

ORDINANCE NO. 143, SERIES 2007

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ("METRO LOUISVILLE") CONFIRMING AND ORDAINING THE PRIOR OFFICIAL COMMITMENTS OF METRO LOUISVILLE TO MAKE GUARANTEED PAYMENTS OVER APPROXIMATELY 30 YEARS OF NOT TO EXCEED \$309,000,000 FOR FINANCING A PORTION OF THE LOUISVILLE ARENA PROJECT, CONSTITUTING A MONETARY OBLIGATION OF METRO LOUISVILLE; REQUESTING THE KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY ("KEDFA") TO ISSUE BONDS FOR THE BENEFIT OF THE LOUISVILLE ARENA AUTHORITY, INC., A KENTUCKY NONPROFIT CORPORATION, FOR THE FINANCING OF A PORTION OF THE COSTS OF THE LOUISVILLE ARENA PROJECT; AND AUTHORIZING AND ORDAINING THE APPLICATION OF CERTAIN PLEDGED RECEIPTS FOR THE PURPOSE OF PROVIDING THE GUARANTEED PAYMENTS.

Sponsored By: Councilman Jim King, Councilman Kelly Downard, President Rick Blackwell

WHEREAS, pursuant to actions taken by the Commonwealth of Kentucky (the "Commonwealth"), the Louisville/Jefferson County Metro Government ("Metro Louisville"), the University of Louisville, University of Louisville Athletic Association, Inc. and certain non-governmental entities, the Louisville Arena Project, a public project intended for multi-uses as a public, recreational and sports facility (the "Arena Project"), has been undertaken, and the Arena Project will significantly benefit Metro Louisville and the Commonwealth by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in and about the Metro Louisville area where the Arena Project will be located; and

WHEREAS, the Louisville Arena Authority, Inc., a Kentucky non-stock, nonprofit corporation (the "Arena Authority"), has been created as an independent entity in order to undertake the acquisition, development, construction and financing of the Arena Project in order to promote private area improvements and complementary amenities to serve as an economic stimulus for Metro Louisville and the Commonwealth as a whole; and

WHEREAS, on July 25, 2006, the Legislative Council of Metro Louisville (the "Metro Council") enacted Resolution No. 81, Series 2006, ratifying, approving and adopting a Memorandum of Agreement, dated July 21, 2006, by and between Metro Louisville and the Arena Authority (the "Guarantee Agreement") pursuant to which Metro Louisville guaranteed to the Arena Authority, to the fullest extent permitted by law, the payment of funds, directly or through appropriate debt instruments on its own or through one or more of its agencies, to pay a portion of the costs of acquisition, construction and installation of the Arena Project during a period commencing November 1, 2010, to and including November 1, 2039, in an aggregate principal amount not to exceed \$309,000,000 (the "Guaranteed Payments"), such Guaranteed Payments to constitute a long-term debt obligation incurred for value received and to be received by Metro Louisville resulting from the acquisition and operation of the Louisville Arena, which will provide the benefits to Metro Louisville described in the first preamble to this Resolution, such Guaranteed Payments to be made in annual amounts as set forth in Section 5(b)

of this Ordinance and to be applied to the payment of principal of and interest on bonds to be issued by the Kentucky Economic Development Finance Authority (“KEDFA”) for the benefit of the Arena Authority at the specific request of Metro Louisville to pay a portion of the costs of development, construction and acquisition of the Arena Project (the “Arena Bonds”); and

WHEREAS, Resolution No. 81, Series 2006, and the Guarantee Agreement were adopted by Metro Louisville with the intent that the Guaranteed Payments agreed to be made by Metro Louisville in order to fund a portion of the costs of the Arena Project by paying a portion of the debt to be represented by the Arena Bonds would constitute a long-term monetary obligation of Metro Louisville payable from (i) legally available Metro Louisville revenues, moneys and funds and (ii) moneys derived from the imposition of existing general taxes in the same manner as for payment of other outstanding monetary obligations of Metro Louisville, including ad valorem property taxes, as permitted by law, occupational license fees, insurance premium taxes, excises, utility and service revenues, and any other receipts from taxes, excises, permits, licenses, fines, available moneys from tax increment districts, or other sources of revenues of, or distributions to, Metro Louisville (collectively, the “Pledged Receipts”) as selected by Metro Louisville; provided that such long-term monetary obligation or any pledge or covenant relating thereto shall not constitute a general obligation indebtedness of Metro Louisville within the meaning of Section 159 of the Constitution of Kentucky or impair any express contract rights of holders of outstanding general obligation bonds of Metro Louisville; and

WHEREAS, it has been determined that in order to effectuate the above-described intent, Metro Louisville should take additional actions by Ordinance for purposes of complying with the requirements and utilizing the authority of Chapters 58 and 67C, Section 83.420 and Sections 91.200 to 91.280, inclusive, of the Kentucky Revised Statutes (“KRS”) (collectively, the “Act”) to legally confirm the permanent and continuing monetary obligation incurred for value represented by such Guaranteed Payments, which are limited as to payment from the Pledged Receipts, and to effectuate and implement the commitments made in the Guarantee Agreement and thereby facilitate the sale and issuance of the Arena Bonds by KEDFA; and

WHEREAS, this Ordinance does not and is not intended to enact new or additional taxes, and “Pledged Receipts” consist of currently effective and applicable sources of revenue to Metro Louisville, which will be pledged to the payment of debt service on the Arena Bonds; and

WHEREAS, to provide funds to pay the Guaranteed Payments and thereby assist in funding the costs of the Arena Project, it is now essential that Metro Louisville, according to the authority of the Kentucky Constitution and applicable laws, including the Act and KRS 103.200 to 103.285, inclusive, and/or KRS Chapter 154, adopt this Ordinance to affirm that the Guaranteed Payments will constitute legal and binding financial obligations of Metro Louisville, secured by and payable from Pledged Receipts, as assessed, levied and appropriated annually;

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, AS FOLLOWS:

Section 1. Confirmation and Incorporation of Preambles. It is hereby determined, declared and ordained that the statements of fact and intent set forth in the foregoing preambles

to this Ordinance are true and accurate in all respects and the same, together with all defined terms therein, are incorporated in full in this Ordinance by reference and shall be an integral part hereof.

