,816,237	197,495	197,495	-	7,852	189,644
Year 13	2030	2031	28,511,643	28,511,643	202,433	202,433	-	8,048	194,385
Year 14	2031	2032	29,224,434	29,224,434	207,493	207,493	-	8,249	199,244
Year 15	2032	2033	29,955,045	29,955,045	212,681	212,681	-	8,455	204,225
Year 16	2033	2034	30,703,921	30,703,921	217,998	217,998	-	8,667	209,331
Year 17	2034	2035	31,471,519	31,471,519	223,448	223,448	-	8,883	214,564
Year 18	2035	2036	32,258,307	32,258,307	229,034	229,034	-	9,106	219,928
Year 19	2036	2037	33,064,765	33,064,765	234,760	234,760	-	9,333	225,427
Year 20	2037	2038	33,891,384	33,891,384	<u>240,629</u>	<u>240,629</u>	-	<u>9,567</u>	<u>231,062</u>
					3,844,982	2,519,684	1,325,298	152,863	2,366,821

(1) assumes hard cost plus land which equates to roughly 80% of total costs; 2.5% growth per annum

Summary of Proposed PILOT to JCPS

2.8.16 Proposal from Edwards Communities Development Company

Baxter / PHT site

<u>Period</u>	<u>Tax Year</u>	<u>Payable</u>	<u>PVA @ 100% all costs ⁽¹⁾</u>	<u>PVA per PILOT</u>	<u>Lvlle Metro School Dist at Full PVA</u>	<u>Lvlle Metro School Dist per PILOT</u>	<u>Lvlle Metro School Dist Participation \$</u>	<u>Current RE tax proceeds to Lvlle Schools ⁽¹⁾⁽²⁾</u>	<u>Proposed PILOT in excess of current taxes</u>
Year 1	2018	2019	41,800,000	8,550,000	296,780	60,705	236,075	23,180	37,525
Year 2	2019	2020	42,845,000	8,550,000	304,200	60,705	243,495	23,760	36,945
Year 3	2020	2021	43,916,125	8,550,000	311,804	60,705	251,099	24,354	36,351
Year 4	2021	2022	45,014,028	8,550,000	319,600	60,705	258,895	24,962	35,743
Year 5	2022	2023	46,139,379	8,550,000	327,590	60,705	266,885	25,586	35,119
Year 6	2023	2024	47,292,863	10,450,000	335,779	74,195	261,584	26,226	47,969
Year 7	2024	2025	48,475,185	10,450,000	344,174	74,195	269,979	26,882	47,313
Year 8	2025	2026	49,687,065	10,450,000	352,778	74,195	278,583	27,554	46,641
Year 9	2026	2027	50,929,241	20,900,000	361,598	148,390	213,208	28,243	120,147
Year 10	2027	2028	52,202,472	20,900,000	370,638	148,390	222,248	28,949	119,441
Year 11	2028	2029	53,507,534	53,507,534	379,903	379,903	-	29,672	350,231
Year 12	2029	2030	54,845,222	54,845,222	389,401	389,401	-	30,414	358,987
Year 13	2030	2031	56,216,353	56,216,353	399,136	399,136	-	31,175	367,961
Year 14	2031	2032	57,621,762	57,621,762	409,115	409,115	-	31,954	377,161
Year 15	2032	2033	59,062,306	59,062,306	419,342	419,342	-	32,753	386,590
Year 16	2033	2034	60,538,863	60,538,863	429,826	429,826	-	33,572	396,254
Year 17	2034	2035	62,052,335	62,052,335	440,572	440,572	-	34,411	406,161
Year 18	2035	2036	63,603,643	63,603,643	451,586	451,586	-	35,271	416,315
Year 19	2036	2037	65,193,734	65,193,734	462,876	462,876	-	36,153	426,723
Year 20	2037	2038	66,823,578	66,823,578	474,447	474,447	-	37,057	437,391
					7,581,143	5,079,094	2,502,050	592,127	4,486,967

(1) assumes hard cost plus land which equates to roughly 80% of total costs; 2.5% growth per annum

Summary of Proposed PILOT to JCPS

2.8.16 Proposal from Edwards Communities Development Company

Combined Sites

Period	Tax Year	Payable	PVA @ 100% all costs ⁽¹⁾	PVA per PILOT	Lvlle Metro School Dist at Full PVA	Lvlle Metro School Dist per PILOT	Lvlle Metro School Dist Participation \$	Current RE tax proceeds to Lvlle Schools ⁽¹⁾	Proposed PILOT in excess of current taxes
Year 1	2018	2019	63,000,000	11,300,000	447,300	80,230	367,070	29,164	51,066
Year 2	2019	2020	64,575,000	11,300,000	458,483	80,230	378,253	29,893	50,337
Year 3	2020	2021	66,189,375	11,300,000	469,945	80,230	389,715	30,641	49,589
Year 4	2021	2022	67,844,109	11,300,000	481,693	80,230	401,463	31,407	48,823
Year 5	2022	2023	69,540,212	11,300,000	493,736	80,230	413,506	32,192	48,038
Year 6	2023	2024	71,278,717	15,750,000	506,079	111,825	394,254	32,997	78,828
Year 7	2024	2025	73,060,685	15,750,000	518,731	111,825	406,906	33,822	78,003
Year 8	2025	2026	74,887,202	15,750,000	531,699	111,825	419,874	34,667	77,158
Year 9	2026	2027	76,759,383	31,500,000	544,992	223,650	321,342	35,534	188,116
Year 10	2027	2028	78,678,367	31,500,000	558,616	223,650	334,966	36,422	187,228
Year 11	2028	2029	80,645,326	80,645,326	572,582	572,582	-	37,333	535,249
Year 12	2029	2030	82,661,459	82,661,459	586,896	586,896	-	38,266	548,630
Year 13	2030	2031	84,727,996	84,727,996	601,569	601,569	-	39,223	562,346
Year 14	2031	2032	86,846,196	86,846,196	616,608	616,608	-	40,203	576,405
Year 15	2032	2033	89,017,351	89,017,351	632,023	632,023	-	41,208	590,815
Year 16	2033	2034	91,242,784	91,242,784	647,824	647,824	-	42,238	605,585
Year 17	2034	2035	93,523,854	93,523,854	664,019	664,019	-	43,294	620,725
Year 18	2035	2036	95,861,950	95,861,950	680,620	680,620	-	44,377	636,243
Year 19	2036	2037	98,258,499	98,258,499	697,635	697,635	-	45,486	652,149
Year 20	2037	2038	100,714,962	100,714,962	715,076	715,076	-	46,623	668,453
					11,426,125	7,598,778	3,827,348	744,990	6,853,788

