

ORDINANCE NO. 118, SERIES 2021

AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO PROVISIONS OF KRS 65.7041- 65.7083 TO BE KNOWN AS THE 726 EAST MARKET STREET DEVELOPMENT AREA, DESIGNATING THE METRO DEVELOPMENT AUTHORITY, INC. AS AN "AGENCY", ADOPTING A DEVELOPMENT PLAN, APPROVING ENTERING INTO A LOCAL PARTICIPATION AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL PARTICIPATION AGREEMENT, REQUIRING THE SUBMISSION OF REGULAR REPORTS TO LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES AUTHORIZED BY THIS ORDINANCE. (AS AMENDED)

**SPONSORED BY: COUNCIL MEMBER KEVIN TRIPLETT**

**WHEREAS**, the Kentucky General Assembly enacted KRS 65.7041-65.7083 (the "Act") relating to tax increment financing and urban redevelopment, which Act establishes development areas to increase property values, increase employment opportunities, and increase economic activity;

**WHEREAS**, Mountain & River City, LLC, a Delaware limited liability company, or an affiliate of same (the "Developer") plans to undertake a major project within the 726 East Market Street Development Area (the "Development Area") to complete the 726 East Market Street Redevelopment Project (the "Project"), as more particularly described in the Development Plan attached hereto as Exhibit A;

**WHEREAS**, the Project, which qualifies as a development area under the Act, will involve new capital investment of approximately \$29 million when fully developed;

**WHEREAS**, in accordance with the provisions of the Act, a Development Plan for the Development Area has been prepared and a public hearing has been conducted to seek public comment on the Development Plan;

**WHEREAS**, the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) finds that the Project to be undertaken in the Development Area by the Developer will further the public purposes identified in the Act by increasing the value of property located in the Development Area, increasing employment within the Development Area, Louisville and the region and increasing the tax base of Louisville;

**WHEREAS**, it is therefore in the interest of Louisville/Jefferson County Metro Government (“Louisville Metro”) and Metro Development Authority, Inc. (the “Authority”) that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner;

**WHEREAS**, the redevelopment of previously developed land, within the meaning of the Act and as presented by the Developer and the Authority, enables Louisville Metro to use tax increment financing to encourage major economic development projects and is a worthy public purpose;

**WHEREAS**, Louisville Metro is authorized under the Act to execute a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville Metro within a development area in order to promote the public purpose of Louisville Metro;

**WHEREAS**, the Authority is organized and incorporated as a nonprofit, nonstock corporation pursuant to KRS Chapters 58 and 273 to act as an “Agency”

under the Act; and

**WHEREAS**, Louisville Metro has determined that based on the benefits to be derived from the Project that it is in furtherance of its public purposes to assist Developer, through the Authority, with the costs of the Project and agrees to enter into the Local Participation Agreement in order to pay to the Authority the Released Amount (as hereinafter defined) for use solely for purposes of the Project.

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

**SECTION I:** The Development Plan, attached hereto as Exhibit A, is hereby adopted.

**SECTION II:** That the Council finds as follows:

A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.

B. The Development Area, as depicted in Exhibit B, is a contiguous parcel of property, approximately 0.3865 acres in size, and is less than three (3) square miles in area as required by the Act.

C. The Development Area constitutes previously developed land as required by KRS 65.7043(2).

D. The establishment of the Development Area shall not cause the assessed value of taxable real estate in all development areas located in Louisville Metro to exceed 20% of the assessed value of all taxable real property in Louisville. To date Louisville Metro has established several other development areas with a combined taxable real property assessment at the time they were established of

approximately \$1.537 billion. The taxable real property assessment of the Development Area for calendar year 2020 is approximately \$420,880, and that amount combined with the previous development areas established by Louisville Metro totals \$1.538 billion, while the total taxable real property assessment for Louisville exceeds \$65.6 billion, 20% of which is \$13.1 billion.

E. The conditions within the Development Area meet two (2) of the seven (7) factors of blight as set forth in KRS 65.7049 and are as follows:

1. **A substantial loss of residential, commercial, and industrial activity or use has occurred within the Development Area.** The buildings in the Development Area were removed years ago due to their condition and for safety reasons, and the site has only been used for surface parking since their removal.

2. **A combination of factors substantially impairs or arrests the growth and economic development of the city or county and impedes the development of commercial or industrial property due to the Development Area's present condition and use.** Development of the Project site without assistance as provided by the Act is not feasible due to the dramatically rising large scale costs associated with the redevelopment of the proposed Project and the current scarcity of traditional financing for hospitality development. Potential revenue alone cannot underwrite the costs of the proposed improvements. No other adequate funding mechanism affords the proposed improvements absent the incentives provided under the Act. These improvements cannot be facilitated with private investment alone. The aesthetic, improved connectivity and amenities

(including related amenities on an adjoining parcel, event space, museum and hospitality) resulting from the development of the proposed Project will have a positive effect on the city and surrounding area, especially the impact on East Market Street, the NuLu neighborhood and the Kentucky International Convention Center.

F. The Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of site development expenses needed for the Project makes public incentives critical to the financing of the Project when compared with low potential revenue generated by these improvements.

G. The public benefits of redeveloping the Development Area justify the public costs proposed. The investment in the Development Area will result in significant returns through increased property valuations for the surrounding area, facilitate secondary and tertiary re-development within the area, and bring additional residents, diners and other visitors to Louisville. The Development Area has a 2020 taxable assessment of approximately \$420,880, which annually generates \$2,092 in ad valorem real property taxes to Louisville Metro. The Project will increase capital investment by approximately \$29,000,000, which will provide significant new taxes to Louisville Metro and the other taxing districts. While Louisville Metro will pledge 80% of the incremental increase of the local ad valorem real property taxes from the Development Area, up to a cap of \$1,880,404, to provide redevelopment assistance to the project, including public infrastructure improvements, it will retain 20% of the new incremental increase of the local ad

valorem real property taxes and 100% of the local occupational taxes from the Development Area. Further, the existing ad valorem real property taxes will be retained by Louisville Metro. Therefore, even when considering the requested incentives for the Project from Louisville Metro, the Project will be financially beneficial to Louisville Metro. The Project will also serve as a catalyst for additional development in the area surrounding the Development Area. The Developer has also committed to a community benefits agreement, which will be memorialized in a Memorandum of Understanding (“MOU”) substantially similar to the draft MOU attached as Exhibit D.