Section 2. Amendment, Readoption and Restatement of Resolution No. 81, Series 2006, and the Guarantee Agreement. Resolution No. 81, Series 2006, and the Guarantee Agreement are each hereby amended, restated and readopted, ab initio, to conform the Guarantee Agreement to the final terms of the agreement of Metro Louisville and the Arena Authority, including the amendment, restatement and readoption of Exhibit B of the Amended and Restated Guarantee Agreement as “Modified Exhibit B”, also attached hereto and incorporated herein. In accordance with the provisions of Resolution No. 81, Series 2006, and the Guarantee Agreement, a separate amendment agreement between the Arena Authority and Metro Louisville is attached to this Ordinance (the “Amendment Agreement”), and such Amendment Agreement and the Amended and Restated Guarantee Agreement incorporating such amendments are collectively attached hereto and incorporated herein as Exhibit C and shall constitute, ipso facto, an integral part of this Ordinance. The adoption by the Metro Council of this Ordinance shall also constitute the adoption of Exhibit C in its entirety. Each of the Mayor of Metro Louisville, the President of the Metro Council and the Clerk of the Metro Council are hereby authorized and directed to execute, authenticate, seal and deliver each of this Ordinance, the Amendment Agreement between the Arena Authority and Metro Louisville and the Amended and Restated Guarantee Agreement, together with and any and all other related documents, agreements and contracts as shall be necessary to finance, construct and otherwise implement the Arena Project.

Section 3. Creation of Monetary Obligation by Metro Louisville; Request to KEDFA for Issuance of Bonds.

(a) It is the intent of this Ordinance to confirm and ordain, and it is hereby ordained under authority of the Act, that the obligation of Metro Louisville to make the Guaranteed Payments as provided in Section 4(b) of this Ordinance and in the Guarantee Agreement, as hereby amended, in order to pay a portion of the debt service of the Arena Bonds as herein described, constitutes a legal and binding long-term monetary obligation of Metro Louisville, secured by and payable only from the Pledged Receipts, as assessed, levied and appropriated. The Arena Project is hereby declared to be a public project pursuant to KRS Chapter 58 and a “capital improvement” situated in Metro Louisville pursuant to KRS 91.200(7) and of significant value and importance to Metro Louisville and its citizens. For the security and source of payment by Metro Louisville of the Guaranteed Payments, a sufficient portion of the Pledged Receipts is hereby pledged to the timely payment of the Guaranteed Payments. Metro Louisville covenants and agrees to apply a sufficient portion of the Pledged Receipts to make the Guaranteed Payments pursuant to the Act, subject to the priority rights in favor of holders of outstanding full faith and credit general obligation indebtedness of Metro Louisville.

(b) In accordance with the provisions of either of KRS 103.210(1) or KRS Chapter 154, Metro Louisville hereby officially requests KEDFA to issue bonds for the financing of the Arena Project in such principal amount, not to exceed \$360,000,000 as may be appropriate, a portion of the debt service on which shall be paid by the Guaranteed Payments of Metro Louisville as assessed, levied and appropriated. Reference is made to Section 4 of this Ordinance for further matters in respect of the Arena Bonds. Metro Louisville affirms and

ordains that the Arena Project (i) is in a “downtown business district” within the meaning of KRS Section 103.200(n) and as set out in the preliminary KEDFA Resolution adopted October 26, 2006, which defined and designated the “downtown business district” as the “Development Area” as originally set forth in Resolution No. 81, Series 2006, and (ii) constitutes a “project” and an “economic development project” as those terms are used in the relevant sections of KRS Chapter 154.

Section 4. This Ordinance to Constitute a Long-Term Debt Instrument. The Arena Project and its financing were developed and implemented by Metro Louisville, the Commonwealth and other parties. The Commonwealth, in reliance upon the Guarantee Agreement, the issuance of the Arena Bonds and the timely payment by Metro Louisville of the Guaranteed Payments, has made a direct grant of \$75,000,000 to the Arena Project, pursuant to legislation adopted by the General Assembly of Kentucky, which grant proceeds are presently being expended on the Arena Project, as required by such legislation. The Commonwealth is also providing additional tax increment financing revenues to the Arena Project, having relied upon Metro Louisville to make the Guaranteed Payments to pay debt service on the Arena Bonds represented by the Guaranteed Payments. Purchasers of Arena Bonds issued by KEDFA at the specific request of Metro Louisville will also rely upon the covenants of Metro Louisville to make the Guaranteed Payments to pay a substantial portion of the debt service on the Arena Bonds. Accordingly, this Ordinance shall constitute an enforceable long-term debt instrument among Metro Louisville, the Trustee for the Arena Bonds, the Arena Authority, and the Commonwealth, which is hereby determined and declared to be necessary and proper for the security and payment of the Arena Bonds; and the covenants by Metro Louisville to make the Guaranteed Payments shall be for the equal and ratable benefit, protection and security of the Arena Bondholders, regardless of the time and times of their issue or maturity and shall be of equal rank without preference, priority or distinction of any one Arena Bond over any other. The annual fiscal year appropriations and payments of the Guaranteed Payments in future years are hereby declared continuing contractual duties and obligations of Metro Louisville.

Section 5. Declarations and Determinations. In accordance with and in each case within the meaning of the requirements of the Act and the Guarantee Agreement, it is hereby determined, declared and ordained as follows:

(a) The Arena Project constitutes a “public project” within the meaning of KRS Chapter 58 and a “capital improvement” within the meaning of KRS 91.200(7), undertaken for public purposes. The acquisition, development, construction and installation of the Arena Project is in the public interest for the purpose of providing a downtown multi-use facility which will provide public recreational and sports facilities for Metro Louisville, will assist in the redevelopment and revitalization of downtown Louisville, and will significantly benefit Metro Louisville and the Commonwealth by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in and about the area where the Arena Project will be located.

(b) Metro Louisville hereby covenants, agrees and promises to pay up to \$309,000,000 in amount, which is declared and determined to be a legal and binding long-term monetary obligation to be represented by Guaranteed Payments to or on behalf of the Arena Authority in amounts per annum as set forth below. Such monetary obligation shall be paid by Metro Louisville from the moneys derived from Pledged Receipts, as assessed, levied and

appropriated annually by Metro Louisville, in each case to be applied and used by the Arena Authority for the purpose of paying a portion of the debt service on the Arena Bonds. The annual minimum and maximum monetary obligation of Metro Louisville, subject to adjustment (but not increased) as set forth in Modified Exhibit B, to be annually assessed, levied and appropriated by Metro Louisville during each annual period up to the guaranteed maximum amounts per annum are as set forth below:

<u>Years</u>	<u>Minimum Annual Guaranteed Payments</u>	<u>Maximum Annual Guaranteed Payments</u>
2010 - 2019	at least \$6,533,333 per annum	not to exceed \$9,800,000 per annum
2020 - 2029	at least \$7,200,000 per annum	not to exceed \$10,800,000 per annum
2030 - 2039	<u>at least \$6,866,667 per annum</u>	<u>not to exceed \$10,300,000 per annum</u>
TOTAL	at least <u>\$206,000,000</u>	not to exceed <u>\$309,000,000</u>

Provided, however, such Minimum Annual Guaranteed Payments in the aggregate amount of \$206,000,000 shall be subject to adjustment but not in excess of the Maximum Annual Guaranteed Payments of \$309,000,000 as set forth in detail in Modified Exhibit B attached hereto and incorporated herein, but not below the Minimum Annual Guaranteed Payments. Guaranteed Payments made by Metro Louisville to or on behalf of the Arena Authority for and on behalf of the Arena Project shall be applied to pay, directly or indirectly, debt service on the Arena Bonds, including the maintenance of the required level of any debt service reserve fund which may only be used to pay debt service on the Arena Bonds and funding a renovation (replacement, repair, depreciation) fund.