(1) assumes 2.5% growth per annum

(2) based upon \$21,000 paid as JCPS taxes in 2014 on Baxter properties

**PROPOSED LOUISVILLE
METRO IRB/PILOT
FINANCIAL PLAN**



LOUISVILLE FORWARD
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

MARY ELLEN WIEDERWOHL
CHIEF

February 19, 2016

Jon Wood
The Edwards Company
Columbus, Ohio
jwood@edwardscompanies.com

RE: Phoenix Hill and Mercy Projects

Dear Mr. Wood:

Pursuant to KRS Chapter 65, please accept this correspondence as Metro Louisville's best and final offer of assistance to the Edwards Companies ("EC") regarding the two projects noted above.

For the Mercy project, Louisville Metro will abate the Louisville Metro (Urban Services District and County at large) incremental tax revenues produced by the ad valorem tax on the development property up to a cap of \$2,605,559.00. This figure represents an estimated amount of ad valorem taxes on the value of the development. The abatement shall be realized over a 20 year period, which shall begin upon the first full tax year after the completion of the construction, and shall terminate upon the earlier attainment of the receipt of EC of \$2,605,559.00 in abated ad valorem taxes on the development or the 20th year of the abatement period. The abatement is based on an 80% recovery of incremental ad valorem taxes realized.

Similarly, for the Phoenix Hill project, Louisville Metro will abate the Louisville Metro (Urban Services District and County at large) incremental tax revenues produced by the ad valorem tax on the development property up to a cap of \$4,908,093.00. This figure represents an estimated amount of ad valorem taxes on the value of the development. The abatement shall be realized over a 20 year period, which shall begin upon the first full tax year after the completion of the construction, and shall terminate upon the earlier attainment of the receipt by EC of \$4,908,093.00 in abated ad valorem taxes on the development or the 20th year of the abatement period. The abatement is based on an 80% recovery of incremental ad valorem taxes realized.

WWW.LOUISVILLEKY.GOV

METRO DEVELOPMENT CENTER 444 SOUTH 5TH STREET SUITE 600 LOUISVILLE, KENTUCKY 40202

Please be advised that if you desire the legal structure of the incentive to be amended, Louisville Metro reserves the right to amend this offer, but the capped amount of Louisville Metro's abatement will not change regardless of the structure ultimately utilized.

This offer of abatement is contingent upon the execution of a Disbursement and Development Agreement for both properties with Louisville Forward and the attainment of any municipal or other legal approvals required to complete these projects including but not limited to the requisite approvals required from our Metro Council.

Sincerely,


E. Jeffrey Mosley
Deputy Chief, Louisville Forward

PILOT AGREEMENT FOR MERCY PROJECT

DRAFT 2/4/16

AGREEMENT IN LIEU OF TAXES

This Agreement is made effective as of this ____ day of _____, 2016, by and among the Louisville Jefferson County Metro Government (“Louisville Metro”), the Board of Education of Jefferson County, Kentucky (the “Board”), and Edwards Companies, and its successors, assigns and/or transferees (collectively, the “Developer”).

WITNESSETH

WHEREAS, the Developer has acquired or will acquire land located in Louisville, Kentucky (the “Real Estate”), described on Exhibit A hereto and intends to construct a residential complex together with a parking facility on the Real Estate (collectively, including the Real Estate, being the “Mercy Project”; provided, however, that the term “Mercy Project” as used herein shall refer only to the portion of the aforementioned improvements which can be assessed for real estate ad valorem taxes, and shall not include any personal property);

WHEREAS, the Developer has requested that Louisville Metro assist in financing the acquisition and construction of the Mercy Project through the issuance of Industrial Building Revenue Bonds (the “Bonds”);

WHEREAS, the Developer and Louisville Metro have entered into an Inducement Agreement for Louisville Metro to authorize, issue, and sell the Bonds in the aggregate amount not to exceed \$30,000,000, pursuant to KRS 103.200 through 103.285 (the “Act”), to finance the acquisition and construction of the Mercy Project; and

WHEREAS, the Developer has agreed to make certain payments in lieu of real property taxes (“PILOTS”) to Louisville Metro and to the Board, respectively, and to enter into this Agreement in Lieu of Taxes with respect thereto;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. TAX EXEMPTION; VALUATION.