H. Most of the area immediately surrounding the Development Area has been subject to growth and development only through public support of private investment. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them.

I. The pledge and use of a portion of Louisville Metro’s incremental revenues, as defined in the Local Participation Agreement, derived from the Development Area to provide redevelopment assistance to the Project and the Development Area will increase capital investment and employment in Louisville Metro, and therefore constitutes a public purpose.

**SECTION III:** The Development Area as illustrated and described in Exhibit B is designated as a development area pursuant to the Act and shall be named the 726 East Market Street Development Area. The Development Area shall be established as of the effective date of this Ordinance and shall terminate on the

earlier of (a) the termination of the Local Participation Agreement, attached hereto as Exhibit C, or (b) 25 years from the date hereof, provided that in no case the termination date will be more than twenty (20) years from the activation date.

**SECTION IV:** That the Metro Development Authority, Inc., a Kentucky nonprofit, nonstock corporation (the "Authority"), (a) is designated as the Agency, pursuant to the terms of the Act, (b) shall be the recipient of the Released Amount under the Local Participation Agreement and (c) shall be required to oversee and administer the implementation of the Project within the Development Area.

**SECTION V:** That the Mayor is authorized to negotiate and enter into a Local Participation Agreement with the Authority for the release to the Authority of a portion of the new ad valorem real property taxes expected to be derived by Louisville Metro from the Project to be constructed in the Development Area ("Released Amount"), substantially in the form attached hereto as Exhibit C.

**SECTION VI:** That the Office of Management and Budget is designated as the department in Louisville Metro to oversee the payment of the Released Amount and to review all documentation concerning the Project, its progress, costs and development. The Office of Management and Budget shall annually submit to the Council a report concerning the Development Area ("Report"). The Developer shall provide to the Office of Management and Budget, on a timely basis, all information required by the Office of Management and Budget to prepare the Report. The Report shall include but not be limited to:

A. An accounting of all payments made to the Authority pursuant to the Local Participation Agreement;

B. An analysis and review of development activity within the Development Area;

C. The progress made toward meeting the stated goals of the Development Area; and

D. An accounting of the Approved Project Costs and other Project Costs incurred by the Developer.

**SECTION VII:** That the Council authorizes Louisville Metro to pay annually to the Authority, the Released Amount which shall be calculated as provided in the Local Participation Agreement, not to exceed a sum equal to 80% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement subject to the following condition: in no event shall the total of the Released Amount paid to the Authority over the term of the Local Participation Agreement exceed \$1,880,404 as set forth in the Local Participation Agreement.

**SECTION VIII:** That the Authority shall establish a Special Fund pursuant to the Act for the Development Area as set forth in the Local Participation Agreement.

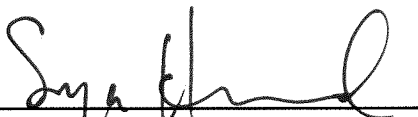
**SECTION IX:** That the Mayor and other appropriate Louisville Metro officials, and each of them, for and on behalf of Louisville Metro, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville Metro under and pursuant to the Local Participation Agreement and related documents, and the performance of all other

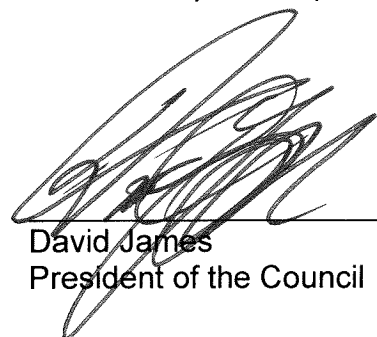



actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville Metro officials, and each of them, are hereby further authorized, empowered and directed for and on behalf of Louisville Metro to execute all papers, letter, documents, undertakings, certificates, assignments, forms, instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Ordinance and the Local Participation Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of Louisville Metro under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville Metro under the Local Participation Agreement and related documents.

**SECTION X:** 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 XI:** This Ordinance shall take effect upon its passage and approval.

  
\_\_\_\_\_  
Sonya Harward  
Metro Council Clerk

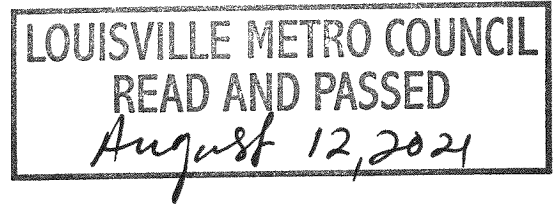
  
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David James  
President of the Council

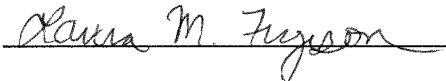
  
\_\_\_\_\_  
Greg Fischer  
Mayor

08/17/2021  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney



By: 

O-299-21 Ordinance Establishing the 726 East Market Street TIF (as amended) (lf)

## Exhibits

- A. Development Plan
- B. Map of Development Area
- C. Local Participation Agreement
- D. Memorandum of Understanding**

**EXHIBIT A**  
**DEVELOPMENT PLAN**

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**Development Plan**

**For**

**726 East Market Street Development Area**

**Louisville/Jefferson County Metro Government**

**\_\_\_\_\_, 2021**

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**Development Plan**  
**The 726 East Market Street Development Area**

**1. Introduction.**

**1.1. Purpose.** The Louisville/Jefferson County Metro Government (“Louisville Metro”) intends to establish the **726 East Market Street Development Area** (the “Development Area”) pursuant to the provisions of KRS 65.7041 to 65.7083, as the same may be amended (collectively, the “Act”), to encourage the redevelopment of a lot currently used for surface parking being undertaken by Mountain & River City, LLC, a Delaware limited liability company, or an affiliate of same (the “Developer”), to be located at and adjacent to 726-730R E. Market Street, Louisville, Kentucky. The Developer proposes to redevelop the site for a hotel project consisting of approximately 122 rooms plus at least two additional unique food and beverage establishments, which will cost approximately \$29 million (the “Project”). Louisville proposes to support the Project and provide redevelopment assistance through a pledge of a portion of the incremental increase in local, Louisville Metro ad valorem real property taxes generated within the Development Area as a result of the Project.