(c) The Guaranteed Payments will provide for the payment of a portion of the debt service on Arena Bonds, being debt instruments issued by KEDFA for the benefit of the Arena Authority, and such Guaranteed Payments will be made annually up to the maximum amounts set forth in this Section 5 (subject to adjustment but not increased), as provided in formulas and provisions set forth in Modified Exhibit B to each of the Guarantee Agreement and this Ordinance.

(d) Provisions for mandatory sinking fund, mandatory sinking fund redemption or redemption prior to maturity of Arena Bonds issued by KEDFA for the benefit of the Arena Authority for the financing of the Arena Project will provide for any such matters as applicable to such Arena Bonds. However, the maximum monetary obligations of Metro Louisville as described in this Section 5 will not be affected by such matters.

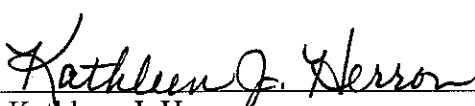
(e) Provisions for rates of interest, including maximum rates of interest or the methods from time to time for establishing or determining the rate or rates of interest to be paid on the Arena Bonds will be determined by the Arena Authority; however, such matters will not increase the maximum financial obligations of Metro Louisville in respect of payment of debt service on the Arena Bonds as set forth in this Section 5.


Section 6. Sources of Payments of Metro Louisville Monetary Obligation. In accordance with the Act, it is hereby determined, declared and ordained that the maximum Guaranteed Payments identified in Section 5 of this Ordinance, as adjusted from time to time, but not increased, shall be and constitute long-term monetary obligations of Metro Louisville, incurred for public purposes, to wit: construction of a public project situated in Metro Louisville and secured by a continuing pledge of the Pledged Receipts until the Guaranteed Payments are paid in accordance with the terms of the Guarantee Agreement, subject to annual assessment, levy and appropriation thereof. For value received, Metro Louisville covenants and agrees with the Arena Bondholders that it will cause adequate and sufficient Pledged Receipts to be made available in each fiscal year during which the Guaranteed Payments are required to be made to assure that the Guaranteed Payments will be timely budgeted, appropriated and paid as provided by the Guarantee Agreement. The Louisville Metro Government Revenue Commission shall, pursuant to 91.200(5) provide for a sinking fund fully sufficient to amortize the monetary obligations of Metro Louisville represented by the Guaranteed Payments.

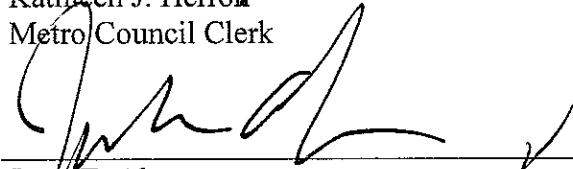
Section 7. Guaranteed Payments to be Included in Fiscal Year Proposed Budgets. Metro Louisville hereby covenants that it will include or cause to be included in each and every proposed fiscal year budget of Metro Louisville the Maximum Annual Guaranteed Payment for such fiscal year, for approval by the Metro Council and for assessment, levy and appropriation of the Guaranteed Payments for such fiscal year. Notwithstanding such budgeting of the Maximum Annual Guaranteed Payment, the actual Guaranteed Payment for each fiscal year shall be determined as provided in this Ordinance, including Modified Exhibit B.

Section 8. Severability Provisions. The provisions of this Ordinance are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect upon its passage and approval.


Kathleen J. Herron
Metro Council Clerk


Rick Blackwell
President of the Council


Jerry E. Abramson
Mayor

7-30-07
Approval Date

Approved as to Form and Legality:
Irv Maze
Jefferson County Attorney

By 
Arena Ordinance ROC emp, bkn Draft 2 062807.doc

LOUISVILLE METRO COUNCIL
READ AND PASSED
July 26, 2007

6-28-07

MODIFIED EXHIBIT B

Section 1. Guaranteed Payments. Metro Louisville minimum and maximum annual Guaranteed Payments to or for the benefit of the Arena Authority are as follows:

Year(s)	Minimum Annual Guaranteed Payments	Maximum Annual Guaranteed Payments
2010-2019	\$6,533,333	\$9,800,000
2020-2029	\$7,200,000	\$10,800,000
2030-2039	\$6,866,667	\$10,300,000

Section 2. Payment of Minimum Annual Guaranteed Payment. Metro Louisville shall annually appropriate and pay to the Trustee under the Indenture the full amount of the initial Minimum Annual Guaranteed Payment on November 1, 2010, plus any additional amount, as provided in Section 5 hereof, and thereafter on each November 1 to and including November 1, 2039, will appropriate and pay the Minimum Annual Guaranteed Payment plus any additional amount, as provided in Section 5 hereof, due in such year.

Section 3. Gross Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Gross Pledged Arena Revenues will be directly transferred, as received, to the Arena Bond Trustee to be used for the purpose of paying debt service on the Arena Bonds to the extent required, and will be available after annual debt service is fully funded, to defer Arena operating and maintenance costs. "Gross Pledged Arena Revenues" are defined as certain Arena Revenues (less amounts actually distributed under revenue sharing agreements) that are generally received on an annual basis from contractually obligated third parties for such services as Arena naming rights (external and internal), annual advertising revenues, revenues received from corporate and other sponsorship rights, such as exclusive use of suites, including lounges, preferential seating, mezzanine and terrace preferential seating, annual sponsorship rights and other similar revenue streams.

Section 4. Net Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Net Pledged Arena Revenues will be applied by the Arena Authority to operate and maintain the Arena by paying labor costs, salaries, costs of direct events, general and administrative expenses, communications, supplies, repairs and maintenance, marketing and similar costs of operating the Arena, but shall be available to pay debt service on the Arena Bonds on the demand of the Arena Bonds Trustee in the event of a shortfall in funds available for payment of annual debt service from Gross Pledged Arena Revenues, current year State Tax Increment revenues, uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues (received in prior years and the current year) and the Metro Government Minimum Guaranteed Payments. The Trustee demand and consequent payment will be made prior to the making of any request to the Metro Government to make an additional payment of any Guaranteed Payment

above the Minimum Guaranteed Payment for that year. "Net Pledged Arena Revenues" are defined as all Arena Authority Revenues (less amounts actually distributed under revenue sharing agreements) not constituting Gross Pledged Arena Revenues such as revenues from non-University events, concessions, catering, restaurant, private offsite parking and other similar revenues.