(a) Louisville Metro and the Developer affirm the accuracy of the Recitals contained above and those contained herein.

(b) The Jefferson County Property Valuation Administrator (the "PVA") is responsible for establishing the assessed value of real estate within Jefferson County for the purpose of imposing real estate taxes. For the purpose of this Agreement the term "PVA Assessment" shall mean the value that the PVA assesses or determines from time to time with respect to the real estate value of the Mercy Project.

(c) Upon the issuance of the Bonds, title to the Mercy Project will be conveyed to Louisville Metro at the Developer's costs and the Mercy Project will be leased back to the Developer under a capital or financing lease (the "Lease"). The parties hereto agree that the Lease will provide, *inter alia*, that a default in any payment hereunder by the Developer shall also constitute a "default" or an "event of default", as appropriate, under the Lease. Prior to the execution and delivery of the Lease, this provision in the Lease must be approved in writing by the Board, which approval shall not be unreasonably withheld; provided, however, that within thirty (30) days of the Board's receipt of a proposed final Lease, the Board shall take action to approve or disapprove such Lease pursuant to the terms hereof. Upon this conveyance and the contemporaneous issuance of the Bonds, the Mercy Project will be exempt from real estate ad valorem taxes as long as the Bonds are outstanding in accordance with existing law. The Developer covenants that no personal property shall be financed by the Bonds and/or conveyed to Louisville Metro in connection therewith in order to receive any tax abatement therefor. Any

such personal property shall be subject to personal property tax in accordance with applicable law.

(d) The parties agree that, subject to the terms of this Agreement, the real estate valuation of the Mercy Project will be the real estate values (including all improvements) set forth in Exhibit B attached hereto (the "Agreed Upon Assessed Value") and that the ad valorem real estate tax rates for use in calculating the PILOTs (as hereinafter described) for the term of this Agreement will be the real property tax rate in effect from time to time which would have been applicable to the Mercy Project were it not for the tax exemption resulting from the conveyance described in Paragraph 1(c).

(e) The PILOTs shall be calculated in the following manner: for each year during which the aforementioned tax exemption for the real estate value of the Property is in effect, the real estate value of the Property, as determined pursuant to this Paragraph 1(d), shall be multiplied by the real property ad valorem tax rate in effect from time to time which would have been applicable to the Mercy Project were it not for the tax exemption resulting from the conveyance described in Paragraph 1(c).

(f) Payment of taxes, and payment in lieu of tax, shall be prorated, but only to the extent necessary, during the year when the Bonds mature, resulting in the end of the real estate tax abatement for the Mercy Project.

2. LOUISVILLE METRO PILOTS.

(a) On or before November 1 of each year, the Developer shall (i) pay directly to Louisville Metro the Louisville Metro Compensation, as defined hereinafter, and (ii) deposit with the Trustee under the Indenture (as those terms are defined hereinafter) an amount equal to the remainder of total PILOTS, as calculated pursuant to Paragraph 1(d) above, after subtracting therefrom the Louisville Metro Compensation and the Board PILOTS (as defined hereinafter). The aforementioned payments to Louisville Metro and the Trustee shall be hereinafter referred to collectively as “Louisville Metro PILOTS”.

(b) After the Louisville Metro Compensation is paid to Louisville Metro, the balance of the Louisville Metro PILOTS shall be deposited by the Developer with the corporate trustee serving as trustee pursuant to the trust indenture (the “Indenture”) securing the Bonds (the “Trustee”). The Trustee will use all such payments to pay debt service on the Bonds, which Bonds may be issued in several series to finance the Mercy Project.

3. LOUISVILLE METRO COMPENSATION.

(a) In order to compensate Louisville Metro for a portion of the ad valorem real property taxes that it would have otherwise received for its County-Wide Tax Revenues and its Urban Service District Tax Revenues were it not for the tax exemption afforded by the Act, the Developer agrees to make the following annual payments (which constitute the “Louisville Metro Compensation”): beginning 2017 through the term of the Bonds, the Developer shall pay to the Louisville Metro the amounts described in Exhibit C hereto (the “Louisville Metro Compensation Schedule”), payable no later than November 1 of each applicable year (the “PILOT Payment Date”).

4. BOARD PILOTS. In order to fully compensate the Board for all ad valorem real property taxes that it would have otherwise received were it not for the tax exemption afforded by the Act, the Developer agrees to make the following annual payments (which constitute the “Board PILOTS”) directly to the Board by November 1 of each year: beginning 2017 through the term of the Bonds, the Developer shall pay to the Board the Developer shall pay to the Louisville Metro the amounts described in Exhibit D hereto (the “Board Compensation Schedule”), payable no later than the PILOT Payment Date of the applicable year.

5. LIMITED SCOPE; BOND DOCUMENTS. Other than the ad valorem property taxes discussed herein, this Agreement does not affect or apply to any other taxes or fees that may be owed by the Developer, or its tenants or lessees, to Louisville Metro, the Board or any other taxing authorities, including full personal property taxes on all personal property which may be a part of the Mercy Project, and any other fees or assessments which may be made against the Mercy Project, or the conduct of business associated therewith, as may be made in the normal course of governmental operations. The Developer acknowledges that this Agreement will not be inconsistent or in conflict with the Trust Indenture, the Lease Agreement or other Bond offering documents to be executed or otherwise produced in connection with the issuance of the Bonds, and to the extent that this Agreement is inconsistent or in conflict with those documents, the terms and language of this Agreement shall control over those documents.