**1.2.** The Project will have approximately 122 rooms, and it is anticipated that the hotel will be managed by the Bunkhouse Group and add a unique hotel experience option to the Louisville Metro market and support the burgeoning “Urban Bourbon” Trail rapidly establishing in Louisville Metro, as it will partner with Rabbit Hole Spirits to provide programming for indoor/outdoor museum art space.

**1.3.** The redevelopment plan for the Project will redevelop a site that where the buildings were torn down years ago, and since then, has been used as a surface parking lot.

Redevelopment will transform a significant block along East Market Street and will be a catalyst for further development of the surrounding area. In addition to redeveloping an underutilized site that has been used for surface parking, this proposed project will provide additional opportunities for tourists and will drive further development in the NuLu neighborhood.

**1.4 Size and Location.** The Development Area is an approximate 0.3865 acre area in the NuLu neighborhood identified more specifically on the map attached as Exhibit “A”. This location, in the NuLu neighborhood, is perfectly situated for development of the Project, which will become the anchor and development catalyst for continued high quality growth and development in the surrounding areas.

## **2. The Development Area**

**2.1. Assurances Regarding the Size and Taxable Assessed Value of the Development Area and Other Matters.** Louisville Metro finds in accordance with the Act that:

**(a)** The Development Area is a contiguous area consisting of approximately 0.3865 acres, which is less than three square miles in area;

**(b)** The establishment of the Development Area will not cause the assessed taxable value of real property within the Development Area and within all “development areas” and “local development areas” established by Louisville Metro (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within Louisville Metro. To date,

Louisville Metro has established several other development areas with a combined taxable real property assessment of \$1.537 billion. The taxable real property within the Development Area for calendar year 2020 is approximately \$420,880, and that combined with the other development areas that have been established by Louisville Metro totals approximately \$1.538 billion in taxable real property assessment. The total assessed value of taxable real property within Louisville Metro for the calendar year 2020 exceeds \$65.6 billion, 20% of which is \$13.1 billion. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within Louisville Metro; and

(c) That the Development Area constitutes previously developed land as required by KRS 65.7043(2).

**2.2. Statement of Conditions and Findings Regarding the Development Area.** Pursuant to KRS 65.7049(3), a development area shall exhibit at least two of the following conditions to qualify for designation as a “development area” under the Act.

(a) Substantial loss of residential, commercial, or industrial activity or use;

(b) Forty percent (40%) or more of the households are low-income households;

(c) More than fifty percent (50%) of residential, commercial, or



industrial structures are deteriorating or deteriorated;

**(d)** Substantial abandonment of residential, commercial, or industrial structures;

**(e)** Substantial presence of environmentally contaminated land;

**(f)** Inadequate public improvements or substantial deterioration in public infrastructure; or

**(g)** Any combination of factors that substantially impairs or arrests the growth and economic development of the city or county; impedes the provision of adequate housing; impedes the development of commercial or industrial property; or adversely affects public health, safety, or general welfare due to the development area's present condition and use.

Louisville Metro has reviewed and analyzed the conditions within the Development Area and finds that the Development Area meets two (2) of the seven (7) qualifying characteristics as follows:

1. **A substantial loss of residential, commercial, and industrial activity or use has occurred within the Development Area.** The buildings in the Development Area were removed years ago due to their condition and for safety reasons, and the site has only been used for surface parking since their removal.
2. **A combination of factors substantially impairs or arrests the growth and economic development of the city or county and impedes the development of commercial or industrial property**

**due to the Development Area's present condition and use.**

Development of the Project site without assistance as provided by the Act is not feasible due to the dramatically rising large scale costs associated with the redevelopment of the proposed Project, and the current scarcity of traditional financing for hospitality development. Potential revenue alone cannot underwrite the costs of the proposed improvements. No other adequate funding mechanism affords the proposed improvements absent the incentives provided under the Act. These improvements cannot be facilitated with private investment alone. The aesthetic, improved connectivity and amenities (including related amenities on an adjoining parcel, event space, museum and hospitality) resulting from the development of the proposed Project will have a positive effect on the city and surrounding area, especially the impact on East Market Street, the NuLu neighborhood and the Kentucky International Convention Center.

3. **Assurances the Development Area Is Not Reasonably Expected to Develop Without Public Assistance.** Louisville Metro finds that the Development Area will not reasonably be developed without public assistance, including incentives as provided by the Act. The high cost of site development expenses needed for the Project make public incentives critical to the financing of the Project.

**2.3. Assurances Regarding the Public Benefits of Redeveloping the Development Area as Proposed Justify the Public Costs Proposed.** Louisville Metro finds that the public benefits of redeveloping the Development Area justify the public costs proposed. The investment in the Development Area will result in significant returns through increased property valuations for the surrounding area, will facilitate secondary and tertiary re-development within the area, and will bring additional visitors to Louisville Metro. The Development Area has a 2020 taxable assessment of approximately \$420,880 which annually generates \$2,092 in ad valorem real property taxes to Louisville Metro. The Project will increase capital investment by approximately \$29,000,000, which will provide significant new taxes to Louisville Metro and the other taxing districts. While Louisville Metro will pledge 80% of the incremental increase of the local ad valorem real property taxes from the Development Area, up to a cap of \$1,880,404, to provide redevelopment assistance to the project, it will retain 20% of the new incremental increase of the local ad valorem real property taxes from the Development Area, and 100% of the increase in any other taxes, such as local occupational taxes. Further, the existing ad valorem real property taxes will be retained by Louisville Metro. Therefore, even when considering the requested incentives for the Project from Louisville Metro, the Project will be financially beneficial to Louisville Metro. Further, the Project will serve as a catalyst for additional development in the area surrounding the Development Area.