Section 5. Payment of Additional Amounts (Not to Exceed Maximum Annual Guaranteed Payment). The Arena Authority shall determine, on or prior to each October 1 in the years specified in Section 1, whether the Arena Authority's total gross revenues in each year from all sources (including (i) Gross Pledged Arena Revenues, (ii) the Metro Louisville Minimum Annual Guaranteed Payment, (iii) current year State Tax Increment revenues, (iv) uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues received in prior years and the current year and (v) Net Pledged Arena Revenues, as provided in Sections 3 and 4) are sufficient to pay in full all debt service due on the Bonds on the next two scheduled semiannual payment dates. In the event of a shortfall in such amounts, then, at the request of the Arena Authority upon not less than 30 days' written notice, Metro Louisville shall appropriate and pay to the Trustee on each November 1 (or other date as required to prevent a debt service payment default) in such years the amount of any such shortfall, provided that the total amount paid by Metro Louisville in the calendar year shall not exceed in any such year the Maximum Annual Guaranteed Payment for such year specified in Section 1.

Section 6. Outside Consultant. In the event that for two consecutive years the Metro Government is required to fund any amount in excess of the Minimum Guaranteed Payment, upon request of the Metro Government, the Arena Authority must promptly retain an independent public accounting firm of national reputation in the field of arena operations (and such selection shall be reasonably satisfactory to the Metro Government) to examine the revenues and operating expenses of the Arena Authority and to file a report with recommendations as to actions which may be taken by the Arena Authority to increase net revenues available to pay debt service. The Arena Authority shall be obligated to file a report within 60 days of the delivery of such Consultant Report to the Metro Government and the Arena Authority as to actions the Arena Authority is taking or will take to implement the recommendations of the Consultant.

Section 7. Excess Net Cash Flow. "Excess Net Cash Flow" for any fiscal year of the Arena Authority represents the remaining balance of the Arena Authority's gross revenues from all sources (excluding amounts payable by the State as tax increment revenues) in such fiscal year after the accrual and/or payment of all operating and maintenance costs and debt service obligations for the Arena Authority in such fiscal year (net of any cumulative loss carryforward in such fiscal year). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated in the following priorities:

- (a) First, additional Excess Net Cash Flow shall be applied to make up any deficiency in the Debt Service Reserve Fund;

above the Minimum Guaranteed Payment for that year. "Net Pledged Arena Revenues" are defined as all Arena Authority Revenues (less amounts actually distributed under revenue sharing agreements) not constituting Gross Pledged Arena Revenues such as revenues from non-University events, concessions, catering, restaurant, parking and other similar revenues.

Section 5. Payment of Additional Amounts (Not to Exceed Maximum Annual Guaranteed Payment). The Arena Authority shall determine, on or prior to each October 1 in the years specified in Section 1, whether the Arena Authority's total gross revenues in each year from all sources (including (i) Gross Pledged Arena Revenues, (ii) the Metro Louisville Minimum Annual Guaranteed Payment, (iii) current year State Tax Increment revenues, (iv) uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues received in prior years and the current year and (v) Net Pledged Arena Revenues, as provided in Sections 3 and 4) are sufficient to pay in full all debt service due on the Bonds on the next two scheduled semiannual payment dates. In the event of a shortfall in such amounts, then, at the request of the Arena Authority upon not less than 30 days' written notice, Metro Louisville shall appropriate and pay to the Trustee on each November 1 (or other date as required to prevent a debt service payment default) in such years the amount of any such shortfall, provided that the total amount paid by Metro Louisville in the calendar year shall not exceed in any such year the Maximum Annual Guaranteed Payment for such year specified in Section 1.

Section 6. Outside Consultant. In the event that for two consecutive years the Metro Government is required to fund any amount in excess of the Minimum Guaranteed Payment, upon request of the Metro Government, the Arena Authority must promptly retain an independent public accounting firm of national reputation in the field of arena operations (and such selection shall be reasonably satisfactory to the Metro Government) to examine the revenues and operating expenses of the Arena Authority and to file a report with recommendations as to actions which may be taken by the Arena Authority to increase net revenues available to pay debt service. The Arena Authority shall be obligated to file a report within 60 days of the delivery of such Consultant Report to the Metro Government and the Arena Authority as to actions the Arena Authority is taking or will take to implement the recommendations of the Consultant.

Section 7. Excess Net Cash Flow. "Excess Net Cash Flow" for any fiscal year of the Arena Authority represents the remaining balance of the Arena Authority's gross revenues from all sources (excluding amounts payable by the State as tax increment revenues) in such fiscal year after the accrual and/or payment of all operating and maintenance costs and debt service obligations for the Arena Authority in such fiscal year (net of any cumulative loss carryforward in such fiscal year). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated in the following priorities:

- (a) First, additional Excess Net Cash Flow shall be applied to make up any deficiency in the Debt Service Reserve Fund;

- (b) Second, remaining Excess Net Cash Flow shall be deposited in a Renovation Fund to be maintained by the Arena Authority until the amount of deposits in such Fund for such fiscal year equals \$3,000,000 plus, to the extent that there has been a deficiency in any prior fiscal year in the deposit of such annual \$3,000,000 requirement, the amount necessary to fully restore such deficiency; and
- (c) Third, forty-five percent (45%) of any additional Excess Net Cash Flow beyond that referred to in paragraphs (a) and (b) above shall be remitted to Metro Louisville within sixty (60) days of the date of determination, with the remaining fifty-five percent (55%) being retained by the Arena Authority. In no event shall the remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that fiscal year.

**AMENDED AND RESTATED
MEMORANDUM OF AGREEMENT**

This AMENDED AND RESTATED MEMORANDUM OF AGREEMENT (hereinafter the "Amended Memorandum") is made and entered into this ___ day of _____, 2007, by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a municipal governmental body within the Commonwealth of Kentucky, with the address at the Metro Hall, 4th Floor, 527 West Jefferson Street, Louisville, KY 40202, (hereinafter "Metro Louisville") and the LOUISVILLE ARENA AUTHORITY, INC., a Kentucky non-stock, non-profit corporation, with an address of 3500 National City Tower, 101 S. Fifth Street, Louisville, KY 40202, (hereinafter the "Arena Authority").