6. MATURITY DATE. It is further agreed by the parties that the final maturity date of the Bonds will not be extended beyond _____, 2042. Upon the earlier of (i) final maturity and payment in full of principal of and interest on the Bonds, or (ii) optional prepayment in full of principal and interest on the Bonds, the conveyance of the Mercy Project from Louisville Metro to the Developer will be promptly carried out, and the Mercy Project will

become subject to full ad valorem real property taxation according to law, whether or not the Mercy Project is so conveyed.

7. NOTICES. All notices sent to the Developer shall be sent to:

Edwards Companies

495 South High Street, Suite 150
Columbus, Ohio 43215
Attn: _____

copy to:

Attn: _____

All notices sent to Louisville Metro shall be sent to:

Louisville Jefferson County Metro Government
c/o Louisville Forward
444 South Fifth Street
Louisville, Kentucky 40202
Attn: _____

with copy to

Louisville Jefferson County Metro Government

Louisville, Kentucky 40202
Attn.: _____

All notices sent to the Board shall be sent to:

Jefferson County Board of Education
Vanhoose Education Center
3332 Newburg Road
Louisville, Kentucky 40218
Attn: Chief Financial Officer

8. ASSIGNMENT. The Developer hereby agrees that it shall not assign any of its rights or duties hereunder to a third party, other than a wholly owned affiliate of the Developer, without the prior written consent of Louisville Metro and the Board, which consent shall not be unreasonably withheld.

9. JURISDICTION. The parties hereto hereby agree that venue and jurisdiction for any actions brought pursuant to this Agreement shall be Jefferson County, Kentucky.

10. MODIFICATION. This Agreement in Lieu of Taxes may not be changed orally, but only by an agreement in writing executed by Louisville Metro, the Board and the Developer.

LOUISVILLE JEFFERSON COUNTY
METRO GOVERNMENT

EDWARDS COMPANIES

Mayor

By: _____
Its: _____

BOARD OF EDUCATION OF
JEFFERSON COUNTY, KENTUCKY

By: _____
Superintendent of Schools

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for and a resident of the Commonwealth of Kentucky stated below, personally appeared Greg Fischer and, who, upon his oath, acknowledged himself to be the Mayor of the Louisville Jefferson County Metro Government, and that he as such Mayor being authorized so to do, executed the foregoing instrument for the purposes contained therein by subscribing thereto the name of said Louisville Jefferson County Metro Government by himself as such Mayor.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this ____ day of _____, 2016.

(SEAL)

Notary Public
My Council expires _____

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for and a resident of the Commonwealth of Kentucky and County stated below, personally appeared Donna Hargens who, upon her oath, acknowledged herself to be the Superintendent of Schools of the Board of Education of Jefferson County, Kentucky, and that as such Superintendent of Schools, being authorized so to do, executed the foregoing instrument for the purposes contained therein by subscribing thereto the name of said Board of Education of Jefferson County, Kentucky, by herself as such Superintendent of Schools.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this ____ day of _____, 2016.

(SEAL)

Notary Public
My Council expires _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me a Notary Public in and for said State and City aforesaid, this ___ day of _____, 2016, by _____, the _____ of Edwards Companies, as Developer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

Notary Public

My Council expires _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT B

AGREED UPON ASSESSED VALUE

The following table is expressed in years following the issuance of the Bonds (“Year” or “Years”):

Years 2017-2022: The assessed value shall be equal to the lessor of \$2,750,000 or the PVA Assessment.

Years 2023-2025: The assessed value shall be equal to the lessor of \$5,300,000 or the PVA Assessment.

Years 2026-2027: The assessed value shall be equal to the lessor of \$10,600,000 or the PVA Assessment.

Years 2028 and thereafter: The assessed value shall be equal to the PVA Assessment.

*The abatement ends in the earlier of (a) Year 2042 or (b) the year following the year in which 100% of the Bonds are defeased and redeemed, if earlier.

EXHIBIT C

LOUISVILLE METRO COMPENSATION SCHEDULE

County-Wide Ad Valorem Tax

The Louisville Metro PILOT for the County shall be calculated and based upon Louisville Metro's County-Wide ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 20%.

Upon the receipt by the Developer of benefits from a reduction in the real estate ad valorem payments to Louisville Metro in an aggregate amount of \$2,609,559, the Louisville Metro PILOT for the County shall be calculated and based upon Louisville Metro's County-Wide ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 100%.

Urban Services District Ad Valorem Tax

The Louisville Metro PILOT for the Urban Services District shall be calculated and based upon Louisville Metro's Urban Services District ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 20%.

Upon the receipt by the Developer of benefits from a reduction in the real estate ad valorem payments to Louisville Metro in an aggregate amount of \$2,609,559, the Louisville Metro PILOT for the Urban Services District shall be calculated and based upon Louisville Metro's Urban Services District ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 100%.

EXHIBIT D

BOARD COMPENSATION SCHEDULE

The Board PILOT shall be calculated and based upon the Board's ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto.

PILOT AGREEMENT FOR BAXTER PROJECT

DRAFT 2/4/16

AGREEMENT IN LIEU OF TAXES

This Agreement is made effective as of this ____ day of _____, 2016, by and among the Louisville Jefferson County Metro Government (“Louisville Metro”), the Board of Education of Jefferson County, Kentucky (the “Board”), and Edwards Companies, and its successors, assigns and/or transferees (collectively, the “Developer”).