**2.4. Assurances Regarding the Area Immediately Surrounding the Development Area.** Pursuant to the Act, the establishment of a development area requires a finding that the area immediately surrounding the Development Area has not

been subject to growth and development through investment by private enterprise or, if the area immediately surrounding the Development Area has been subject to growth and development through investment by private enterprise, that there are certain special circumstances within the Development Area that would prevent its development without public assistance. Most of the area immediately surrounding the Development Area has been subject to growth and development only through public support of private investment. The proposed improvements within the Development Area will have a positive effect on the surrounding area, which faces stagnation in development without them.

**2.5. Development Area Description.** The Development Area includes the real property within the boundaries described on the site plan and legal description attached hereto as Exhibit "A."

**2.6. Existing Uses and Conditions.** The Development Area consists of approximately 0.3865 acres on East Market Street midblock between South Clay Street and South Shelby Street in the NuLu neighborhood. The existing site has been used for surface parking since the buildings were torn down years ago due to their condition and safety reasons.

**2.7. Changes in the Zoning Ordinance, Zoning Map, Comprehensive Plan or Other Codes or Plans Necessary to Implement the Development Plan.** No change is needed in zoning to implement the Development Plan.

**2.8. Certification of Compliance with the Comprehensive Land-Use Plan.** The Project complies with the Comprehensive Land-Use Plan for Louisville Metro.

### **3. The Development Program.**

The Development is expected to be a hotel managed by the Bunkhouse Group, which will complement the Bourbon Trail and the Kentucky International Convention Center by providing another option for visitors wishing to lodge in Louisville.

### **4. Redevelopment Assistance and Finance Plan.**

Louisville Metro proposes to provide redevelopment assistance and pay for Project costs through a pledge of a portion of the incremental increases in tax revenues from local ad valorem real property taxes from the Development Area. Louisville Metro proposes to pay annually to the Agency, as defined in the Local Participation Agreement, the Released Amount which shall be calculated as provided in the Local Participation Agreement as follows: 80% of the Louisville Metro Ad Valorem Real Property Tax Increment, as that term is defined in the Local Participation Agreement, subject to the following condition: in no event shall the total of the Released Amount paid to the Agency over the term of the Local Participation Agreement exceed \$1,880,404 as more particularly set forth in the Local Participation Agreement. The projected incremental revenues and proposed time frame of the financial obligations is attached as Exhibit "B."

Louisville Metro will establish a special fund for the deposit of pledged incremental revenues as required by KRS 65.7061. Pledged incremental revenues deposited into this special fund will be used solely to reimburse the Developer for redevelopment assistance or pay for project costs in compliance with this Development Plan, the Act, and all agreements and documents entered into in connection therewith. Louisville will enact an ordinance establishing the Development Area and adopting this

Development Plan. The development area ordinance will designate the Metro Development Authority, Inc. (the "Agency"), organized by Louisville Metro, as the entity in charge of overseeing, administering and implementing the terms of the development ordinance.

## **5. Conclusions.**

In conclusion, the Project will serve as an important catalyst to the further development of the NuLu neighborhood and surrounding areas, will generate significant new tax revenues to Louisville Metro, and will facilitate an increase in the availability of hotel space needed to support the growth and development of Louisville Metro. The incentives proposed to be provided under the Act are reasonable and critical to the overall financing for the Project.

**Exhibit A**

**Map and Description of Development Area**

Tract 1

Parcel #04-017D-0194-000

Being Tract 2 as shown on Minor Plat Docket No. 15 Minor Plat 1067, of record in Deed Book 10492, Page 176, in the Office of the County Court of Jefferson County, Kentucky, having been approved by the Louisville Metro Planning Commission on October 22, 2015.

Tract 2

Parcel #04-017D-0087-0000

Beginning at a point in the South line of Market Street 183-9/12 feet West of the Southwest corner of Shelby and Market Streets; thence West 26-3/12 feet; thence extending back South and parallel with Shelby Street 133-3/4 feet; thence East 26-3/12 feet; thence North and parallel with Shelby Street, 133-3/4 feet to the point of beginning.

Tract 3

Parcel #04-017D-0087-0000\*

Beginning at a point on the North side of the alley between Market and Jefferson Streets and Clay and Shelby Streets one hundred and sixty-five (165) feet nine (9) inches West of Shelby Street; running thence with the alley forty-three (43) feet nine (9) inches; thence Northwardly at right angles, seventy (70) feet, more or less; thence Eastwardly twenty-six (26) feet three (3) inches; thence Southeast to a point forty-three (43) feet nine (9) inches East of the West line of the lot to a point fifty-six (56) feet North of the alley; thence Southwardly fifty-six (56) feet to the beginning.

Tract 4

Parcel #04-017D-0085-0000

Beginning at a point in the South line of Market Street, 210 feet West of Shelby Street; running thence West with the South line of Market Street 28 feet, and extending back, between lines parallel with Shelby Street, 204 feet to an alley.

\*Deed also lists Tract 3 as Parcel #04-017D-0087-0000; PVA lists Tract 3 as Parcel #04-017D-0086-0000.