WITNESSETH:

WHEREAS, the Louisville Arena project, under the auspices of the Arena Authority, a public project intended for multiple uses as a public, recreational, cultural, and sports facility ("Project"), will significantly benefit Metro Louisville and the Commonwealth of Kentucky by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in the area where the Project will be located; and

WHEREAS, the Arena Authority was created in order to facilitate public improvements and publicly promoted private area improvements and complementary amenities, to serve as an economic development stimulus in Metro Louisville and the Commonwealth as a whole and for the purpose of creating, financing, developing and overseeing the construction, management and operation of a multi-use arena to be constructed in Louisville, Jefferson County, Kentucky; and

WHEREAS, the 2006 General Assembly enacted House Bill 380 authorizing the expenditure of up to seventy-five million dollars (\$75,000,000) in state-supported bonds to pay a portion of the cost of constructing the Project and designated the Finance and Administration Cabinet of the Commonwealth as the budget unit responsible for the administration of the state funds for the Project, funds which will be obtained through the issuance of bonds and/or notes supported by state appropriations; and

WHEREAS, the release of the state-supported bond funds to the Arena Authority on or near July 1, 2006, is contingent upon the execution of various agreements, in form and substance satisfactory to the Commonwealth of Kentucky, acting by and through its Finance and Administration Cabinet, including an agreement between the Arena Authority and Metro Louisville setting forth the amount of financial support for the Project to be provided by Metro Louisville; and

WHEREAS, Metro Louisville has adopted a resolution authorizing and guaranteeing payments to the Arena Authority which will be used for the purpose of financing a portion of the Project by authorizing the Mayor to enter into this Amended Memorandum;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged by the parties hereto, Metro Louisville and the Arena Authority agree as follows:

SECTION 1. DEFINITIONS

Definitions. For the purposes hereof, the following words and phrases shall have the meanings ascribed thereto:

"Amended Memorandum" shall mean this Amended Memorandum of Agreement, by and between Metro Louisville and the Arena Authority;

"Authorizing Ordinance" means Ordinance No. _____, Series 2007, of Metro Louisville, adopted and ordained by the Legislative Council of Metro Louisville on _____, 2007, and in full force and effect.

"Authorizing Resolution" means Resolution No. 81, Series 2006, of Metro Louisville, adopted by the Legislative Council of Metro Louisville on July 25, 2006, that authorized and guaranteed the payment of funds from Metro Louisville to the Arena Authority for the purpose of financing a portion of the Project;

"Budget Act" shall mean House Bill 380 of the General Assembly of the Commonwealth of Kentucky, 2006 Regular Session, as enacted and vetoed in part;

"Code" shall mean the Internal Revenue Code of 1986, as amended, or as hereafter amended, including valid Regulations of the Department of the Treasury thereunder and Rulings of the Commissioner of the Internal Revenue Service thereunder; reference to a provision of the Code by number or letter includes reference to any law hereafter enacted as an amendment to or substitution for such provision; words which are used herein and in the Code shall have the meaning given to such words in or pursuant to the Code;

"Commonwealth" shall mean the Commonwealth of Kentucky and all governmental agencies, authorities and political subdivisions thereof, including without limitation the Finance and Administration Cabinet, a governmental agency of the Commonwealth of Kentucky;

"Laws" shall mean and include all laws, statutes, court decisions, rules, orders and regulations of the United States of America, the States thereof and of

their respective counties, municipalities and other subdivisions, and shall include without limitation the laws, statutes, court decisions, rules, orders and regulations of any other applicable jurisdiction;

"Payments" or "Guaranteed Payments" shall mean the guaranteed distribution of funds, directly or through appropriate debt instruments of its own or one or more of its agencies, to support a portion of the development, financing and construction of the Louisville Arena Project paid by Metro Louisville to the Arena Authority each November 1, commencing November 1, 2010 and concluding November 1, 2039, pursuant to Section 2 of this Amended Memorandum and reflected in the schedule attached hereto as Modified Exhibit B;

"Person" shall include an individual, firm, trust, estate, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof; and

"Project" or "Arena Project" shall refer to the development, construction and financing, including but not limited to all reasonable and/or necessary costs incurred or estimated to be incurred in connection with and any such costs incidental to the development, construction and financing, of the downtown Louisville Arena, a public project intended for multiple uses as a public, recreational, cultural, and sports facility.

SECTION 2. OBLIGATIONS OF METRO LOUISVILLE

Metro Louisville covenants and agrees to undertake the following obligations:

A. Pursuant to the Authorizing Ordinance and the Authorizing Resolution, Metro Louisville agrees to disburse to the Arena Authority the Guaranteed Payments as described in Modified Exhibit B hereto conditioned upon the following:

(i) the execution and delivery of this Amended Memorandum, in form and substance satisfactory to the Commonwealth, by the parties hereto;

(ii) the execution of an agreement between the Commonwealth and the Arena Authority governing the distribution of up to seventy-five million dollars (\$75,000,000) of bond funds that will support a portion of the Project as authorized in the Budget Act;

(iii) the execution of an agreement between the Commonwealth and the Arena Authority governing the application of state tax-increment financing or other non-tax income revenues that will support a portion of the Project;

(iv) the execution of an agreement, in form and substance satisfactory to the Commonwealth, between the University of Louisville and the Arena Authority regarding scheduling priorities for men's and women's basketball games and practices, sharing of catering and concession revenue, allocation and pricing of parking spaces, marketing and allocation of revenues from suites and premium seats, arena advertising, signage, banners and branding, ticket prices and surcharges, arena development team membership, other events and uses of the arena, rental rates, merchandise revenue sharing and such other matters as the Arena Authority and the University of Louisville deem appropriate, as required by the Budget Act;

(v) the receipt of the items required to be submitted by the Arena Authority as set forth in Section 3 below;

B. The Parking Authority of River City ("PARC") shall bond and construct the Louisville Arena parking garage and revenues derived therefrom shall remain with PARC.

C. Metro Louisville by entering into this Amended Memorandum confirms that it has a continuing annual obligation to possibly make an additional Annual Guaranteed Payment in excess of the Minimum Annual Guaranteed Payment, subject to the requirements and conditions specifically provided and detailed in Modified Exhibit B, attached hereto and incorporated herein, but never in excess of the Maximum Annual Guaranteed Payment for such year.

D. Metro Louisville shall cooperate fully with the Arena Authority in order to facilitate the obligations set out in this Amended Memorandum.

SECTION 3. OBLIGATIONS OF THE ARENA AUTHORITY

The Arena Authority covenants and agrees to undertake the following obligations:

A. The Arena Authority hereby acknowledges that the Budget Act authorizes the expenditure of state-supported bond funds for this Project and that the Arena Authority will comply with all terms and conditions set forth in the agreement between the Commonwealth and the Arena Authority.

B. The Arena Authority hereby acknowledges that any debt issued by the Arena Authority or any other entity other than Metro Louisville, including any industrial revenue bonds that may be issued on a conduit basis by Metro Louisville, shall not constitute a debt, pledge of the full faith and credit, or a moral obligation of Metro Louisville beyond those amounts identified as Guaranteed Payments in the Authorizing Resolution and this Amended Memorandum.