WITNESSETH

WHEREAS, the Developer has acquired or will acquire land located in Louisville, Kentucky (the “Real Estate”), described on Exhibit A hereto and intends to construct a mixed-use commercial and residential complex together with a parking facility on the Real Estate (collectively, including the Real Estate, being the “Baxter Project”; provided, however, that the term “Baxter Project” as used herein shall refer only to the portion of the aforementioned improvements which can be assessed for real estate ad valorem taxes, and shall not include any personal property);

WHEREAS, the Developer has requested that Louisville Metro assist in financing the acquisition and construction of the Baxter Project through the issuance of Industrial Building Revenue Bonds (the “Bonds”);

WHEREAS, the Developer and Louisville Metro have entered into an Inducement Agreement for Louisville Metro to authorize, issue, and sell the Bonds in the aggregate amount not to exceed \$60,000,000, pursuant to KRS 103.200 through 103.285 (the “Act”), to finance the acquisition and construction of the Baxter Project; and

WHEREAS, the Developer has agreed to make certain payments in lieu of real property taxes (“PILOTs”) to Louisville Metro and to the Board, respectively, and to enter into this Agreement in Lieu of Taxes with respect thereto;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. TAX EXEMPTION; VALUATION.

(a) Louisville Metro and the Developer affirm the accuracy of the Recitals contained above and those contained herein.

(b) The Jefferson County Property Valuation Administrator (the “PVA”) is responsible for establishing the assessed value of real estate within Jefferson County for the purpose of imposing real estate taxes. For the purpose of this Agreement the term “PVA Assessment” shall mean the value that the PVA assesses or determines from time to time with respect to the real estate value of the Baxter Project.

(c) Upon the issuance of the Bonds, title to the Baxter Project will be conveyed to Louisville Metro at the Developer’s costs and the Baxter Project will be leased back to the Developer under a capital or financing lease (the “Lease”). The parties hereto agree that the Lease will provide, *inter alia*, that a default in any payment hereunder by the Developer shall also constitute a “default” or an “event of default”, as appropriate, under the Lease. Prior to the execution and delivery of the Lease, this provision in the Lease must be approved in writing by the Board, which approval shall not be unreasonably withheld; provided, however, that within thirty (30) days of the Board’s receipt of a proposed final Lease, the Board shall take action to approve or disapprove such Lease pursuant to the terms hereof. Upon this conveyance and the contemporaneous issuance of the Bonds, the Baxter Project will be exempt from real estate ad

valorem taxes as long as the Bonds are outstanding in accordance with existing law. The Developer covenants that no personal property shall be financed by the Bonds and/or conveyed to Louisville Metro in connection therewith in order to receive any tax abatement therefor. Any such personal property shall be subject to personal property tax in accordance with applicable law.

(d) The parties agree that, subject to the terms of this Agreement, the real estate valuation of the Baxter Project will be the real estate values (including all improvements) set forth in Exhibit B attached hereto (the "Agreed Upon Assessed Value") and that the ad valorem real estate tax rates for use in calculating the PILOTs (as hereinafter described) for the term of this Agreement will be the real property tax rate in effect from time to time which would have been applicable to the Baxter Project were it not for the tax exemption resulting from the conveyance described in Paragraph 1(c).

(e) The PILOTs shall be calculated in the following manner: for each year during which the aforementioned tax exemption for the real estate value of the Property is in effect, the real estate value of the Property, as determined pursuant to this Paragraph 1(d), shall be multiplied by the real property ad valorem tax rate in effect from time to time which would have been applicable to the Baxter Project were it not for the tax exemption resulting from the conveyance described in Paragraph 1(c).

(f) Payment of taxes, and payment in lieu of tax, shall be prorated, but only to the extent necessary, during the year when the Bonds mature, resulting in the end of the real estate tax abatement for the Baxter Project.

2. LOUISVILLE METRO PILOTS.

(a) On or before November 1 of each year, the Developer shall (i) pay directly to Louisville Metro the Louisville Metro Compensation, as defined hereinafter, and (ii) deposit with the Trustee under the Indenture (as those terms are defined hereinafter) an amount equal to the remainder of total PILOTS, as calculated pursuant to Paragraph 1(d) above, after subtracting therefrom the Louisville Metro Compensation and the Board PILOTS (as defined hereinafter). The aforementioned payments to Louisville Metro and the Trustee shall be hereinafter referred to collectively as “Louisville Metro PILOTS”.

(b) After the Louisville Metro Compensation is paid to Louisville Metro, the balance of the Louisville Metro PILOTS shall be deposited by the Developer with the corporate trustee serving as trustee pursuant to the trust indenture (the “Indenture”) securing the Bonds (the “Trustee”). The Trustee will use all such payments to pay debt service on the Bonds, which Bonds may be issued in several series to finance the Baxter Project.

3. LOUISVILLE METRO COMPENSATION.

(a) In order to compensate Louisville Metro for a portion of the ad valorem real property taxes that it would have otherwise received for its County-Wide Tax Revenues and its Urban Service District Tax Revenues were it not for the tax exemption afforded by the Act, the Developer agrees to make the following annual payments (which constitute the “Louisville Metro Compensation”): beginning 2017 through the term of the Bonds, the Developer shall pay to the Louisville Metro the amounts described in Exhibit C hereto (the “Louisville Metro Compensation Schedule”), payable no later than November 1 of each applicable year (the “PILOT Payment Date”).