**Bunkhouse Hotel Development Area**





**Exhibit B**

**PROJECTED NEW REAL ESTATE TAX REVENUES**

2023	98,873
2024	100,851
2025	102,868
2026	104,925
2027	107,024
2028	109,164
2029	111,347
2030	113,574
2031	115,846
2032	118,163
2033	120,526
2034	122,936
2035	125,395
2036	127,903
2037	130,461
2038	133,070
2039	135,732
2040	138,446
2041	141,215
2042	144,040

**EXHIBIT B**  
**MAP OF DEVELOPMENT AREA**

# Bunkhouse Hotel Development Area



## LEGAL DESCRIPTION

### Tract 1

Parcel #04-017D-0194-000

Being Tract 2 as shown on Minor Plat Docket No. 15 Minor Plat 1067, of record in Deed Book 10492, Page 176, in the Office of the County Court of Jefferson County, Kentucky, having been approved by the Louisville Metro Planning Commission on October 22, 2015.

### Tract 2

Parcel #04-017D-0087-0000

Beginning at a point in the South line of Market Street 183-9/12 feet West of the Southwest corner of Shelby and Market Streets; thence West 26-3/12 feet; thence extending back South and parallel with Shelby Street 133-3/4 feet; thence East 26-3/12 feet; thence North and parallel with Shelby Street, 133-3/4 feet to the point of beginning.

### Tract 3

Parcel #04-017D-0087-0000\*

Beginning at a point on the North side of the alley between Market and Jefferson Streets and Clay and Shelby Streets one hundred and sixty-five (165) feet nine (9) inches West of Shelby Street; running thence with the alley forty-three (43) feet nine (9) inches; thence Northwardly at right angles, seventy (70) feet, more or less; thence Eastwardly twenty-six (26) feet three (3) inches; thence Southeast to a point forty-three (43) feet nine (9) inches East of the West line of the lot to a point fifty-six (56) feet North of the alley; thence Southwardly fifty-six (56) feet to the beginning.

### Tract 4

Parcel #04-017D-0085-0000

Beginning at a point in the South line of Market Street, 210 feet West of Shelby Street; running thence West with the South line of Market Street 28 feet, and extending back, between lines parallel with Shelby Street, 204 feet to an alley.

\*Deed also lists Tract 3 as Parcel #04-017D-0087-0000; PVA lists Tract 3 as Parcel #04-017D-0086-0000.

**EXHIBIT C**  
**LOCAL PARTICIPATION AGREEMENT**

## LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government ("Louisville") and (ii) the **METRO DEVELOPMENT AUTHORITY, INC.**, a Kentucky non-profit, nonstock corporation ("Authority").

### RECITALS:

**WHEREAS**, Mountain & River City, LLC, a Delaware limited liability company, or an affiliate of same ("Developer"), desires to redevelop property at 726-730R East Market Street into an approximately 122 room hotel with conference space with at least two additional unique food and beverage establishments, which will cost approximately \$29 million, and known as the 726 East Market Street Redevelopment Project more specifically described in Exhibit A (the "Project");

**WHEREAS**, Louisville and the Authority, to induce Developer to undertake the Project, agree to provide certain tax increment financing incentives to Developer as set forth in this Agreement and the TIF Disbursement Agreement to be entered into among Developer, the Authority and Louisville ("TIF Agreement");

**WHEREAS**, pursuant to KRS 65.7041-65.7083 ("the Act"), the Legislative Council of Louisville/Jefferson County Metro Government ("Metro Council"), by Ordinance No \_\_\_\_, Series 2021 (the "Ordinance"), enacted on \_\_\_\_\_, 2021, has established the 726 East Market Street Development Area (the "Development Area"), as more specifically described in Exhibit B;

**WHEREAS**, the Project represents new economic development in Louisville;

**WHEREAS**, the Project, located within the Development Area, as presented to Louisville and the Authority by Developer in preliminary planning papers, will result in the increase in the value of real property located in the Development Area, increase the tax base of Louisville, and increase employment in Louisville;

**WHEREAS**, it is therefore in the interest of Louisville and the Authority that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner;

**WHEREAS**, Louisville is authorized under the Act to enter into a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purposes of Louisville;

**WHEREAS**, the Ordinance declares the Development Area to be a "development area" within the meaning of the Act, and the Project constitutes a "project" within the meaning of the Act; therefore, the Project is eligible to receive a portion of incremental local ad valorem real property taxes as provided in the Act;

**WHEREAS**, the Authority, pursuant to Chapters 58 and 273 of the Kentucky Revised Statutes, is organized and incorporated by Louisville as a not-for-profit, nonstock corporation, and pursuant to the Ordinance, the Authority has been designated as the "agency," within the meaning of the Act for the purposes of receiving and distributing incremental local tax revenues generated within the Development Area; and

**WHEREAS**, Louisville desires to assist the Developer, through the Authority, with the costs of the Project and agrees to enter into this Agreement in order to release to the Authority a portion of the Real Estate Tax Increment (as hereinafter defined) for use solely for purposes of the Project;

**NOW THEREFORE**, in consideration of the premises and the additional consideration provided herein, Louisville and the Authority agree as follows:

**Section 1. Definitions.**

In addition to the terms defined in the above recitals, the following additional terms used in this Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

(a) **"Activation Date"** means \_\_\_\_\_, 2023, being within two (2) years of the Commencement Date which, upon the written notice of the Authority to Metro Council, may be extended, but in no event more than four (4) years from the Commencement Date.

(b) **"Base Year"** means January 1, 2020 through December 31, 2020, the last full year prior to the Commencement Date.

(c) **"Calendar Year"** means January 1 through and including December 31.

(d) **"Commencement Date"** shall mean the later of (i) the effective date hereof or (ii) the effective date of the Local Participation Agreement.

(e) **"New Real Estate Tax Revenue"** means the amount of Real Estate Taxes received by Louisville after the Activation Date has occurred through the term of this Agreement.

(f) **"Office of Management and Budget"** means the department of Louisville with that name.

(g) **"Old Real Estate Tax Revenue"** means the amount of Real Estate Taxes assumed to have been received by Louisville in the Base Year, as calculated in Section 4.1 of this Agreement.