C. The Arena Authority shall provide to Metro Louisville:

(i) a summary overview of the Project, including estimated budget and timetable for completion, which can include documents previously prepared and submitted to the Commonwealth and Metro Louisville;

(ii) the projected and/or contemplated source and disposition of other funds to be used to complete the Project, including identification of any other funding sources, including but not limited to the agreements referenced in this Section 2;

(iii) a copy of the laws, articles, resolutions, ordinances or other appropriate documents pursuant to which the Arena Authority was formed;

(iv) any and all other documents, instruments, or assurances relating to the Project or the parties as may be reasonably requested by Metro Louisville.

D. The Arena Authority shall provide to Metro Louisville in a timely manner copies of any semi-annual progress reports submitted to the Commonwealth, pursuant to the terms and conditions of the agreement between the Commonwealth and the Arena Authority.

E. The Arena Authority shall retain all records relating to the Project for five (5) years following the completion of the Project.

F. A copy of the Arena Authority resolution or copy of the minutes as certified by the authorized Board officer, authorizing the execution of this Amended Memorandum.

G. The Arena Authority acknowledges that the signature of its counsel upon this Amended Memorandum evidences that this Amended Memorandum has been duly authorized, executed and delivered by the Arena Authority and is enforceable against the Arena Authority in accordance with its terms.

H. The Arena Authority shall comply with all applicable federal and state statutes, local laws and ordinances, executive orders, regulatory requirements and policies.

I. The Arena Authority shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that, for the purposes of federal income taxation, interest paid on all tax-exempt bonds issued in support of the Project shall be excludable from gross income under any valid provision of law.

J. The Arena Authority shall not permit at any time or times any of the proceeds of any tax-exempt obligations issued to fund the Project to be used to acquire or to replace funds which were used directly or indirectly to acquire any

securities or obligations which are "higher yielding investments" (as defined in the Code), the acquisition of which would cause a debt obligation to be an "arbitrage bond" as defined in Sections 103(b)(2) and 148 of the Code as then in effect, unless, under any valid provision of law hereafter enacted (i) such action would not cause arbitrage bond status to occur, or (ii) the interest paid by the Arena Authority on the debt obligation will be excludable from the gross income of a recipient thereof for federal income tax purposes without regard to compliance with the provisions of Section 103(a) of the Code.

K. The Arena Authority will not make any additional pledge or assignment of or create or suffer any lien or encumbrance upon the Guaranteed Payments, except as provided in the Authorizing Resolution and in this Amended Memorandum.

L. The Arena Authority may include in its agreements with all contractors and subcontractors terms consistent with the applicable provisions of Louisville/Jefferson County Metro Code of Ordinance § 37.90 (D), with the exception of subparagraph (D) (3) thereof, after meeting with and seeking counsel from unions and the minority contractor committee described herein.

M. The Arena Authority will contract with an organization or organizations recommended by a committee of at least five (5) members convened by the Louisville Urban League/Justice Resource Center, including at least one union representative, to represent minority and union contractors; to assist with recruitment of Project minorities and women; to assist in training those individuals thereby recruited; to provide verification and concurrent monitoring of the level of participation of minorities and women in the Project; and to monitor the payment of prevailing wages.

N. The Arena Authority by entering into this Amended Memorandum confirms that it will incorporate, where appropriate, the following terms and conditions:

- a. The payment of the prevailing wage for each trade on the project.
- b. A goal of at least 20% minority participation for employees and contractors, respectively, on the Project.
- c. A goal of at least 5% women participation for employees and contractors, respectively, on the Project.
- d. Opportunities for both union and non-union employees and contractors.
- e. A goal that 75% of Project jobs be reserved for Kentucky and Indiana residents and a goal that at least 60% of Project jobs be reserved for residents of the Metro Louisville Standard Metropolitan Statistical Area.

P. The Arena Authority shall amend its bylaws to add the President of the Metro Council or designee as a non-voting ex-officio member of the Board of Directors of the Arena Authority.

Q. The Arena Authority shall fully cooperate with Metro Louisville and any and all other parties necessary to facilitate the agreements and obligations set out in this Amended Memorandum.

SECTION 4. CONFORMITY WITH AUTHORIZING ORDINANCE; AUTHORIZING ORDINANCE PREVAILS; GUARANTEED PAYMENTS ARE IRREVOCABLE

A. In amending and readopting this Amended Memorandum, it is the intent of the Legislative Council of Metro Louisville that the Authorizing Ordinance and this Amended Memorandum shall be consistent with one another, to the end that third parties involved in the Arena Project, including, but not limited to, the Commonwealth, which has made a direct grant of \$75,000,000 to the Arena Project and created a state tax increment district in support thereof and the purchasers of Arena Bonds may rely upon the covenants of Metro Louisville in the Authorizing Ordinance to make the Guaranteed Payments without interruption and that the Authorizing Ordinance creates an enforceable long term debt instrument of Metro Louisville in accordance with its terms, and that the payments of the Guaranteed Payments in future years from Pledged Receipts, as defined in the Authorizing Ordinance, shall constitute contractual duties and obligations of Metro Louisville. Accordingly, Metro Louisville covenants and agrees that its covenants and agreements to make the Guaranteed Payments and the payments thereof are and shall be irrevocable. In the event of any conflict or inconsistency between the provisions of this Amended Memorandum and the Authorizing Ordinance, the provision of the Authorizing Ordinance shall prevail.

B. Except as may otherwise be provided herein, each party to this Amended Memorandum shall be solely responsible for any costs incurred in fulfilling its obligations under this Amended Memorandum, and no party shall have any claim against any other party for reimbursement of such costs.

C. Waiver by either party of performance by the other party of any of the provisions of this Amended Memorandum shall not be construed as a waiver of any further right to insist upon full performance of the terms of this Amended Memorandum.

SECTION 5. TERM OF AMENDED MEMORANDUM

This Amended Memorandum shall be effective as of the date first written above and shall terminate upon completion of the schedule of Payments attached hereto and identified in Modified Exhibit B, unless otherwise extended by the parties.

SECTION 6. MISCELLANEOUS PROVISIONS

A. This Amended Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Amended Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Amended Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Amended Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Amended Memorandum are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Amended Memorandum.

C. The terms and conditions of this Amended Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Amended Memorandum, which assignment shall be prohibited.

D. This Amended Memorandum shall not be amended, modified, or supplemented except by a written agreement duly executed by both parties; provided, however, that any such amendment, modification or supplement shall be insubstantial in nature and that the irrevocable nature of the Guaranteed Payments may not be amended or modified whatsoever.

E. This Amended Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all existing agreements among them concerning the subject matter hereof.