4. BOARD PILOTS. In order to fully compensate the Board for all ad valorem real property taxes that it would have otherwise received were it not for the tax exemption afforded by the Act, the Developer agrees to make the following annual payments (which constitute the “Board PILOTS”) directly to the Board by November 1 of each year: beginning 2017 through the term of the Bonds, the Developer shall pay to the Board the Developer shall pay to the Louisville Metro the amounts described in Exhibit D hereto (the “Board Compensation Schedule”), payable no later than the PILOT Payment Date of the applicable year.

5. LIMITED SCOPE; BOND DOCUMENTS. Other than the ad valorem property taxes discussed herein, this Agreement does not affect or apply to any other taxes or fees that may be owed by the Developer, or its tenants or lessees, to Louisville Metro, the Board or any other taxing authorities, including full personal property taxes on all personal property which may be a part of the Baxter Project, and any other fees or assessments which may be made against the Baxter Project, or the conduct of business associated therewith, as may be made in the normal course of governmental operations. The Developer acknowledges that this Agreement will not be inconsistent or in conflict with the Trust Indenture, the Lease Agreement or other Bond offering documents to be executed or otherwise produced in connection with the issuance of the Bonds, and to the extent that this Agreement is inconsistent or in conflict with those documents, the terms and language of this Agreement shall control over those documents.

6. MATURITY DATE. It is further agreed by the parties that the final maturity date of the Bonds will not be extended beyond _____, 2042. Upon the earlier of (i) final maturity and payment in full of principal of and interest on the Bonds, or (ii) optional prepayment in full of principal and interest on the Bonds, the conveyance of the Baxter Project from Louisville Metro to the Developer will be promptly carried out, and the Baxter Project will

become subject to full ad valorem real property taxation according to law, whether or not the Baxter Project is so conveyed.

7. NOTICES. All notices sent to the Developer shall be sent to:

Edwards Companies

495 South High Street, Suite 150
Columbus, Ohio 43215
Attn: _____

copy to:

Attn: _____

All notices sent to Louisville Metro shall be sent to:

Louisville Jefferson County Metro Government
c/o Louisville Forward
444 South Fifth Street
Louisville, Kentucky 40202
Attn: _____

with copy to

Louisville Jefferson County Metro Government

Louisville, Kentucky 40202
Attn.: _____

All notices sent to the Board shall be sent to:

Jefferson County Board of Education
Vanhoose Education Center
3332 Newburg Road
Louisville, Kentucky 40218
Attn: Chief Financial Officer

8. ASSIGNMENT. The Developer hereby agrees that it shall not assign any of its rights or duties hereunder to a third party, other than a wholly owned affiliate of the Developer, without the prior written consent of Louisville Metro and the Board, which consent shall not be unreasonably withheld.

9. JURISDICTION. The parties hereto hereby agree that venue and jurisdiction for any actions brought pursuant to this Agreement shall be Jefferson County, Kentucky.

10. MODIFICATION. This Agreement in Lieu of Taxes may not be changed orally, but only by an agreement in writing executed by Louisville Metro, the Board and the Developer.

LOUISVILLE JEFFERSON COUNTY
METRO GOVERNMENT

EDWARDS COMPANIES

Mayor

By: _____
Its: _____

BOARD OF EDUCATION OF
JEFFERSON COUNTY, KENTUCKY

By: _____
Superintendent of Schools

COMMONWEALTH OF KENTUCKY)
)SS:
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for and a resident of the Commonwealth of Kentucky stated below, personally appeared Greg Fischer and, who, upon his oath, acknowledged himself to be the Mayor of the Louisville Jefferson County Metro Government, and that he as such Mayor being authorized so to do, executed the foregoing instrument for the purposes contained therein by subscribing thereto the name of said Louisville Jefferson County Metro Government by himself as such Mayor.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this ____ day of _____, 2016.

(SEAL)

Notary Public
My Council expires _____

COMMONWEALTH OF KENTUCKY)
)SS:
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for and a resident of the Commonwealth of Kentucky and County stated below, personally appeared Donna Hargens who, upon her oath, acknowledged herself to be the Superintendent of Schools of the Board of Education of Jefferson County, Kentucky, and that as such Superintendent of Schools, being authorized so to do, executed the foregoing instrument for the purposes contained therein by subscribing thereto the name of said Board of Education of Jefferson County, Kentucky, by herself as such Superintendent of Schools.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on this ____ day of _____, 2016.

(SEAL)

Notary Public
My Council expires _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me a Notary Public in and for said State and City aforesaid, this ____ day of _____, 2016, by _____, the _____ of Edwards Companies, as Developer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

Notary Public

My Council expires _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

EXHIBIT B

AGREED UPON ASSESSED VALUE

The following table is expressed in years following the issuance of the Bonds (“Year” or “Years”):

Years 2017-2022: The assessed value shall be equal to the lessor of \$8,550,000 or the PVA Assessment.

Years 2023-2025: The assessed value shall be equal to the lessor of \$10,450,000 or the PVA Assessment.

Years 2026-2027: The assessed value shall be equal to the lessor of \$20,900,000 or the PVA Assessment.

Years 2028 and thereafter: The assessed value shall be equal to the PVA Assessment.

* The abatement ends in the earlier of (a) Year 2042 or (b) the year following the year in which 100% of the Bonds are defeased and redeemed, if earlier.