(h) **"Real Estate Tax"** means the local ad valorem real property taxes received annually by Louisville from real property located within the Development Area.

(i) **"Real Estate Tax Increment"** means the incremental amount of Real Estate Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Real Estate Tax Revenue from the amount of New Real Tax Revenue.

(j) **"Released Amount"** means the amount payable in each Calendar Year from Louisville to the Authority pursuant to Section 4.4 of this Agreement.

(k) **"Termination Date"** means the date ending twenty (20) years from the Activation Date, unless terminated earlier pursuant to Section 3.1 of this Agreement.

## **Section 2. Representations and Warranties.**

**2.1 Representations and Warranties of the Authority.** The Authority represents and warrants to Louisville as follows:

(a) **Existence.** The Authority is a duly organized and validly existing non-profit corporation created under and in conformity with the laws of the Commonwealth of Kentucky.

(b) **Authority to Act.** The Authority has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Agreement on behalf of the Authority have been or are otherwise duly authorized to enter into this Agreement on behalf of the Authority.

(c) **Validity of Agreement; Compliance with Law.** This Agreement is the legal, valid, and binding obligation of the Authority enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Authority of the terms and conditions thereof do not and will not materially violate any of the provisions of the Authority's Articles of Incorporation or any laws applicable to the Authority.

(d) **Litigation.** No litigation or proceeding involving the Authority is pending or, to the best of the knowledge of the Authority, is threatened in any court or administrative agency which, if determined adversely to the Authority could have a materially adverse impact on the ability of the Authority to perform any of its obligations under this Agreement.

(e) **Conflicting Transactions.** The culmination of the transactions contemplated hereby and the performance of the obligations of the Authority under and by virtue of this Agreement shall not result in any material breach of, or constitute a default under, any contract, agreement, lease, indenture, bond, note, loan or credit agreement to which it is a party or by which it is bound.



**2.2 Designation of Subsidiary or Related Entity.** Notwithstanding the provisions of Subsection 2.1, the Authority shall have the right to designate as the "Agency" a subsidiary or related entity of the Authority provided that such subsidiary or related entity (i) qualifies as an agency pursuant to the Act, (ii) such subsidiary entity can make to Louisville the representations and warranties required pursuant to subsection 2.1, (iii) such subsidiary or related entity is reasonably acceptable to Louisville, and (iv) such subsidiary is able to perform those obligations required in the Ordinance.

**2.3 Representations and Warranties of Louisville.** Louisville represents and warrants to the Authority as follows:

(a) **Authority to Act.** Louisville has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Agreement on behalf of Louisville has been and is duly authorized to enter into this Agreement on behalf of Louisville.

(b) **Validity of Agreement; Compliance with Law.** This Agreement is the legal, valid and binding obligation of Louisville enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by Louisville of the terms and conditions thereof, do not and will not violate any provisions of any laws applicable to Louisville.

**Section 3. Released Amount.**

**3.1 Term.** Louisville agrees to pay to the Authority, and the Authority does accept from Louisville, the Released Amount for each calendar year beginning in the year including the Activation Date, with payment to be made beginning in the year following the Activation Date, and for successive calendar years continuing automatically thereafter until the earlier of the following: (i) that date nineteen (19) years following the initial payment to the Authority; (ii) Louisville's election to terminate this Agreement pursuant to Kentucky Constitution sections 157(b), 162, and 179, and KRS Chapters 67C and 91A at the end of any current calendar year following written notice to the Authority delivered at least sixty (60) days prior to such calendar year end; or (iii) the aggregate of the total of the Released Amount paid to the Authority by Louisville equals \$1,880,404.

**3.2 The Authority Reporting.** The Developer has agreed in the TIF Agreement, at its sole expense, to submit a report to the Authority and the Office of Management and Budget on or before July 1 of each year during the term of this Agreement including but not limited to:

(a) A notarized certification by the Developer accounting for the use and expenditure of the Released Amount by the Developer in the preceding Calendar Year, including any Released Amount carried forward from earlier Calendar Years;

(b) An analysis and review of all development activities within the Development Area during the prior Calendar Year;

(c) A progress report on the current status of achieving the stated goals of the Project and the Development Area;

(d) A proposed spending plan for the Released Amount for the current Calendar Year; and

(e) The Authority shall submit the Request for the Released Amount each year following Activation for the term of this Agreement to the Office of Management and Budget on or after July 1, but no later than December 31 following the calendar year for which the Released Amount is requested. No more than one request shall be submitted in any calendar year.

**3.3 Louisville Monitoring, Tracking and Reporting.** The Office of Management and Budget shall oversee the payment of the Released Amount to the Authority. The Office of Management and Budget shall review all reports received from the Authority pursuant to Section 3.2 or otherwise and shall annually submit to the Metro Council a report concerning the Project and the Development Area including but not limited to:

(a) An accounting of all payments made to the Authority pursuant to this Agreement in the prior fiscal year;

(b) An analysis and review of development activity within the Development Area as reported to Louisville by the Authority;

(c) The progress made by the Authority toward the stated goals of the Development Area as reported to Louisville by the Authority; and

The Developer has agreed to submit to the Authority and Louisville all information required to make the report.

**3.4 Time of Payment.** By no sooner than (i) December 31<sup>st</sup> of each Calendar Year beginning in the year after the year of the Activation Date or (ii) thirty (30) days after the submission by the Authority of a request for the Released Amount under this Agreement, Louisville agrees to pay to the Authority the Released Amount. In no event shall Louisville agree to pay to the Authority the Released Amount if a submitted request is not received by December 31 of the calendar year after the applicable tax year, unless mutually agreed to by both Louisville and the Authority. No more than one request shall be submitted in any one calendar year

**3.5 Use of Released Amount.** Consistent with the Act, the Authority covenants and agrees that the Released Amount will be deposited in a special fund and it will use the Released Amount solely for the benefit of the Project, pursuant to the requirements of the Act.