F. Time is of the essence in the performance of each of the terms and conditions of this Amended Memorandum.

G. All notices, requests, demands, waivers, and other communications given as provided in this Amended Memorandum shall be in writing, and shall be addressed as follows:


If to Metro Louisville: Mayor
Metro Hall, 4th Floor
527 West Jefferson Street
Louisville, Kentucky 40202

If to the Arena Authority: Louisville Arena Authority, Inc.
3500 National City Tower
101 S. Fifth Street
Louisville, Kentucky 40202
Attn: Chairman

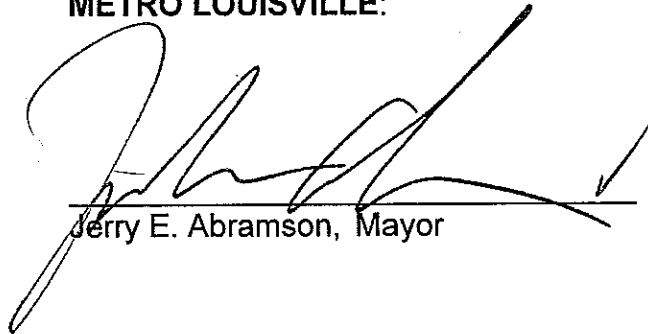
In WITNESS WHEREOF, Metro Louisville and the Arena Authority have executed this Amended Memorandum effective as of the date first above written.

METRO LOUISVILLE:

Approved as to Form and Legality:



Honorable Irv Maze
Jefferson County Attorney



Jerry E. Abramson, Mayor

ARENA AUTHORITY:

Approved as to Form and Legality:

LOUISVILLE ARENA AUTHORITY,
INC.

Counsel for Arena Authority

Chairman

Exhibit B

~~Section 1. Metro Louisville annual Guaranteed Payments to or for the benefit of
Arena Authority:~~

Year(s)	Amount(s)
2010 - 2019	\$9,800,000
2020 - 2029	\$10,800,000
2030 - 2039	\$10,300,000

~~Section 2. Metro Louisville's annual Guaranteed Payment for any year shall be reduced by the Excess Net Cash Flow, if any, generated by the Arena Authority. Excess Net Cash Flow represents the remaining balance after the accrual and/or payment of all operating costs and debt service obligations for the Arena Authority's fiscal year (net of any cumulative loss carry forward). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated as follows:~~

- ~~(a) Excess Net Cash Flow up to \$3 million shall be placed in a Renovation Fund to be maintained by the Arena Authority;~~
- ~~(b) Additional Excess Net Cash Flow beyond that referred to in paragraph (a) above shall be credited against Metro Louisville's annual Guaranteed Payment until said annual Guaranteed Payment is equal to one-third (1/3) of the annual Bond Principal and Interest Payment; and~~
- ~~(c) Forty five percent (45%) of any additional Excess Net Cash Flow beyond that referred in paragraphs (a) and (b) above shall be remitted to Metro Louisville within sixty (60) days of the date of determination, with the remaining fifty five percent (55%) being retained by the Arena Authority.~~

~~Section 3. Notwithstanding Section 1, the Metro Louisville minimum payment shall be \$6,533,333 per year for 2010-2019, \$7,200,000 for 2020-2029, and \$6,866,667 for 2030-2039, adjusted annually in accordance with Section 1 and Section 2.~~

~~Section 4. In the event that the Excess Net Cash Flow in any year shall not be sufficient to fund both the credit to Metro Louisville (e.g., the difference between the Section 1 amount and the Section 3 amount) and the \$3 million contribution to the Renovation Fund, any resulting deficiency shall be made up in the year(s) following before additional credits/contributions are made or allotted.~~

~~Section 5. If Metro Louisville's payments in Section 3 are insufficient to maintain debt service payments, then Metro Louisville will guarantee the difference between Section 3 and up to the amount(s) shown in Section 1 for that year.~~

Section 6. In no event shall the credits and remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that calendar year.

REQUIRED DEBT PAYMENTS
METRO LOUISVILLE

	(A)	(B)	(C)
	<u>Minimum</u> <u>Payment Due</u>	<u>Possible Additional</u> <u>Payment Due</u>	<u>Maximum</u> <u>Payment Due</u>
2010-2019	\$ 6,533,333	\$ 3,288,667	\$ 9,800,000
2020-2029	7,200,000	3,600,000	10,800,000
2030-2039	6,866,667	3,433,333	10,300,000
Average	\$ 6,866,667	3,433,333	10,300,000
Years	x 30	x 30	x 30
	<u>\$206,000,000</u>	<u>\$103,000,000</u>	<u>\$309,000,000</u>

1. Metro Louisville is required to make the payments each year as shown in column (A) (MINIMUM PAYMENT DUE).
2. If all sources, including the Metro payment in (1) above, are insufficient to pay the total debt service in any year, Metro Louisville guarantees to pay the shortfall up to the amount in column (B) (POSSIBLE ADDITIONAL PAYMENT DUE).
3. In any year when revenue from all sources, including the Metro payment in (1) above, exceeds the required debt service, Excess Net Cash Flow will be disbursed as follows:
 - a. Up to \$3,000,000 to a Renovation Fund to be maintained by the Louisville Arena Authority, Inc.
 - b. Additional Excess Net Cash Flow beyond that referred to in (a) shall be split (45%) to Metro Louisville with the remaining (55%) being retained by the Louisville Metro Authority, Inc.

MODIFIED EXHIBIT B

Section 1. Guaranteed Payments. Metro Louisville minimum and maximum annual Guaranteed Payments to or for the benefit of the Arena Authority are as follows:

<u>Year(s)</u>	<u>Minimum Annual Guaranteed Payments</u>	<u>Maximum Annual Guaranteed Payments</u>
<u>2010-2019</u>	<u>\$6,533,333</u>	<u>\$9,800,000</u>
<u>2020-2029</u>	<u>\$7,200,000</u>	<u>\$10,800,000</u>
<u>2030-2039</u>	<u>\$6,866,667</u>	<u>\$10,300,000</u>

Section 2. Payment of Minimum Annual Guaranteed Payment. Metro Louisville shall annually appropriate and pay to the Trustee under the Indenture the full amount of the initial Minimum Annual Guaranteed Payment on November 1, 2010, plus any additional amount, as provided in Section 5 hereof, and thereafter on each November 1 to and including November 1, 2039, will appropriate and pay the Minimum Annual Guaranteed Payment plus any additional amount, as provided in Section 5 hereof, due in such year.

Section 3. Gross Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Gross Pledged Arena Revenues will be directly transferred, as received, to the Arena Bond Trustee to be used for the purpose of paying debt service on the Arena Bonds to the extent required, and will be available after annual debt service is fully funded, to defer Arena operating and maintenance costs. "Gross Pledged Arena Revenues" are defined as certain Arena Revenues that are generally received on an annual basis from contractually obligated third parties for such services as Arena naming rights (external and internal), annual advertising revenues, revenues received from corporate and other sponsorship rights, such as exclusive use of suites, including lounges, preferential seating, mezzanine and terrace preferential seating, annual sponsorship rights and other similar revenue streams.