EXHIBIT C

LOUISVILLE METRO COMPENSATION SCHEDULE

County-Wide Ad Valorem Tax

The Louisville Metro PILOT for the County shall be calculated and based upon Louisville Metro's County-Wide ad valorem rate applied to the Baxter Project at the Agreed Upon Assessed Value of the Baxter Project set forth in Exhibit B hereto times 20%.

Upon the receipt by the Developer of benefits from a reduction in the real estate ad valorem payments to Louisville Metro in an aggregate amount of \$4,908,093, the Louisville Metro PILOT for the County shall be calculated and based upon Louisville Metro's County-Wide ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 100%.

Urban Services District Ad Valorem Tax

The Louisville Metro PILOT for the Urban Services District shall be calculated and based upon Louisville Metro's Urban Services District ad valorem rate applied to the Baxter Project at the Agreed Upon Assessed Value of the Baxter Project set forth in Exhibit B hereto times 20%.

Upon the receipt by the Developer of benefits from a reduction in the real estate ad valorem payments to Louisville Metro in an aggregate amount of \$4,908,093, the Louisville Metro PILOT for the Urban Services District shall be calculated and based upon Louisville Metro's Urban Services District ad valorem rate applied to the Mercy Project at the Agreed Upon Assessed Value of the Mercy Project set forth in Exhibit B hereto times 100%.

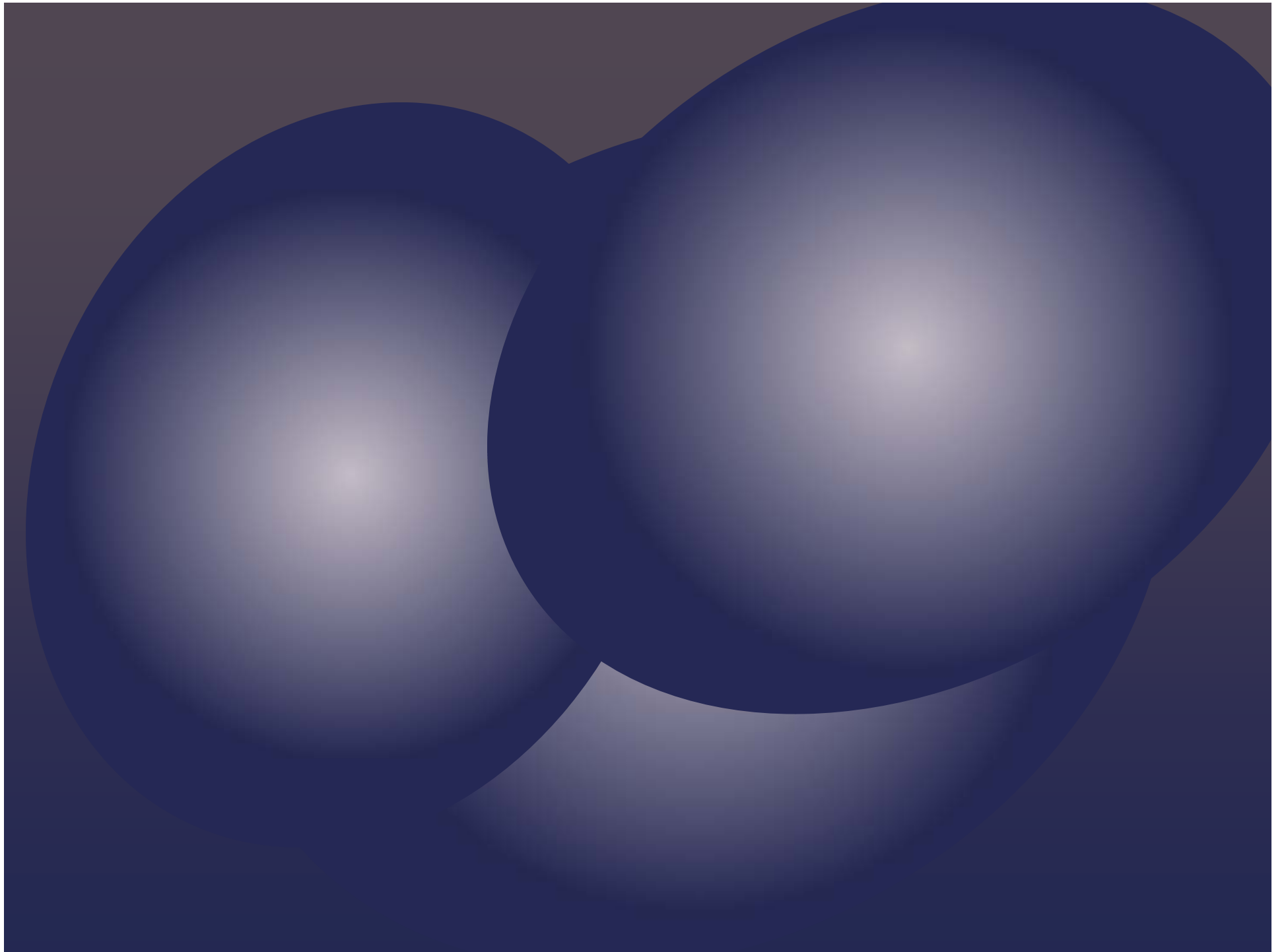
EXHIBIT D

BOARD COMPENSATION SCHEDULE

The Board PILOT shall be calculated and based upon the Board's ad valorem rate applied to the Baxter Project at the Agreed Upon Assessed Value of the Baxter Project set forth in Exhibit B hereto.

Aerial photo of the Mercy Academy site and repurposed medical office building and parking garage next door. Note location of adjoining Breckinridge Metropolitan high school.