**Section 4. Determination of Released Amount.**

**4.1 Calculation of Old Real Estate Tax Revenue.** The taxable value of all real property within the Development Area in the Base Year is **FOUR HUNDRED TWENTY THOUSAND EIGHT HUNDRED EIGHTY DOLLARS (\$420,880.00)**. The applicable ad valorem real property tax rate in the Base Year, including the Urban Services District tax and the county tax rate was .4971 per hundred dollars of assessed value. It is stipulated therefore that the amount of Old Real Estate Tax Revenue shall equal the assumed assessment in the Base Year times the applicable county and Urban Services tax rates in the Base Year, for the sum equal to \$2,092. The Old Real Estate Tax Revenue shall be adjusted each calendar year after the Base Year by adding the Old Real Estate Tax Revenue calculated for the previous calendar year, multiplied by two percent (2.0%), to the amount of Old Real Estate Tax Revenue for the previous calendar year. This adjusted amount is the Old Real Estate Tax Revenue for the current calendar year.

**4.2 New Real Estate Tax Revenue.** The Office of Management and Budget shall calculate the amount of New Real Estate Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 3.4 of this Agreement. The Office of Management and Budget shall calculate the New Real Estate Tax Revenue by aggregating the Real Estate Taxes received from within the Development Area. An estimate of the New Real Estate Tax Revenue is attached as Exhibit C.

**4.3 Calculation of the Real Estate Tax Increment.** The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 3.4 of this Agreement, shall calculate the Real Estate Tax Increment, which shall be an amount equal to the New Real Estate Tax Revenue calculated pursuant to Section 4.2 of this Agreement minus the Old Real Estate Tax Revenue calculated pursuant to Section 4.1 of this Agreement.

**4.4 Calculation of Released Amount.** The Office of Management and Budget in each year following the Activation Date, prior to the Time of Payment pursuant to Section 3.4 of this Agreement, shall calculate the Released Amount, which shall be a sum equal to eighty percent (80%) of the Real Estate Tax Increment.

**Section 5. Pledge of Incremental Revenues Superior to Ordinances and Statutes.**

As provided in the Act, any pledge of the Released Amount in this Agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the Activation Date to the Termination Date, supersede any statute or ordinance regarding the application or use of incremental revenues.

**Section 6. Miscellaneous.**

**6.1 Notices.** All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by

first class mail or overnight delivery to the other parties at their respective addresses as follows:

If to Louisville:       Louisville/Jefferson County Metro Government  
                                  c/o Louisville Forward  
                                  444 S. 5<sup>th</sup> St., Ste. 600  
                                  Louisville, Kentucky 40202  
                                  Attn: Rebecca Fleischaker

If to the Authority:   Metro Development Authority, Inc.  
                                  444 S. 5<sup>th</sup> St., Ste. 600  
                                  Louisville, Kentucky 40202

### **Section 7. Default.**

**7.1 Default by the Authority.** If the Authority materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein or in the reasonable judgment of Louisville there has been a substantial decrease in the Authority's capacity to undertake the obligations required by this Agreement, Louisville may give written notice (with a copy of said notice being given to the Office) that remedial action must be taken within thirty (30) calendar days. The Authority shall correct such breach or default within thirty (30) days after receipt of such notice. However, if the default is not reasonably curable within thirty (30) days, then the Authority may continue to cure the default or breach so long as Louisville is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, Louisville may terminate the Agreement by giving written notice to the Authority at least ten (10) days prior to the effective date of termination and shall and be entitled to any remedy and damages available to it at law or in equity, including specific performance.

**7.2 Default by Louisville.** If Louisville materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, the Authority may give written notice to Louisville that remedial action must be taken within thirty (30) days after Louisville's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Louisville may continue to cure the default or breach so long as the Authority is satisfied that sufficient progress is being made toward a cure. If such action is not taken, the Authority shall be entitled to enforce the provisions of this Agreement.

### **Section 8. Miscellaneous Provisions.**

**8.1 Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

**8.2 Severability.** If any clause, provision, or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or

unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

**8.3 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

**8.4 Entire Agreement; Modifications.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement. This Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the parties hereto.

**8.5 Counterparts.** This Agreement may be executed in any number of counterparts by some or all of the parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

**8.6 Relationship of the Parties.** Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

**8.7 Further Assurances.** Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

**8.8 Mutual Termination.** In addition to any other provisions relating to termination of this Agreement contained herein, this Agreement shall terminate upon the written agreement of all the parties hereto, except as otherwise provided in Section 8.3 of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

By: \_\_\_\_\_  
Greg Fischer, Mayor

**Approved as to Form and Legality:**

Michael J. O'Connell  
Jefferson County Attorney

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

**METRO DEVELOPMENT AUTHORITY,  
INC.**

By: \_\_\_\_\_  
Rebecca Fleischaker, President

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The 726 East Market Street project will involve new capital investment of approximately \$29 million and will construct a hotel to be managed by the Bunkhouse Group with approximately 122 rooms and at least two additional unique food & beverage establishments, on a lot that is currently used for surface parking.

**EXHIBIT B**

**DESCRIPTION OF DEVELOPMENT AREA**

Tract 1

Parcel #04-017D-0194-000

Being Tract 2 as shown on Minor Plat Docket No. 15 Minor Plat 1067, of record in Deed Book 10492, Page 176, in the Office of the County Court of Jefferson County, Kentucky, having been approved by the Louisville Metro Planning Commission on October 22, 2015.

Tract 2

Parcel #04-017D-0087-0000

Beginning at a point in the South line of Market Street 183-9/12 feet West of the Southwest corner of Shelby and Market Streets; thence West 26-3/12 feet; thence extending back South and parallel with Shelby Street 133-3/4 feet; thence East 26-3/12 feet; thence North and parallel with Shelby Street, 133-3/4 feet to the point of beginning.