Section 4. Net Pledged Arena Revenues. Each year, beginning November 1, 2010, all Arena Authority revenues consisting of Net Pledged Arena Revenues will be applied by the Arena Authority to operate and maintain the Arena by paying labor costs, salaries, costs of direct events, general and administrative expenses, communications, supplies, repairs and maintenance, marketing and similar costs of operating the Arena, but shall be available to pay debt service on the Arena Bonds on the demand of the Arena Bonds Trustee in the event of a shortfall in funds available for payment of annual debt service from Gross Pledged Arena Revenues, current year State Tax Increment revenues, uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues (received in prior years and the current year) and the Metro Government Minimum Guaranteed Payments. The Trustee demand and consequent payment will be made prior to the making of any request to the Metro Government to make an additional payment of any Guaranteed Payment above the Minimum Guaranteed Payment for that year. "Net Pledged Arena Revenues" are defined as all Arena Authority Revenues not constituting Gross Pledged Arena

Revenues such as revenues from non-University events, concessions, catering, restaurant, parking and other similar revenues.

Section 5. Payment of Additional Amounts (Not to Exceed Maximum Annual Guaranteed Payment). The Arena Authority shall determine, on or prior to each October 1 in the years specified in Section 1, whether the Arena Authority's total gross revenues in each year from all sources (including (i) Gross Pledged Arena Revenues, (ii) the Metro Louisville Minimum Annual Guaranteed Payment, (iii) current year State Tax Increment revenues; (iv) uncommitted available State Tax Increment revenues from surplus State Tax Increment revenues received in prior years and the current year and (v) Net Pledged Arena Revenues, as provided in Sections 3 and 4) are sufficient to pay in full all debt service due on the Bonds on the next two scheduled semiannual payment dates. In the event of a shortfall in such amounts, then, at the request of the Arena Authority upon not less than 30 days' written notice, Metro Louisville shall appropriate and pay to the Trustee on each November 1 (or other date as required to prevent a debt service payment default) in such years the amount of any such shortfall, provided that the total amount paid by Metro Louisville in the calendar year shall not exceed in any such year the Maximum Annual Guaranteed Payment for such year specified in Section 1.

Section 6. Outside Consultant. In the event that for two consecutive years the Metro Government is required to fund any amount in excess of the Minimum Guaranteed Payment, upon request of the Metro Government, the Arena Authority must promptly retain an independent public accounting firm of national reputation in the field of arena operations (and such selection shall be reasonably satisfactory to the Metro Government) to examine the revenues and operating expenses of the Arena Authority and to file a report with recommendations as to actions which may be taken by the Arena Authority to increase net revenues available to pay debt service. The Arena Authority shall be obligated to file a report within 60 days of the delivery of such Consultant Report to the Metro Government and the Arena Authority as to actions the Arena Authority is taking or will take to implement the recommendations of the Consultant.

Section 7. Excess Net Cash Flow. "Excess Net Cash Flow" for any fiscal year of the Arena Authority represents the remaining balance of the Arena Authority's gross revenues from all sources (excluding amounts payable by the State as tax increment revenues) in such fiscal year after the accrual and/or payment of all operating and maintenance costs and debt service obligations for the Arena Authority in such fiscal year (net of any cumulative loss carryforward in such fiscal year). Excess Net Cash Flow shall be determined annually and not earlier than March 31 of each year commencing in 2011 and allocated in the following priorities:

(a) First, additional Excess Net Cash Flow shall be applied to make up any deficiency in the Debt Service Reserve Fund;

(b) Second, remaining Excess Net Cash Flow shall be deposited in a Renovation Fund to be maintained by the Arena Authority until the amount of deposits in

such Fund for such fiscal year equals \$3,000,000 plus, to the extent that there has been a deficiency in any prior fiscal year in the deposit of such annual \$3,000,000 requirement, the amount necessary to fully restore such deficiency; and

(c) Third, forty-five percent (45%) of any additional Excess Net Cash Flow beyond that referred to in paragraphs (a) and (b) above shall be remitted to Metro Louisville within sixty (60) days of the date of determination, with the remaining fifty-five percent (55%) being retained by the Arena Authority. In no event shall the remittances to Metro Louisville provided for herein exceed the amount of Metro Louisville's Guaranteed Payment for that fiscal year.

**AGREEMENT AS TO
AMENDMENT AND RESTATEMENT OF
MEMORANDUM OF AGREEMENT**

THIS AGREEMENT AS TO AMENDMENT AND RESTATEMENT OF MEMORANDUM OF AGREEMENT (the "Amendment and Restatement Agreement") is made and entered into this ____ day of _____, 2007, by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a de jure consolidated local government pursuant to KRS Chapter 67C and a political subdivision of the Commonwealth of Kentucky ("Metro Louisville") and the LOUISVILLE ARENA AUTHORITY, INC., a Kentucky non-stock, non-profit corporation (the "Arena Authority").

WITNESSETH:

WHEREAS, under date of July 21, 2006, pursuant to authority of Resolution No. 81, Series 2006 of the Metro Council of Metro Louisville, the Arena Authority and Metro Louisville entered into a Memorandum of Agreement (the "Original Guarantee Agreement") with respect to the financing and construction of the Louisville Arena, a public project intended for multiple uses as a public, recreational, cultural and sports facility; and

WHEREAS, the parties agree that it is necessary and appropriate that such Original Guarantee Agreement be amended and restated, in light of developments occurring after the execution and delivery of the Original Guarantee Agreement;

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND FOR OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED BY EACH PARTY, THE PARTIES COVENANT AND AGREE, AS FOLLOWS:

Section 1. The Guarantee Agreement shall be amended and restated in full, in order to reflect with accuracy the undertakings, covenants and agreements made by the parties. The Amended and Restated Guarantee Agreement is attached hereto and incorporated herein as Exhibit C. Amendments are reflected as text strike-outs and underlined text additions. Exhibit B to the Original Guarantee Agreement is hereby repealed and annulled in its entirety and shall be replaced by "Modified Exhibit B" hereby adopted, which will be an integral part of Exhibit C hereto.

Section 2. The Amended and Restated Memorandum of Agreement adopted as Exhibit C hereto and Modified Exhibit B thereto are hereby approved and adopted by Metro Louisville and the Arena Authority, which approvals shall be evidenced by execution by each the parties of this Amendment and Modification Agreement and the Amended and Restated Memorandum of Agreement. This Amendment to Guarantee Agreement and the Amended and Restated Memorandum of Agreement, including Modified Exhibit B, shall be in full force and effect from and after the execution and delivery of each such agreement by each Party hereto.