Proposed former Mercy Academy Development Plan



Former Mercy Academy
and adjoining repurposed
parking garage building
photographs

View of Mercy from E. Broadway.



1178 US-150



Exit Street View

© 2015 Google

© 2015 Google

Google earth

38°14'37.77" N 85°43'50.82" W elev 501 ft eye alt 492 ft

Report a problem

View of existing medical offices and parking garage just west of Mercy.



1155 US-150



Exit Street View

MALONE

Google earth

© 2015 Google

© 2015 Google

38°14'35.90" N 85°43'55.34" W elev 523 ft eye alt 489 ft

Looking at the rear of Mercy Academy from Mercy Way.



Looking north from Mercy Way with the medical office parking garage to the west and Mercy Academy to the east.

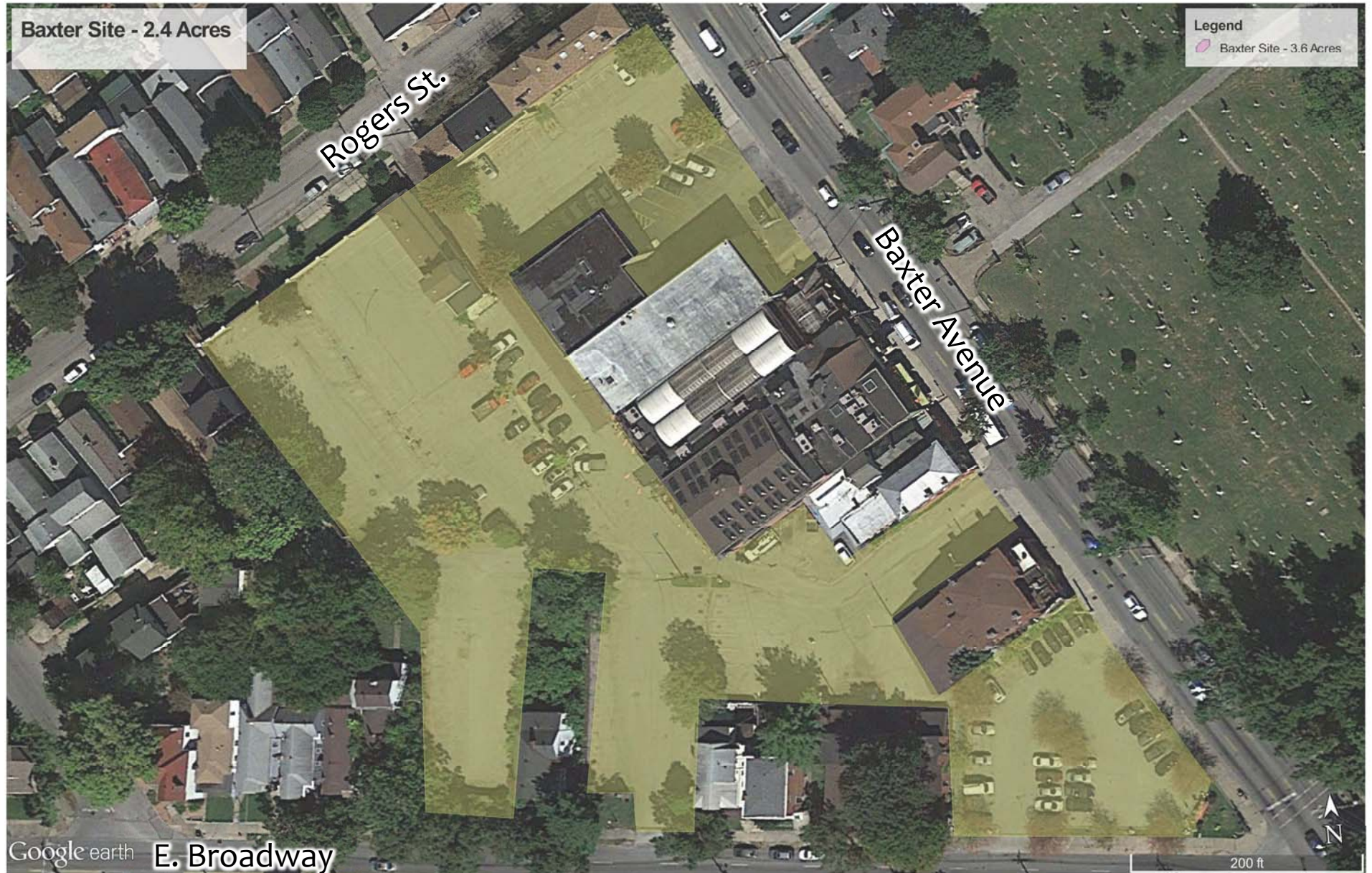


Proposed Mercy Apartment Building Elevations





Aerial photo of the Broadway & Baxter site, 2/3 of which is vacant or parking lot.



Proposed Broadway and Baxter Development Plan



Proposed Broadway & Baxter Building Elevations

Baxter Avenue elevation



BAXTER ST ELEVATION
SCALE: 1/16"=1'-0"

Rogers Street elevation



ROGERS ST.
SCALE: 1/16" = 1'-0"

Rubel Avenue elevation



REAR ELEVATION

SCALE: 1/16" = 1'-0"

E. Broadway elevation



Broadway and Baxter
aerial photographs and
site map with building
addresses and
photographs



E. Broadway

SITE

Baxter Avenue

Rogers St.

Mercy apts.