Tract 3

Parcel #04-017D-0087-0000\*

Beginning at a point on the North side of the alley between Market and Jefferson Streets and Clay and Shelby Streets one hundred and sixty-five (165) feet nine (9) inches West of Shelby Street; running thence with the alley forty-three (43) feet nine (9) inches; thence Northwardly at right angles, seventy (70) feet, more or less; thence Eastwardly twenty-six (26) feet three (3) inches; thence Southeast to a point forty-three (43) feet nine (9) inches East of the West line of the lot to a point fifty-six (56) feet North of the alley; thence Southwardly fifty-six (56) feet to the beginning.

Tract 4

Parcel #04-017D-0085-0000

Beginning at a point in the South line of Market Street, 210 feet West of Shelby Street; running thence West with the South line of Market Street 28 feet, and extending back, between lines parallel with Shelby Street, 204 feet to an alley.

\*Deed also lists Tract 3 as Parcel #04-017D-0087-0000; PVA lists Tract 3 as Parcel #04-017D-0086-0000.



**EXHIBIT C**

**ESTIMATE OF NEW REAL ESTATE TAX REVENUE**

2023	98,873
2024	100,851
2025	102,868
2026	104,925
2027	107,024
2028	109,164
2029	111,347
2030	113,574
2031	115,846
2032	118,163
2033	120,526
2034	122,936
2035	125,395
2036	127,903
2037	130,461
2038	133,070
2039	135,732
2040	138,446
2041	141,215
2042	144,040

**EXHIBIT D**

**MEMORANDUM OF UNDERSTANDING**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **MOUNTAIN & RIVER CITY, LLC**, a Delaware limited liability company, or an affiliate of same (the "Developer") **AND THE PHOENIX HILL NEIGHBORHOOD ASSOCIATION, INC.**, a Kentucky nonprofit corporation ("Phoenix Hill").

### RECITALS:

**WHEREAS**, the Developer plans to undertake a major project located at 726 East Market Street, which will include a boutique hotel managed by the Bunkhouse Group with approximately 122 rooms, conference space, at least two additional unique food and beverage establishments, and an art garden with programmable space, at a cost of approximately \$29 million, more specifically described in **Exhibit A** (the "Project"); and

**WHEREAS**, Phoenix Hill is dedicated to the equitable & inclusive revitalization of the historic Phoenix Hill neighborhood and the surrounding area just east of downtown Louisville; and

**WHEREAS**, the Developer desires to provide certain community benefits in response to community needs.

**NOW THEREFORE**, for good and valuable consideration, the parties agree as follows:

**SECTION 1. OBLIGATIONS OF DEVELOPER**. Mountain & River City, LLC agrees as follows:

- A. At its sole cost and expense, the Developer will offer the following benefits to Phoenix Hill and the surrounding area:
  - a. Targeted neighborhood hiring and training: With a specific focus on the Phoenix Hill neighborhood, which is 65.5% Black, the Developer agrees to: 1) host multiple job fairs targeted at hiring locals and 2) establish a hospitality school, in partnership with a community group, in an effort to create a long-lasting effect on the community by training for careers in hotels in restaurants.
  - b. Community support: The Developer will stock its mini-mart with local makers and provisions at reasonable prices. In addition to creating a community hub to support families with food insecurity by providing fresh local produce and other staples at reasonable prices, Developer will also work with a designated local non-profit to ensure no food goes to waste either through daily pickup donation, a weekly farmers market, and/or dedicated space donated for an annual fundraiser for the non-profit.
  - c. Local programming: The Developer will source regional makes and small batch goods from local, diverse retailers across the state of Kentucky to supply interior pieces and textiles, as well as stock the lobby shop, mini mart, and in room amenities. A goal for these makers for retail will be to reflect the metropolitan statistical area (MSA) of Louisville, KY. To ensure there is reasonable effort to give opportunities to

underrepresented businesses, the Bunkhouse Hotel will work with Buy Black Lou and the Black Louisville Business Association.

**SECTION 2. OBLIGATIONS OF PHOENIX HILL.** Phoenix Hill agrees as follows:

- B. In good faith, the Phoenix Hill Neighborhood Association, Inc. will work with the Developer to:
  - a. Assist with the development of programming for programmable Project amenities
  - b. Identify local, community-based organizations and entrepreneurs for the Developer's mini mart, lobby shop, in room amenities, potential future farmers market, and for the free pick-up of excess or unused food items
  - c. Support the establishment and operation of the hospitality school

**Section 3. TERM.** The Term of this MOU shall be \_\_\_ ( ) year(s), commencing on the effective date and shall be renewed automatically for \_\_\_ ( ) successive one (1) year terms unless terminated by any party which gives written notice of its intent to terminate to all other parties to this MOU at least 90 days prior to the end of a term or unless terminated, pursuant to Section 5 of this MOU.

**Section 4. APPLICABLE LAW.** This MOU shall be interpreted under the laws of the Commonwealth of Kentucky.

**Section 5. ENTIRE AGREEMENT.** This MOU, together with any exhibits hereto, which are deemed to be incorporated by reference as if set forth at length herein, shall constitute the entire written understanding of the parties with respect to the subject matter hereof and shall supersede all oral and written understandings of the parties, all of which are deemed to be merged herein. This MOU may not be modified or amended except in writing, signed by each of the parties hereto, their successors or assigns.

**IN WITNESS WHEREOF** the authorized representatives of parties hereto have caused this Agreement to be duly executed as of the date first above written.

**Mountain & River City, LLC**  
**"Developer"**

\_\_\_\_\_

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

Title: \_\_\_\_\_

**Phoenix Hill Neighborhood Association,**  
**Inc.**  
**"Phoenix Hill"**

\_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT A**

**PROJECT DESCRIPTION**

The 726 East Market Street project will involve new capital investment of approximately \$29 million and will construct a hotel to be managed by the Bunkhouse Group with approximately 122 rooms and at least two additional unique food & beverage establishments, on a lot that is currently used for surface parking.